

Senate Bill No. 1289

Passed the Senate August 30, 2016

Secretary of the Senate

Passed the Assembly August 23, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 1670.9 to the Civil Code, relating to immigration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, 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, commencing on January 1, 2018, 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.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would specify that any facility that detains an immigrant pursuant to a contract with a city, county, city and county, or a local law enforcement agency is subject to the California Public Records Act.

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 prohibit an immigration detention facility from involuntarily placing a detainee in segregated housing because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation.

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 provide that its provisions are severable.

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

SECTION 1. The Legislature finds and declares the following:

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

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

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

1670.9. (a) A city, county, city and county, or a local law enforcement agency shall not enter into or renew a contract, or modify 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. This subdivision shall become operative on January 1, 2018.

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

(c) Any facility that detains an immigrant pursuant to a contract with a city, county, city and county, or a local law enforcement agency is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

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

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

(f) Nothing in this section shall prohibit an immigration detention facility operator from exceeding the 2011 Operations Manual ICE Performance-Based National Detention Standards as

corrected and clarified in February 2013 or ICE Directive 11065.1 (Review of the Use of Segregation for ICE Detainees).

(g) If an immigration detention facility operator, or agent of an immigration detention facility, or person acting on behalf of an immigration detention facility, violates subdivision (d) or (e), or the 2011 Operations Manual ICE Performance-Based National Detention Standards as corrected and clarified in February 2013, or ICE Directive 11065.1 (Review of Use of Segregation for ICE Detainees), the Attorney General, or any district attorney or city attorney, may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section, and the penalty shall be awarded to each individual who has been injured under this section.

(h) For purposes of this section, the following definitions shall apply:

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

(A) The United States Department of Homeland Security or other federal agency.

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

(2) “Immigration detention facility operator” means an individual, firm, corporation, association, partnership, joint venture, commercial entity, municipality, commission, or political division of the State of California that operates or owns an immigration detention facility.

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

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

Approved _____, 2016

Governor