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**SB-785 Evidence: immigration status.** (2017-2018)

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Date Published: 05/17/2018 09:00 PM

**Senate Bill No. 785**

**CHAPTER 12**

An act to add and repeal Sections 351.3 and 351.4 of the Evidence Code, relating to evidence, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor May 17, 2018. Filed with Secretary of State May 17, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 785, Wiener. Evidence: immigration status.

Existing law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declaring, subject to specified exceptions. Existing law also provides that, in civil actions for personal injury or wrongful death, evidence of a person's immigration status is not admissible and discovery of a person's immigration status is not permitted.

In civil actions other than those specified above, this bill would prohibit the disclosure of a person's immigration status in open court by a party unless that party requests an in camera hearing and the presiding judge determines that the evidence is admissible. This bill would apply this prohibition to criminal actions. The provisions of the bill would be repealed on January 1, 2022.

The California Constitution provides for the Right to Truth-in-Evidence, which requires a  $\frac{2}{3}$  vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill may exclude from a criminal action information about a person's immigration status that would otherwise be admissible, it requires a  $\frac{2}{3}$  vote of the Legislature.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 351.3 is added to the Evidence Code, to read:

**351.3.** (a) In a civil action not governed by Section 351.2, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her 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 of the person's immigration status.

(b) This section does not do any of the following:

(1) Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense.

(2) 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, including Section 3339 of the Civil Code, Section 7285 of the Government Code, Section 24000 of the Health and Safety Code, and Section 1171.5 of the Labor Code.

(3) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

**SEC. 2.** Section 351.4 is added to the Evidence Code, to read:

**351.4.** (a) In a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her 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 of the person's immigration status.

(b) This section does not do any of the following:

(1) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense.

(2) Limit discovery in a criminal action.

(3) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

**SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to immediately help protect undocumented residents of California and their ability to participate in the California justice system, it is necessary that this act take effect immediately.

**SEC. 4.** This act does not alter a prosecutor's existing obligation to disclose exculpatory evidence.