

AMENDED IN ASSEMBLY JUNE 30, 2016

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~~ *Section 1670.9* 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 a city, county, or a city and county, or a local law enforcement 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 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 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 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 immigration detention 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 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 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 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 humane treatment
7 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) A city, county, city and county, or a local law
15 enforcement agency shall not enter into or renew a contract, or
16 modify a contract to extend the length of the contract, with a private
17 corporation, contractor, or vendor to detain immigrants in civil
18 immigration proceedings for profit.

19 (b) If a city, county, city and county, or a local law enforcement
20 agency chooses to enter into a contract, renews a contract, or
21 modifies a contract to extend the length of the contract, to detain
22 immigrants in civil immigration proceedings, it shall detain
23 immigrants only pursuant to a contract that requires the
24 immigration detention facility operator to adhere to the standards
25 for detaining those individuals described in the 2011 Operations
26 Manual ICE Performance-Based National Detention Standards as
27 corrected and clarified in February 2013 and ICE Directive 11065.1
28 (Review of the Use of Segregation for ICE Detainees).

29 (c) *An immigration detention facility operator, an agent of an*
30 *immigration detention facility, or a person acting on behalf of an*
31 *immigration detention facility, shall not deprive any immigrant*
32 *detainee in civil immigration proceedings access to an attorney*
33 *or any other person authorized by the Board of Immigration*
34 *Appeals under Section 292.2 of Title 8 of the Code of Federal*
35 *Regulations, access to a translator or interpretation services,*
36 *medical care, freedom from harm or harassment, or privacy.*

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

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

3 (d) *An immigration detention facility shall have a Legal*
4 *Orientation Program (as established by the Executive Office for*
5 *Immigration Review of the United States Department of Justice)*
6 *or similar program to provide comprehensive explanations about*
7 *immigration court procedure, along with other basic legal*
8 *information, to unrepresented immigrant detainees. The program*
9 *shall include an orientation on immigration removal proceedings*
10 *and forms of relief, distribute self-help materials, provide private,*
11 *individual consultations with unrepresented detainees to discuss*
12 *their cases, and referrals to pro bono legal services.*

13 (e) *When an immigrant detainee is transferred, the immigration*
14 *detention facility operator shall do all of the following:*

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

18 (2) *Ensure that all detainees receive all medications needed*
19 *while in transit.*

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

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

25 (f) *An immigrant detainee shall not be involuntarily placed in*
26 *segregated housing in an immigration detention facility because*
27 *of his or her actual or perceived gender, gender identity, gender*
28 *expression, or sexual orientation, as defined in Section 422.56 of*
29 *the Penal Code. Transgender and gender nonconforming*
30 *immigrant detainees shall be given the option to choose a housing*
31 *placement consistent with their gender identity.*

32 (g) *Nothing in this section shall prohibit an immigration*
33 *detention facility operator from exceeding the 2011 Operations*
34 *Manual ICE Performance-Based National Detention Standards*
35 *as corrected and clarified in February 2013 or ICE Directive*
36 *11065.1 (Review of the Use of Segregation for ICE Detainees).*

37 (h) *If an immigration detention facility operator, or agent of an*
38 *immigration detention facility, or person acting on behalf of an*
39 *immigration detention facility, violates subdivision (c), (d), (e), or*
40 *(f), or the 2011 Operations Manual ICE Performance-Based*

1 *National Detention Standards as corrected and clarified in*
2 *February 2013, or ICE Directive 11065.1 (Review of Use of*
3 *Segregation for ICE Detainees), the following actions may be*
4 *taken:*

5 (1) *The Attorney General, or any district attorney or city*
6 *attorney, may bring a civil action for injunctive and other*
7 *appropriate equitable relief in the name of the people of the State*
8 *of California. An action brought by the Attorney General, any*
9 *district attorney, or any city attorney may also seek a civil penalty*
10 *of twenty-five thousand dollars (\$25,000). If this civil penalty is*
11 *requested, it shall be assessed individually against each person*
12 *who is determined to have violated this section, and the penalty*
13 *shall be awarded to each individual who has been injured under*
14 *this section.*

15 (2) *Any individual who has been injured by a failure to comply*
16 *with subdivisions (c), (d), (e), or (f), may bring a civil action for*
17 *damages, including, but not limited to, damages under Section 52,*
18 *injunctive relief, and other appropriate equitable relief, including*
19 *appropriate equitable and declaratory relief.*

20 (i) *An action brought pursuant to this section is independent of*
21 *any other action, remedy, or procedure that may be available to*
22 *an individual under any other provision of law.*

23 (j) *In addition to any damages, injunction, or other equitable*
24 *relief awarded in an action brought pursuant to subdivision (h),*
25 *the court may award the petitioner or plaintiff reasonable*
26 *attorney's fees and costs.*

27 (k) *For purposes of this section, the following definitions shall*
28 *apply:*

29 (1) *"Immigration detention facility" means a facility where*
30 *immigrants are detained for civil immigration proceedings*
31 *pursuant to an agreement between a city, county, or city and*
32 *county, or a law enforcement agency and either of the following:*

33 (A) *The Department of Homeland Security or other federal*
34 *agency.*

35 (B) *A private corporation, contractor, or private vendor.*

36 (2) *"Immigration detention facility operator" means an*
37 *individual, firm, corporation, association, partnership, joint*
38 *venture, commercial entity, municipality, commission, or political*
39 *division of the State of California that operates or owns an*
40 *immigration detention facility.*

1 (3) “Segregated housing” means administrative segregation
 2 or disciplinary segregation, as defined in the 2011 Operations
 3 Manual ICE Performance-Based National Detention Standards
 4 as corrected and clarified in February 2013, or any other act
 5 resulting in an individual being segregated from the general
 6 population through prolonged physical or social isolation for
 7 hours, days, weeks, or years.

8 ~~SEC. 3.— Section 1670.91 is added to the Civil Code, to read:~~

9 ~~1670.91. (a) An immigration detention facility operator, an~~
 10 ~~agent of an immigration detention facility, or a person acting on~~
 11 ~~behalf of an immigration detention facility, shall not deprive any~~
 12 ~~immigrant detainee in civil immigration proceedings access to an~~
 13 ~~attorney or any other person authorized by the Board of~~
 14 ~~Immigration Appeals under Section 292.2 of Title 8 of the Code~~
 15 ~~of Federal Regulations, access to a translator or interpretation~~
 16 ~~services, medical care, freedom from harm or harassment, or~~
 17 ~~privacy.~~

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

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

22 ~~(b) If an immigration detention facility operator, or agent of an~~
 23 ~~immigration detention facility, or person acting on behalf of an~~
 24 ~~immigration detention facility, violates subdivision (a), (h), (i), or~~
 25 ~~(j) or the 2011 Operations Manual ICE Performance-Based~~
 26 ~~National Detention Standards as corrected and clarified in February~~
 27 ~~2013, or ICE Directive 11065.1 (Review of Use of Segregation~~
 28 ~~for ICE Detainees), the following actions may be taken:~~

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

39 ~~(2) Any individual who has been injured by a failure to comply~~
 40 ~~with subdivisions (a), (h), (i), or (j) may bring a civil action for~~

1 damages, including, but not limited to, damages under Section 52,
2 injunctive relief, and other appropriate equitable relief, including
3 appropriate equitable and declaratory relief.

4 ~~(e) Nothing in this section shall prohibit an immigration~~
5 ~~detention facility operator from exceeding the 2011 Operations~~
6 ~~Manual ICE Performance-Based National Detention Standards as~~
7 ~~corrected and clarified in February 2013 or ICE Directive 11065.1~~
8 ~~(Review 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, "immigration detention facility"~~
17 ~~means a facility where immigrants are detained for civil~~
18 ~~immigration proceedings pursuant to an agreement between a city,~~
19 ~~county, or city and county, or a law enforcement agency and either~~
20 ~~of the following:~~

21 ~~(1) The Department of Homeland Security or other federal~~
22 ~~agency.~~

23 ~~(2) A private corporation, contractor, or private vendor.~~

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

29 ~~(h) When an immigrant detainee is transferred, the immigration~~
30 ~~detention facility operator shall do all of the following:~~

31 ~~(1) Ensure that all medical records of the detainee are promptly~~
32 ~~transferred to ICE at the time of transfer, or promptly provided to~~
33 ~~the facility to which the detainee is transferred.~~

34 ~~(2) Ensure that all detainees receive all medications needed~~
35 ~~while in transit.~~

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

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

1 ~~(i) An immigration detainee shall not be involuntarily placed~~
2 ~~in segregated housing in an immigration detention facility because~~
3 ~~of his or her actual or perceived gender, gender identity, gender~~
4 ~~expression, or sexual orientation, as defined in Section 422.56 of~~
5 ~~the Penal Code. Transgender and gender non-conforming~~
6 ~~immigration detainees shall be give the option to choose a housing~~
7 ~~placement consistent with their gender identity.~~

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

18 ~~(k) For purposes of this section, “segregated housing” means~~
19 ~~administrative segregation or disciplinary segregation, as defined~~
20 ~~in the 2011 Operations Manual ICE Performance-Based National~~
21 ~~Detention Standards as corrected and clarified in February 2013,~~
22 ~~or any other act resulting in an individual being segregated from~~
23 ~~the general population through prolonged physical or social~~
24 ~~isolation for hours, days, weeks, or years.~~

25 ~~SEC. 4.~~

26 ~~SEC. 3. The provisions of this act are severable. If any~~
27 ~~provision of this act or its application is held invalid, that invalidity~~
28 ~~shall not affect other provisions or applications that can be given~~
29 ~~effect without the invalid provision or application.~~