

**Introduced by Senator Wyland**February 21, 2014

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An act to amend Section 530.5 of the Penal Code, relating to crimes.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1307, as introduced, Wyland. Identity theft: fines.

Existing law makes it a misdemeanor to acquire or retain, with the intent to defraud, possession of the personal identifying information of another person. Under existing law, a 2nd commission of this offense and the commission of this crime against 10 or more victims may be charged as either a misdemeanor or a felony. Existing law makes it a crime, punishable as either a misdemeanor or a felony, to sell, transfer, or convey the personal identifying information of another with the intent to defraud. Existing law also makes it a felony to sell personal information with the knowledge that it will be used for an unlawful purpose.

Under existing law a misdemeanor is punishable by a term of imprisonment of not more than one year in county jail and, unless otherwise provided, a fine not to exceed \$1,000.

This bill would specify that the fine for committing any of the above crimes, other than acquiring or retaining possession of the personal identifying information of 10 or more victims, if charged as a misdemeanor, is not to exceed \$5,000, and the fine for acquiring or retaining possession of the personal identifying information of 10 or more victims, if charged as a misdemeanor, is not to exceed \$10,000.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 530.5 of the Penal Code is amended to  
2 read:

3 530.5. (a) ~~Every~~A person who willfully obtains personal  
4 identifying information, as defined in subdivision (b) of Section  
5 530.55, of another person, and uses that information for ~~any~~ *an*  
6 unlawful purpose, including to obtain, or attempt to obtain, credit,  
7 goods, services, real property, or medical information without the  
8 consent of that person, is guilty of a public offense, and upon  
9 conviction therefor, shall be punished by a fine, by imprisonment  
10 in a county jail not to exceed one year, or by both a fine and  
11 imprisonment, or by imprisonment pursuant to subdivision (h) of  
12 Section 1170.

13 (b) In ~~any~~ a case in which a person willfully obtains personal  
14 identifying information of another person, uses that information  
15 to commit a crime in addition to a violation of subdivision (a), and  
16 is convicted of that crime, the court records shall reflect that the  
17 person whose identity was falsely used to commit the crime did  
18 not commit the crime.

19 (c) (1) ~~Every~~A person who, with the intent to defraud, acquires  
20 or retains possession of the personal identifying information, as  
21 defined in subdivision (b) of Section 530.55, of another person is  
22 guilty of a public offense, and upon conviction therefor, shall be  
23 punished by a fine *not to exceed five thousand dollars (\$5,000)*,  
24 by imprisonment in a county jail not to exceed one year, or by both  
25 a *that* fine and imprisonment.

26 (2) Every person who, with the intent to defraud, acquires or  
27 retains possession of the personal identifying information, as  
28 defined in subdivision (b) of Section 530.55, of another person,  
29 and who has previously been convicted of a violation of this  
30 section, upon conviction therefor shall be punished by a fine *not*  
31 *to exceed five thousand dollars (\$5,000)*, by imprisonment in a  
32 county jail not to exceed one year, or by both ~~a~~ *that* fine and  
33 imprisonment, or by imprisonment pursuant to subdivision (h) of  
34 Section 1170.

35 (3) Every person who, with the intent to defraud, acquires or  
36 retains possession of the personal identifying information, as  
37 defined in subdivision (b) of Section 530.55, of 10 or more other  
38 persons is guilty of a public offense, and upon conviction therefor,

1 shall be punished by a fine *not to exceed ten thousand dollars*  
2 *(\$10,000)*, by imprisonment in a county jail not to exceed one year,  
3 or by both—*a that* fine and imprisonment, or by imprisonment  
4 pursuant to subdivision (h) of Section 1170.

5 (d) (1) Every person who, with the intent to defraud, sells,  
6 transfers, or conveys the personal identifying information, as  
7 defined in subdivision (b) of Section 530.55, of another person is  
8 guilty of a public offense, and upon conviction therefor, shall be  
9 punished by a fine *not to exceed five thousand dollars (\$5,000)*,  
10 by imprisonment in a county jail not to exceed one year, or by both  
11 *a that* fine and imprisonment, or by imprisonment pursuant to  
12 subdivision (h) of Section 1170.

13 (2) Every person who, with actual knowledge that the personal  
14 identifying information, as defined in subdivision (b) of Section  
15 530.55, of a specific person will be used to commit a violation of  
16 subdivision (a), sells, transfers, or conveys that same personal  
17 identifying information is guilty of a public offense, and upon  
18 conviction therefor, shall be punished by a fine *not to exceed five*  
19 *thousand dollars (\$5,000)*, by imprisonment pursuant to  
20 subdivision (h) of Section 1170, or by both—*a that* fine and  
21 imprisonment.

22 (e) Every person who commits mail theft, as defined in Section  
23 1708 of Title 18 of the United States Code, is guilty of a public  
24 offense, and upon conviction therefor shall be punished by a fine,  
25 by imprisonment in a county jail not to exceed one year, or by both  
26 a fine and imprisonment. Prosecution under this subdivision shall  
27 not limit or preclude prosecution under any other provision of law,  
28 including, but not limited to, subdivisions (a) to (c), inclusive, of  
29 this section.

30 (f) An interactive computer service or access software provider,  
31 as defined in subsection (f) of Section 230 of Title 47 of the United  
32 States Code, shall not be liable under this section unless the service  
33 or provider acquires, transfers, sells, conveys, or retains possession  
34 of personal information with the intent to defraud.