

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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*CALIFORNIA'S PROPOSITION 187: A BRIEF
OVERVIEW*

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Abstract. California's Proposition 187 broadly denies illegal aliens state-funded services, including public education and non-emergency health care. It also requires active cooperation between state authorities and the U.S. Immigration and Naturalization Service in the detection of illegal aliens.

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California's Proposition 187: A Brief Overview

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Summary

On September 13, 1999, a U.S. district judge approved an agreement to end litigation challenging California's Proposition 187, a 1994 ballot initiative to deny illegal aliens state benefits and to require reporting of illegal alien applicants for benefits to federal immigration officials. This agreement effectively continues earlier court-imposed restraints on implementing Prop 187. Meanwhile, federal law enacted in 1996 denies illegal aliens most state-provided benefits funded in part by the federal government and authorizes California to deny illegal aliens many other benefits that would have been denied had Prop 187 been implemented. In a reversal of policy, however, California has now restored state-financed prenatal care for illegal aliens and is also considering easing other restrictions that it had imposed after the 1996 law.

In November 1994, California voters approved Proposition 187 by a 59%-41% margin. This initiative broadly denied illegal aliens state-funded services, including public education and non-emergency health care. It also required state authorities to facilitate the identification and removal of illegal aliens by the U.S. Immigration and Naturalization Service (INS). The State of California's Legislative Analyst had estimated that Prop 187 would reduce net state outlays about \$100-200 million per year.

A federal district court temporarily halted Prop 187's restrictions on benefits in December 1994, and this freeze was continued under a November 1995 preliminary injunction. This 1995 decision, *LULAC v. Wilson*, also overturned most of Prop 187's enforcement procedures. The court-ordered halt of Prop 187 finally became ripe for appeal in March 1998 when the presiding judge issued a permanent injunction. However, new California Governor Gray Davis decided to seek a mediated end to the suit rather than to pursue an appeal. Subsequently, the parties to the suit (including the state) agreed to maintain the effects of the injunction, the presiding judge approved the agreement on September 13, 1999, and some proponents of Prop 187 have stated that they will now try to appeal the injunction on their own.

While litigation on Prop 187 was pending, the Personal Responsibility and Work Opportunity Act (PRWOA) became federal law (P.L. 104-193) on August 22, 1996. This

major welfare reform in part denies illegal aliens most federal, state, and local public benefits (not including elementary and secondary education, which remains available under the Supreme Court decision in *Plyler v. Doe* (457 U.S. 202)). Existing state laws that allowed benefits contrary to PRWOA were preempted, but PRWOA also authorized the states to enact new laws to provide illegal aliens state-funded benefits.

After PRWOA, California officials identified more than 200 programs from which they planned to bar illegal aliens. Thus, PRWOA appeared likely to result in curtailing many benefits that would have been restricted under Prop 187, with the major (and expensive) exception of elementary and secondary education. Nevertheless, the 1998 elections resulted in a new official attitude toward denying illegal aliens public services. California is again giving illegal aliens access to state-funded prenatal care. Also, bills are before the legislature to allow illegal aliens to obtain drivers' licenses, qualify for in-state college tuition, and reclaim certain other benefits denied them the past several years.

At the congressional level, frustration over the delayed implementation of Prop 187 in part led the House to pass bills twice (once during each of the 104th and 105th Congresses) to put court challenges to state ballot initiatives on a faster judicial track. The Senate failed to take action on the bills, however.

Contents of Prop 187

Prop 187 addressed the following areas:

Public education. Public elementary, secondary, and postsecondary schools may not admit a student who is not “authorized under federal law to be present in the United States.” Elementary and secondary schools also must verify the status of the parent or guardian of each child enrolled or seeking enrollment. Whenever an individual whose status is required to be verified is determined or reasonably suspected to be violating federal immigration laws, notice is to be provided to state authorities and INS.

Public social services. An individual may not receive a public social service until verified as a citizen or a “lawfully admitted” alien. Applicants determined or reasonably suspected to be violating immigration law are to be warned and reported to state authorities and INS.

Publicly-funded health care services. No applicant may receive publicly-funded “health care services” until citizenship or immigration status has been verified. Whenever a publicly-funded health facility determines or reasonably suspects that an applicant is an unlawful alien, the applicant, and the State Director of Health Services, the State Attorney General, and INS, are to be notified.

Other provisions. State law enforcement agencies must verify the legal status of arrested individuals suspected of being illegal aliens and report those appearing to lack lawful status. Contrary local laws or policies are prohibited. Prop 187 also makes it a felony punishable up to 5 years to make, distribute, or use false documents intended to conceal an individual’s true status as an illegal alien. Unlike other provisions of Prop 187, the federal district court held that these criminal provisions were not preempted by federal law and may be enforced.