
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 222 **Hearing Date:** June 27, 2017
Author: Bocanegra
Version: June 20, 2017
Urgency: No **Fiscal:** Yes
Consultant: NG

Subject: *False Documents*

HISTORY

Source: Author

Prior Legislation: SB 369 (De León) Chapter 318, Statutes of 2014
AB 60 (Alejo) Chapter 524, Statutes of 2013
SB 1187 (Lara) Chapter 753, Statutes of 2014

Support: California Public Defenders Association; Conference of California Bar Associations; Los Angeles County District Attorney's Office; National Association of Social Workers, California Chapter; Service Employees International Union

Opposition: None known

Assembly Floor Vote: 54 - 21

PURPOSE

The purpose of this bill is to repeal the maximum punishment for the crimes of manufacturing, distributing, selling, and using false documents to conceal his or her citizen status by amending provisions of Proposition 187.

Existing law states that a felony is a crime that is punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail not exceeding three years as a realigned felony, notwithstanding any other provision of law. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions. (Pen. Code § 17)

Existing law provides that every person who falsely makes, alters, forges, counterfeits, duplicates, or in any manner reproduces any driver's license or identification card issued by a governmental agency with the intent that such driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in a county jail not exceeding three years as a realigned felony. (Pen. Code § 470a)

Existing law provides that every person who displays, causes, permits to be displayed, or has in his or her possession any driver's license or identification card, as specified, with the intent that

the driver's license or identification card be used to facilitate the commission of any forgery is punishable by imprisonment in a county jail for not more than one year, by imprisonment in a county jail not exceeding three years as a realigned felony. (Pen. Code § 470b)

Existing law provides that a person who causes or permits to be displayed or have in his or her possession any canceled, revoked, suspended, fictitious, fraudulently altered, or fraudulently obtained driver's license, shall be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding \$1,000, or by both fine or imprisonment. (Veh. Code § 14610, subd. (a)(1).)

Existing law provides that a person who manufactures or sells an identification document substantially similar, or that purports to confer the same privileges as, the drivers' licenses issued by the Department of Motor Vehicles, shall be punished by a fine not exceeding \$1,000, and 24 hours of community service if the person is not employed or is not attending school, as well as imprisonment not exceeding one year, or by both fine and imprisonment. (Veh. Code § 14610.1)

Existing law provides that a person who causes or permits to be displayed or have in his or her possession any canceled, fictitious, fraudulently altered or obtained identification card shall be punished by fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding six months, or by both fine and imprisonment. (Veh. Code § 13004)

Existing law provides that a person who manufactures, distributes, or sells false documents to conceal the true citizenship or resident alien status of another person is guilty of a realigned felony, a fine of \$75,000. (Pen. Code § 113)

This bill repeals Penal Code Section 113 by removing the existing mandatory sentence of a five year period of imprisonment, or the fine of \$75,000, for the conviction of the manufacturing, distribution, or selling false documents to conceal the true citizenship or resident alien status of another person.

Existing law provides that any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a realigned felony, or by a fine of \$25,000. (Pen. Code § 114)

This bill repeals Penal Code Section 114 by removing the existing mandatory sentence of a five year period of imprisonment, or the fine of \$25,000, for the conviction of the utilization of false documents to conceal a person's citizenship or resident alien status.

This bill, by repealing Penal Code Section 113 and 114, amends Proposition 187, an initiative statute approved by the voters at the November 8, 1994 statewide general election, and shall only become effective when submitted to and approved by the voters at a statewide election.

This bill specifies that the Secretary of State must submit the provisions of this bill to the voters for their approval during the November 2020 statewide general election.

COMMENTS

1. Need for This Bill

According to the author:

In 1994, voters passed Proposition 187, a largely unconstitutional attempt to fight the perceived ills of illegal immigration and punish the undocumented. It was designed to prevent undocumented immigrants from receiving public benefits, including social services, health care services, and public education, and it required various agencies to report suspected undocumented immigrants to various levels of state and federal law enforcement. The measure also enacted PC §114 to make it a felony, punishable by five years in prison or a \$25,000 fine, to use false citizenship or residence documents to conceal one's country of origin or resident status

Pursuant to the provision enacted above by Proposition 187, existing law provides for two separate and unequal sentences for individuals caught using false or forged identity documents, based solely upon the individual in question.

In context: An undocumented individual who purchases a fake driver's license and social security card so that he or she can work or simply avoid deportation is prosecuted and subject to felony and a sentence of five years in prison or a \$25,000 fine. However, an underage college student who purchases that same driver's license to buy beer is prosecuted and subject to a misdemeanor or a felony, and is subject to a range of sentencing options.

This bill strikes Penal Code Sections 113 & 114, two unnecessary and anti-immigrant provisions of Prop. 187, both of deal with the use and manufacturing and falsifying documents. Upon passage of this bill, voters would be required to approve a complimentary ballot measure for this bill to take effect. District Attorneys will maintain the ability to prosecute an individual under existing penal code felony convictions – Penal Code Sections 470 (a),(b).

2. Proposition 187

On November 8, 1994, California voters approved Proposition 187. The proposition prohibited any person from receiving public social services, publicly funded health care services, or from being admitted into public elementary, secondary, and postsecondary school unless he or she could prove that they were a citizen of the United States, or a lawfully present alien. The proposition also included guidelines for the local and state law enforcement to cooperate with the U.S. Immigration and Naturalization Service, now called the U.S. Citizenship and immigration Services. Further, the proposition added criminal statutes, Penal Code Section 113 and 114—the subject of this bill—regarding the use and production of false documents, such as a driver's license, for the purposes of concealing immigration status.¹

¹ "Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. California Proposition 187 (1994)," http://repository.uhastings.edu/cgi/viewcontent.cgi?article=2103&context=ca_ballot_props

In 1998, six years following the immediate injunction of Proposition 187, a Federal judge struck down major components of Proposition 187. Judge Mariana Pfaelzer of Federal District Court in Los Angeles found that major elements of the measure “unconstitutionally usurped Federal authority over immigration policy...[and that] the state could not deny immigrants benefits in the state’s college and university systems or deny access to health care or social services. Only [the] provisions for criminal penalties for the manufacture, sale, and use of false documents to conceal a person’s immigrant status remain in force.”² These provisions, found in Penal Code Sections 113 and 114, remain current law.

This bill repeals Penal Code Sections 113 and 114, thus eliminating the maximum punishments provided by Proposition 187 for the production and use of fraudulent documents. Because this bill amends a proposition approved by the voters, this bill will be subject to voter approval in a statewide general election, and will only become law if a majority of the voters approve the bill. This bill specifies that it will be placed on the November 2020 statewide general election.

3. Inconsistencies in Penalties for the Production and Use of Fraudulent Documents

a) Production of Fraudulent Documents

Every person who alters, falsifies, forges, duplicates or in any manner reproduces or counterfeits any driver's license or identification card issued by a governmental agency with the intent that such driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in county jail for up to three years pursuant to a realigned felony. (Pen. Code, § 470a.)

However, Penal Code Section 113 provides that if a person produces, distributes or sells similar false documents for the purpose to conceal their true citizenship status, they may be imprisoned in county jail for five years or receive a fine of \$75,000.

This bill repeals Penal Code Section 113, thus the penalties in Penal Code 470a would apply in the production of fraudulent documents to conceal immigration status.

b) Use of Fraudulent Documents

Every person who displays, causes, permits to be displayed, or has in his or her possession any driver’s license or identification card, as specified, with the intent that the driver’s license or identification card be used to facilitate the commission of any forgery is punishable by imprisonment in a county jail for not more than one year, by imprisonment in a county jail not exceeding three years as a realigned felony. (Pen. Code § 470b)

² Todd. S. Purdum, “Judge Nullifies Most of California Immigrant Law,” *The New York Times*, March 19, 1998, accessed June 19, 2017. <http://www.nytimes.com/1998/03/19/us/judge-nullifies-most-of-california-immigrant-law.html>

However, Penal Code Section 114 provides that if a person uses similar false documents for the purpose of concealing their true citizenship status, they may be imprisoned in a county jail for five years or may receive a fine of \$25,000.

This bill repeals Penal Code Section 114, thus the penalties in Penal Code 470b would apply in the use of fraudulent documents to conceal immigration status.

4. Californians' Current Attitude Regarding Undocumented Immigrants

A January 2017 poll by the Public Policy Institute of California (PPIC) —a nonprofit, nonpartisan public policy think tank—found that an “overwhelming majority of Californians (85%) believe there should be a way for undocumented immigrants to stay in the U.S. legally if certain requirements are met.”³ The poll also found this view of undocumented immigrants was supported across party lines, finding that 93% of Democrats, 84% of independents, and 65% of Republicans supported the statement.

Further, PPIC also found that in California a majority of adults (65%) and likely voters (58%) support the idea that California should take independent actions of the federal government to protect the legal rights of undocumented immigrants in California.⁴

The results found by PPIC were also mirrored in a poll jointly authored by the University of Southern California and the Los Angeles Times in March 2016. The poll found that “more than three-fourths of voters said they believed immigrants who are already here [in the U.S.] should be allowed to stay. Sixty-five percent said such immigrants should be allowed to apply for U.S. citizenship, while 14% said they should be allowed to stay and work legally in the country but not apply for citizenship. Only 16% said that they should be required to leave the country...Just 36% of Republican voters likely to participate in the state’s primary in June [2016] said immigrants already here should be required to leave...only 8% of likely voters in the Democratic primary took that position.”⁵

However, the University of Southern California and Los Angeles Times poll also found that “62% of voters said they believed illegal immigration in California is at least a major problem, 23% calling it a crisis. By contrast, 36% said the issue was a small problem or not a problem at all.” The University of Southern California and Los Angeles Times poll did not qualify why respondents believed illegal immigration was a problem.⁶

5. November 2020 Ballot

Because this bill amends a proposition approved by California voters, this bill is subject to voter approval by statewide general election. This bill specifies that the Secretary of State will submit this bill to the voters in the November 2020 statewide general election.

³ Mark Baldassare, Dean Bonner, David Kordus, Lunna Lopes, “Californians & Their Government: PPIC Statewide Survey,” *Public Policy Institute of California*, January 2017, p. 3, accessed June 16, 2017.

http://www.ppic.org/content/pubs/survey/S_117MBS.pdf

⁴ *Ibid.*, p. 3.

⁵ Kate Linticum, “Most California Voters Think Illegal Immigration is a problem, but Don’t See Mass Deportation as the Answer,” *The Los Angeles Times*, March 31, 2016, accessed June 16, 2017.

<http://www.latimes.com/politics/la-pol-ca-latimes-immigration-california-primary-poll-20160331-story.html>

⁶ *Ibid.*

6. Argument in Support

The Los Angeles County District Attorney's Office states, in support:

In 1994, voters passed Proposition 187, which the courts later determined was largely unconstitutional to fight the perceived ills of illegal immigration. Among the provision of Proposition 187 was the creation of Penal Code §114 which made it a felony, punishable by five years in prison or a \$25,000, to use false citizenship or residence documents to conceal one's country of origin or resident status.

Our office believes that the punishment contained in Penal Code §114 is extremely disproportionate to the crime. There are far more serious crimes that carry substantially lower penalties than the crime of using a false document to conceal an individual's true citizenship or resident alien status. For example:

- Felony domestic violence is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand (\$6,000), or by both that fine and imprisonment (Penal Code §273.5(a));
- Felony driving under the influence is punishable by imprisonment in the state prison for 16 months, two or three years. Typically an individual has to have three or more prior DUI *convictions* within the last ten years, to face a felony DUI charge under California Vehicle Code section 23152.
- Battery on a peace officer engaged in the performance of their duties is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment (Penal Code §243(c)(2));
- Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment (Penal Code §288.4(a)(1));...

A five year state prison felony for a violation of Penal Code §114 is completely out of proportion to the crime being committed. The Penalties being proposed in AB 222 are more than adequate especially considering the reason for the possession of the documents is a federal offense and not a crime under state law.

– END –