

AMENDED IN SENATE APRIL 11, 2016

**SENATE BILL**

**No. 1289**

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**Introduced by Senator Lara**

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, as amended, 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 of a county, or a legislative body of a city or a city and county, or a local law enforcement entity from entering into or renewing a contract, or modifying a contract to extend the length of the contract, with a private corporation, contractor, or vendor to detain immigrants for profit, on behalf of the United States Department of Homeland Security, the United States Marshals Service, or the federal Office of Refugee Resettlement.*

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

*This bill would require an immigrant detention facility that chooses to enter into a contract to detain immigrants in civil immigration proceedings to detain immigrants only pursuant to a contract that requires the entity contracting with the Department of Homeland Security or other federal agency to adhere to specified standards.*

*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 in all business establishments of every kind. Persons denied their rights under this act may obtain specified remedies, including treble damages.*

*This bill would provide that an immigrant detention facility, as defined, an agent thereof, or a person acting on its behalf, shall not deprive an immigrant of specified rights, including access to an attorney or other authorized person, medical care, freedom from harm or harassment, or privacy. The bill would require an immigrant detention facility to ensure appropriate medical treatment when a detainee is transferred and prohibit involuntary placement of a detainee in segregated housing because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation. The bill would also require an immigration detention facility to have a Legal Orientation Program, as specified, or other similar program to provide comprehensive explanations about immigration court procedure and other legal information to unrepresented immigration detainees.*

*This bill would authorize the Attorney General or any district attorney or city attorney to bring a civil action against an immigrant detention facility, an agent thereof, or a person acting on its behalf 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.*

*The bill would provide that its provisions are severable.*

~~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~~no.

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

1     SECTION 1. *The Legislature finds and declares the following:*

2     (a) *In keeping with its obligation to safeguard the humane and*  
3 *just treatment of all individuals located in California, it is the*  
4 *intent of the Legislature that this bill declare the state’s intolerance*  
5 *to profiting from the incarceration of Californians held in*  
6 *immigration detention and its desire to ensure the just and human*  
7 *treatment of our most vulnerable populations.*

8     (b) *It is the further intent of the Legislature to ensure the uniform*  
9 *treatment of individuals detained within immigration detention*  
10 *facilities, operating in California, in a manner that meets or*  
11 *exceeds the federal national standards and other applicable legal*  
12 *requirements.*

13     SEC. 2. *Section 1670.9 is added to the Civil Code, to read:*

14     1670.9. (a) *The board of supervisors of a county, or a*  
15 *legislative body of a city or of a city and county, or a local law*  
16 *enforcement entity shall not enter into or renew a contract, or*  
17 *modify a contract to extend the length of the contract, with a*  
18 *private corporation, contractor, or vendor to detain immigrants*  
19 *for profit, on behalf of the United States Department of Homeland*  
20 *Security, the United States Marshals Service, or the federal Office*  
21 *of Refugee Resettlement.*

22     (b) *If an immigrant detention facility chooses to enter into a*  
23 *contract to detain immigrants in civil immigration proceedings,*  
24 *it shall detain immigrants only pursuant to a contract that requires*  
25 *the entity contracting with the Department of Homeland Security*  
26 *or other federal agency to adhere to the standards for detaining*  
27 *those individuals described in the 2011 Operations Manual ICE*  
28 *Performance-Based National Detention Standards as corrected*

1 *and clarified in February 2013 and ICE Directive 11065.1 (Review*  
2 *of the Use of Segregation for ICE Detainees).*

3 *SEC. 3. Section 1670.91 is added to the Civil Code, to read:*

4 *1670.91. (a) An immigrant detention facility, an agent of an*  
5 *immigrant detention facility, or a person acting on behalf of an*  
6 *immigrant detention facility, shall not deprive any immigrant*  
7 *detainee on behalf of the Department of Homeland Security access*  
8 *to an attorney or any other person authorized by the Board of*  
9 *Immigration Appeals under Section 292.2 of Title 8 of the Code*  
10 *of Federal Regulations, access to a translator or interpretation*  
11 *services, medical care, freedom from harm or harassment, or*  
12 *privacy.*

13 *(1) Medical care includes, but is not limited to, HIV medication*  
14 *and transition-related health care.*

15 *(2) Medical care shall not be denied or delayed on the basis*  
16 *that the immigrant is likely to be released or deported.*

17 *(b) If an immigrant detention facility, or agent of an immigrant*  
18 *detention facility, or person acting on behalf of an immigrant*  
19 *detention facility, deprives any immigrant detainee of his or her*  
20 *rights as described in subdivision (a), (g), (h), or (i), or rights*  
21 *under the 2011 Operations Manual ICE Performance-Based*  
22 *National Detention Standards as corrected and clarified in*  
23 *February 2013, or ICE Directive 11065.1 (Review of Use of*  
24 *Segregation for ICE Detainees), the following actions may be*  
25 *taken:*

26 *(1) The Attorney General, or any district attorney or city*  
27 *attorney, may bring a civil action for injunctive and other*  
28 *appropriate equitable relief in the name of the people of the State*  
29 *of California. An action brought by the Attorney General, any*  
30 *district attorney, or any city attorney may also seek a civil penalty*  
31 *of twenty-five thousand dollars (\$25,000). If this civil penalty is*  
32 *requested, it shall be assessed individually against each person*  
33 *who is determined to have violated this section, and the penalty*  
34 *shall be awarded to each individual whose rights under this section*  
35 *are determined to have been violated.*

36 *(2) Any individual who has been deprived of his or her rights*  
37 *may bring a civil action for damages, including, but not limited*  
38 *to, damages under Section 52, injunctive relief, and other*  
39 *appropriate equitable relief, including appropriate equitable and*

1 *declaratory relief, for failure to comply with subdivision (a), (g),*  
2 *(h), or (i).*

3 *(c) Nothing in this section shall prohibit an immigrant detention*  
4 *facility from providing more rights than are required under the*  
5 *2011 Operations Manual ICE Performance-Based National*  
6 *Detention Standards as corrected and clarified in February 2013*  
7 *or ICE Directive 11065.1 (Review of the Use of Segregation for*  
8 *ICE Detainees).*

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

12 *(e) In addition to any damages, injunction, or other equitable*  
13 *relief awarded in an action brought pursuant to subdivision (b),*  
14 *the court may award the petitioner or plaintiff reasonable*  
15 *attorney's fees and costs.*

16 *(f) For purposes of this section, "immigrant detention facility"*  
17 *means a facility that chooses to enter into a contract to detain*  
18 *immigrants for civil immigration proceedings.*

19 *(g) When an immigrant detainee is transferred, the immigrant*  
20 *detention facility shall do all of the following:*

21 *(1) Ensure that all medical records of the detainee are promptly*  
22 *transferred to ICE at the time of transfer, or promptly provided*  
23 *to the facility to which the detainee is transferred.*

24 *(2) Ensure that all detainees receive all medications needed*  
25 *while in transit.*

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

29 *(4) Ensure that there is no delay, disruption, or denial of medical*  
30 *treatment after or before detainee transfer.*

31 *(h) An immigration detainee shall not be involuntarily placed*  
32 *in segregated housing in an immigration detention facility because*  
33 *of his or her actual or perceived gender, gender identity, gender*  
34 *expression, or sexual orientation, as defined in Section 422.56 of*  
35 *the Penal Code.*

36 *(i) An immigration detention facility shall have a Legal*  
37 *Orientation Program (as established by the Executive Office for*  
38 *Immigration Review of the United States Department of Justice)*  
39 *or similar program to provide comprehensive explanations about*  
40 *immigration court procedure, along with other basic legal*

1 information, to unrepresented immigration detainees. The program  
2 shall include an orientation on immigration removal proceedings  
3 and forms of relief, distribute self-help materials, provide private,  
4 individual consultations with unrepresented detainees to discuss  
5 their cases, and referrals to pro bono legal services.

6 (j) For purposes of this section, “segregated housing” means  
7 administrative segregation or disciplinary segregation, as defined  
8 in the 2011 Operations Manual ICE Performance-Based National  
9 Detention Standards as corrected and clarified in February 2013,  
10 or any other act resulting in an individual being segregated from  
11 the general population through prolonged physical or social  
12 isolation for hours, days, weeks, or years.

13 SEC. 4. The provisions of this act are severable. If any  
14 provision of this act or its application is held invalid, that invalidity  
15 shall not affect other provisions or applications that can be given  
16 effect without the invalid provision or application.

17 SECTION 1. ~~Section 1670.9 is added to the Civil Code, to~~  
18 ~~read:~~

19 ~~1670.9. (a) The board of supervisors or sheriff of a county, or~~  
20 ~~a legislative body or chief of police of a city or of a city and county,~~  
21 ~~is prohibited from entering into or renewing a contract to detain~~  
22 ~~immigrants for profit, on behalf of the Department of Homeland~~  
23 ~~Security, with a private corporation, contractor, or vendor.~~

24 ~~(b) A city, county, or city and county that holds immigrants in~~  
25 ~~a local correctional facility or local detention facility on behalf of~~  
26 ~~the Department of Homeland Security shall do so only pursuant~~  
27 ~~to a contract that requires its adherence to the standards for~~  
28 ~~detaining these individuals described in the 2011 Operations~~  
29 ~~Manual ICE Performance-Based National Detention Standards as~~  
30 ~~corrected and clarified in February 2013.~~

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

32 ~~1670.91. (a) No immigrant detention facility, or agent of an~~  
33 ~~immigrant detention facility, or person acting on behalf of an~~  
34 ~~immigrant detention facility, shall deprive any immigrant detained~~  
35 ~~on behalf of the Department of Homeland Security access to an~~  
36 ~~attorney, HIV medication or other medication, freedom from harm~~  
37 ~~or harassment, privacy, or accommodations as a result of being a~~  
38 ~~member of the lesbian, gay, bisexual, transgender, or queer~~  
39 ~~communities.~~

1     ~~(b) If an immigrant detention facility, or agent of an immigrant~~  
2 ~~detention facility, or person acting on behalf of an immigrant~~  
3 ~~detention facility, deprives any immigrant detained on behalf of~~  
4 ~~the Department of Homeland Security their rights as described in~~  
5 ~~subdivision (a), (g), or (h), or rights under the 2011 Operations~~  
6 ~~Manual ICE Performance-Based National Detention Standards as~~  
7 ~~corrected and clarified in February 2013, the Attorney General, or~~  
8 ~~any district attorney or city attorney, may bring a civil action for~~  
9 ~~injunctive and other appropriate equitable relief in the name of the~~  
10 ~~people of the State of California. An action brought by the Attorney~~  
11 ~~General, any district attorney, or any city attorney may also seek~~  
12 ~~a civil penalty of twenty-five thousand dollars (\$25,000). If this~~  
13 ~~civil penalty is requested, it shall be assessed individually against~~  
14 ~~each person who is determined to have violated this section, and~~  
15 ~~the penalty shall be awarded to each individual whose rights under~~  
16 ~~this section are determined to have been violated.~~

17     ~~(c) Any individual who has been deprived of his or her rights~~  
18 ~~under subdivision (a), (g), or (h), or rights under the 2011~~  
19 ~~Operations Manual ICE Performance-Based National Detention~~  
20 ~~Standards as corrected and clarified in February 2013, may bring~~  
21 ~~a civil action for damages, including, but not limited to, damages~~  
22 ~~under Section 52, injunctive relief, and other appropriate equitable~~  
23 ~~relief, including appropriate equitable and declaratory relief, to~~  
24 ~~eliminate a pattern or practice of conduct as described in~~  
25 ~~subdivision (a), (g), or (h).~~

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

29     ~~(e) In addition to any damages, injunction, or other equitable~~  
30 ~~relief awarded in an action brought pursuant to subdivision (b),~~  
31 ~~the court may award the petitioner or plaintiff reasonable attorney's~~  
32 ~~fees.~~

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

36     ~~(1) Between the Department of Homeland Security and a board~~  
37 ~~of supervisors of a county, or a legislative body of a city or of a~~  
38 ~~city and county, or a local law enforcement entity; or~~

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

4 ~~(g) When an immigrant detention facility transfers an immigrant~~  
5 ~~detainee, that immigrant detention facility must do all of the~~  
6 ~~following:~~

7 ~~(1) Ensure that all medical records of the detainee are received~~  
8 ~~by the facility to which the detainee is transferred at the time of~~  
9 ~~transfer.~~

10 ~~(2) Ensure that all detainees receive all medications needed~~  
11 ~~while in transit.~~

12 ~~(3) Ensure that a detainee's treatment plan is received by the~~  
13 ~~medical personnel at the facility to which the detainee is being~~  
14 ~~transferred.~~

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

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

20 ~~SEC. 3.— The provisions of this act are severable. If any~~  
21 ~~provision of this act or its application is held invalid, that invalidity~~  
22 ~~shall not affect other provisions or applications that can be given~~  
23 ~~effect without the invalid provision or application.~~

24 ~~SEC. 4.— If the Commission on State Mandates determines that~~  
25 ~~this act contains costs mandated by the state, reimbursement to~~  
26 ~~local agencies and school districts for those costs shall be made~~  
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
28 ~~4 of Title 2 of the Government Code.~~