

Introduced by Senator LaraFebruary 19, 2016

An act to add Sections 1670.9 and 1670.91 to the Civil Code, relating to immigration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, as introduced, Lara. Law enforcement: immigration.

Existing law generally regulates formation and enforcement of contracts, including what constitutes an unlawful contract. Under existing law, a contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals.

Existing law authorizes a county board of supervisors on behalf of its sheriff, and a legislative body of a city on behalf of its chief of police, to contract to provide supplemental law enforcement services to private individuals, private entities, and private corporations in specified circumstances and subject to certain conditions.

This bill would prohibit the board of supervisors or sheriff of a county or a legislative body or chief of police of a city or a city and county from entering into or renewing a contract to detain immigrants for profit, on behalf of the Department of Homeland Security, with a private corporation, contractor, or vendor.

Existing law requires the Board of State and Community Corrections to establish minimum standards for local correctional facilities, as specified.

Existing law, the Unruh Civil Rights Act, provides that all persons within the jurisdiction of California are free and equal no matter their national origin, citizenship, or immigration status and are entitled to full and equal accommodations, facilities, and privileges.

This bill would require a city, county, or city and county that holds immigrants in a local correctional facility or local detention facility on behalf of the Department of Homeland Security to do so only pursuant to a contract that requires it to adhere to the standards for detaining those individuals described in the 2011 Operations Manual ICE Performance-Based National Detention Standards.

This bill would specify that no immigrant detention facility or agent thereof shall deprive an immigrant of specified rights, including access to an attorney, medication, or freedom from harassment. The bill would require an immigrant detention facility to ensure appropriate medical treatment when a detainee is transferred and prohibit the use of solitary confinement to regularly house or detain an individual because he or she is a member of the lesbian, gay, bisexual, transgender, or queer communities. Because the bill would require local agencies to perform additional duties, the bill would impose a state-mandated local program.

This bill would authorize the Attorney General or any district attorney or city attorney to bring a civil action against an immigrant detention facility or an agent thereof that violates a detainee’s rights, as specified. The bill would also authorize a person whose rights have been violated, as described above, or under the Unruh Civil Rights Act, to bring a civil action for damages, injunctive relief, and other equitable relief against an immigrant detention facility or agent thereof.

The bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 1670.9 is added to the Civil Code, to
- 2 read:
- 3 1670.9. (a) The board of supervisors or sheriff of a county, or
- 4 a legislative body or chief of police of a city or of a city and county,
- 5 is prohibited from entering into or renewing a contract to detain

1 immigrants for profit, on behalf of the Department of Homeland
2 Security, with a private corporation, contractor, or vendor.

3 (b) A city, county, or city and county that holds immigrants in
4 a local correctional facility or local detention facility on behalf of
5 the Department of Homeland Security shall do so only pursuant
6 to a contract that requires its adherence to the standards for
7 detaining these individuals described in the 2011 Operations
8 Manual ICE Performance-Based National Detention Standards as
9 corrected and clarified in February 2013.

10 SEC. 2. Section 1670.91 is added to the Civil Code, to read:

11 1670.91. (a) No immigrant detention facility, or agent of an
12 immigrant detention facility, or person acting on behalf of an
13 immigrant detention facility, shall deprive any immigrant detained
14 on behalf of the Department of Homeland Security access to an
15 attorney, HIV medication or other medication, freedom from harm
16 or harassment, privacy, or accommodations as a result of being a
17 member of the lesbian, gay, bisexual, transgender, or queer
18 communities.

19 (b) If an immigrant detention facility, or agent of an immigrant
20 detention facility, or person acting on behalf of an immigrant
21 detention facility, deprives any immigrant detained on behalf of
22 the Department of Homeland Security their rights as described in
23 subdivision (a), (g), or (h), or rights under the 2011 Operations
24 Manual ICE Performance-Based National Detention Standards as
25 corrected and clarified in February 2013, the Attorney General, or
26 any district attorney or city attorney, may bring a civil action for
27 injunctive and other appropriate equitable relief in the name of the
28 people of the State of California. An action brought by the Attorney
29 General, any district attorney, or any city attorney may also seek
30 a civil penalty of twenty-five thousand dollars (\$25,000). If this
31 civil penalty is requested, it shall be assessed individually against
32 each person who is determined to have violated this section, and
33 the penalty shall be awarded to each individual whose rights under
34 this section are determined to have been violated.

35 (c) Any individual who has been deprived of his or her rights
36 under subdivision (a), (g), or (h), or rights under the 2011
37 Operations Manual ICE Performance-Based National Detention
38 Standards as corrected and clarified in February 2013, may bring
39 a civil action for damages, including, but not limited to, damages
40 under Section 52, injunctive relief, and other appropriate equitable

1 relief, including appropriate equitable and declaratory relief, to
2 eliminate a pattern or practice of conduct as described in
3 subdivision (a), (g), or (h).

4 (d) An action brought pursuant to this section is independent of
5 any other action, remedy, or procedure that may be available to
6 an individual under any other provision of law.

7 (e) In addition to any damages, injunction, or other equitable
8 relief awarded in an action brought pursuant to subdivision (b),
9 the court may award the petitioner or plaintiff reasonable attorney's
10 fees.

11 (f) For purposes of this section, "immigrant detention facility"
12 means a facility that detains immigrants on behalf of the
13 Department of Homeland Security pursuant to an agreement:

14 (1) Between the Department of Homeland Security and a board
15 of supervisors of a county, or a legislative body of a city or of a
16 city and county, or a local law enforcement entity; or

17 (2) Between the board of supervisors of a county, or a legislative
18 body of a city or of a city and county, or local law enforcement
19 entity with a private corporation, contractor, or private vendor.

20 (g) When an immigrant detention facility transfers an immigrant
21 detainee, that immigrant detention facility must do all of the
22 following:

23 (1) Ensure that all medical records of the detainee are received
24 by the facility to which the detainee is transferred at the time of
25 transfer.

26 (2) Ensure that all detainees receive all medications needed
27 while in transit.

28 (3) Ensure that a detainee's treatment plan is received by the
29 medical personnel at the facility to which the detainee is being
30 transferred.

31 (4) Ensure that there is no delay or disruption in medical
32 treatment, after or before detainee transfer.

33 (h) Solitary confinement shall not be used to regularly house or
34 detain an individual because he or she is a member of the lesbian,
35 gay, bisexual, transgender, or queer communities.

36 SEC. 3. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity
38 shall not affect other provisions or applications that can be given
39 effect without the invalid provision or application.

1 SEC. 4. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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