

AMENDED IN ASSEMBLY MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1698

Introduced by Assembly Member Wagner

February 13, 2014

An act to amend Section 115 of the Penal Code, relating to falsified public documents.

LEGISLATIVE COUNSEL'S DIGEST

AB 1698, as amended, Wagner. Falsified public records.

Under existing law, a person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

This bill would provide that after a person is convicted of a violation of that law, or a plea is entered whereby a charge alleging a violation of that law is dismissed and a waiver is obtained as specified, *upon written motion of the prosecuting agency, the court, after a hearing, as specified*, is required to issue a written order that the false or forged instrument be adjudged void ab initio *if the court determines that an order is appropriate under applicable law*. The bill would require the order to state whether the instrument is false or forged, or both false and forged, and describe the nature of the falsity or forgery. The bill would require a copy of the instrument to be attached to the order and a certified copy of the order to be filed, registered, or recorded. *The bill would require a prosecuting agency to follow specific procedures for filing the motion, including, but not limited to, requirements to provide*

notice to interested parties, and would require a court to take specified procedural actions.

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

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

1 SECTION 1. Section 115 of the Penal Code is amended to
2 read:

3 115. (a) Every person who knowingly procures or offers any
4 false or forged instrument to be filed, registered, or recorded in
5 any public office within this state, which instrument, if genuine,
6 might be filed, registered, or recorded under any law of this state
7 or of the United States, is guilty of a felony.

8 (b) Each instrument which is procured or offered to be filed,
9 registered, or recorded in violation of subdivision (a) shall
10 constitute a separate violation of this section.

11 (c) Except in unusual cases where the interests of justice would
12 best be served if probation is granted, probation shall not be granted
13 to, nor shall the execution or imposition of sentence be suspended
14 for, any of the following persons:

15 (1) Any person with a prior conviction under this section who
16 is again convicted of a violation of this section in a separate
17 proceeding.

18 (2) Any person who is convicted of more than one violation of
19 this section in a single proceeding, with intent to defraud another,
20 and where the violations resulted in a cumulative financial loss
21 exceeding one hundred thousand dollars (\$100,000).

22 (d) For purposes of prosecution under this section, each act of
23 procurement or of offering a false or forged instrument to be filed,
24 registered, or recorded shall be considered a separately punishable
25 offense.

26 (e) (1) After a person is convicted of a violation of this section,
27 or a plea is entered whereby a charge alleging a violation of this
28 section is dismissed and waiver is obtained pursuant to People v.
29 Harvey (1979) 25 Cal.3d 754, upon written motion of the
30 prosecuting agency, the court, after a hearing described in
31 subdivision (f), shall issue a written order that the false or forged
32 instrument be adjudged void ab initio if the court determines that
33 an order is appropriate under applicable law. The order shall state

1 whether the instrument is false or forged, or both false and forged,
2 and describe the nature of the falsity or forgery. A copy of the
3 instrument shall be attached to the order and a certified copy of
4 the order shall be filed, registered, or recorded.

5 (2) (A) *If the order pertains to a false or forged instrument that*
6 *has been recorded with a county recorder, an order made pursuant*
7 *to this section shall be recorded in the county where the affected*
8 *real property is located. The order shall also reference the county*
9 *recorder's document recording number of any notice of pendency*
10 *of action recorded pursuant to paragraph (2) of subdivision (f).*

11 (B) *As to any order, notice of pendency of action, or withdrawal*
12 *of notice of pendency of action recorded pursuant to this section,*
13 *recording fees shall be waived pursuant to Section 27383 of the*
14 *Government Code.*

15 (f) *A prosecuting agency shall use the following procedures in*
16 *filing a motion under subdivision (e):*

17 (1) *Within 10 calendar days of filing a criminal complaint or*
18 *indictment alleging a violation of this section, the prosecuting*
19 *agency shall provide written notice by certified mail to all parties*
20 *who have an interest in the property affected by the false or forged*
21 *instrument, or in the instrument itself, including those described*
22 *in paragraph (5).*

23 (2) (A) *Within 10 calendar days of filing a criminal complaint*
24 *or indictment alleging a violation of this section, the prosecuting*
25 *agency shall record a notice of pendency of action in the county*
26 *in which the affected real property is located.*

27 (B) *Within 10 calendar days of the case being adjudicated or*
28 *dismissed without obtaining an order pursuant to subdivision (e),*
29 *the prosecuting agency shall record a withdrawal of the notice of*
30 *pendency of action in the county where the affected real property*
31 *is located.*

32 (3) *The written notice and notice of pendency of action described*
33 *in paragraphs (1) and (2) shall inform the interested parties that*
34 *a criminal action has commenced against the property affected by*
35 *the false or forged instrument, or the instrument, or both as*
36 *applicable, and shall notify the interested parties of their right to*
37 *be heard if a motion is brought under subdivision (e) to void the*
38 *false or forged instrument. The notice shall state the street address,*
39 *if available, and the legal description of the affected real property.*

1 (4) Failure of the prosecuting agency to provide written notice
2 or record a pendency of action as required under paragraphs (1)
3 and (2) within 10 calendar days shall not prevent the prosecuting
4 agency from later making a motion under subdivision (e), but the
5 court shall take the failure to provide notice or record a pendency
6 of action as required under paragraphs (1) and (2) as reason to
7 provide any interested parties additional time to respond to the
8 motion. Failure of the prosecuting agency to so notify interested
9 parties under this subdivision or record a pendency of action as
10 required under paragraphs (1) and (2) within 10 calendar days
11 shall create a presumption that a finding as described in paragraph
12 (9) is necessary to protect the property rights of the interested
13 party or parties.

14 (5) If the instrument sought to be declared void involves real
15 property, “interested parties” include, but are not limited to, all
16 parties who have recorded with the county recorder in the county
17 where the affected property is located any of the following: a deed,
18 lien, mortgage, deed of trust, security interest, lease, or other
19 instrument declaring an interest in, or requesting notice relating
20 to the property affected by the false or forged instrument as of the
21 date of the filing of the criminal complaint or indictment.

22 (6) Any party not required to be noticed under paragraph (1)
23 or (5) who nonetheless notifies the prosecuting agency in writing
24 of the party’s desire to be notified if a motion is brought under
25 subdivision (e) to void the false or forged instrument shall be
26 treated as an interested party as defined in paragraph (1) or (5).

27 (7) The court shall set a hearing for the motion brought by the
28 prosecuting agency under subdivision (e) no earlier than 90
29 calendar days from the date the motion is made. The prosecuting
30 agency shall provide a copy by certified mail of the written motion
31 and a notice of hearing to all interested parties described in
32 paragraphs (1), (5), or (6), and all other persons who obtain an
33 interest in the property prior to recordation of notice of pendency
34 of action no later than 90 days before the hearing date set by the
35 court. The notice shall state the street address, if available, and
36 the legal description of the affected real property.

37 (8) At a hearing on a motion brought by the prosecuting agency
38 under subdivision (e), the defendant, prosecuting agency, and
39 interested parties described in paragraphs (1), (5), or (6), shall
40 have a right to be heard and present information to the court. No

1 party shall be denied a right to present information due to a lack
2 of notice by the prosecuting agency or failure to contact the
3 prosecuting agency or the court prior to the hearing.

4 (9) (A) At a hearing on a motion brought by a prosecuting
5 agency under subdivision (e), if the court determines that the
6 interests of justice or the need to protect the property rights of any
7 person or party so requires, including, but not limited to, a finding
8 that the matter may be more appropriately determined in a civil
9 proceeding, the court may decline to make a determination under
10 subdivision (e).

11 (B) If, prior to the hearing on the motion, any person or party
12 files a quiet title action which seeks a judicial determination of
13 the validity of the same false or forged instrument that is the subject
14 of the motion, the court may consider that as an additional but not
15 dispositive factor in making its determination under subdivision
16 (e); provided, however, that a final judgment previously entered
17 in that quiet title action shall be followed to the extent otherwise
18 required by law.

19 (g) As used in the section “prosecuting agency” means a city
20 attorney, a district attorney, the Attorney General, or other state
21 or local agency actively prosecuting a case under this section.

22 (h) An order made pursuant to subdivision (e) shall be
23 considered a judgment, and subject to appeal in accordance with,
24 paragraph (1) of subdivision (a) of Section 904.1 of the Code of
25 Civil Procedure.

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