

ASSEMBLY BILL

No. 441

Introduced by Assembly Member Wilk

February 23, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 441, as introduced, Wilk. Identity theft: seniors: enhancements.

Existing law makes it a public offense for a person to acquire or retain possession of, or sell or transfer, the personal identifying information of another person with the intent to defraud. Existing law makes these offenses punishable as misdemeanors or felonies, as specified.

This bill would provide an enhanced sentence of an additional 2 years imprisonment for a felony conviction when the victim was 65 years of age or older. By increasing the penalties for existing felonies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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:

1 530.5. (a) Every person who willfully obtains personal
2 identifying information, as defined in subdivision (b) of Section
3 530.55, of another person, and uses that information for any
4 unlawful purpose, including to obtain, or attempt to obtain, credit,
5 goods, services, real property, or medical information without the
6 consent of that person, is guilty of a public offense, and upon
7 conviction therefor, shall be punished by a fine, by imprisonment
8 in a county jail not to exceed one year, or by both a fine and
9 imprisonment, or by imprisonment pursuant to subdivision (h) of
10 Section 1170.

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

17 (c) (1) Every person who, with the intent to defraud, acquires
18 or retains possession of the personal identifying information, as
19 defined in subdivision (b) of Section 530.55, of another person is
20 guilty of a public offense, and upon conviction therefor, shall be
21 punished by a fine, by imprisonment in a county jail not to exceed
22 one year, or by both a fine and imprisonment.

23 (2) Every person who, with the intent to defraud, acquires or
24 retains possession of the personal identifying information, as
25 defined in subdivision (b) of Section 530.55, of another person,
26 and who has previously been convicted of a violation of this
27 section, upon conviction therefor shall be punished by a fine, by
28 imprisonment in a county jail not to exceed one year, or by both
29 a fine and imprisonment, or by imprisonment pursuant to
30 subdivision (h) of Section 1170.

31 (3) Every person who, with the intent to defraud, acquires or
32 retains possession of the personal identifying information, as
33 defined in subdivision (b) of Section 530.55, of 10 or more other
34 persons is guilty of a public offense, and upon conviction therefor,
35 shall be punished by a fine, by imprisonment in a county jail not
36 to exceed one year, or by both a fine and imprisonment, or by
37 imprisonment pursuant to subdivision (h) of Section 1170.

38 (d) (1) Every person who, with the intent to defraud, sells,
39 transfers, or conveys the personal identifying information, as
40 defined in subdivision (b) of Section 530.55, of another person is

1 guilty of a public offense, and upon conviction therefor, shall be
2 punished by a fine, by imprisonment in a county jail not to exceed
3 one year, or by both a fine and imprisonment, or by imprisonment
4 pursuant to subdivision (h) of Section 1170.

5 (2) Every person who, with actual knowledge that the personal
6 identifying information, as defined in subdivision (b) of Section
7 530.55, of a specific person will be used to commit a violation of
8 subdivision (a), sells, transfers, or conveys that same personal
9 identifying information is guilty of a public offense, and upon
10 conviction therefor, shall be punished by a fine, by imprisonment
11 pursuant to subdivision (h) of Section 1170, or by both a fine and
12 imprisonment.

13 (e) Every person who commits mail theft, as defined in Section
14 1708 of Title 18 of the United States Code, is guilty of a public
15 offense, and upon conviction therefor shall be punished by a fine,
16 by imprisonment in a county jail not to exceed one year, or by both
17 a fine and imprisonment. Prosecution under this subdivision shall
18 not limit or preclude prosecution under any other provision of law,
19 including, but not limited to, subdivisions (a) to (c), inclusive, of
20 this section.

21 (f) *Every person convicted of a felony under this section shall*
22 *be subject to an additional term of imprisonment of two years when*
23 *the victim was 65 years of age or older at the time of the offense.*

24 ~~(f)~~

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

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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