

A 10944 Bing Same as [S 7843](#) SCHNEIDERMAN
Penal Law
TITLE....Provides a cogent and logical framework for
the myriad identity theft laws that have been passed in
response to the rapidly changing nature of identity theft
crimes
05/04/10 referred to codes

S7843 SCHNEIDERMAN Same as [A 10944](#) Bing
ON FILE: 05/17/10 Penal Law
TITLE....Provides a cogent and logical framework for the
myriad identity theft laws that have been passed in response
to the rapidly changing nature of identity theft crimes
05/14/10 REFERRED TO CODES

BING, JAFFEE, WEISENBERG, GUNTHER, COLTON, KOON, ROBINSON, SKARTADOS, GALEF,
GABRYSZAK, ZEBROWSKI, TITONE, SCARBOROUGH; M-S: Brennan, DelMonte, Mayersohn, Reilly,
Sweeney, Thiele
Rpld SS190.77 - 190.86, add Art 191 SS191.00 - 191.60, amd SS60.27, 460.10 & 490.05, Pen L; amd SS20.40 &
700.05, CP L; amd SS646 & 995, Exec L; amd S899-aa, Gen Bus L; amd S208, St Tech L
Provides a cogent and logical framework for the myriad identity theft laws that have been passed in response to the
rapidly changing nature of identity theft crimes; provides the dollar threshold for identity theft comparable to those
in the grand larceny statutes; acknowledges that identity theft doesn't respect geographic boundaries.
CRIMINAL SANCTION IMPACT.

STATE OF NEW YORK

10944

IN ASSEMBLY

May 4, 2010

Introduced by M. of A. BING -- read once and referred to the Committee
on Codes

AN ACT to amend the penal law, the criminal procedure law, the executive
law, the general business law and the state technology law, in
relation to the crime of identity theft; and repealing certain
provisions of the penal law and the criminal procedure law relating
thereto

**The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:**

- 1 Section 1. Sections 190.77, 190.78, 190.79, 190.80, 190.80-a, 190.81,
2 190.82, 190.83, 190.84, 190.85 and 190.86 of the penal law are REPEALED.
3 § 2. The penal law is amended by adding a new article 191 to read as
4 follows:
5 **ARTICLE 191**
6 **IDENTITY THEFT**
7 **Section 191.00 Offenses involving theft of identity; definitions.**
8 **191.05 Petit identity theft.**
9 **191.10 Identity theft in the fourth degree.**
10 **191.15 Identity theft in the third degree.**
11 **191.20 Identity theft in the second degree.**
12 **191.25 Identity theft in the first degree.**
13 **191.26 Identity theft of multiple victims in the fourth degree.**
14 **191.27 Identity theft of multiple victims in the third degree.**
15 **191.28 Identity theft of multiple victims in the second degree.**

- 16 191.29 Identity theft of multiple victims in the first degree.
17 191.30 Aggravated identity theft.
18 191.35 Unlawful possession of personal identifying information
19 in the third degree.
20 191.40 Unlawful possession of personal identifying information
21 in the second degree.
22 191.45 Unlawful possession of personal identifying information
23 in the first degree.
24 191.50 Defenses.

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

LBD16861-03-0

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- 1 191.55 Unlawful possession of a skimmer device in the second
2 degree.
3 191.60 Unlawful possession of a skimmer device in the first
4 degree.
5 § 191.00 Offenses involving theft of identity; definitions.
6 1. For the purposes of this article "personal identifying information"
7 means a person's name, address, telephone number, date of birth, driv-
8 er's license number, social security number, place of employment, moth-
9 er's maiden name, financial services account number or code, savings
10 account number or code, checking account number or code, brokerage
11 account number or code, credit card account number or code, debit card
12 number or code, automated teller machine number or code, taxpayer iden-
13 tification number, computer system password, signature or copy of a
14 signature, electronic signature, unique biometric data that is a finger-
15 print, voice print, retinal image or iris image of another person, tele-
16 phone calling card number, mobile identification number or code, elec-
17 tronic serial number or personal identification number, medical
18 information, medical insurance information, or any other name, number,
19 code or information that may be used alone or in conjunction with other
20 such information to assume the identity of another person.
21 2. For the purposes of this article:
22 a. "electronic signature" shall have the same meaning as defined in
23 subdivision three of section three hundred two of the state technology
24 law.
25 b. "personal identification number" means any number or code which may
26 be used alone or in conjunction with any other information to assume the
27 identity of another person or access financial resources or credit of
28 another person.
29 c. "member of the armed forces" shall mean a person in the military
30 service of the United States or the military service of the state,
31 including but not limited to, the armed forces of the United States, the
32 army national guard, the air national guard, the New York naval militia,
33 the New York guard, and such additional forces as may be created by the
34 federal or state government as authorized by law.
35 d. "medical information" means any information regarding an individ-
36 ual's medical history, mental or physical condition, or medical treat-
37 ment or diagnosis by a health care professional.
38 e. "medical insurance information" means an individual's health insur-
39 ance policy number or subscriber identification number, any unique iden-
40 tifier used by a health insurer to identify the individual or any infor-
41 mation in an individual's application and claims history, including, but
42 not limited to, appeals history.
43 § 191.05 Petit identity theft.

44 A person is guilty of petit identity theft when he or she knowingly
45 and with intent to defraud assumes the identity of another person by
46 presenting himself or herself as that other person, or by acting as that
47 other person or by using personal identifying information of that other
48 person, and thereby obtains goods, money, property or services or uses
49 credit in the name of such other person or causes financial loss to such
50 person or to another person or persons.

51 Petit identity theft is a class A misdemeanor.

52 § 191.10 Identity theft in the fourth degree.

53 A person is guilty of identity theft in the fourth degree when he or
54 she knowingly and with intent to defraud assumes the identity of another
55 person by presenting himself or herself as that other person, or by

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1 acting as that other person or by using personal identifying information
2 of that other person, and thereby:

3 1. obtains goods, money, property or services or uses credit in the
4 name of such other person in an aggregate amount that exceeds five
5 hundred dollars; or

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

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

10 Identity theft in the fourth degree is a class E felony.

11 § 191.15 Identity theft in the third degree.

12 A person is guilty of identify theft in the third degree when he or
13 she knowingly and with intent to defraud assumes the identity of another
14 person by presenting himself or herself as that other person, or by
15 acting as that other person or by using personal identifying information
16 of that other person, and thereby:

17 1. obtains goods, money, property or services or uses credit in the
18 name of such other person in an aggregate amount that exceeds two thou-
19 sand dollars; or

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

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

25 4. commits the crime of identity theft in the fourth degree as defined
26 in section 191.10 of this article and has been previously convicted
27 within the last five years of petit identity theft as defined in section
28 191.05, identity theft in the fourth degree as defined in section
29 191.10, identity theft in the third degree as defined in this section,
30 identity theft in the second degree as defined in section 191.20, iden-
31 tity theft in the first degree as defined in section 191.25, identity
32 theft of multiple victims in the fourth degree as defined in section
33 191.26, identity theft of multiple victims in the third degree as
34 defined in section 191.27, identity theft of multiple victims in the
35 second degree as defined in section 191.28, identity theft of multiple
36 victims in the first degree as defined in section 191.29, unlawful
37 possession of personal identifying information in the third degree as
38 defined in section 191.35, unlawful possession of personal identifying
39 information in the second degree as defined in section 191.40, unlawful
40 possession of personal identifying information in the first degree as
41 defined in section 191.45, unlawful possession of a skimmer device in
42 the second degree as defined in section 191.55, unlawful possession of a
43 skimmer device in the first degree as defined in section 191.60, grand
44 larceny in the fourth degree as defined in section 155.30, grand larceny

45 in the third degree as defined in section 155.35, grand larceny in the
46 second degree as defined in section 155.40 or grand larceny in the first
47 degree as defined in section 155.42, criminal possession of a forged
48 instrument in the third degree as defined in section 170.20, criminal
49 possession of a forged instrument in the second degree as defined in
50 section 170.25, criminal possession of a forged instrument in the first
51 degree as defined in section 170.30, criminal possession of stolen prop-
52 erty in the fifth degree as defined in section 165.40, criminal
53 possession of stolen property in the fourth degree as defined in section
54 165.45, criminal possession of stolen property in the third degree as
55 defined in section 165.50, criminal possession of stolen property in the
56 second degree as defined in section 165.52, criminal possession of

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1 stolen property in the first degree as defined in section 165.54, or
2 criminal possession of forgery devices as defined in section 170.40 of
3 this chapter.
4 Identity theft in the third degree is a class D felony.
5 § 191.20 Identity theft in the second degree.
6 A person is guilty of identity theft in the second degree when he or
7 she knowingly and with intent to defraud assumes the identity of another
8 person by presenting himself or herself as that other person, or by
9 acting as that other person or by using personal identifying information
10 of that other person, and thereby:
11 1. obtains goods, money, property or services or uses credit in the
12 name of such other person in an aggregate amount that exceeds twenty-
13 five thousand dollars; or
14 2. causes financial loss to such person or to another person or
15 persons in an aggregate amount that exceeds twenty-five thousand
16 dollars; or
17 3. commits or attempts to commit a class C felony or higher level
18 crime or acts as an accessory in the commission of a class C or higher
19 level felony; or
20 4. commits the crime of identity theft in the third degree as defined
21 in section 191.15 of this article and has been previously convicted
22 within the last five years of petit identity theft as defined in section
23 191.05, identity theft in the fourth degree as defined in section
24 191.10, identity theft in the third degree as defined in section 191.15,
25 identity theft in the second degree as defined in this section, identity
26 theft in the first degree as defined in section 191.25, identity theft
27 of multiple victims in the fourth degree as defined in section 191.26,
28 identity theft of multiple victims in the third degree as defined in
29 section 191.27, identity theft of multiple victims in the second degree
30 as defined in section 191.28, identity theft of multiple victims in the
31 first degree as defined in section 191.29, unlawful possession of
32 personal identifying information in the third degree as defined in
33 section 191.35, unlawful possession of personal identifying information
34 in the second degree as defined in section 191.40, unlawful possession
35 of personal identifying information in the first degree as defined in
36 section 191.45, unlawful possession of a skimmer device in the second
37 degree as defined in section 191.55, unlawful possession of a skimmer
38 device in the first degree as defined in section 191.60, grand larceny
39 in the fourth degree as defined in section 155.30, grand larceny in the
40 third degree as defined in section 155.35, grand larceny in the second
41 degree as defined in section 155.40 or grand larceny in the first degree
42 as defined in section 155.42, criminal possession of a forged instrument
43 in the third degree as defined in section 170.20, criminal possession of
44 a forged instrument in the second degree as defined in section 170.25,

45 criminal possession of a forged instrument in the first degree as
46 defined in section 170.30, criminal possession of stolen property in the
47 fifth degree as defined in section 165.40, criminal possession of stolen
48 property in the fourth degree as defined in section 165.45, criminal
49 possession of stolen property in the third degree as defined in section
50 165.50, criminal possession of stolen property in the second degree as
51 defined in section 165.52, criminal possession of stolen property in the
52 first degree as defined in section 165.54, or criminal possession of
53 forgery devices as defined in section 170.40 of this chapter.
54 Identity theft in the second degree is a class C felony.
55 § 191.25 Identity theft in the first degree.

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1 A person is guilty of identify theft in the first degree when he or
2 she knowingly and with intent to defraud assumes the identity of another
3 person by presenting himself or herself as that other person, or by
4 acting as that other person or by using personal identifying information
5 of that other person, and thereby:
6 1. obtains goods, money, property or services or uses credit in the
7 name of such other person in an aggregate amount that exceeds two
8 hundred thousand dollars; or
9 2. causes financial loss to such person or to another person or
10 persons in an aggregate amount that exceeds two hundred thousand
11 dollars; or
12 3. commits or attempts to commit a class B felony or higher level
13 crime or acts as an accessory in the commission of a class B or higher
14 level felony; or
15 4. commits the crime of identity theft in the second degree as defined
16 in section 191.20 of this article and has been previously convicted
17 within the last five years of petit identity theft as defined in section
18 191.05, identity theft in the fourth degree as defined in section
19 191.10, identity theft in the third degree as defined in section 191.15,
20 identity theft in the second degree as defined in section 191.20 of this
21 article, identity theft in the first degree as defined in this section,
22 identity theft of multiple victims in the fourth degree as defined in
23 section 191.26, identity theft of multiple victims in the third degree
24 as defined in section 191.27, identity theft of multiple victims in the
25 second degree as defined in section 191.28, identity theft of multiple
26 victims in the first degree as defined in section 191.29, unlawful
27 possession of personal identifying information in the second degree as
28 defined in section 191.40, unlawful possession of personal identifying
29 information in the first degree as defined in section 191.45, unlawful
30 possession of a skimmer device in the second degree as defined in
31 section 191.55, unlawful possession of a skimmer device in the first
32 degree as defined in section 191.60, grand larceny in the fourth degree
33 as defined in section 155.30, grand larceny in the third degree as
34 defined in section 155.35, grand larceny in the second degree as defined
35 in section 155.40 or grand larceny in the first degree as defined in
36 section 155.42, criminal possession of a forged instrument in the third
37 degree as defined in section 170.20, criminal possession of a forged
38 instrument in the second degree as defined in section 170.25, criminal
39 possession of a forged instrument in the first degree as defined in
40 section 170.30, criminal possession of stolen property in the fifth
41 degree as defined in section 165.40, criminal possession of stolen prop-
42 erty in the fourth degree as defined in section 165.45, criminal
43 possession of stolen property in the third degree as defined in section
44 165.50, criminal possession of stolen property in the second degree as
45 defined in section 165.52, criminal possession of stolen property in the

46 first degree as defined in section 165.54, or criminal possession of
47 forgery devices as defined in section 170.40 of this chapter.
48 Identity theft in the first degree is a class B felony.
49 § 191.26 Identity theft of multiple victims in the fourth degree.
50 A person is guilty of identity theft of multiple victims in the fourth
51 degree when he or she knowingly, and with intent to defraud, assumes the
52 identity of three or more persons by presenting himself or herself as
53 those other persons, or by acting as those other persons, or by using
54 personal identifying information of those other persons, and thereby:
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1 1. obtains goods, money, medical information, health information,
2 property or services or uses credit in the name of those persons, in an
3 aggregate amount that exceeds five hundred dollars; or
4 2. causes financial loss to such persons, or to another person or
5 persons in an aggregate amount that exceeds five hundred dollars; or
6 3. commits or attempts to commit a felony or acts as an accessory to
7 the commission of a felony.
8 Identity theft of multiple victims in the fourth degree is a class E
9 felony.
10 § 191.27 Identity theft of multiple victims in the third degree.
11 A person is guilty of identity theft of multiple victims in the third
12 degree when he or she knowingly, and with intent to defraud, assumes the
13 identity of ten or more persons by presenting himself or herself as
14 those other persons, or by acting as those other persons, or by using
15 personal identifying information of those other persons, and thereby:
16 1. obtains goods, money, medical information, health information,
17 property or services or uses credit in the name of those persons, in an
18 aggregate amount that exceeds two thousand dollars; or
19 2. causes financial loss to such persons, or to another person or
20 persons in an aggregate amount that exceeds two thousand dollars; or
21 3. commits or attempts to commit a class D felony or higher level
22 crime or acts as an accessory in the commission of a class D or higher
23 level felony; or
24 4. commits the crime of identity theft in the fourth degree as defined
25 in section 191.10 of this article and has been previously convicted
26 within the last five years of petit identity theft as defined in section
27 191.05, identity theft in the fourth degree as defined in section
28 191.10, identity theft in the third degree as defined in section 191.15,
29 identity theft in the second degree as defined in section 191.20, iden-
30 tity theft in the first degree as defined in section 191.25, identity
31 theft of multiple victims in the fourth degree as defined in section
32 191.26, identity theft of multiple victims in the third degree as
33 defined in this section, identity theft of multiple victims in the
34 second degree as defined in section 191.28, identity theft of multiple
35 victims in the first degree as defined in section 191.29, unlawful
36 possession of personal identifying information in the third degree as
37 defined in section 191.35, unlawful possession of personal identifying
38 information in the second degree as defined in section 191.40, unlawful
39 possession of personal identifying information in the first degree as
40 defined in section 191.45, unlawful possession of a skimmer device in
41 the second degree as defined in section 191.55, unlawful possession of a
42 skimmer device in the first degree as defined in section 191.60, grand
43 larceny in the fourth degree as defined in section 155.30, grand larceny
44 in the third degree as defined in section 155.35, grand larceny in the
45 second degree as defined in section 155.40, grand larceny in the first
46 degree as defined in section 155.42, criminal possession of a forged
47 instrument in the third degree as defined in section 170.20, criminal

48 possession of a forged instrument in the second degree as defined in
49 section 170.25, criminal possession of a forged instrument in the first
50 degree as defined in section 170.30, criminal possession of stolen prop-
51 erty in the fifth degree as defined in section 165.40, criminal
52 possession of stolen property in the fourth degree as defined in section
53 165.45, criminal possession of stolen property in the third degree as
54 defined in section 165.50, criminal possession of stolen property in the
55 second degree as defined in section 165.52, criminal possession of
56 stolen property in the first degree as defined in section 165.54, or

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1 criminal possession of forgery devices as defined in section 170.40 of
2 this chapter.
3 Identity theft of multiple victims in the third degree is a class D
4 felony.
5 § 191.28 Identity theft of multiple victims in the second degree.
6 A person is guilty of identity theft of multiple victims in the second
7 degree when he or she knowingly, and with intent to defraud, assumes the
8 identity of twenty-five or more persons by presenting himself or herself
9 as those other persons, or by acting as those other persons, or by using
10 personal identifying information of those other persons, and thereby:
11 1. obtains goods, money, medical information, health information,
12 property or services or uses credit in the name of those persons, in an
13 aggregate amount that exceeds twenty-five thousand dollars; or
14 2. causes financial loss to such persons, or to another person or
15 persons in an aggregate amount that exceeds twenty-five thousand
16 dollars; or
17 3. commits or attempts to commit a class C felony or higher level
18 crime or acts as an accessory in the commission of a class C or higher
19 level felony; or
20 4. commits the crime of identity theft in the fourth degree as defined
21 in section 191.10 of this article and has been previously convicted
22 within the last five years of petit identity theft as defined in section
23 191.05, identity theft in the fourth degree as defined in section
24 191.10, identity theft in the third degree as defined in section 191.15,
25 identity theft in the second degree as defined in section 191.20, iden-
26 tity theft in the first degree as defined in section 191.25, identity
27 theft of multiple victims in the fourth degree as defined in section
28 191.26, identity theft of multiple victims in the third degree as
29 defined in section 191.27, identity theft of multiple victims in the
30 second degree as defined in this section, identity theft of multiple
31 victims in the first degree as defined in section 191.29, unlawful
32 possession of personal identifying information in the third degree as
33 defined in section 191.35, unlawful possession of personal identifying
34 information in the second degree as defined in section 191.40, unlawful
35 possession of personal identifying information in the first degree as
36 defined in section 191.45, unlawful possession of a skimmer device in
37 the second degree as defined in section 191.55, unlawful possession of a
38 skimmer device in the first degree as defined in section 191.60, grand
39 larceny in the fourth degree as defined in section 155.30, grand larceny
40 in the third degree as defined in section 155.35, grand larceny in the
41 second degree as defined in section 155.40, grand larceny in the first
42 degree as defined in section 155.42, criminal possession of a forged
43 instrument in the third degree as defined in section 170.20, criminal
44 possession of a forged instrument in the second degree as defined in
45 section 170.25, criminal possession of a forged instrument in the first
46 degree as defined in section 170.30, criminal possession of stolen prop-
47 erty in the fifth degree as defined in section 165.40, criminal

48 possession of stolen property in the fourth degree as defined in section
49 165.45, criminal possession of stolen property in the third degree as
50 defined in section 165.50, criminal possession of stolen property in the
51 second degree as defined in section 165.52, criminal possession of
52 stolen property in the first degree as defined in section 165.54, or
53 criminal possession of forgery devices as defined in section 170.40 of
54 this chapter.

55 Identity theft of multiple victims in the second degree is a class C
56 felony.

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1 § 191.29 Identity theft of multiple victims in the first degree.

2 A person is guilty of identity theft of multiple victims in the first
3 degree when he or she knowingly, and with intent to defraud, assumes the
4 identity of fifty or more persons by presenting himself or herself as
5 those other persons, or by acting as those other persons, or by using
6 personal identifying information of those other persons, and thereby:
7 1. obtains goods, money, medical information, health information,
8 property or services or uses credit in the name of those persons, in an
9 aggregate amount that exceeds two hundred thousand dollars; or
10 2. causes financial loss to such persons, or to another person or
11 persons in an aggregate amount that exceeds two hundred thousand
12 dollars; or
13 3. commits or attempts to commit a class B felony or higher level
14 crime or acts as an accessory in the commission of a class B or higher
15 level felony; or
16 4. commits the crime of identity theft in the fourth degree as defined
17 in section 191.10 of this article and has been previously convicted
18 within the last five years of petit identity theft as defined in section
19 191.05, identity theft in the fourth degree as defined in section
20 191.10, identity theft in the third degree as defined in section 191.15,
21 identity theft in the second degree as defined in section 191.20, iden-
22 tity theft in the first degree as defined in section 191.25, identity
23 theft of multiple victims in the fourth degree as defined in section
24 191.26, identity theft of multiple victims in the third degree as
25 defined in section 191.27, identity theft of multiple victims in the
26 second degree as defined in section 191.28, identity theft of multiple
27 victims in the first degree as defined in this section, unlawful
28 possession of personal identifying information in the third degree as
29 defined in section 191.35, unlawful possession of personal identifying
30 information in the second degree as defined in section 191.40, unlawful
31 possession of personal identifying information in the first degree as
32 defined in section 191.45, unlawful possession of a skimmer device in
33 the second degree as defined in section 191.55, unlawful possession of a
34 skimmer device in the first degree as defined in section 191.60, grand
35 larceny in the fourth degree as defined in section 155.30, grand larceny
36 in the third degree as defined in section 155.35, grand larceny in the
37 second degree as defined in section 155.40, grand larceny in the first
38 degree as defined in section 155.42, criminal possession of a forged
39 instrument in the third degree as defined in section 170.20, criminal
40 possession of a forged instrument in the second degree as defined in
41 section 170.25, criminal possession of a forged instrument in the first
42 degree as defined in section 170.30, criminal possession of stolen prop-
43 erty in the fifth degree as defined in section 165.40, criminal
44 possession of stolen property in the fourth degree as defined in section
45 165.45, criminal possession of stolen property in the third degree as
46 defined in section 165.50, criminal possession of stolen property in the
47 second degree as defined in section 165.52, criminal possession of

48 stolen property in the first degree as defined in section 165.54, or
49 criminal possession of forgery devices as defined in section 170.40 of
50 this chapter.

51 Identity theft of multiple victims in the first degree is a class B
52 felony.

53 § 191.30 Aggravated identity theft.

54 A person is guilty of aggravated identity theft when he or she know-
55 ingly and with intent to defraud assumes the identity of another person
56 by presenting himself or herself as that other person, or by acting as

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1 that other person or by using personal identifying information of that
2 other person, and:

3 1. knows that such person is a member of the armed forces, and knows
4 that such member is presently deployed outside of the continental United
5 States and:

6 a. thereby obtains goods, money, property or services or uses credit
7 in the name of such member of the armed forces in an aggregate amount
8 that exceeds five hundred dollars; or

9 b. thereby causes financial loss to such member of the armed forces in
10 an aggregate amount that exceeds five hundred dollars; or

11 2. knows that such person is a vulnerable elderly person as defined in
12 subdivision three of section 260.31 of this chapter or a person who is
13 unable to care for himself or herself because of physical disability,
14 mental disease or defect, or because he or she is a minor and:

15 a. thereby obtains goods, money, property or services or uses credit
16 in the name of such person in an aggregate amount that exceeds five
17 hundred dollars; or

18 b. thereby causes financial loss to such person in an aggregate amount
19 that exceeds five hundred dollars.

20 Aggravated identity theft is a class D felony.

21 § 191.35 Unlawful possession of personal identifying information in the
22 third degree.

23 A person is guilty of unlawful possession of personal identifying
24 information in the third degree when he or she knowingly possesses a
25 person's personal identifying information as defined in section 191.00
26 of this article of another person knowing such information is intended
27 to be used in furtherance of the commission of a crime defined in this
28 chapter.

29 Unlawful possession of personal identifying information in the third
30 degree is a class A misdemeanor.

31 § 191.40 Unlawful possession of personal identifying information in the
32 second degree.

33 A person is guilty of unlawful possession of personal identifying
34 information in the second degree when he or she knowingly possesses
35 fifty or more items of personal identifying information as defined in
36 section 191.00 of this article knowing such information is intended to
37 be used in furtherance of the commission of a crime defined in this
38 chapter.

39 Unlawful possession of personal identifying information in the second
40 degree is a class E felony.

41 § 191.45 Unlawful possession of personal identifying information in the
42 first degree.

43 A person is guilty of unlawful possession of personal identifying
44 information in the first degree when he or she commits the crime of
45 unlawful possession of personal identifying information in the second
46 degree and:

47 1. with intent to further the commission of identity theft in the

48 third degree, he or she supervises more than three accomplices; or
49 2. he or she has been previously convicted within the last five years
50 of petit identity theft as defined in section 191.05, identity theft in
51 the fourth degree as defined in section 191.10, identity theft in the
52 third degree as defined in section 191.15, identity theft in the second
53 degree as defined in section 191.20, identity theft in the first degree
54 as defined in section 191.25, identity theft of multiple victims in the
55 fourth degree as defined in section 191.26, identity theft of multiple
56 victims in the third degree as defined in section 191.27, identity theft

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1 of multiple victims in the second degree as defined in section 191.28,
2 identity theft of multiple victims in the first degree as defined in
3 section 191.29, unlawful possession of personal identifying information
4 in the third degree as defined in section 191.35, unlawful possession of
5 personal identifying information in the second degree as defined in
6 section 191.40, unlawful possession of personal identifying information
7 in the first degree as defined in this section, unlawful possession of a
8 skimmer device in the second degree as defined in section 191.55, unlaw-
9 ful possession of a skimmer device in the first degree as defined in
10 section 191.60, grand larceny in the fourth degree as defined in section
11 155.30, grand larceny in the third degree as defined in section 155.35,
12 grand larceny in the second degree as defined in section 155.40 or grand
13 larceny in the first degree as defined in section 155.42, criminal
14 possession of a forged instrument in the third degree as defined in
15 section 170.20, criminal possession of a forged instrument in the second
16 degree as defined in section 170.25, criminal possession of a forged
17 instrument in the first degree as defined in section 170.30, criminal
18 possession of stolen property in the fifth degree as defined in section
19 165.40, criminal possession of stolen property in the fourth degree as
20 defined in section 165.45, criminal possession of stolen property in the
21 third degree as defined in section 165.50, criminal possession of stolen
22 property in the second degree as defined in section 165.52, criminal
23 possession of stolen property in the first degree as defined in section
24 165.54, or criminal possession of forgery devices as defined in section
25 170.40 of this chapter; or
26 3. with intent to further the commission of identity theft in the
27 second degree:
28 a. he or she supervises more than two accomplices, and
29 b. he or she knows that the person whose personal identifying informa-
30 tion that he or she possesses is a member of the armed forces, and
31 c. he or she knows that such member of the armed forces is presently
32 deployed outside of the continental United States.
33 Unlawful possession of personal identifying information in the first
34 degree is a class D felony.
35 § 191.50 Defenses.
36 In any prosecution for identity theft or unlawful possession of
37 personal identifying information pursuant to this article, it shall be
38 an affirmative defense that the person charged with the offense:
39 1. was under twenty-one years of age at the time of committing the
40 offense and the person used or possessed the personal identifying infor-
41 mation of another solely for the purpose of purchasing alcohol;
42 2. was under eighteen years of age at the time of committing the
43 offense and the person used or possessed the personal identifying infor-
44 mation of another solely for the purpose of purchasing tobacco products;
45 or
46 3. used or possessed the personal identifying information of another
47 person solely for the purpose of misrepresenting the person's age to

48 gain access to a place the access to which is restricted based on age.
49 § 191.55 Unlawful possession of a skimmer device in the second degree.
50 1. A person is guilty of unlawful possession of a skimmer device in
51 the second degree when he or she possesses a skimmer device with the
52 intent that such device be used in furtherance of the commission of the
53 crime of identity theft or unlawful possession of personal identifying
54 information as defined in this article.
55 2. For purposes of this article, "skimmer device" means a device
56 designed or adapted to obtain personal identifying information from a
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1 credit card, debit card, public benefit card, access card or device, or
2 other card or device that contains personal identifying information.
3 Unlawful possession of a skimmer device in the second degree is a
4 class A misdemeanor.
5 § 191.60 Unlawful possession of a skimmer device in the first degree.
6 A person is guilty of unlawful possession of a skimmer device in the
7 first degree when he or she commits the crime of unlawful possession of
8 a skimmer device in the second degree and he or she has been previously
9 convicted within the last five years of identity theft in the fourth
10 degree as defined in section 191.10, identity theft in the third degree
11 as defined in section 191.15, identity theft in the second degree as
12 defined in section 191.20, identity theft in the first degree as defined
13 in section 191.25, identity theft of multiple victims in the fourth
14 degree as defined in section 191.26, identity theft of multiple victims
15 in the third degree as defined in section 191.27, identity theft of
16 multiple victims in the second degree as defined in section 191.28,
17 identity theft of multiple victims in the first degree as defined in
18 section 191.29, unlawful possession of personal identifying information
19 in the third degree as defined in section 191.35, unlawful possession of
20 personal identifying information in the second degree as defined in
21 section 191.40, unlawful possession of personal identifying information
22 in the first degree as defined in section 191.45, unlawful possession of
23 a skimmer device in the second degree as defined in section 191.55,
24 unlawful possession of a skimmer device in the first degree as defined
25 in this section, grand larceny in the fourth degree as defined in
26 section 155.30, grand larceny in the third degree as defined in section
27 155.35, grand larceny in the second degree as defined in section 155.40,
28 grand larceny in the first degree as defined in section 155.42, criminal
29 possession of a forged instrument in the third degree as defined in
30 section 170.20, criminal possession of a forged instrument in the second
31 degree as defined in section 170.25, criminal possession of a forged
32 instrument in the first degree as defined in section 170.30, criminal
33 possession of stolen property in the fifth degree as defined in section
34 165.40, criminal possession of stolen property in the fourth degree as
35 defined in section 165.45, criminal possession of stolen property in the
36 third degree as defined in section 165.50, criminal possession of stolen
37 property in the second degree as defined in section 165.52, criminal
38 possession of stolen property in the first degree as defined in section
39 165.54, or criminal possession of forgery devices as defined in section
40 170.40 of this chapter.
41 Unlawful possession of a skimmer device in the first degree is a class
42 E felony.

43 § 3. Subdivision 1 of section 60.27 of the penal law, as amended by
44 chapter 279 of the laws of 2008, is amended to read as follows:
45 1. In addition to any of the dispositions authorized by this article,
46 the court shall consider restitution or reparation to the victim of the
47 crime and may require restitution or reparation as part of the sentence

48 imposed upon a person convicted of an offense, and after providing the
49 district attorney with an opportunity to be heard in accordance with the
50 provisions of this subdivision, require the defendant to make restitu-
51 tion of the fruits of his or her offense or reparation for the actual
52 out-of-pocket loss caused thereby and, in the case of a violation of
53 section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10,
54 191.15, 191.20, 191.25 or 191.30 of this chapter, any costs or losses
55 incurred due to any adverse action taken against the victim. The
56 district attorney shall where appropriate, advise the court at or before
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1 the time of sentencing that the victim seeks restitution or reparation,
2 the extent of injury or economic loss or damage of the victim, and the
3 amount of restitution or reparation sought by the victim in accordance
4 with his or her responsibilities under subdivision two of section 390.50
5 of the criminal procedure law and article twenty-three of the executive
6 law. The court shall hear and consider the information presented by the
7 district attorney in this regard. In that event, or when the victim
8 impact statement reports that the victim seeks restitution or repara-
9 tion, the court shall require, unless the interests of justice dictate
10 otherwise, in addition to any of the dispositions authorized by this
11 article that the defendant make restitution of the fruits of the offense
12 and reparation for the actual out-of-pocket loss and, in the case of a
13 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,
14 191.10, 191.15, 191.20, 191.25 or 191.30 of this chapter, any costs or
15 losses incurred due to any adverse action, caused thereby to the victim.
16 In the event that restitution or reparation are not ordered, the court
17 shall clearly state its reasons on the record. Adverse action as used in
18 this subdivision shall mean and include actual loss incurred by the
19 victim, including an amount equal to the value of the time reasonably
20 spent by the victim attempting to remediate the harm incurred by the
21 victim from the offense, and the consequential financial losses from
22 such action.

23 § 4. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,
24 as amended by chapter 619 of the laws of 2002, is amended to read as
25 follows:

26 (b) the term "victim" shall include the victim of the offense, the
27 representative of a crime victim as defined in subdivision six of
28 section six hundred twenty-one of the executive law, an individual whose
29 identity was assumed or whose personal identifying information was used
30 in violation of section [~~190.78, 190.79 or 190.80~~] 191.05, 191.10,
31 191.15, 191.20, 191.25 or 191.30 of this chapter, or any person who has
32 suffered a financial loss as a direct result of the acts of a defendant
33 in violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~]
34 191.05, 191.10, 191.15, 191.20, 191.25 or 191.30 of this chapter, a good
35 samaritan as defined in section six hundred twenty-one of the executive
36 law and the crime victims' board or other governmental agency that has
37 received an application for or has provided financial assistance or
38 compensation to the victim.

39 § 5. Paragraph (a) of subdivision 1 of section 460.10 of the penal
40 law, as amended by section 30 of part AAA of chapter 56 of the laws of
41 2009, is amended to read as follows:

42 (a) Any of the felonies set forth in this chapter: sections 120.05,
43 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
44 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
45 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
46 ing to labor trafficking; section 135.65 relating to coercion; sections
47 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10

48 and 145.12 relating to criminal mischief; article one hundred fifty
49 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
50 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
51 health care fraud; article one hundred sixty relating to robbery;
52 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
53 possession of stolen property; sections 165.72 and 165.73 relating to
54 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,
55 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
56 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
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1 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
2 and 178.25 relating to criminal diversion of prescription medications
3 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
4 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
5 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
6 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage
7 fraud, sections 190.40 and 190.42 relating to criminal usury; section
8 190.65 relating to schemes to defraud; sections 191.05, 191.10, 191.15,
9 191.20, 191.25, 191.30, 191.35, 191.40, 191.45, 191.55 and 191.60 relat-
10 ing to identity theft, sections 205.60 and 205.65 relating to hindering
11 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and
12 contempt; section 215.40 relating to tampering with physical evidence;
13 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,
14 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled
15 substances; sections 225.10 and 225.20 relating to gambling; sections
16 230.25, 230.30, and 230.32 relating to promoting prostitution; and section
17 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and
18 235.22 relating to obscenity; sections 263.10 and 263.15 relating to
19 promoting [a] an obscene sexual performance by a child; sections 265.02,
20 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section
21 265.10 which constitute a felony relating to firearms and other danger-
22 ous weapons; and sections 265.14 and 265.16 relating to criminal sale of
23 a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to
24 unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20
25 relating to money laundering; or
26 § 6. Paragraph (a) of subdivision 3 of section 490.05 of the penal
27 law, as amended by section 7 of part A of chapter 1 of the laws of 2004,
28 is amended to read as follows:
29 (a) "Specified offense" for purposes of this article means a class A
30 felony offense other than an offense as defined in article two hundred
31 twenty, a violent felony offense as defined in section 70.02,
32 manslaughter in the second degree as defined in section 125.15, criminal
33 tampering in the first degree as defined in section 145.20, identity
34 theft in the second degree as defined in section [~~190.79~~] 191.20, iden-
35 tity theft in the first degree as defined in section [~~190.80~~] 191.25,
36 unlawful possession of personal identification information in the second
37 degree as defined in section [~~190.82~~] 191.40, unlawful possession of
38 personal identification information in the first degree as defined in
39 section [~~190.83~~] 191.45, money laundering in support of terrorism in the
40 fourth degree as defined in section 470.21, money laundering in support
41 of terrorism in the third degree as defined in section 470.22, money
42 laundering in support of terrorism in the second degree as defined in
43 section 470.23, money laundering in support of terrorism in the first
44 degree as defined in section 470.24 of this chapter, and includes an
45 attempt or conspiracy to commit any such offense.
46 § 7. The opening paragraph and paragraph (l) of subdivision 4 of
47 section 20.40 of the criminal procedure law, paragraph (l) as amended by

48 chapter 346 of the laws of 2007, are amended to read as follows:

49 A person may be convicted in an appropriate criminal court of a
50 particular county, of an offense of which the criminal courts of this
51 state have jurisdiction pursuant to section 20.20, committed either by
52 his or her own conduct or by the conduct of another for which he or she
53 is legally accountable pursuant to section 20.00 of the penal law, when:
54 (l) An offense of identity theft or unlawful possession of personal
55 ~~[identification]~~ identifying information and all criminal acts committed
56 in connection with those crimes or committed through the criminal misuse

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1 of personal identifying information may be prosecuted (i) in any county
2 in which part of the offense took place regardless of whether the
3 defendant was actually present in such county, or (ii) in the county in
4 which the person who suffers financial loss resided at the time of the
5 commission of the offense, or (iii) in the county where the person whose
6 personal ~~[identification]~~ identifying information was used in the
7 commission of the offense resided at the time of the commission of the
8 offense. The law enforcement agency of any such county shall take a
9 police report of the matter and provide the complainant with a copy of
10 such report at no charge.

11 § 8. Paragraph (s) of subdivision 8 of section 700.05 of the criminal
12 procedure law is REPEALED and a new paragraph (s) is added to read as
13 follows:

14 (s) Petit identity theft as defined in section 191.05, identity theft
15 in the fourth degree as defined in section 191.10, identity theft in the
16 third degree as defined in section 191.15, identity theft in the second
17 degree as defined in section 191.20, identity theft in the first degree
18 as defined in section 191.25, identity theft of multiple victims in the
19 fourth degree as defined in section 191.26, identity theft of multiple
20 victims in the third degree as defined in section 191.27, identity theft
21 of multiple victims in the second degree as defined in section 191.28,
22 identity theft of multiple victims in the first degree as defined in
23 section 191.29, aggravated identity theft as defined in section 191.30,
24 unlawful possession of personal identifying information in the third
25 degree as defined in section 191.35, unlawful possession of personal
26 identifying information in the second degree as defined in section
27 191.40, unlawful possession of personal identifying information in the
28 first degree as defined in section 191.45, unlawful possession of a
29 skimmer device in the second degree as defined in section 191.55, or
30 unlawful possession of a skimmer device in the first degree as defined
31 in section 191.60.

32 § 9. Subdivision 2 of section 646 of the executive law, as amended by
33 chapter 346 of the laws of 2007, is amended to read as follows:

34 2. An individual whose identity was assumed or whose personal identi-
35 fying information, as defined in ~~[section 190.77]~~ subdivision one of
36 section 191.00 of the penal law, was used in violation of section
37 ~~[190.78, 190.79 or 190.80]~~ 191.05, 191.10, 191.15, 191.20, 191.25,
38 191.26, 191.27, 191.28, 191.29 or 191.30 of the penal law, or any person
39 who has suffered a financial loss as a direct result of the acts of a
40 defendant in violation of section ~~[190.78, 190.79, 190.80, 190.82 or~~
41 ~~190.83]~~ 191.05, 191.10, 191.15, 191.20, 191.25, 191.26, 191.27, 191.28,
42 191.29 or 191.30 of the penal law, who has learned or reasonably
43 suspects that his or her personal identifying information has been
44 unlawfully used by another, may make a complaint to the local law
45 enforcement agency of the county in which any part of the offense took
46 place regardless of whether the defendant was actually present in such
47 county, or in the county in which the person who suffered financial loss

48 resided at the time of the commission of the offense, or in the county
49 where the person whose personal identification information was used in
50 the commission of the offense resided at the time of the commission of
51 the offense as provided in paragraph (l) of subdivision four of section
52 20.40 of the criminal procedure law. Said local law enforcement agency
53 shall take a police report of the matter and provide the complainant
54 with a copy of such report free of charge.

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1 § 10. Paragraph (d) of subdivision 7 of section 995 of the executive
2 law, as amended by chapter 2 of the laws of 2006, is amended to read as
3 follows:

4 (d) any of the following felonies, or an attempt thereof where such
5 attempt is a felony offense:

6 aggravated assault upon a person less than eleven years old, as
7 defined in section 120.12 of the penal law; menacing in the first
8 degree, as defined in section 120.13 of the penal law; reckless endan-
9 germent in the first degree, as defined in section 120.25 of the penal
10 law; stalking in the second degree, as defined in section 120.55 of the
11 penal law; criminally negligent homicide, as defined in section 125.10
12 of the penal law; vehicular manslaughter in the second degree, as
13 defined in section 125.12 of the penal law; vehicular manslaughter in
14 the first degree, as defined in section 125.13 of the penal law;
15 persistent sexual abuse, as defined in section 130.53 of the penal law;
16 aggravated sexual abuse in the fourth degree, as defined in section
17 130.65-a of the penal law; female genital mutilation, as defined in
18 section 130.85 of the penal law; facilitating a sex offense with a
19 controlled substance, as defined in section 130.90 of the penal law;
20 unlawful imprisonment in the first degree, as defined in section 135.10
21 of the penal law; custodial interference in the first degree, as defined
22 in section 135.50 of the penal law; criminal trespass in the first
23 degree, as defined in section 140.17 of the penal law; criminal tamper-
24 ing in the first degree, as defined in section 145.20 of the penal law;
25 tampering with a consumer product in the first degree, as defined in
26 section 145.45 of the penal law; robbery in the third degree as defined
27 in section 160.05 of the penal law; identity theft in the second degree,
28 as defined in section [~~190.79~~] 191.20 of the penal law; identity theft
29 in the first degree, as defined in section [~~190.80~~] 191.25 of the penal
30 law; promoting prison contraband in the first degree, as defined in
31 section 205.25 of the penal law; tampering with a witness in the third
32 degree, as defined in section 215.11 of the penal law; tampering with a
33 witness in the second degree, as defined in section 215.12 of the penal
34 law; tampering with a witness in the first degree, as defined in section
35 215.13 of the penal law; criminal contempt in the first degree, as
36 defined in subdivisions (b), (c) and (d) of section 215.51 of the penal
37 law; aggravated criminal contempt, as defined in section 215.52 of the
38 penal law; bail jumping in the second degree, as defined in section
39 215.56 of the penal law; bail jumping in the first degree, as defined in
40 section 215.57 of the penal law; patronizing a prostitute in the second
41 degree, as defined in section 230.05 of the penal law; patronizing a
42 prostitute in the first degree, as defined in section 230.06 of the
43 penal law; promoting prostitution in the second degree, as defined in
44 section 230.30 of the penal law; promoting prostitution in the first
45 degree, as defined in section 230.32 of the penal law; compelling pros-
46 titution, as defined in section 230.33 of the penal law; disseminating
47 indecent [~~materials~~] material to minors in the second degree, as defined
48 in section 235.21 of the penal law; disseminating indecent [~~materials~~]
49 material to minors in the first degree, as defined in section 235.22 of

50 the penal law; riot in the first degree, as defined in section 240.06 of
51 the penal law; criminal anarchy, as defined in section 240.15 of the
52 penal law; aggravated harassment of an employee by an inmate, as defined
53 in section 240.32 of the penal law; unlawful surveillance in the second
54 degree, as defined in section 250.45 of the penal law; unlawful surveil-
55 lance in the first degree, as defined in section 250.50 of the penal
56 law; endangering the welfare of a vulnerable elderly person, or an
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1 incompetent or physically disabled person in the second degree, as
2 defined in section 260.32 of the penal law; endangering the welfare of a
3 vulnerable elderly person, or an incompetent or physically disabled
4 person in the first degree, as defined in section 260.34 of the penal
5 law; use of a child in a sexual performance, as defined in section
6 263.05 of the penal law; promoting an obscene sexual performance by a
7 child, as defined in section 263.10 of the penal law; possessing an
8 obscene sexual performance by a child, as defined in section 263.11 of
9 the penal law; promoting a sexual performance by a child, as defined in
10 section 263.15 of the penal law; possessing a sexual performance by a
11 child, as defined in section 263.16 of the penal law; criminal
12 possession of a weapon in the third degree, as defined in section 265.02
13 of the penal law; criminal sale of a firearm in the third degree, as
14 defined in section 265.11 of the penal law; criminal sale of a firearm
15 to a minor, as defined in section 265.16 of the penal law; unlawful
16 wearing of a body vest, as defined in section 270.20 of the penal law;
17 hate crimes as defined in section 485.05 of the penal law; and crime of
18 terrorism, as defined in section 490.25 of the penal law; or
19 § 11. Paragraph (b) of subdivision 1 of section 899-aa of the general
20 business law, as added by chapter 442 of the laws of 2005, is amended to
21 read as follows:

22 (b) "Private information" shall mean personal information consisting
23 of any information in combination with any one or more of the following
24 data elements, when either the personal information or the data element
25 is not encrypted, or encrypted with an encryption key that has also been
26 acquired:

27 (1) social security number;

28 (2) driver's license number or non-driver identification card number;

29 ~~(3)~~

30 (3) account number, credit or debit card number, in combination with
31 any required security code, access code, or password that would permit
32 access to an individual's financial account;

33 (4) medical information; or

34 (5) health insurance information.

35 For the purposes of this paragraph, "medical information" means any
36 information regarding an individual's medical history, mental or phys-
37 ical condition, or medical treatment or diagnosis by a health care
38 professional and "health insurance information" means an individual's
39 health insurance policy number or subscriber identification number, any
40 unique identifier used by a health insurer to identify the individual or
41 any information in an individual's application and claims history,
42 including, but not limited to, appeals history.

43 "Private information" does not include publicly available information
44 which is lawfully made available to the general public from federal,
45 state, or local government records.

46 § 12. Paragraph (a) of subdivision 1 of section 208 of the state tech-
47 nology law, as added by chapter 442 of the laws of 2005, is amended to
48 read as follows:

49 (a) "Private information" shall mean personal information in combina-

50 tion with any one or more of the following data elements, when either
51 the personal information or the data element is not encrypted or
52 encrypted with an encryption key that has also been acquired:

53 (1) social security number;

54 (2) driver's license number or non-driver identification card number;

55 [~~or~~]

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1 (3) account number, credit or debit card number, in combination with
2 any required security code, access code, or password which would permit
3 access to an individual's financial account[.];

4 **(4) medical information; or**

5 **(5) health insurance information.**

6 **For the purposes of this paragraph, "medical information" means any**
7 **information regarding an individual's medical history, mental or phys-**
8 **ical condition, or medical treatment or diagnosis by a health care**
9 **professional and "health insurance information" means an individual's**
10 **health insurance policy number or subscriber identification number, any**
11 **unique identifier used by a health insurer to identify the individual or**
12 **any information in an individual's application and claims history,**
13 **including, but not limited to, appeals history.**

14 "Private information" does not include publicly available information
15 that is lawfully made available to the general public from federal,
16 state, or local government records.

17 § 13. This act shall take effect on the thirtieth day after it shall
18 have become a law.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A10944

SPONSOR: Bing

TITLE OF BILL: An act to amend the penal law, the criminal procedure law, the executive law, the general business law and the state technology law, in relation to the crime of identity theft; and repealing certain provisions of the penal law and the criminal procedure law relating thereto

GENERAL IDEA OF BILL: This legislation provides a cogent and logical framework for the myriad identity theft laws that have been passed in response to the rapidly changing nature of identity theft crimes. It makes the dollar threshold for identity theft comparable to those in the grand larceny statutes.

SUMMARY OF SPECIFIC PROVISIONS: 1. PL §§190.77, 190.78, 190.79, 190.80, 190.80-a, 190.81, 190.82, 190.83, 190.84, 191.85, and 191.86 and CPL §700.05(8)(s) are repealed, and new PL §§ 191.00, 191.05, 191.10, 190.15, 191.20, 191.25, 191.30, 191.35, 191.40, 191.45, 191.50, 191.55 and 191.60 and new CPL §700.05(8)(s) are added.

The new Article 191 creates the E felony of Identity Theft in the Fourth Degree; the D felony of Identity Theft in the Third Degree, the C felony of Identity Theft in the Second Degree; and the B felony of Identity Theft in the First Degree. The Article includes vulnerable elderly people, minors, and physically and mentally disabled people into those protected by the Aggravated Identity Theft section. The Article makes technical corrections to PL 191.35, 191.40 and 191.45 by changing personal identification information to personal identifying information, and including Social Security numbers in the definition.

2. CPL § 20.40(4)(1), PL §460.10(1) are amended to conform with the above Article 191.

3. General Business Law § 899-aa(b), and State Technology Law § 208(1)(a) are amended to include medical information and health insurance information in the list of identifying items and to define the terms "medical information" and "health insurance information."

PURPOSE AND JUSTIFICATION: Identity theft as we know it did not exist a decade ago. The laws governing identity theft and related crimes reflect the attempt to keep pace with the constant evolution of this technology-driven crime. Unfortunately, the rapidity with which change occurred left legislators without the luxury of assessing the panacea of identity theft-related crimes and crafting a comprehensive law. The result is a patchwork of laws and amendments that allow some perpetrators to slip through the cracks.

Identity theft continues to increase throughout New York State, and the economic recession has only accelerated this problem. In order to protect New Yorkers and to penalize thieves who steal identities as a means of illicitly procuring money, goods and services that rightfully belong to others, we need to revise the Identity Theft laws by creating

a new Penal Law Article 191. These revisions recognize and address the reality that identity thieves often target multiple victims and steal large amounts of money. Therefore in addition to establishing dollar thresholds, the new article establishes thresholds for the number of victims a perpetrator steals from.

The revisions also correct some technical problems with existing law. Most importantly, they create standard terminology regarding personal identifying information, which previously switched between "personal identifying" and "personal identification" information. Finally, it lists the most frequently found companion crimes and expands the venue provision that already existed in the identity theft laws to include those companion crimes. This is pragmatic legally and financially - defenders, prosecutors, courts, and defendants will no longer need to try parts of the same case in multiple counties, wasting resources and risking claims of double jeopardy.

PRIOR LEGISLATIVE HISTORY: None

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect 30 days after it is signed into law.
