

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

#55 Alessi	#02 Flanagan	#40 Leibell	#37 Opyenhalmer	#09 Skeles
#20 Andrews	#08 Fuschillo	#52 Libous	#11 Padavan	#10 Smith, A.
#07 Balboni	#22 Golden	#45 Little	#21 Parker	#14 Smith, M.
#42 Bonacic	#33 Gonzalez	#15 Maltese	#30 Paterrean	#35 Spano
#46 Breslin	#06 Nannon	#05 Marcellino	#61 Rath	#58 Stachowski
#60 Brown	#36 Russell-	#24 Marchi	#56 Robsch	#16 Stawisky
#43 Bruno	Thompson	#52 Maziars	#13 Sahini	#03 Trunzo
#25 Connor	#04 Johnson	#57 McGee	#41 Saland	#49 Valasky
#50 DeFrancisco	#34 Klein	#47 Meier	#19 Sampson	#59 Volker
#32 Diaz	#26 Krueger	#18 Montgomery	#23 Savino	#53 Winner
#17 Dilan	#27 Kruger	#38 Morahan	#31 Schneiderman	#48 Wright
#29 Duane	#39 Larkin	#54 Muzzolio	#28 Serrano	
#44 Farley	#01 LaValle	#12 Onorato	#51 Geward	

S. Senate

22

IN SENATE--Introduced by Sen

(at the request of the Attorney General)
--read twice and ordered printed,
and when printed to be committed
to the Committee on

A. Assembly

IN ASSEMBLY--Introduced by M. of A.

(at the request of the Attorney General)
with M. of A. as co-sponsors

--read once and referred to the
Committee on

GENEBULA
(Enacts the identity theft
prevention and mitigation act)

Gen Bus L. identity theft; mitig.

AN ACT

to amend the general business law,
the criminal procedure law and the
executive law, in relation to iden-
tity theft and mitigation

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

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

#045 Abbate	#010 Conte	#148 Hayes	#022 Meng	#080 Rivera, N.
#001 Acampora	#032 Cook	#083 Heastie	#102 Miller	#076 Rivera, P.
#021 Alfano	#107 Crouch	#048 Hiskind	#052 Millman	#056 Robinson
#084 Arroyo	#083 Cusick	#127 Hooker	#060 Mirones	#012 Saladino
#118 Aubertine	#045 Cymbrowitz	#018 Hooper	#132 Morelle	#074 Sanders
#035 Aubry	#138 DeMonte	#144 Hoyt	#093 Masiello	#113 Sayward
#136 Bacalles	#116 Destito	#052 Ignizio	#139 Newbitt	#029 Scarborough
#124 Barclay	#086 Diaz, L.	#042 Jacobs	#037 Nolan	#140 Schimminger
#014 Barra	#085 Diaz, R.	#131 John	#043 Norman	#148 Schroeder
#008 Barraga	#016 DiNapoli	#095 Karben	#138 Oaks	#122 Scozzafava
#082 Benedetto	#081 Dinowitz	#100 Kirwan	#017 O'Connell	#059 Seddio
#079 Benjamin	#003 Edgington	#129 Kolb	#069 O'Donnell	#038 Seminerio
#073 Bing	#004 Englebright	#135 Koon	#137 O'Mara	#066 Silver
#055 Boyland	#130 Errigo	#034 Lafayette	#051 Ortiz	#099 Stephens
#089 Bradley	#072 Espalliat	#091 Latimer	#114 Orloff	#067 Stringer
#044 Brennan	#071 Farrell	#061 Lavelle	#150 Parment	#011 Sweeney
#092 Brodsky	#015 Ferrara	#013 Lavine	#088 Paulin	#110 Tediaco
#121 Brown	#005 Fields	#050 Lentol	#141 Peoples	#002 Thiele
#147 Burling	#123 Finch	#125 Lifton	#039 Peralta	#031 Titus
#117 Butler	#007 Fitzpatrick	#053 Lopez	#058 Perry	#143 Tokars
#101 Cahill	#090 Galef	#126 Lupardo	#033 Phaffer	#105 Tonko
#096 Calhoun	#133 Gantt	#111 Magee	#068 Powell	#054 Towns
#106 Canestreri	#036 Gianaris	#120 Maguarelli	#087 Pretlow	#115 Townsend
#026 Carrozza	#066 Glick	#103 Manning	#146 Quinn	#041 Weinstein
#100 Casale	#040 Gordon	#030 Markey	#097 Rabbitt	#020 Weisenberg
#119 Christensen	#075 Gottfried	#027 Mayersohn	#009 Rais	#024 Weprin
#033 Clark	#065 Grannis	#112 McDonald	#006 Ramos	#142 Wirth
#046 Cohen, A.	#057 Green	#019 McDonough	#134 Reillich	#070 Wright
#028 Cohen, M.	#077 Greene	#104 McNaney	#109 Reilly	#149 Young
#047 Colton	#098 Dunther	#025 McLaughlin	#078 Rivera, J.	#094 Zebrowski

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. This act shall be known and may be cited as the "identity
2 theft prevention and mitigation act."

3 § 2. Legislative findings: The legislature finds and declares that
4 recent studies have shown that the incidence of identity theft continues
5 to rise, costing both victims and businesses billions of dollars in
6 losses. Between January and December 2004, the complaint database oper-
7 ated by the Federal Trade Commission (FTC) received 246,570 complaints.
8 New York state ranked seventh in the nation in per-capita identity theft
9 reports. Studies have also shown that identity theft is much more
10 common than reports suggest. The FTC further reported that an estimated
11 27.3 million Americans have been victims of identity theft in the last
12 five years. The total cost of identity theft approaches \$50 billion per
13 year. Identity theft can cause substantial harm to consumers.

14 The legislature further finds that identity thieves take advantage of
15 the fact that many businesses access a consumer's consumer report for
16 credit, insurance and other purposes. Allowing people who have been or
17 suspect that they are the victim of identity theft to place a "security
18 freeze" on their consumer report can prevent further victimization by
19 requiring that the consumer expressly consent to dissemination of infor-
20 mation in his or her report for the provision of credit, loans and other
21 services.

22 The legislature further finds that an integral part of many identity
23 crimes involves the interception of or unauthorized access to personal
24 information including social security account numbers. The Federal
25 Trade Commission, the Social Security Administration, the General
26 Accounting Office and others acknowledge that the widespread public
27 exposure of personal information especially social security account
28 numbers plays a significant role in identity theft.

1 The legislature further declares that security is an essential compo-
2 nent of information privacy and identity theft prevention. Information
3 security studies have indicated that the number of security breaches has
4 increased over time. Implementing information safeguards and procedures
5 as part of business operations is important for an institution to
6 fulfill its obligation to consumers who entrust it with their personal
7 information. It also reduces the risk of exposing individuals to the
8 possibility of identity theft. A necessary component of any information
9 security procedure is a plan of response in the event that personal
10 information has been compromised.

11 The legislature hereby concludes that the growing threat represented
12 by the misuse of personal information, especially social security
13 account numbers and identity theft, warrants enactment of further
14 protections and remedies as provided in this act.

15 § 3. Section 380-a of the general business law is amended by adding a
16 new subdivision (k) to read as follows:

17 (k) The term "security freeze" means a notice placed in a consumer
18 report, at the request of the consumer who is or reasonably suspects
19 that he or she is a victim of theft of identity, pursuant to section
20 three hundred eighty-s of this article, that prohibits a consumer
21 reporting agency from releasing a consumer report or any information
22 derived from it without the express authorization of the consumer.

23 § 4. Paragraph 3 of subdivision (a) of section 380-d of the general
24 business law, as added by chapter 867 of the laws of 1977, is amended
25 and a new paragraph 4 is added to read as follows:

26 (3) the recipients of any consumer report on the consumer which it has
27 furnished;

1 (i) for employment purposes within the two-year period preceding the
2 request, and

3 (ii) for any other purpose within the six month period preceding the
4 request[.]; and

5 (4) for victims of or those who suspect that they are victims of theft
6 of identity, the right to obtain a security freeze on your consumer
7 report at no charge pursuant to section three hundred eighty-u of this
8 article.

9 § 5. Subdivision (c) of section 380-d of the general business law, as
10 added by chapter 237 of the laws of 1981, is amended to read as follows:

11 (c) Notwithstanding any other provision of this article, every consum-
12 er reporting agency, upon contact by a consumer by phone, mail, secure
13 electronic mail or in person regarding information which may be
14 contained in the agency's files which has been or may be used for the
15 purpose of providing a consumer report regarding that consumer, shall
16 promptly advise the consumer of the obligation of the agency to provide
17 disclosure of the files in person, by mail, secure electronic mail or by
18 telephone pursuant to this section, including the obligation of the
19 agency to provide a decoded written version of the file or a written
20 copy of the file with an explanation of any code used, in plain and
21 simple english if the consumer so requests. The disclosure shall be
22 provided in the manner selected by the consumer. The consumer reporting
23 agency shall also provide a written explanation of the rights and reme-
24 dies of consumers pursuant to this article including the right to place
25 a security freeze pursuant to section three hundred eighty-u of this
26 article. All consumers shall be specifically advised that if they have
27 been denied credit in the past thirty days they are entitled to receive

1 a written copy of their complete file, at no charge whatsoever, should
2 they choose to request such a copy.

3 § 6. Subdivision (e) of section 380-e of the general business law is
4 amended by adding a new paragraph 3-a to read as follows:

5 (3-a) Notwithstanding any other provision of this article, where a
6 consumer reporting agency removes a security freeze pursuant to para-
7 graph two of subdivision (j) of section three hundred eighty-u of this
8 article, the disclosures required under section three hundred eighty-d
9 of this article shall be made without charge to such consumer with the
10 required notification.

11 § 7. The general business law is amended by adding a new section 380-u
12 to read as follows:

13 § 380-u. Security freeze. (a) A consumer who is or reasonably suspects
14 that he or she is a victim of theft of identity may elect to place a
15 security freeze on his or her consumer report by making a request in
16 writing by certified mail to a consumer reporting agency with proper
17 identification and a copy of a valid police report, investigative
18 report, or complaint that the consumer has filed with a law enforcement
19 agency.

20 (b) Upon written request for a security freeze provided by a consumer
21 under subdivision (a) of this section, a consumer reporting agency shall
22 disclose to the consumer the process for placing, removing and temporar-
23 ily lifting a security freeze.

24 (c) A consumer reporting agency shall place a security freeze on a
25 consumer report no later than five business days after receiving the
26 written request.

27 (d) The consumer reporting agency shall send a written confirmation of
28 the placement of the security freeze to the consumer within ten business

1 days and shall provide the consumer with a unique personal identifica-
2 tion number or password, other than the consumer's social security
3 account number, to be used by the consumer when providing authorization
4 for the removal or temporary lifting of the security freeze and the
5 release of his or her consumer report or any information from it for a
6 specific party, parties, or period of time. Such written confirmation
7 shall also inform the consumer of the process to remove and temporarily
8 lift a security freeze.

9 (e) A security freeze shall prohibit, subject to the exceptions
10 provided herein, the consumer reporting agency from releasing the
11 consumer's consumer report or any information from it without the prior
12 express authorization of the consumer. This subdivision does not prevent
13 a consumer reporting agency from informing a third party that a security
14 freeze is in effect with respect to the consumer's consumer report
15 provided, however, a consumer reporting agency may not suggest or other-
16 wise state or imply to a third party or to the consumer that a security
17 freeze reflects a negative credit history, report or rating.

18 (f) If a third party requests access to a consumer report on which a
19 security freeze is in effect, and this request is in connection with an
20 application for credit, insurance or any other use as provided in
21 section three hundred eighty-b of this article, and the consumer does
22 not authorize his or her consumer report to be accessed for that specif-
23 ic party, purpose or period of time, the third party may treat the
24 application as incomplete.

25 (g) If the consumer wishes to allow his or her consumer report or
26 information from it to be released for a specific party, parties or
27 period of time while a freeze is in place, he or she shall contact the
28 consumer reporting agency via telephone, certified mail, or secure elec-

1 tronic mail, request that the freeze be temporarily lifted, and provide
2 the following:

3 (1) proper identification;

4 (2) the unique personal identification number or password provided by
5 the consumer reporting agency pursuant to subdivision (d) of this
6 section; and

7 (3) the proper information regarding the third party, parties or time
8 period for which the report or any information from it shall be avail-
9 able to the users of the consumer report.

10 (h) A consumer reporting agency that receives a request from a consum-
11 er to temporarily lift a freeze on a consumer report pursuant to subdivi-
12 vision (g) of this section shall comply with such request no later than
13 three business days after receiving the request and shall record the
14 release in the consumer's file.

15 (i) A security freeze shall remain in place until the consumer
16 requests that the security freeze be removed. A consumer reporting agen-
17 cy shall record the removal of the security freeze in the consumer's
18 file and remove the security freeze within three business days after
19 receiving a request for removal from the consumer who provides the
20 following:

21 (1) proper identification; and

22 (2) the unique personal identification number or password provided by
23 the consumer reporting agency pursuant to subdivision (d) of this
24 section.

25 (j) A consumer reporting agency shall remove or temporarily lift a
26 security freeze placed on a consumer's consumer report only in the
27 following cases:

1 (1) upon consumer request pursuant to subdivisions (g) and (i) of this
2 section; or

3 (2) if the consumer's consumer report was frozen due to a material
4 misrepresentation of fact by the consumer. If a consumer reporting agen-
5 cy intends to remove a freeze upon a consumer's consumer report pursuant
6 to this paragraph, the consumer reporting agency shall notify the
7 consumer in writing five business days prior to removing the freeze on
8 the consumer's consumer report and provide a copy of the consumer report
9 at no charge.

10 (k) A consumer reporting agency may develop procedures involving the
11 use of telephone, fax, the Internet, or other secure electronic media to
12 receive and process a request from a consumer to temporarily lift or
13 remove a freeze on a consumer report pursuant to subdivisions (g) and
14 (i) of this section in an expedited fashion.

15 (l) A consumer reporting agency shall honor a security freeze placed
16 on a consumer file by another consumer reporting agency.

17 (m) A consumer reporting agency may not charge a consumer for any
18 security freeze services, including but not limited to the placement,
19 removing or temporary lifting of a security freeze. A consumer may be
20 charged by the consumer reporting agency a nominal fee of no more than
21 five dollars where the consumer fails to retain the original personal
22 identification number or password provided by the consumer reporting
23 agency pursuant to subdivision (d) of this section and a new personal
24 identification number or password is issued.

25 (n) When a security freeze is in place, a consumer reporting agency
26 shall not change any of the following information in a consumer report
27 without sending a written confirmation of the change to the consumer
28 within thirty calendar days of the change being posted to the consumer's

1 file: name, date of birth, social security account number, or address.
2 Written confirmation is not required for technical modifications of a
3 consumer's information, including name and street abbreviations,
4 complete spellings, or transposition of numbers or letters. Written
5 confirmation of an address change shall be sent to both the new address
6 and to the former address.

7 (o) The provisions of this section, including the security freeze, do
8 not apply to a consumer report provided to:

9 (1) a person, or the person's subsidiary, affiliate, agent, or assignee
10 with whom the consumer has or, prior to assignment, had an account,
11 contract, or debtor-creditor relationship for the purposes of reviewing
12 the account or collecting the financial obligation owing for the
13 account, contract, or debt, or extending credit to a consumer with a
14 period or existing account, contract, or debtor-creditor relationship.
15 For purposes of this paragraph, "reviewing the account" includes activ-
16 ities related to account maintenance and administration, monitoring,
17 credit line increases, and account upgrades and enhancements;

18 (2) a subsidiary, affiliate, agent, assignee or prospective assignee
19 of a person to whom access has been granted under subdivision (g) of
20 this section for purposes of facilitating the extension of credit or
21 other permissible use pursuant to section three hundred eighty-b of this
22 article;

23 (3) any person acting pursuant to a court order, warrant or subpoena;

24 (4) a child support agency acting pursuant to Title IV-D of the Social
25 Security Act (42 U.S.C. 651 et seq.) or article six-A of the social
26 services law;

1 (5) the department of law or its agents or assignee acting to investi-
2 gate welfare and medicaid fraud pursuant to section seventy-four of the
3 executive law;

4 (6) the department of taxation and finance or its agents or assignee
5 and any local taxing authority or its agents or assignee acting to
6 investigate or collect delinquent taxes or assessments, unpaid court
7 orders, including interest and penalties, or to fulfill any of its stat-
8 utory responsibilities;

9 (7) a person for the purposes of prescreening as provided by the
10 federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended;

11 (8) any person or entity administering a consumer report monitoring
12 subscription service to which the consumer has subscribed; or

13 (9) any person or entity for the purpose of providing a consumer with
14 a copy of his or her consumer report upon the consumer's request.

15 (p) The requirement under this section to place a security freeze on a
16 consumer report does not apply to the following, provided however, that
17 any person that is not required to place a security freeze on a consumer
18 report under this section must comply with any security freeze placed on
19 a consumer report by another consumer reporting agency from which it
20 obtains information:

21 (1) a check service or fraud prevention service company, which reports
22 on incidents of fraud or issues authorizations for the purpose of
23 approving or processing negotiable instruments, electronic fund trans-
24 fers, or similar methods of payments;

25 (2) a deposit account information service company that issues reports
26 regarding account closures due to fraud, substantial overdrafts, auto-
27 mated teller machine abuses, or similar negative information regarding a
28 consumer to inquiring banks or other financial institutions for use only

1 in reviewing a consumer request for a deposit account at that institu-
2 tion; or

3 (3) a consumer reporting agency that:

4 (i) acts only to resell credit information by assembling and merging
5 information contained in a database of one or more consumer reporting
6 agencies; and

7 (ii) does not maintain a permanent database of credit information from
8 which new consumer reports are produced.

9 (g) Where a consumer reporting agency erroneously releases a consumer
10 report subject to a security freeze or any information it contains, the
11 consumer reporting agency shall send written notification to the
12 affected consumer within five business days of the release. Such notifi-
13 cation shall also inform the consumer of the nature of the information
14 released and identify and provide contact information for the recipient
15 of the information.

16 § 8. The general business law is amended by adding a new section 380-v
17 to read as follows:

18 § 380-v. Enforcement by the attorney general. Whenever there shall be
19 a violation of this article, application may be made by the attorney
20 general in the name of the people of the state of New York to a court or
21 justice having jurisdiction by a special proceeding to issue an injunc-
22 tion, and upon notice to the defendant of not less than five days, to
23 enjoin and restrain the continuance of such violations; and if it shall
24 appear to the satisfaction of the court or justice that the defendant
25 has, in fact, violated this article, an injunction may be issued by such
26 court or justice, enjoining and restraining any further violation,
27 without requiring proof that any person has, in fact, been injured or
28 damaged thereby. In any such proceeding, the court may make allowances

1 to the attorney general as provided in paragraph six of subdivision (a)
2 of section eighty-three hundred three of the civil practice law and
3 rules, and direct restitution. Whenever the court shall determine that a
4 violation of this article has occurred, the court may impose a civil
5 penalty of not more than five thousand dollars for each violation. In
6 connection with any such proposed application, the attorney general is
7 authorized to take proof and make a determination of the relevant facts
8 and to issue subpoenas in accordance with the civil practice law and
9 rules.

10 § 9. The general business law is amended by adding a new section 396-
11 ss to read as follows:

12 § 396-ss. Confidentiality of social security account number. 1. As
13 used in this section "social security account number" shall include the
14 number issued by the federal social security administration and any
15 number derived from such number.

16 2. No person, firm, partnership, association or corporation shall do
17 any of the following:

18 (a) Intentionally communicate or otherwise make available to the
19 general public in any manner an individual's social security account
20 number.

21 (b) Print an individual's social security account number on any card
22 or tag required for the individual to access products, services or bene-
23 fits provided by the person, firm, partnership, association or corpo-
24 ration or encode, embed or include on such card or tag a social security
25 account number, including, but not limited to, using a magnetic strip,
26 bar code, or other means of technology or communication which conveys
27 such number.

1 (c) Require an individual to transmit his or her social security
2 account number over the internet, unless the connection is secure or the
3 social security account number is encrypted.

4 (d) Require an individual to use his or her social security account
5 number to access an internet web site, unless a password or unique
6 personal identification number or other authentication device is also
7 required to access the internet web site.

8 (e) Print an individual's social security account number on any mate-
9 rials that are mailed to the individual, unless state or federal law
10 requires the social security account number to be on the document to be
11 mailed. A social security account number that is permitted to be mailed
12 under this section may not be printed, in whole or part, on a postcard
13 or other mailer not requiring an envelope, or visible on the envelope or
14 without the envelope having been opened.

15 3. This section does not prevent the collection, use, or release of a
16 social security account number as required by state or federal law or
17 the use of a social security account number for internal verification or
18 administrative purposes.

19 4. A social security account number may be sold or otherwise made
20 available to a consumer reporting agency as defined in section three
21 hundred eighty-a of this chapter for use or disclosure solely for
22 permissible purposes described in section three hundred eighty-b of this
23 chapter.

24 5. Any person, firm, partnership, association or corporation having
25 possession of the social security account number of any individual
26 shall, to the extent that such number is maintained for the conduct of
27 business or trade, ensure that no officer or employee has access to such
28 number for any purpose other than for a legitimate or necessary purpose

1 related to the conduct of such business or trade and provide safeguards
2 necessary or appropriate to preclude unauthorized access to the social
3 security account number and to protect the confidentiality of such
4 number.

5 6. Any waiver of the provisions of this section is contrary to public
6 policy, and is void and unenforceable.

7 7. Whenever there shall be a violation of this section, application
8 may be made by the attorney general in the name of the people of the
9 state of New York to a court or justice having jurisdiction by a special
10 proceeding to issue an injunction, and upon notice to the defendant of
11 not less than five days, to enjoin and restrain the continuance of such
12 violation; and if it shall appear to the satisfaction of the court or
13 justice that the defendant has, in fact, violated this section, an
14 injunction may be issued by such court or justice, enjoining and
15 restraining any further violation, without requiring proof that any
16 person has, in fact, been injured or damaged thereby. In any such
17 proceeding, the court may make allowances to the attorney general as
18 provided in paragraph six of subdivision (a) of section eighty-three
19 hundred three of the civil practice law and rules, and direct restitu-
20 tion. In connection with any such proposed application, the attorney
21 general is authorized to take proof and make a determination of the
22 relevant facts and to issue subpoenas in accordance with the civil prac-
23 tice law and rules. Whenever the court shall determine that a violation
24 of subdivision two of this section has occurred, the court shall impose a
25 civil penalty of not more than one thousand dollars. The second offense
26 and any offense committed thereafter shall be punishable by a civil
27 penalty of not more than five thousand dollars for each violation. Any
28 person who has been injured by reason of any violation of this section

1 may bring an action in his or her own name to enjoin such unlawful act
2 or practice, an action to recover his or her actual damages or fifty
3 dollars, whichever is greater, or both such actions. The court may, in
4 its discretion, increase the award of damages to an amount not to exceed
5 three times the actual damages up to one thousand dollars, if the court
6 finds the defendant willfully or knowingly violated this section. The
7 court may award reasonable attorney's fees to a prevailing plaintiff. No
8 person, firm, partnership, association or corporation shall be deemed to
9 have violated the provisions of this section if such person, firm, part-
10 nership, association or corporation shows, by a preponderance of the
11 evidence, that the violation was not intentional and resulted from a
12 bona fide error made notwithstanding the maintenance of procedures
13 reasonably adopted to avoid such error.

14 § 10. Section 380-b of the general business law is amended by adding a
15 new subdivision (e) to read as follows:

16 (e) Notwithstanding any other provision of law, a consumer reporting
17 agency may furnish a social security account number of a consumer, or
18 any derivative thereof, only in accordance with this section.

19 § 11. The general business law is amended by adding a new section
20 396-tt to read as follows:

21 § 396-tt. Notice of information breach. 1. As used in this section:

22 (a) "Breach of security" means the unauthorized access, infiltration,
23 or acquisition of personal information maintained and stored in any
24 record, including but not limited to, paper and electronic, that compro-
25 mises the security, confidentiality, or integrity of the personal infor-
26 mation. Good faith access to or acquisition of personal information
27 maintained by an employee or agent for a legitimate or necessary purpose
28 related to the conduct of a business or trade is not a breach of securi-

1 ty, provided that the personal information is not used for a purpose
2 unrelated to the business or trade or subject to unauthorized disclo-
3 sure.

4 (b) "Personal information" means an individual's first name or first
5 initial and last name in combination with any one or more of the follow-
6 ing elements, when either the name or the elements are not encrypted or
7 redacted:

8 (i) social security account number;

9 (ii) mother's maiden name;

10 (iii) driver's license number or state identification card number;

11 (iv) financial services, savings, checking or brokerage account number
12 or code, credit or debit card number or code, automated teller machine
13 number or access codes, passwords or personal identification numbers,
14 telephone calling card number, mobile identification number or code;

15 (v) electronic signature or unique biometric data; or

16 (vi) date of birth.

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

20 2. Any person, firm, partnership, association or corporation that
21 collects, owns, maintains or uses personal information shall disclose a
22 breach of security related to unencrypted or non-redacted personal
23 information concerning five hundred or more residents of New York. The
24 disclosure shall be made within two business days after learning of the
25 breach of security, but may be delayed if a law enforcement agency
26 determines that the notification will impede a criminal investigation.
27 The notification required by this section shall be made after the law

1 enforcement agency determines that it will not compromise the investi-
2 gation.

3 3. Notification may be provided by one or more of the following meth-
4 ods:

5 (a) written notice;

6 (b) electronic notice, if the notice provided is consistent with the
7 provisions regarding electronic records and signatures set forth in
8 Section 7001 of Title 15 of the United States Code;

9 (c) conspicuous posting on the entity's home page of its web site. At
10 a minimum, such notification shall disclose the nature of the breach in
11 security and include a telephone number and other information that indi-
12 viduals whose information has been the target of an unauthorized access,
13 infiltration or acquisition may contact for further information and
14 assistance. The notification shall also inform individuals that they may
15 want to contact credit and other consumer reporting agencies to check
16 their accounts for suspicious activity; or

17 (d) pursuant to procedures established under an information security
18 policy maintained by a person, firm, partnership, association or corpo-
19 ration that are consistent with the requirements of this section.

20 4. Any firm, partnership, association or corporation that discloses a
21 breach of security shall cooperate with individuals whose information
22 has been the target of unauthorized access, infiltration, or acquisi-
23 tion. Upon request of such an individual, the firm, partnership, asso-
24 ciation or corporation shall disclose and provide copies of the informa-
25 tion and records that were the target of the breach of security free of
26 charge within ten business days.

27 5. A person, firm, partnership, association or corporation shall take
28 all reasonable steps to destroy or arrange for the destruction of

1 personal information maintained and stored in any record, including but
2 not limited to, paper and electronic, within its custody or control,
3 which is no longer to be retained by shredding, erasing, or otherwise
4 modifying the personal information in those records to make it unread-
5 able or indecipherable through any means.

6 6. Any waiver of the provisions of this section is contrary to public
7 policy, and is void and unenforceable.

8 7. Whenever there shall be a violation of this section, application
9 may be made by the attorney general in the name of the people of the
10 state of New York to a court or justice having jurisdiction by a special
11 proceeding to issue an injunction, and upon notice to the defendant of
12 not less than five days, to enjoin and restrain the continuance of such
13 violation; and if it shall appear to the satisfaction of the court or
14 justice that the defendant has, in fact, violated this section, an
15 injunction may be issued by such court or justice, enjoining and
16 restraining any further violation, without requiring proof that any
17 person has, in fact, been injured or damaged thereby. In any such
18 proceeding, the court may make allowances to the attorney general as
19 provided in paragraph six of subdivision (a) of section eighty-three
20 hundred three of the civil practice law and rules, and direct restitu-
21 tion. In connection with any such proposed application, the attorney
22 general is authorized to take proof and make a determination of the
23 relevant facts and to issue subpoenas in accordance with the civil prac-
24 tice law and rules. Whenever the court shall determine that a violation
25 of subdivision two of this section has occurred, the court shall impose
26 a civil penalty of not more than one thousand dollars. The second
27 offense and any offense committed thereafter shall be punishable by a
28 civil penalty of not more than five thousand dollars for each violation.

1 Any person who has been injured by reason of any violation of this
2 section may bring an action in his or her own name to enjoin such unlaw-
3 ful act or practice, an action to recover his or her actual damages or
4 fifty dollars, whichever is greater, or both such actions. The court
5 may, in its discretion, increase the award of damages to an amount not
6 to exceed three times the actual damages up to one thousand dollars, if
7 the court finds the defendant willfully or knowingly violated this
8 section. The court may award reasonable attorney's fees to a prevailing
9 plaintiff. No person, firm, partnership, association or corporation
10 shall be deemed to have violated the provisions of this section if such
11 person, firm, partnership, association or corporation shows, by a
12 preponderance of the evidence, that the violation was not intentional
13 and resulted from a bona fide error made notwithstanding the maintenance
14 of procedures reasonably adopted to avoid such error.

15 § 12. Paragraph (1) of subdivision 4 of section 20.40 of the criminal
16 procedure law, as added by section 619 of the laws of 2002, is amended
17 to read as follows:

18 (1) An offense of identity theft or unlawful possession of personal
19 identification information may be prosecuted (i) in any county in which
20 part of the offense took place regardless of whether the defendant was
21 actually present in such county, or (ii) in the county in which the
22 person who suffers financial loss resided at the time of the commission
23 of the offense, or (iii) in the county where the person whose personal
24 identification information was used in the commission of the offense
25 resided at the time of the commission of the offense. A person who
26 knows or reasonably suspects that his or her personal identification
27 information was unlawfully used may make a complaint to the law enforce-
28 ment agency (1) in any county in which part of the offense took place

1 regardless of whether the defendant was actually present in such county,
2 (2) in the county in which the person who suffered financial loss
3 resided at the time of the commission of the offense, or (3) in the
4 county where the person whose personal identification information was
5 used in the commission of the offense resided at the time of the commis-
6 sion of the offense. Such law enforcement agency shall record the
7 complaint and provide the complainant with a copy of the complaint,
8 including the name of the law enforcement officer taking the complaint,
9 and an incident number or case number assigned to such complaint.

10 § 13. Section 646 of the executive law, as added by chapter 548 of the
11 laws of 1986, is amended to read as follows:

12 § 646. Police reports. A victim of crime, including but not limited
13 to a victim of theft of identity, as defined in section three hundred
14 eighty-s of the general business law; shall be entitled, regardless of
15 physical injury, without charge to a copy of a police report of the
16 crime.

17 § 14. Severability. The provisions of this act shall be severable. If
18 any part or provision hereof shall be declared invalid or unenforceable,
19 the remaining provisions shall be enforced to the extent practicable.
20 The provisions of this act are in addition to any other rights or reme-
21 dies otherwise available to consumers and nothing herein contained shall
22 be construed to limit such rights or remedies.

23 § 15. This act shall take effect on the ninetieth day after it shall
24 have become a law.