

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 11, 2016

SENATE BILL

No. 1289

Introduced by Senator Lara

February 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 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 city, county, or a legislative body of a city or a city and county, or a local law enforcement entity~~ *agency* 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.~~ *in civil immigration proceedings for profit.*

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 a city, county, or city and county, or a local law enforcement agency 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~~ *immigration detention facility operator* 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~~ *immigration* detention facility, *facility operator*, as defined, an agent thereof, or a person acting on its behalf, shall not deprive an immigrant *detainee in civil immigration proceedings* 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~~ *immigration* 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~~ *immigration* 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 who has been injured by a failure to comply with these provisions, or~~ with 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 intent
4 of the Legislature that this bill declare the state's intolerance to
5 profiting from the incarceration of Californians held in immigration
6 detention and its desire to ensure the just and ~~human~~ *humane*
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 exceeds
11 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~~ *A city, county, city and county,*
16 ~~or a local law enforcement entity agency~~ shall not enter into or
17 renew a contract, or modify a contract to extend the length of the
18 contract, with a private corporation, contractor, or vendor to detain
19 immigrants ~~for profit, on behalf of the United States Department~~
20 ~~of Homeland Security, the United States Marshals Service, or the~~
21 ~~federal Office of Refugee Resettlement.~~ *in civil immigration*
22 *proceedings for profit.*

23 (b) ~~If an immigrant detention facility~~ *a city, county, city and*
24 *county, or a local law enforcement agency* chooses to enter into a
25 ~~contract~~ *contract, renews a contract, or modifies a contract to*
26 *extend the length of the contract,* to detain immigrants in civil
27 immigration proceedings, it shall detain immigrants only pursuant
28 to a contract that requires ~~the entity contracting with the~~
29 ~~Department of Homeland Security or other federal agency to the~~
30 *immigration detention facility operator* to adhere to the standards
31 for detaining those individuals described in the 2011 Operations
32 Manual ICE Performance-Based National Detention Standards as
33 corrected and clarified in February 2013 and ICE Directive 11065.1
34 (Review of the Use of Segregation for ICE Detainees).

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

1 1670.91. (a) An ~~immigrant immigration~~ detention ~~facility,~~
2 ~~facility operator,~~ an agent of an ~~immigrant immigration~~ detention
3 facility, or a person acting on behalf of an ~~immigrant immigration~~
4 detention facility, shall not deprive any immigrant detainee ~~on~~
5 ~~behalf of the Department of Homeland Security in civil~~
6 ~~immigration proceedings~~ access to an attorney or any other person
7 authorized by the Board of Immigration Appeals under Section
8 292.2 of Title 8 of the Code of Federal Regulations, access to a
9 translator or interpretation services, medical care, freedom from
10 harm or harassment, or privacy.

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

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

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

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

36 (2) Any individual who has been ~~deprived of his or her rights~~
37 ~~injured by a failure to comply with subdivisions (a), (h), (i), or (j)~~
38 may bring a civil action for damages, including, but not limited
39 to, damages under Section 52, injunctive relief, and other
40 appropriate equitable relief, including appropriate equitable and

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

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

9 (d) An action brought pursuant to this section is independent of
10 any other action, remedy, or procedure that may be available to
11 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 attorney’s
15 fees and costs.

16 (f) For purposes of this section, ~~“immigrant~~ *“immigration*
17 *detention facility”* means a facility ~~that chooses to enter into a~~
18 ~~contract to detain immigrants~~ *where immigrants are detained for*
19 *civil immigration proceedings pursuant to an*
20 *agreement between a city, county, or city and county, or a law*
21 *enforcement agency and either of the following:*

22 (1) *The Department of Homeland Security or other federal*
23 *agency.*

24 (2) *A private corporation, contractor, or private vendor.*

25 (g) *For purposes of this section “immigration detention facility*
26 *operator” means an individual, firm, corporation, association,*
27 *partnership, joint venture, commercial entity, municipality,*
28 *commission, or political division of the State of California that*
29 *operates or owns an immigration detention facility.*

30 ~~(g)~~

31 (h) When an immigrant detainee is transferred, the ~~immigrant~~
32 *immigration* detention facility operator shall do all of the
33 following:

34 (1) Ensure that all medical records of the detainee are promptly
35 transferred to ICE at the time of transfer, or promptly provided to
36 the facility to which the detainee is transferred.

37 (2) Ensure that all detainees receive all medications needed
38 while in transit.

1 (3) Ensure that a detainee’s treatment plan is received by the
 2 medical personnel at the facility to which the detainee is being
 3 transferred.

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

6 ~~(h)~~

7 (i) An immigration detainee shall not be involuntarily placed
 8 in segregated housing in an immigration detention facility because
 9 of his or her actual or perceived gender, gender identity, gender
 10 expression, or sexual orientation, as defined in Section 422.56 of
 11 the Penal Code. *Transgender and gender non-conforming*
 12 *immigration detainees shall be give the option to choose a housing*
 13 *placement consistent with their gender identity.*

14 ~~(i)~~

15 (j) An immigration detention facility shall have a Legal
 16 Orientation Program (as established by the Executive Office for
 17 Immigration Review of the United States Department of Justice)
 18 or similar program to provide comprehensive explanations about
 19 immigration court procedure, along with other basic legal
 20 information, to unrepresented immigration detainees. The program
 21 shall include an orientation on immigration removal proceedings
 22 and forms of relief, distribute self-help materials, provide private,
 23 individual consultations with unrepresented detainees to discuss
 24 their cases, and referrals to pro bono legal services.

25 ~~(j)~~

26 (k) For purposes of this section, “segregated housing” means
 27 administrative segregation or disciplinary segregation, as defined
 28 in the 2011 Operations Manual ICE Performance-Based National
 29 Detention Standards as corrected and clarified in February 2013,
 30 or any other act resulting in an individual being segregated from
 31 the general population through prolonged physical or social
 32 isolation for hours, days, weeks, or years.

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