

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Niello

February 23, 2007

An act to amend Section ~~530.5~~ 12022.6 of the Penal Code, relating to ~~identity theft~~ *sentencing*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as amended, Niello. ~~Identity theft. Sentencing: enhancement.~~

Existing law provides for an additional term of imprisonment, as specified, when any person takes, damages, or destroys any property in the commission or attempted commission of a felony and is repealed as of January 1, 2008.

This bill, by deleting the repeal date, would extend that provision indefinitely.

Because this bill would increase the duties of local officials, it 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.

~~Existing law makes it unlawful to willfully obtain personal identifying information, as defined for specified purposes.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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

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

1 SECTION 1. Section 12022.6 of the Penal Code is amended
2 to read:

3 12022.6. (a) When any person takes, damages, or destroys
4 any property in the commission or attempted commission of a
5 felony, with the intent to cause that taking, damage, or destruction,
6 the court shall impose an additional term as follows:

7 (1) If the loss exceeds fifty thousand dollars (\$50,000), the court,
8 in addition and consecutive to the punishment prescribed for the
9 felony or attempted felony of which the defendant has been
10 convicted, shall impose an additional term of one year.

11 (2) If the loss exceeds one hundred fifty thousand dollars
12 (\$150,000), the court, in addition and consecutive to the
13 punishment prescribed for the felony or attempted felony of which
14 the defendant has been convicted, shall impose an additional term
15 of two years.

16 (3) If the loss exceeds one million dollars (\$1,000,000), the
17 court, in addition and consecutive to the punishment prescribed
18 for the felony or attempted felony of which the defendant has been
19 convicted, shall impose an additional term of three years.

20 (4) If the loss exceeds two million five hundred thousand dollars
21 (\$2,500,000), the court, in addition and consecutive to the
22 punishment prescribed for the felony or attempted felony of which
23 the defendant has been convicted, shall impose an additional term
24 of four years.

25 (b) In any accusatory pleading involving multiple charges of
26 taking, damage, or destruction, the additional terms provided in
27 this section may be imposed if the aggregate losses to the victims
28 from all felonies exceed the amounts specified in this section and
29 arise from a common scheme or plan. All pleadings under this
30 section shall remain subject to the rules of joinder and severance
31 stated in Section 954.

32 (c) The additional terms provided in this section shall not be
33 imposed unless the facts of the taking, damage, or destruction in
34 excess of the amounts provided in this section are charged in the

1 accusatory pleading and admitted or found to be true by the trier
2 of fact.

3 (d) This section applies to, but is not limited to, property taken,
4 damaged, or destroyed in violation of Section 502 or subdivision
5 (b) of Section 502.7. This section shall also apply to applicable
6 prosecutions for a violation of Section 350, 653h, 653s, or 653w.

7 (e) For the purposes of this section, the term “loss” has the
8 following meanings:

9 (1) When counterfeit items of computer software are
10 manufactured or possessed for sale, the “loss” from the
11 counterfeiting of those items shall be equivalent to the retail price
12 or fair market value of the true items that are counterfeited.

13 (2) When counterfeited but unassembled components of
14 computer software packages are recovered, including, but not
15 limited to, counterfeited computer diskettes, instruction manuals,
16 or licensing envelopes, the “loss” from the counterfeiting of those
17 components of computer software packages shall be equivalent to
18 the retail price or fair market value of the number of completed
19 computer software packages that could have been made from those
20 components.

21 ~~(f) It is the intent of the Legislature that the provisions of this~~
22 ~~section be reviewed within 10 years to consider the effects of~~
23 ~~inflation on the additional terms imposed. For that reason, this~~
24 ~~section shall remain in effect only until January 1, 2008, and as of~~
25 ~~that date is repealed unless a later enacted statute, which is enacted~~
26 ~~before January 1, 2008, deletes or extends that date.~~

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

36 ~~SECTION 1. Section 530.5 of the Penal Code is amended to~~
37 ~~read:~~

38 ~~530.5. (a) Every person who willfully obtains personal~~
39 ~~identifying information, as defined in subdivision (b) of Section~~
40 ~~530.55, of another person, and uses that information for an~~

1 unlawful purpose, including to obtain, or attempt to obtain, credit,
2 goods, services, real property, or medical information without the
3 consent of that person, is guilty of a public offense, and, upon
4 conviction therefor, shall be punished by a fine, by imprisonment
5 in a county jail not to exceed one year, or by both a fine and
6 imprisonment, or by imprisonment in the state prison.

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

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

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

26 (3) 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 10 or more other
29 persons is guilty of a public offense, and upon conviction therefor,
30 shall be punished by a fine, by imprisonment in a county jail not
31 to exceed one year, or by both a fine and imprisonment, or by
32 imprisonment in the state prison.

33 (d) (1) Every person who, with the intent to defraud, sells,
34 transfers, or conveys the personal identifying information, as
35 defined in subdivision (b) of Section 530.55, of another person is
36 guilty of a public offense, and upon conviction therefor, shall be
37 punished by a fine, by imprisonment in a county jail not to exceed
38 one year, or by both a fine and imprisonment, or by imprisonment
39 in the state prison.

1 ~~(2) Every person who, with actual knowledge that the personal~~
2 ~~identifying information, as defined in subdivision (b) of Section~~
3 ~~530.55, of a specific person will be used to commit a violation of~~
4 ~~subdivision (a), sells, transfers, or conveys that same personal~~
5 ~~identifying information is guilty of a public offense, and upon~~
6 ~~conviction therefor, shall be punished by a fine, by imprisonment~~
7 ~~in the state prison, or by both fine and imprisonment.~~
8 ~~(e) Every person who commits mail theft, as defined in Section~~
9 ~~1705 of Title 18 of the United States Code, is guilty of a public~~
10 ~~offense, and upon conviction therefor shall be punished by a fine,~~
11 ~~by imprisonment in a county jail not to exceed one year, or by both~~
12 ~~a fine and imprisonment. Prosecution under this subdivision shall~~
13 ~~not limit or preclude prosecution under any other provision of law,~~
14 ~~including, but not limited to subdivisions (a) to (c), inclusive, of~~
15 ~~this section.~~
16 ~~(f) An interactive computer service or access software provider,~~
17 ~~as defined in subsection (f) of Section 230 of Title 47 of the United~~
18 ~~States Code, shall not be liable under this section unless the service~~
19 ~~or provider acquires, transfers, sells, conveys, or retains possession~~
20 ~~of personal information with the intent to defraud.~~