STATE OF NEW YORK

2376--B

Cal. No. 731

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, the general business law and the state technology law, in relation to adding medical and health insurance information within the definitions of identity theft

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 190.77 of the penal law is amended by adding two new paragraphs d and e to read as follows:

d. "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

e. "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

§ 2. Section 190.78 of the penal law, as added by chapter 619 of the laws of 2002, is amended to read as follows:

§ 190.78 Identity theft in the third degree.

A person is guilty of identity theft in the third degree when [~~he or she~~] **such person** knowingly and with intent to defraud assumes the identity of another person by presenting [~~himself or herself~~] **themself** as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, **medical information, health insurance information,** property or services or uses credit in the name of such other

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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person or causes financial loss to such person or to another person or persons; or

2. commits a class A misdemeanor or higher level crime.

Identity theft in the third degree is a class A misdemeanor.

§ 3. Section 190.79 of the penal law, as added by chapter 619 of the laws of 2002 and subdivision 4 as amended by chapter 279 of the laws of 2008, is amended to read as follows:

§ 190.79 Identity theft in the second degree.

A person is guilty of [~~identify~~] **identity** theft in the second degree when [~~he or she~~] **such person** knowingly and with intent to defraud assumes the identity of another person by presenting [~~himself or herself~~] **themself** as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, **medical information, health insurance information,** property or services or uses credit in the name of such other person in an aggregate amount that exceeds five hundred dollars; or

2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred dollars; or

3. commits or attempts to commit a felony or acts as an accessory to the commission of a felony; or

4. commits the crime of identity theft in the third degree as defined in section 190.78 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter.

Identity theft in the second degree is a class E felony.

§ 4. Section 190.80 of the penal law, as added by chapter 619 of the laws of 2002, subdivision 4 as amended by chapter 279 of the laws of 2008, is amended to read as follows:

§ 190.80 Identity theft in the first degree.

A person is guilty of identity theft in the first degree when [~~he or she~~] **such person** knowingly and with intent to defraud assumes the identity of another person by presenting [~~himself or herself~~] **themself** as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, **medical information, health insurance information,** property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or

2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds two thousand dollars; or

3. commits or attempts to commit a class D felony or higher level crime or acts as an accessory in the commission of a class D or higher level felony; or

4. commits the crime of identity theft in the second degree as defined in section 190.79 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in this section, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter.

Identity theft in the first degree is a class D felony.

§ 5. Paragraph (b) of subdivision 1 of section 899-aa of the general business law is amended by adding two new undesignated paragraphs and subparagraph (i) of such paragraph is amended by adding two new clauses 6 and 7 to read as follows:

(6) medical information; or

(7) health insurance information; or

For the purposes of this paragraph, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

For the purposes of this paragraph, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

§ 6. Paragraph (a) of subdivision 1 of section 208 of the state technology law is amended by adding two new undesignated paragraphs and subparagraph (i) of such paragraph is amended by adding two new clauses 6 and 7 to read as follows:

(6) medical information; or

(7) health insurance information; or

For the purposes of this paragraph, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

For the purposes of this paragraph, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.