

**A3838** Bing (MS) No Same as  
Penal Law

TITLE....Relates to offenses involving thefts of identity; repealer  
01/28/11referred to codes

BING, ZEBROWSKI, TITONE, JAFFEE, WEISENBERG, GUNTHER, COLTON,  
ROBINSON, GALEF, GABRYSZAK, SCARBOROUGH, PHEFFER, GIBSON,  
SPANO, HOOPER, M. MILLER, RAMOS, SCHROEDER, COOK, P. RIVERA; M-S:  
Brennan, Englebright, Gottfried, Jeffries, Mayersohn, McKeVitt, Paulin, Reilly, Schimel,  
Simotas, Sweeney, Thiele

Add Art 191 SS191.00 - 191.55, amd SS460.10, 490.05 & 60.27, rpld SS190.77 - 190.86,  
Pen L; amd SS20.40 & 700.05, rpld S700.05 sub 8 P (s), CP L; amd S899-aa, Gen Bus L;  
amd S208, St Tech L; amd SS646 & 995, Exec L

Relates to offenses involving thefts of identity.

CRIMINAL SANCTION IMPACT.

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**STATE OF NEW YORK**

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3838

2011-2012 Regular Sessions

**IN ASSEMBLY**

January 28, 2011

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Introduced by M. of A. BING, ZEBROWSKI, TITONE, JAFFEE,  
WEISENBERG,  
GUNTHER, COLTON, ROBINSON, GALEF, GABRYSZAK,  
SCARBOROUGH, PHEFFER,  
GIBSON, SPANO, HOOPER, M. MILLER, RAMOS -- Multi-Sponsored by -- M.  
of  
A. BRENNAN, ENGLEBRIGHT, GOTTFRIED, JEFFRIES, MAYERSOHN,  
McKEVITT,  
PAULIN, REILLY, SCHIMEL, SIMOTAS, SWEENEY, THIELE -- read once  
and  
referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the general  
business law, the state technology law and the executive law, in  
relation to offenses involving theft of identity; and to repeal  
certain provisions of the criminal procedure law and the penal law

relating thereto

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

1 Section 1. The penal law is amended by adding a new article 191 to  
2 read as follows:

3 **ARTICLE 191**

4 **OFFENSES INVOLVING THEFT OF IDENTITY**

5 **Section 191.00 Definitions.**

6 **191.05 Petit identity theft.**

7 **191.10 Identity theft in the fourth degree.**

8 **191.15 Identity theft in the third degree.**

9 **191.20 Identity theft in the second degree.**

10 **191.25 Identity theft in the first degree.**

11 **191.30 Unlawful possession of personal identifying information**  
12 **in the third degree.**

13 **191.35 Unlawful possession of personal identifying information**  
14 **in the second degree.**

15 **191.40 Unlawful possession of personal identifying information**  
16 **in the first degree.**

17 **191.45 Defenses.**

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

LBD05183-02-1

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1 **191.50 Unlawful possession of a skimmer device in the second**  
2 **degree.**

3 **191.55 Unlawful possession of a skimmer device in the first**  
4 **degree.**

5 **§ 191.00 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  
26 may be used alone or in conjunction with any other information to assume  
27 the identity of another person or access financial resources or credit  
28 of 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  
39 insurance policy number or subscriber identification number, any unique  
40 identifier used by a health insurer to identify the individual or any  
41 information in an individual's application and claims history, includ-  
42 ing, but 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:

55 1. assumes the identity of another person by presenting himself or  
56 herself as that other person, or by acting as that other person or by

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

3 (a) 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 (b) causes financial loss to such person or to another person or

7 persons in an aggregate amount that exceeds five hundred dollars; or  
8 (c) commits or attempts to commit a felony or acts as an accessory to  
9 the commission of a felony; or  
10 (d) commits the crime of petit identity theft as defined in section  
11 191.05 of this article and knows that such other person is a member of  
12 the armed forces and that such member is presently deployed outside of  
13 the continental United States; or  
14 (e) commits the crime of petit identity theft as defined in section  
15 191.05 of this article and knows that such other person is a vulnerable  
16 elderly person as defined in subdivision three of section 260.31 of this  
17 chapter, or a person who is unable to care for himself or herself  
18 because of physical disability, mental disease or defect, or because he  
19 or she is a minor; or  
20 2. assumes the identity of three or more persons by presenting himself  
21 or herself as those other persons, or by acting as those other persons,  
22 or by using personal identifying information of those other persons, and  
23 thereby obtains goods, money, property or services or uses credit in the  
24 name of those persons, or causes financial loss to at least one such  
25 person, or to another person or persons.  
26 Identity theft in the fourth degree is a class E felony.  
27 § 191.15 Identity theft in the third degree.  
28 A person is guilty of identify theft in the third degree when he or  
29 she knowingly and with intent to defraud:  
30 1. (a) Assumes the identity of another person by presenting himself or  
31 herself as that other person, or by acting as that other person or by  
32 using personal identifying information of that other person, and there-  
33 by:  
34 (a) obtains goods, money, property or services or uses credit in the  
35 name of such other person in an aggregate amount that exceeds two thou-  
36 sand dollars; or  
37 (b) causes financial loss to such person or to another person or  
38 persons in an aggregate amount that exceeds two thousand dollars; or  
39 (c) commits or attempts to commit a class D felony or higher level  
40 crime or acts as an accessory to the commission of a class D or higher  
41 level felony; or  
42 (d) commits the crime of identity theft in the fourth degree as  
43 defined in section 191.10 of this article and has been previously  
44 convicted within the last five years of petit identity theft as defined  
45 in section 191.05, identity theft in the fourth degree as defined in  
46 section 191.10, identity theft in the third degree as defined in this  
47 section, identity theft in the second degree as defined in section  
48 191.20, identity theft in the first degree as defined in section 191.25,  
49 unlawful possession of personal identifying information in the third  
50 degree as defined in section 191.30, unlawful possession of personal  
51 identifying information in the second degree as defined in section  
52 191.35, unlawful possession of personal identifying information in the

53 first degree as defined in section 191.40, unlawful possession of a  
54 skimmer device in the second degree as defined in section 191.50, unlaw-  
55 ful possession of a skimmer device in the first degree as defined in  
56 section 191.55, grand larceny in the fourth degree as defined in section

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1 155.30, grand larceny in the third degree as defined in section 155.35,  
2 grand larceny in the second degree as defined in section 155.40 or grand  
3 larceny in the first degree as defined in section 155.42, criminal  
4 possession of a forged instrument in the third degree as defined in  
5 section 170.20, criminal possession of a forged instrument in the second  
6 degree as defined in section 170.25, criminal possession of a forged  
7 instrument in the first degree as defined in section 170.30, criminal  
8 possession of stolen property in the fifth degree as defined in section  
9 165.40, criminal possession of stolen property in the fourth degree as  
10 defined in section 165.45, criminal possession of stolen property in the  
11 third degree as defined in section 165.50, criminal possession of stolen  
12 property in the second degree as defined in section 165.52, criminal  
13 possession of stolen property in the first degree as defined in section  
14 165.54, or criminal possession of forgery devices as defined in section  
15 170.40 of this chapter; or

16 (e) commits the crime of identity theft in the fourth degree as  
17 defined in section 191.10 of this article and knows that such other  
18 person is a member of the armed forces, and knows that such member is  
19 presently deployed outside of the continental United States; or

20 (f) commits the crime of identity theft in the fourth degree as  
21 defined in section 191.10 of this article and knows that such other  
22 person is a vulnerable elderly person as defined in subdivision three of  
23 section 260.31 of this chapter, or a person who is unable to care for  
24 himself or herself because of physical disability, mental disease or  
25 defect, or because he or she is a minor; or

26 2. assumes the identity of ten or more persons by presenting himself  
27 or herself as those other persons, or by acting as those other persons,  
28 or by using personal identifying information of those other persons, and  
29 thereby obtains goods, money, property or services or uses credit in the  
30 name of those persons, or causes financial loss to at least one such  
31 person, or to another person or persons.

32 Identity theft in the third degree is a class D felony.

33 § 191.20 Identity theft in the second degree.

34 A person is guilty of identity theft in the second degree when he or  
35 she knowingly and with intent to defraud:

36 1. assumes the identity of another person by presenting himself or  
37 herself as that other person, or by acting as that other person or by  
38 using personal identifying information of that other person, and there-  
39 by:

40 (a) obtains goods, money, property or services or uses credit in the

41 name of such other person in an aggregate amount that exceeds twenty-  
42 five thousand dollars; or  
43 (b) causes financial loss to such person or to another person or  
44 persons in an aggregate amount that exceeds twenty-five thousand  
45 dollars; or  
46 (c) commits or attempts to commit a class C felony or higher level  
47 crime or acts as an accessory in the commission of a class C or higher  
48 level felony; or  
49 (d) commits the crime of identity theft in the third degree as defined  
50 in section 191.15 of this article and has been previously convicted  
51 within the last five years of petit identity theft as defined in section  
52 191.05, identity theft in the fourth degree as defined in section  
53 191.10, identity theft in the third degree as defined in section 191.15,  
54 identity theft in the second degree as defined in this section, identity  
55 theft in the first degree as defined in section 191.25, unlawful  
56 possession of personal identifying information in the third degree as

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1 defined in section 191.30, unlawful possession of personal identifying  
2 information in the second degree as defined in section 191.35, unlawful  
3 possession of personal identifying information in the first degree as  
4 defined in section 191.40, unlawful possession of a skimmer device in  
5 the second degree as defined in section 191.50, unlawful possession of a  
6 skimmer device in the first degree as defined in section 191.55, grand  
7 larceny in the fourth degree as defined in section 155.30, grand larceny  
8 in the third degree as defined in section 155.35, grand larceny in the  
9 second degree as defined in section 155.40 or grand larceny in the first  
10 degree as defined in section 155.42, criminal possession of a forged  
11 instrument in the third degree as defined in section 170.20, criminal  
12 possession of a forged instrument in the second degree as defined in  
13 section 170.25, criminal possession of a forged instrument in the first  
14 degree as defined in section 170.30, criminal possession of stolen prop-  
15 erty in the fifth degree as defined section 165.40, criminal possession  
16 of stolen property in the fourth degree as defined in section 165.45,  
17 criminal possession of stolen property in the third degree as defined in  
18 section 165.50, criminal possession of stolen property in the second  
19 degree as defined in section 165.52, criminal possession of stolen prop-  
20 erty in the first degree as defined in section 165.54, or criminal  
21 possession of forgery devices as defined in section 170.40 of this chap-  
22 ter; or  
23 (e) commits the crime of identity theft in the third degree as defined  
24 in section 191.15 of this article and knows that such other person is a  
25 member of the armed forces and that such member is presently deployed  
26 outside of the continental United States; or  
27 (f) commits the crime of identity theft in the third degree as defined  
28 in section 191.15 of this article and knows that such other person is a

29 vulnerable elderly person as defined in subdivision three of section  
30 260.31 of this chapter, or a person who is unable to care for himself or  
31 herself because of physical disability, mental disease or defect, or  
32 because he or she is a minor; or  
33 2. assumes the identity of twenty-five or more persons by presenting  
34 himself or herself as those other persons, or by acting as those other  
35 persons, or by using personal identifying information of those other  
36 persons, and thereby obtains goods, money, property or services or uses  
37 credit in the name of those persons, or causes financial loss to at  
38 least one such person, or to another person or persons.  
39 Identity theft in the second degree is a class C felony.  
40 § 191.25 Identity theft in the first degree.  
41 A person is guilty of identity theft in the first degree when he or  
42 she knowingly and with intent to defraud:  
43 1. assumes the identity of another person by presenting himself or  
44 herself as that other person, or by acting as that other person or by  
45 using personal identifying information of that other person, and there-  
46 by:  
47 (a) obtains goods, money, property or services or uses credit in the  
48 name of such other person in an aggregate amount that exceeds two  
49 hundred thousand dollars; or  
50 (b) causes financial loss to such person or to another person or  
51 persons in an aggregate amount that exceeds two hundred thousand  
52 dollars; or  
53 (c) commits or attempts to commit a class B felony or higher level  
54 crime or acts as an accessory in the commission of a class B or higher  
55 level felony; or

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1 (d) commits the crime of identity theft in the second degree as  
2 defined in section 191.20 of this article and has been previously  
3 convicted within the last five years of petit identity theft as defined  
4 in section 191.05, identity theft in the fourth degree as defined in  
5 section 191.10, identity theft in the third degree as defined in section  
6 191.15, identity theft in the second degree as defined in section 191.20  
7 of this article, identity theft in the first degree as defined in this  
8 section, unlawful possession of personal identifying information in the  
9 second degree as defined in section 191.35, unlawful possession of  
10 personal identifying information in the first degree as defined in  
11 section 191.40, unlawful possession of a skimmer device in the second  
12 degree as defined in section 191.50, unlawful possession of a skimmer  
13 device in the first degree as defined in section 191.55, grand larceny  
14 in the fourth degree as defined in section 155.30, grand larceny in the  
15 third degree as defined in section 155.35, grand larceny in the second  
16 degree as defined in section 155.40 or grand larceny in the first degree  
17 as defined in section 155.42, criminal possession of a forged instrument

18 in the third degree as defined in section 170.20, criminal possession of  
19 a forged instrument in the second degree as defined in section 170.25,  
20 criminal possession of a forged instrument in the first degree as  
21 defined in section 170.30, criminal possession of stolen property in the  
22 fifth degree as defined in section 165.40, criminal possession of stolen  
23 property in the fourth degree as defined in section 165.45, criminal  
24 possession of stolen property in the third degree as defined in section  
25 165.50, criminal possession of stolen property in the second degree as  
26 defined in section 165.52, criminal possession of stolen property in the  
27 first degree as defined in section 165.54, or criminal possession of  
28 forgery devices as defined in section 170.40 of this chapter; or  
29 (e) commits the crime of identity theft in the second degree as  
30 defined in section 191.20 of this article and knows that such other  
31 person is a member of the armed forces, and knows that such member is  
32 presently deployed outside of the continental United States; or  
33 (f) commits the crime of identity theft in the second degree as  
34 defined in section 191.20 of this article and knows that such other  
35 person is a vulnerable elderly person as defined in subdivision three of  
36 section 260.31 of this chapter, or a person who is unable to care for  
37 himself or herself because of physical disability, mental disease or  
38 defect, or because he or she is a minor; or  
39 2. assumes the identity of fifty or more persons by presenting himself  
40 or herself as those other persons, or by acting as those other persons,  
41 or by using personal identifying information of those other persons, and  
42 thereby obtains goods, money, property or services or uses credit in the  
43 name of those persons, or causes financial loss to at least one such  
44 person, or to another person or persons.  
45 Identity theft in the first degree is a class B felony.  
46 § 191.30 Unlawful possession of personal identifying information in the  
47 third degree.  
48 A person is guilty of unlawful possession of personal identifying  
49 information in the third degree when he or she knowingly possesses a  
50 person's personal identifying information as defined in section 191.00  
51 of this article of another person knowing such information is intended  
52 to be used in furtherance of the commission of a crime defined in this  
53 chapter.  
54 Unlawful possession of personal identifying information in the third  
55 degree is a class A misdemeanor.

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1 § 191.35 Unlawful possession of personal identifying information in the  
2 second degree.  
3 A person is guilty of unlawful possession of personal identifying  
4 information in the second degree when he or she knowingly possesses  
5 fifty or more items of personal identifying information as defined in  
6 section 191.00 of this article knowing such information is intended to

7 be used in furtherance of the commission of a crime defined in this  
8 chapter.

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

11 § 191.40 Unlawful possession of personal identifying information in the  
12 first degree.

13 A person is guilty of unlawful possession of personal identifying  
14 information in the first degree when he or she commits the crime of  
15 unlawful possession of personal identifying information in the second  
16 degree and:

- 17 1. with intent to further the commission of identity theft in the  
18 third degree, he or she supervises more than three accomplices; or
- 19 2. he or she has been previously convicted within the last five years  
20 of petit identity theft as defined in section 191.05, identity theft in  
21 the fourth degree as defined in section 191.10, identity theft in the  
22 third degree as defined in section 191.15, identity theft in the second  
23 degree as defined in section 191.20, identity theft in the first degree  
24 as defined in section 191.25, unlawful possession of personal identify-  
25 ing information the third degree as defined in section 191.30, unlawful  
26 possession of personal identifying information in the second degree as  
27 defined in section 191.35, unlawful possession of personal identifying  
28 information in the first degree as defined in this section, unlawful  
29 possession of a skimmer device in the second degree as defined in  
30 section 191.50, unlawful possession of a skimmer device in the first  
31 degree as defined in section 191.55, grand larceny in the fourth degree  
32 as defined in section 155.30, grand larceny in the third degree as  
33 defined in section 155.35, grand larceny in the second degree as defined  
34 in section 155.40 or grand larceny in the first degree as defined in  
35 section 155.42, criminal possession of a forged instrument in the third  
36 degree as defined in section 170.20, criminal possession of a forged  
37 instrument in the second degree as defined in section 170.25, criminal  
38 possession of a forged instrument in the first degree as defined in  
39 section 170.30, criminal possession of stolen property in the fifth  
40 degree as defined in section 165.40, criminal possession of stolen prop-  
41 erty in the fourth degree as defined in section 165.45, criminal  
42 possession of stolen property in the third degree as defined in section  
43 165.50, criminal possession of stolen property in the second degree as  
44 defined in section 165.52, criminal possession of stolen property in the  
45 first degree as defined in section 165.54, or criminal possession of  
46 forgery devices as defined in section 170.40 of this chapter; or
- 47 3. with intent to further the commission of identity theft in the  
48 second degree:
  - 49 (a) he or she supervises more than two accomplices, and
  - 50 (b) he or she knows that the person whose personal identifying infor-  
51 mation that he or she possesses is a member of the armed forces, and
  - 52 (c) he or she knows that such member of the armed forces is presently

53 deployed outside of the continental United States.  
54 Unlawful possession of personal identifying information in the first  
55 degree is a class D felony.

56 § 191.45 Defenses.

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1 In any prosecution for identity theft or unlawful possession of  
2 personal identifying information pursuant to this article, it shall be  
3 an affirmative defense that the person charged with the offense:  
4 1. was under twenty-one years of age at the time of committing the  
5 offense and the person used or possessed the personal identifying infor-  
6 mation of another solely for the purpose of purchasing alcohol;  
7 2. was under eighteen years of age at the time of committing the  
8 offense and the person used or possessed the personal identifying infor-  
9 mation of another solely for the purpose of purchasing tobacco products;  
10 or

11 3. used or possessed the personal identifying information of another  
12 person solely for the purpose of misrepresenting the person's age to  
13 gain access to a place the access to which is restricted based on age.

14 § 191.50 Unlawful possession of a skimmer device in the second degree.

15 1. A person is guilty of unlawful possession of a skimmer device in  
16 the second degree when he or she possesses a skimmer device with the  
17 intent that such device be used in furtherance of the commission of the  
18 crime of identity theft or unlawful possession of personal identifying  
19 information as defined in this article.

20 2. For purposes of this article, "skimmer device" means a device  
21 designed or adapted to obtain personal identifying information from a  
22 credit card, debit card, public benefit card, access card or device, or  
23 other card or device that contains personal identifying information.

24 Unlawful possession of a skimmer device in the second degree is a  
25 class A misdemeanor.

26 § 191.55 Unlawful possession of a skimmer device in the first degree.

27 A person is guilty of unlawful possession of a skimmer device in the  
28 first degree when he or she commits the crime of unlawful possession of  
29 a skimmer device in the second degree and he or she has been previously  
30 convicted within the last five years of identity theft in the fourth  
31 degree as defined in section 191.10, identity theft in the third degree  
32 as defined in section 191.15, identity theft in the second degree as  
33 defined in section 191.20, identity theft in the first degree as defined  
34 in section 191.25, unlawful possession of personal identifying informa-  
35 tion in the third degree as defined in section 191.30, unlawful  
36 possession of personal identifying information in the second degree as  
37 defined in section 191.35, unlawful possession of personal identifying  
38 information in the first degree as defined in section 191.40, unlawful  
39 possession of a skimmer device in the second degree as defined in  
40 section 191.50, unlawful possession of a skimmer device in the first

41 degree as defined in this section, grand larceny in the fourth degree as  
42 defined in section 155.30, grand larceny in the third degree as defined  
43 in section 155.35, grand larceny in the second degree as defined in  
44 section 155.40, grand larceny in the first degree as defined in section  
45 155.42, criminal possession of a forged instrument in the third degree  
46 as defined in section 170.20, criminal possession of a forged instrument  
47 in the second degree as defined in section 170.25, criminal possession  
48 of a forged instrument in the first degree as defined in section 170.30,  
49 criminal possession of stolen property in the fifth degree as defined in  
50 section 165.40, criminal possession of stolen property in the fourth  
51 degree as defined in section 165.45, criminal possession of stolen prop-  
52 erty in the third degree as defined in section 165.50, criminal  
53 possession of stolen property in the second degree as defined in section  
54 165.52, criminal possession of stolen property in the first degree as  
55 defined in section 165.54, or criminal possession of forgery devices as  
56 defined in section 170.40 of this chapter.

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1 Unlawful possession of a skimmer device in the first degree is a class  
2 E felony.

3 § 2. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
4 law, as amended by chapter 405 of the laws of 2010, is amended to read  
5 as follows:

6 (a) Any of the felonies set forth in this chapter: sections 120.05,  
7 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
8 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
9 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
10 135.25 relating to kidnapping; section 135.35 relating to labor traf-  
11 ficking; section 135.65 relating to coercion; sections 140.20, 140.25  
12 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12  
13 relating to criminal mischief; article one hundred fifty relating to  
14 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
15 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
16 care fraud; article one hundred sixty relating to robbery; sections  
17 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
18 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
19 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
20 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
21 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
22 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
23 to criminal diversion of prescription medications and prescriptions;  
24 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
25 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,  
26 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20  
27 and 187.25 relating to residential mortgage fraud, sections 190.40 and  
28 190.42 relating to criminal usury; section 190.65 relating to schemes to

29 defraud; sections 191.05, 191.10, 191.15, 191.20, 191.25, 191.30,  
30 191.35, 191.40, 191.50 and 191.55 relating to identity theft, sections  
31 205.60 and 205.65 relating to hindering prosecution; sections 210.10,  
32 210.15, and 215.51 relating to perjury and contempt; section 215.40  
33 relating to tampering with physical evidence; sections 220.06, 220.09,  
34 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,  
35 220.55, 220.60 and 220.77 relating to controlled substances; sections  
36 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and  
37 230.32 relating to promoting prostitution; section 230.34 relating to  
38 sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to  
39 obscenity; sections 263.10 and 263.15 relating to promoting a sexual  
40 performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12,  
41 265.13 and the provisions of section 265.10 which constitute a felony  
42 relating to firearms and other dangerous weapons; and sections 265.14  
43 and 265.16 relating to criminal sale of a firearm; and section 275.10,  
44 275.20, 275.30, or 275.40 relating to unauthorized recordings; and  
45 sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering;  
46 or

47 § 3. Paragraph (a) of subdivision 3 of section 490.05 of the penal  
48 law, as amended by section 7 of part A of chapter 1 of the laws of 2004,  
49 is amended to read as follows:

50 (a) "Specified offense" for purposes of this article means a class A  
51 felony offense other than an offense as defined in article two hundred  
52 twenty, a violent felony offense as defined in section 70.02,  
53 manslaughter in the second degree as defined in section 125.15, criminal  
54 tampering in the first degree as defined in section 145.20, identity  
55 theft in the second degree as defined in section [~~190.79~~] 191.20, iden-  
56 tity theft in the first degree as defined in section [~~190.80~~] 191.25,

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1 unlawful possession of personal identification information in the second  
2 degree as defined in section [~~190.82~~] 191.35, unlawful possession of  
3 personal identification information in the first degree as defined in  
4 section [~~190.83~~] 191.40, money laundering in support of terrorism in the  
5 fourth degree as defined in section 470.21, money laundering in support  
6 of terrorism in the third degree as defined in section 470.22, money  
7 laundering in support of terrorism in the second degree as defined in  
8 section 470.23, money laundering in support of terrorism in the first  
9 degree as defined in section 470.24 of this chapter, and includes an  
10 attempt or conspiracy to commit any such offense.

11 § 4. The opening paragraph and paragraph (l) of subdivision 4 of  
12 section 20.40 of the criminal procedure law, paragraph (l) as amended by  
13 chapter 346 of the laws of 2007, are amended to read as follows:

14 A person may be convicted in an appropriate criminal court of a  
15 particular county, of an offense of which the criminal courts of this  
16 state have jurisdiction pursuant to section 20.20, committed either by

17 his or her own conduct or by the conduct of another for which he or she  
18 is legally accountable pursuant to section 20.00 of the penal law, when:  
19 (l) An offense of identity theft or unlawful possession of personal  
20 [identification] identifying information and all criminal acts committed  
21 in connection with those crimes or committed through the criminal misuse  
22 of personal identifying information may be prosecuted (i) in any county  
23 in which part of the offense took place regardless of whether the  
24 defendant was actually present in such county, or (ii) in the county in  
25 which the person who suffers financial loss resided at the time of the  
26 commission of the offense, or (iii) in the county where the person whose  
27 personal [identification] identifying information was used in the  
28 commission of the offense resided at the time of the commission of the  
29 offense. The law enforcement agency of any such county shall take a  
30 police report of the matter and provide the complainant with a copy of  
31 such report at no charge.

32 § 5. Paragraph (s) of subdivision 8 of section 700.05 of the criminal  
33 procedure law is REPEALED and a new paragraph (s) is added to read as  
34 follows:

35 (s) Petit identity theft as defined in section 191.05, identity theft  
36 in the fourth degree as defined in section 191.10, identity theft in the  
37 third degree as defined in section 191.15, identity theft in the second  
38 degree as defined in section 191.20, identity theft in the first degree  
39 as defined in section 191.25, unlawful possession of personal identify-  
40 ing information in the third degree as defined in section 191.30, unlaw-  
41 ful possession of personal identifying information in the second degree  
42 as defined in section 191.35, unlawful possession of personal identify-  
43 ing information in the first degree as defined in section 191.40, unlaw-  
44 ful possession of a skimmer device in the second degree as defined in  
45 section 191.50, or unlawful possession of a skimmer device in the first  
46 degree as defined in section 191.55 of the penal law.

47 § 6. Paragraph (b) of subdivision 1 of section 899-aa of the general  
48 business law, as added by chapter 442 of the laws of 2005, is amended to  
49 read as follows:

50 (b) "Private information" shall mean personal information consisting  
51 of any information in combination with any one or more of the following  
52 data elements, when either the personal information or the data element  
53 is not encrypted, or encrypted with an encryption key that has also been  
54 acquired:

55 (1) social security number;

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

2 or

3 (3) account number, credit or debit card number, in combination with  
4 any required security code, access code, or password that would permit

5 access to an individual's financial account; or

6 (4) medical information; or

7 (5) health insurance information;

8 For purposes of this paragraph, "medical information" means any infor-  
9 mation regarding an individual's medical history, mental or physical  
10 condition, or medical treatment or diagnosis by a health care profes-  
11 sional.

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

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

20 § 7. Paragraph (a) of subdivision 1 of section 208 of the state tech-  
21 nology law, as added by chapter 442 of the laws of 2005, is amended to  
22 read as follows:

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

27 (1) social security number;

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

29 or

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

33 (4) medical information; or

34 (5) health insurance information.

35 For purposes of this paragraph, "medical information" means any infor-  
36 mation regarding an individual's medical history, mental or physical  
37 condition, or medical treatment or diagnosis by a health care profes-  
38 sional.

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

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

47 § 8. Sections 190.77, 190.78, 190.79, 190.80, 190.81, 190.82, 190.83,  
48 190.84, 190.85 and 190.86 of the penal law are REPEALED.

49 § 9. Subdivision 1 of section 60.27 of the penal law, as amended by  
50 chapter 279 of the laws of 2008, is amended to read as follows:

51 1. In addition to any of the dispositions authorized by this article,

52 the court shall consider restitution or reparation to the victim of the  
53 crime and may require restitution or reparation as part of the sentence  
54 imposed upon a person convicted of an offense, and after providing the  
55 district attorney with an opportunity to be heard in accordance with the  
56 provisions of this subdivision, require the defendant to make restitu-  
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1 tion of the fruits of his or her offense or reparation for the actual  
2 out-of-pocket loss caused thereby and, in the case of a violation of  
3 section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10,  
4 191.15, 191.20 or 191.25 of this chapter, any costs or losses incurred  
5 due to any adverse action taken against the victim. The district attor-  
6 ney shall where appropriate, advise the court at or before the time of  
7 sentencing that the victim seeks restitution or reparation, the extent  
8 of injury or economic loss or damage of the victim, and the amount of  
9 restitution or reparation sought by the victim in accordance with his or  
10 her responsibilities under subdivision two of section 390.50 of the  
11 criminal procedure law and article twenty-three of the executive law.  
12 The court shall hear and consider the information presented by the  
13 district attorney in this regard. In that event, or when the victim  
14 impact statement reports that the victim seeks restitution or repara-  
15 tion, the court shall require, unless the interests of justice dictate  
16 otherwise, in addition to any of the dispositions authorized by this  
17 article that the defendant make restitution of the fruits of the offense  
18 and reparation for the actual out-of-pocket loss and, in the case of a  
19 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,  
20 191.10, 191.15, 191.20 or 191.25 of this chapter, any costs or losses  
21 incurred due to any adverse action, caused thereby to the victim. In the  
22 event that restitution or reparation are not ordered, the court shall  
23 clearly state its reasons on the record. Adverse action as used in this  
24 subdivision shall mean and include actual loss incurred by the victim,  
25 including an amount equal to the value of the time reasonably spent by  
26 the victim attempting to remediate the harm incurred by the victim from  
27 the offense, and the consequential financial losses from such action.  
28 § 10. Paragraph (b) of subdivision 4 of section 60.27 of the penal  
29 law, as amended by section 41 of part A-1 of chapter 56 of the laws of  
30 2010, is amended to read as follows:  
31 (b) the term "victim" shall include the victim of the offense, the  
32 representative of a crime victim as defined in subdivision six of  
33 section six hundred twenty-one of the executive law, an individual whose  
34 identity was assumed or whose personal identifying information was used  
35 in violation of section [~~190.78, 190.79 or 190.80~~] 191.05, 191.10,  
36 191.15, 191.20 or 191.25 of this chapter, or any person who has suffered  
37 a financial loss as a direct result of the acts of a defendant in  
38 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,  
39 191.10, 191.15, 191.20 or 191.25 of this chapter, a good samaritan as

40 defined in section six hundred twenty-one of the executive law and the  
41 office of victim services or other governmental agency that has received  
42 an application for or has provided financial assistance or compensation  
43 to the victim.

44 § 11. Subdivision 2 of section 646 of the executive law, as amended by  
45 chapter 346 of the laws of 2007, is amended to read as follows:

46 2. An individual whose identity was assumed or whose personal identi-  
47 fying information, as defined in [~~section 190.77~~] subdivision one of  
48 section 191.00 of the penal law, [was used in violation of section  
49 [~~190.78, 190.79 or 190.80~~] 191.05, 191.10, 191.15, 191.20 or 191.25 of  
50 the penal law, or any person who has suffered a financial loss as a  
51 direct result of the acts of a defendant in violation of section  
52 [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10, 191.15,  
53 151.20 or 191.25 of the penal law, who has learned or reasonably  
54 suspects that his or her personal identifying information has been  
55 unlawfully used by another, may make a complaint to the local law  
56 enforcement agency of the county in which any part of the offense took

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1 place regardless of whether the defendant was actually present in such  
2 county, or in the county in which the person who suffered financial loss  
3 resided at the time of the commission of the offense, or in the county  
4 where the person whose personal identification information was used in  
5 the commission of the offense resided at the time of the commission of  
6 the offense as provided in paragraph (l) of subdivision four of section  
7 20.40 of the criminal procedure law. Said local law enforcement agency  
8 shall take a police report of the matter and provide the complainant  
9 with a copy of such report free of charge.

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

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

15 aggravated assault upon a person less than eleven years old, as  
16 defined in section 120.12 of the penal law; menacing in the first  
17 degree, as defined in section 120.13 of the penal law; reckless endan-  
18 germent in the first degree, as defined in section 120.25 of the penal  
19 law; stalking in the second degree, as defined in section 120.55 of the  
20 penal law; criminally negligent homicide, as defined in section 125.10  
21 of the penal law; vehicular manslaughter in the second degree, as  
22 defined in section 125.12 of the penal law; vehicular manslaughter in  
23 the first degree, as defined in section 125.13 of the penal law;  
24 persistent sexual abuse, as defined in section 130.53 of the penal law;  
25 aggravated sexual abuse in the fourth degree, as defined in section  
26 130.65-a of the penal law; female genital mutilation, as defined in  
27 section 130.85 of the penal law; facilitating a sex offense with a

28 controlled substance, as defined in section 130.90 of the penal law;  
29 unlawful imprisonment in the first degree, as defined in section 135.10  
30 of the penal law; custodial interference in the first degree, as defined  
31 in section 135.50 of the penal law; criminal trespass in the first  
32 degree, as defined in section 140.17 of the penal law; criminal tamper-  
33 ing in the first degree, as defined in section 145.20 of the penal law;  
34 tampering with a consumer product in the first degree, as defined in  
35 section 145.45 of the penal law; robbery in the third degree as defined  
36 in section 160.05 of the penal law; identity theft in the second degree,  
37 as defined in section ~~[190.79]~~ 191.20 of the penal law; identity theft  
38 in the first degree, as defined in section ~~[190.80]~~ 191.25 of the penal  
39 law; promoting prison contraband in the first degree, as defined in  
40 section 205.25 of the penal law; tampering with a witness in the third  
41 degree, as defined in section 215.11 of the penal law; tampering with a  
42 witness in the second degree, as defined in section 215.12 of the penal  
43 law; tampering with a witness in the first degree, as defined in section  
44 215.13 of the penal law; criminal contempt in the first degree, as  
45 defined in subdivisions (b), (c) and (d) of section 215.51 of the penal  
46 law; aggravated criminal contempt, as defined in section 215.52 of the  
47 penal law; bail jumping in the second degree, as defined in section  
48 215.56 of the penal law; bail jumping in the first degree, as defined in  
49 section 215.57 of the penal law; patronizing a prostitute in the second  
50 degree, as defined in section 230.05 of the penal law; patronizing a  
51 prostitute in the first degree, as defined in section 230.06 of the  
52 penal law; promoting prostitution in the second degree, as defined in  
53 section 230.30 of the penal law; promoting prostitution in the first  
54 degree, as defined in section 230.32 of the penal law; compelling pros-  
55 titution, as defined in section 230.33 of the penal law; disseminating  
56 indecent ~~[materials]~~ material to minors in the second degree, as defined

1 in section 235.21 of the penal law; disseminating indecent ~~[materials]~~  
2 material to minors in the first degree, as defined in section 235.22 of  
3 the penal law; riot in the first degree, as defined in section 240.06 of  
4 the penal law; criminal anarchy, as defined in section 240.15 of the  
5 penal law; aggravated harassment of an employee by an inmate, as defined  
6 in section 240.32 of the penal law; unlawful surveillance in the second  
7 degree, as defined in section 250.45 of the penal law; unlawful surveil-  
8 lance in the first degree, as defined in section 250.50 of the penal  
9 law; endangering the welfare of a vulnerable elderly person, or an  
10 incompetent or physically disabled person in the second degree, as  
11 defined in section 260.32 of the penal law; endangering the welfare of a  
12 vulnerable elderly person, or an incompetent or physically disabled  
13 person in the first degree, as defined in section 260.34 of the penal  
14 law; use of a child in a sexual performance, as defined in section  
15 263.05 of the penal law; promoting an obscene sexual performance by a

16 child, as defined in section 263.10 of the penal law; possessing an  
17 obscene sexual performance by a child, as defined in section 263.11 of  
18 the penal law; promoting a sexual performance by a child, as defined in  
19 section 263.15 of the penal law; possessing a sexual performance by a  
20 child, as defined in section 263.16 of the penal law; criminal  
21 possession of a weapon in the third degree, as defined in section 265.02  
22 of the penal law; criminal sale of a firearm in the third degree, as  
23 defined in section 265.11 of the penal law; criminal sale of a firearm  
24 to a minor, as defined in section 265.16 of the penal law; unlawful  
25 wearing of a body vest, as defined in section 270.20 of the penal law;  
26 hate crimes as defined in section 485.05 of the penal law; and crime of  
27 terrorism, as defined in section 490.25 of the penal law; or  
28 § 13. This act shall take effect immediately.

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

**BILL NUMBER:** A3838

**SPONSOR:** Bing (MS)

**TITLE OF BILL:** An act to amend the penal law, the criminal procedure law, the general business law, the state technology law and the executive law, in relation to offenses involving theft of identity; and to repeal certain provisions of the criminal procedure law and the penal 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 creates five tiers of crimes, based on the financial loss to the victim(s) and the number of people victimized, providing enhancements for vulnerable elderly and disabled victims as well as victims on military, deployment. It also acknowledges that identity theft doesn't respect geographic boundaries by providing that companion crimes, such as larceny, can be charge along with the crime of Identity Theft.

**SUMMARY OF SPECIFIC PROVISIONS:** 1. PL §§190.77, 190.7S, 190.79, 190.80, 190.80-a, 190.81, 190.82, 190.83, 190.84, 191.85, and 191,86 are repealed, and new PL §§ 191.00, 191.05, 191.10, 190.15, 191.20, 19125, 191.35, 191.40, 191.45, 191.50, 191.55 and 191.60 are added,

The new Article 191 creates the A misdemeanor of Petit Identity Theft, 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 makes technical corrections to Unlawful Possession of Personal Identification Information in the First, Second and Third Degrees by changing personal "identification" information to personal "identifying" information to conform with other provisions in the law, and including Social Security numbers in the definition.

2. PL §§ 60.27(3), 60.27(4)(b), 460.10(1) and CPL §§ 20.40(4)(1), 700.05(8)(s) and Executive Law §§ 646(2), 995(7)(d) 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 crimes are widely regarded as among the hardest to prosecute. Criminal activity linked to one victim routinely spans numerous jurisdictions. A summary arrest of one individual can represent the victimization of dozens or even hundreds of people. And, in the age of the internet, accomplices located around the world can work together to steal, fraudulently use, and traffic in personal data. Our current laws do not provide adequate tools to combat this crime. Moreover, the laws are weakest in addressing the most insidious forms of identity theft - those crimes in which the largest sums are stolen or numerous people are victimized.

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:** 2010: A. 10944 / S. 7843 Referred to Codes.

**FISCAL IMPLICATIONS:** None.

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

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