

SENATE THIRD READING
SB 836 (Wiener)
As Amended February 18, 2022
2/3 vote. Urgency

SUMMARY

Restores lapsed statutes prohibiting the disclosure of a person's immigration status in open court by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing.

Major Provisions

- 1) Prohibits the disclosure of a person's immigration status in open court in a criminal case by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure.
- 2) States that this prohibition does not do any of the following:
 - a) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense;
 - b) Limit discovery in a criminal action; or,
 - c) Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.
- 3) Provides that these provisions do not change a prosecutor's existing obligation to disclose exculpatory evidence.
- 4) Prohibits the disclosure of a person's immigration status in open court by a party or their attorney in a civil action other than a personal injury or wrongful death action (where evidence of immigration status is never admissible) unless the judge presiding over the matter first determines that the evidence is admissible at an in camera hearing.
- 5) States that this prohibition does not do any of the following:
 - a) Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense;
 - b) Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action; or,
 - c) Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.
- 6) Contains an urgency clause.

COMMENTS

Need for this Bill: The fair and effective administration of justice requires that all participants in the process feel free and secure to present their case or provide their testimony before the court. Unfortunately, some undocumented immigrants may be reluctant to do so because taking part in the formal legal system might expose their immigration status.

In recognition of this dynamic, California enacted several laws to ensure that designed to ensure that undocumented immigrants feel safe participating in the legal system. Of particular relevance to this bill, California enacted SB 785 (Wiener) Chapter 12, Statutes of 2018 prohibiting the disclosure of evidence about immigration status in open court unless pre-approved by a judge during a closed hearing on the matter. SB 785 established a system for avoiding the exposure of immigration status information in court unless and until a judge determined that the information was relevant and admissible. Specifically, rather than permitting parties to begin questioning or discussing the immigration status of any other party or witness in open court, SB 785 required the party seeking to introduce the evidence to request a confidential, in camera hearing during which the judge makes a determination as to whether or not the evidence is relevant and admissible. If the judge ruled the immigration status evidence to be relevant and admissible, the case proceeds accordingly. If the judge rules that the immigration status evidence is not relevant, both the evidence itself, and the discussion about whether to admit it remains confidential. However, SB 785 contained a sunset clause that caused it to expire on December 31, 2021.

This bill would reenact these provisions of law.

According to the Author

"Senate Bill 836 re-enacts provisions which protected a person's immigration status in a public court record, unless the presiding judge determined that immigration status was relevant information. Senate Bill 785 (Wiener), Chapter 12, Statutes of 2018 was enacted to keep immigration status private in public court records, but it expired on January 1, 2022. SB 836 ensures that public courts continue to protect a person's immigration status.

"SB 785 prohibited the inclusion of evidence of a person's immigration status in a public court record -- unless the party seeking its inclusion obtained a ruling by the presiding judge at an in-camera hearing that the evidence was relevant -- until January 1, 2022. SB 785 guaranteed a procedural requirement that protected a person's immigration status from being exposed in open court prior to review by the presiding judge. Immigration status was only considered admissible evidence when a judge ruled it to be so at an in camera hearing. Only then could it be part of public court records. SB 785 did not prohibit an individual from voluntarily revealing their own immigration status in court. The protections established by SB 785 also applied to both civil and criminal cases.

"In March 2017, California Chief Supreme Court Justice Tani Cantil-Sakauye sent a letter to U.S. Former Attorney General Jeff Sessions and Former Homeland Security Secretary John Kelly expressing concern over reports of immigration agents stalking undocumented immigrants in California courthouses. Chief Justice Cantil-Sakauye said, 'Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws.'

"Prior to SB 785 becoming law, there were numerous documented examples of defense attorneys exposing the immigration status of witnesses and victims of crimes in California courthouses. In addition, there were reports of immigration agents throughout the country monitoring and detaining individuals at courthouses.

"The protections guaranteed by SB 785 ended on January 1, 2022. Many immigrants continue to feel apprehension in court settings for fear of being targeted and arrested by Immigration and Customs Enforcement (ICE) agents. Every day that passes without these protections puts immigrants at risk."

Arguments in Support

According to the *Coalition for Humane Immigrant Rights* (CHIRLA), a co-sponsor of this bill, "We believe SB 836 is an important and necessary bill to make court rooms and our judicial system a place where everyone, regardless of their immigration status, can participate safely. SB 836 removes the sunset date on Senate Bill 785, which protected a person's immigration status from disclosure in a public court record, unless the presiding judge determined that immigration status information was admissible. Senate Bill 785 (Wiener, Chapter 12, Statutes of 2018) was enacted to keep immigration status private in public court records, but it expired on January 1, 2022. CHIRLA supported this original legislation. SB 836 ensures that courts continue to protect a person's immigration status from unnecessary disclosure.

"In March 2017, California Chief Supreme Court Justice Tani Cantil-Sakauye sent a letter to then U.S. Attorney General Jeff Sessions and Homeland Security John Kelly expressing concern over reports of immigration agents stalking undocumented immigrants in California courthouses. Chief Justice Cantil-Sakauye said, 'Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws.' Prior to SB 785 becoming law, there were numerous documented examples of defense attorneys exposing the immigration status of witnesses and victims of crimes in California courthouses. In addition, there were reports of immigration agents throughout the country monitoring and detaining individuals at courthouses. Despite the change in federal administrations, courthouses continue to be accessible to immigration agents and a future administration could return to widespread courthouse immigration enforcement.

"Moreover, even absent immigration agents being present in courthouses, numerous courts in California and across the country have long recognized the intimidating and chilling effect disclosure of immigration status in court proceedings has on immigrants' ability to enforce their rights or participate more generally in court proceedings.

"The protections guaranteed by SB 785 ended on January 1, 2022. Many immigrants continue to feel apprehension in court settings for fear of being targeted and arrested by Immigration and Customs Enforcement (ICE) agents. SB 836 is essential to prevent immigration status from being wielded as a tool of intimidation as immigrant individuals go to court to reclaim wages, keep their housing, and ensure their basic rights are not being violated. Every day that passes without these protections puts immigrants and their broader communities at risk."

Arguments in Opposition

None submitted.

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES**SENATE FLOOR: 28-0-12**

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Laird, Leyva, Limón, McGuire, Min, Newman, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

ABS, ABST OR NV: Bates, Borgeas, Dahle, Grove, Hurtado, Jones, Kamlager, Melendez, Nielsen, Ochoa Bogh, Pan, Wilk

ASM PUBLIC SAFETY: 5-0-2

YES: Jones-Sawyer, Mia Bonta, Bryan, Quirk, Santiago

ABS, ABST OR NV: Lackey, Seyarto

ASM JUDICIARY: 9-0-1

YES: Cunningham, Bloom, Davies, Haney, Kalra, Maienschein, Reyes, Robert Rivas, Cooley

ABS, ABST OR NV: Kiley

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