

State of California
COMMISSION ON STATE MANDATES
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Claim No. <u>03-TC-08</u>

TEST CLAIM FORM

Local Agency or School District Submitting Claim

City of Newport Beach

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Representative Organization to be Notified

League of California Cities

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 956, Statutes of 2000; Penal Code, Section 530.6.

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

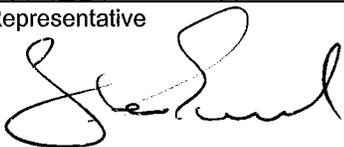
Telephone No.

Glen Everroad, Revenue Manager

(949) 644-3140

Signature of Authorized Representative

Date:



24 Sept '02

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
City of Newport Beach

IDENTITY THEFT

Chapter 956, Statutes of 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Generally, when a crime has been committed, the location where the crime was committed determines where it will be investigated and where jurisdiction and venue for the investigation and possible subsequent criminal enforcement may take place. *See*, Penal Code, Section 777, *et seq.* However, the test claim legislation requires that if the asserted crime is identity theft, the local law enforcement agency is now required to take a police report in the jurisdiction where the complainant resides, provide the complaining party of a copy of the police report, and either commence to investigate if the crime was within the jurisdiction, or ascertain the jurisdiction and refer the matter to the other jurisdiction for investigation if the crime was committed outside the jurisdiction.

This change was wrought in the test claim legislation by virtue of the addition of Penal Code, Section 530.6, which now states as follows:

- (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime as committed for an investigation of the facts.
- (b) A person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual

innocence, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense. If the petitioner is found factually innocent, the court shall issue an order certifying this determination. The Judicial Council of California shall develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

This test claim legislation changed substantially the manner in which police reports are taken and provided. Prior to this legislation, if a person were to have claimed in the city or county in which he or she lived that he or she believed he or she was the victim of identity theft, the person would be referred to the jurisdiction wherein the theft was committed or the defendant was located. However, with this new test claim legislation, not only is the local law enforcement agency required to take a police report; it must now also determine the appropriate law enforcement agency to investigate the matter further, and refer this matter to them. Additionally, the police report must be taken, and a copy afforded the claimant for his or her use.

Newport Beach is not commonly the locale where such thefts actually take place. However, given the demographics of the area, residents of Newport Beach have been subjected to identity theft. As a result, while the theft may not have taken place within Newport Beach nor the defendant be located within the jurisdiction, Newport Beach is required to take and pursue such a police report.

B. LEGISLATIVE HISTORY PRIOR TO 1975

Prior to 1975, there was no requirement to take a police report of an identity theft complaint in the jurisdiction wherein the complainant resided, much less make a copy of same available to the claimant. The test claim legislation also requires that Newport Beach determine the appropriate jurisdiction to investigate the suspected crime and refer the matter to it for further investigation.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

The mandated activities are contained in Penal Code, Section 530.6.

D. COST ESTIMATES

Because of the demographics of Newport Beach, our present estimate of the cost to take the complaints of persons who believe they have been the victim of identity theft, provide a copy of said complaint, and ascertain the appropriate investigating jurisdiction and refer the matter for further investigation and possible prosecution is in excess of \$15,000 per year.

REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the claimant as a result of the statutes on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code § 17500 *et al.* of the Government Code. Section 17514 defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975.:"
3. The costs are as a result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

E. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate is Unique to Local Government

Only local government takes police reports and investigates possible crimes.

Mandate Carries Out a State Policy

This legislation carries out the state's policy of making it easier for victims of identity theft to make police reports about such crimes and requires law enforcement agencies to determine the appropriate jurisdiction and refer the matter for further investigation and possible legal action.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code § 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Although this legislation does include a provision regarding the enforcement of a crime, the portion of the test claim legislation which serves as the foundation for this test claim is the requirement that the local law enforcement agency take a police report for a crime which has not been committed within its jurisdiction and over which it has no

jurisdiction or requirement for investigation or criminal enforcement. Thus, the provision with regard to a new crime is not applicable here.

CONCLUSION

The within legislation requires law enforcement agencies to take police reports for crimes which did not happen within its jurisdiction and over which it has no jurisdiction to seek prosecution. Additionally, this legislation requires that the local law enforcement agency determine the appropriate jurisdiction to investigate the suspected crime, and refer the police report to that jurisdiction for further investigation and possible prosecution.

F. CLAIM REQUIREMENTS

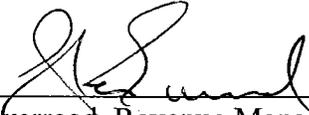
The following elements of this test claim are provided pursuant to Section 1183, Title 2 of the California Code of Regulations:

Exhibit 1: Chapter 956, Statutes of 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the Sate of California that the statements made in this document are true and complete to the best of my personal knowledge except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

Executed this 24 day of September, 2003, at Newport Beach, California, by:



Glen Everroad, Revenue Manager

DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for the City of Newport Beach. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

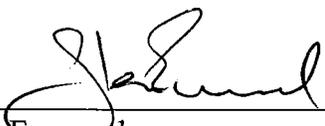
I declare that I have examined the City of Newport Beach's State mandated duties and resulting costs in implementing the subject law and guidelines, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

"Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 24 day of September, 2003, at Newport Beach, California.



Glen Everroad
Revenue Manager
City of Newport Beach

Assembly Bill No. 1897

CHAPTER 956

An act to amend Section 530.5 of, and to add Section 530.6 to, the Penal Code, relating to identity theft.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, Davis. Identity theft: remedies.

Existing law provides that every person who willfully obtains personal identifying information about another person without that person's consent, and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, or medical information in the name of that person, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, a fine not to exceed \$10,000, or both. Existing law also provides when a person is convicted of using that information to commit a separate crime, that court record shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime. Existing law also provides that if a consumer submits to a credit reporting agency a copy of a valid police report pursuant to these provisions, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of that violation so that the information cannot be reported. Existing regulations of the Department of Motor Vehicles also provide that a person may apply for a new driver's license or identification card number in the event of fraudulent use by another, upon submission of a police report and specified supporting information.

This bill would provide that a person who has learned or reasonably suspects that his or her personal identifying information has been used by another to commit a crime, may initiate a law enforcement investigation by contacting the local law enforcement agency with jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and either begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the crime or suspected crime was committed for an investigation of the facts. This bill would also provide that a person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual innocence order certifying

that he or she is a victim of identity theft, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. The bill would specify the sort of information to be used in making this determination, would direct the court to issue an order certifying that the petitioner is factually innocent where it finds that the petition is meritorious and there is no reason to believe the petitioner committed the offense. The bill would direct the Judicial Council to develop a form for use in connection with these proceedings, and would authorize courts to vacate determinations of factual innocence if a petition or supporting information is found to contain any material misrepresentation or fraud.

The bill would impose a state-mandated local program by requiring a higher level of service from local law enforcement.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) "Personal identifying information," as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

SEC. 2. Section 530.6 is added to the Penal Code, to read:

530.6. (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense. If the petitioner is found factually innocent, the court shall issue an order certifying this determination. The Judicial Council of California shall develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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