

REFERENCE TITLE: private prisons; prisoner transfer; prohibition

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2129

Introduced by
Representatives Campbell, Wheeler: Alston, Dalessandro, Hernandez, McCune
Davis, Otondo

AN ACT

AMENDING SECTIONS 41-1609, 41-1681, 41-1682, 41-1683 AND 41-1830.31, ARIZONA
REVISED STATUTES; RELATING TO PRIVATE PRISONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1609, Arizona Revised Statutes, is amended to
3 read:

4 41-1609. Agreements with federal or private agencies and
5 institutions; contract review; emergency contracts

6 A. The department may enter into agreements with the federal
7 government, other states or agencies of the federal government or other
8 states for such compensation upon which they agree to ~~accept or~~ deliver adult
9 offenders or to administer correctional programs. Notwithstanding ~~the~~
10 ~~provisions of~~ section 35-193, any funds received by the department under the
11 agreements shall be kept in a separate revolving fund for current usage and
12 shall not revert to the state general fund if unexpended at the close of a
13 fiscal year.

14 B. The department may contract with any private or public institution
15 that is located inside or outside this state for facilities or the operation
16 of facilities that are dedicated to the confinement of persons who are
17 committed to the department. Notwithstanding chapter 4, article 7 of this
18 title and article 4 of this chapter, the contract may include a purchase
19 option and if the contract has a per diem provision the contract may include
20 a provision that allows a portion of the per diem to be applied to reduce the
21 purchase price.

22 C. The department shall submit all contracts entered into pursuant to
23 subsection B of this section to the attorney general to determine if the
24 contract is within the authority granted under the laws of this state and in
25 proper form. All contracts involving the detention or incarceration of adult
26 offenders shall conform to the requirements of section 41-1609.01.

27 D. Notwithstanding subsection C of this section, the department may
28 enter into emergency contracts pursuant to section 41-2537 with private or
29 public institutions for facilities or the operation of facilities that are
30 dedicated to the confinement of persons who are committed to the department.

31 E. The director may declare an emergency for acts of God, natural
32 catastrophes, prison riots and overcrowding. In an emergency, the director
33 shall:

34 1. Confine persons who are committed to the department in either of
35 the following:

36 (a) An existing public institution.

37 (b) A private institution that is described in subsection B of this
38 section.

39 2. Up to twenty-four hours before declaring the emergency, notify the
40 governor and the attorney general of the emergency and the need to relocate
41 persons who are committed to the department to another existing public or
42 private facility established pursuant to sections 41-1609.01 and 41-1609.02.

43 3. Within thirty days after declaring the emergency, determine the
44 length of the emergency confinement. If the director determines that the
45 emergency confinement will exceed six months in duration, the emergency
46 contract shall comply with sections 41-1609.01 and 41-1609.02.

1 F. Notwithstanding subsection E, paragraph 2 of this section, if the
2 director declares that an emergency exists due to the overcrowding of a
3 public or private correctional facility, the director shall discuss with the
4 governor, the attorney general and the majority and minority leadership in
5 the senate and the house of representatives relocating the inmates from the
6 overcrowded facility to another facility before relocating the inmates.

7 G. An emergency contract shall not exceed one year in duration.

8 Sec. 2. Section 41-1681, Arizona Revised Statutes, is amended to read:

9 41-1681. Definition

10 For the purposes of this article, "private prison" means any privately
11 owned prison that does not contract exclusively with the state department of
12 corrections ~~and is primarily directed at housing adult prisoners who are~~
13 ~~sentenced to serve a term of detention or incarceration by a court from a~~
14 ~~state other than this state.~~

15 Sec. 3. Section 41-1682, Arizona Revised Statutes, is amended to read:

16 41-1682. Private prisons; prohibitions; liability for services;
17 financial responsibility; security officer
18 qualifications

19 A. No private prison may operate in this state unless the private
20 contractor complies with this section.

21 B. A private prison shall provide the department of administration
22 with financial responsibility to cover this state's potential liability in
23 the amount of ten million dollars. The monies shall be used by the state if
24 the state is held liable for civil damages resulting from the escape of a
25 prisoner from the private prison. The private prison may file proof of
26 financial responsibility by filing one of the following:

27 1. Proof that ten million dollars is deposited in the private prison
28 escapee fund established by section 41-1830.31.

29 2. An insurance policy that is in a form approved by the department of
30 administration, that provides civil liability and civil rights liability
31 coverage in the amount of ten million dollars and ~~listing~~ THAT LISTS the
32 state as an insured.

33 3. A surety bond with the principal sum of ten million dollars.

34 4. A certified financial statement that is not more than ninety days
35 old and that shows a net worth of more than fifteen million dollars. Every
36 ninety days the private prison shall submit a certified financial statement
37 to the department of administration signed under oath by the chief financial
38 officer of the prison. If the financial statement indicates a net worth of
39 less than fifteen million dollars, the private prison shall comply with
40 ~~paragraphs~~ PARAGRAPH 1, 2 or 3 of this subsection.

41 C. An insurance company or surety company duly authorized to transact
42 business in this state shall execute the insurance policy or bond prescribed
43 in subsection B of this section.

44 D. The insurance policy or surety bond shall continue in effect until
45 ninety days after the private prison is sold or closed. Any monies deposited
46 in the private prison escapee fund by the private prison shall be refunded to

1 the private prison within ninety days after submission of evidence to the
2 director of the department of administration that the private prison is
3 either sold or closed and there are no remaining liabilities for which the
4 state might be required to assume responsibility.

5 E. On receipt by the director of the department of administration of
6 notice to cancel an insurance policy or bond by an insurance company or
7 surety, the director OF THE DEPARTMENT OF ADMINISTRATION shall immediately
8 notify the private prison NAMED on the insurance policy or the surety bond of
9 the effective date of cancellation of the insurance policy or the surety
10 bond. The private prison shall furnish a like insurance policy or surety
11 bond within thirty days after mailing of the notice by the director OF THE
12 DEPARTMENT OF ADMINISTRATION. Unless a replacement insurance policy or
13 surety bond is filed with the director OF THE DEPARTMENT OF ADMINISTRATION,
14 the right of the private prisons PRISON to operate in this state shall be
15 suspended by operation of law on the date the bond is canceled.

16 F. If any of the monies required by subsection B, paragraph 1 of this
17 section are used to satisfy civil damage claims or civil rights claims, the
18 private prison shall reestablish the full amount of those monies within
19 thirty days after notification by the director of the department of
20 administration.

21 G. A security officer employed by a private prison contractor shall be
22 at least twenty-one years of age and have no felony convictions.

23 H. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION,
24 A PRIVATE PRISON SHALL NOT ACCEPT THE TRANSFER OF AN ADULT PRISONER FROM A
25 STATE OTHER THAN THIS STATE.

26 Sec. 4. Section 41-1683, Arizona Revised Statutes, is amended to read:
27 41-1683. Private prison; prisoner identification; public record

28 ~~A.~~ Private prisons shall maintain photographs and fingerprints on site
29 of all prisoners WHO ARE incarcerated in ~~the facility~~ PRIVATE PRISON
30 FACILITIES. THE PHOTOGRAPHS AND FINGERPRINTS OF ALL PRISONERS ARE A PUBLIC
31 RECORD.

32 ~~B. Before another state transfers prisoners to a private prison in~~
33 ~~this state, the private prison housing prisoners under incarceration orders~~
34 ~~from a court of another state shall provide the governor, the director of the~~
35 ~~department of public safety and the director of the state department of~~
36 ~~corrections with the following information:~~

37 ~~1. The number of prisoners to be transferred.~~

38 ~~2. The names of the prisoners to be transferred.~~

39 ~~3. The date of the transfer.~~

40 ~~4. The security level of each prisoner to be transferred, as~~
41 ~~determined by the sentencing state.~~

42 ~~C. If one to ten prisoners are transferred into this state, the~~
43 ~~private prison shall comply with the notification requirements in subsection~~
44 ~~B at least forty-eight hours before the prisoners arrive in this state. If~~
45 ~~eleven or more prisoners are transferred into this state, the private prison~~

1 ~~shall comply with the notification requirements pursuant to subsection B at~~
2 ~~least seven days before the prisoners arrive in this state.~~

3 ~~D. The information provided pursuant to subsection B, paragraphs 2, 3~~
4 ~~and 4 shall not be public record until the transfer of the prisoners is~~
5 ~~completed.~~

6 Sec. 5. Section 41-1830.31, Arizona Revised Statutes, is amended to
7 read:

8 41-1830.31. Private prison escapee fund; monies; uses; lapsing;
9 definitions

10 A. A private prison escapee fund is established for the purposes of
11 providing monies to cover capture costs associated with escapees or
12 liabilities that the state may incur. The fund consists of the monies
13 deposited pursuant to subsection B of this section and section 41-1682,
14 subsection B, paragraph 1. The director of the department of administration
15 shall administer the fund.

16 B. All private prisons shall pay a penalty to the director of the
17 department of administration for the capture costs of an escapee in the
18 amount of ten thousand dollars per escapee or the actual capture costs per
19 escapee, whichever is more. The director of the department of administration
20 shall deposit the monies received from the private prison into the private
21 prison escapee fund.

22 C. Fund monies shall be used to reimburse law enforcement agencies of
23 this state for the costs incurred by them in capturing prisoners who escape
24 from private prisons.

25 D. A detailed account of the costs incurred in capturing escapees
26 shall be submitted to the director of the department of public safety and
27 reimbursed on approval by the director.

28 E. Monies in the private prison escapee fund do not revert to the
29 state general fund. The monies in the fund are a continuing appropriation to
30 the director of the department of administration for the purposes prescribed
31 in this section.

32 F. The director of the department of administration shall reimburse
33 monies deposited in the fund by private prisons as prescribed by section
34 41-1682, subsection B, paragraph 1 after receiving notification from the
35 director of the ~~state~~ department of public safety to reimburse the monies.

36 G. For the purposes of this section:

37 1. "Escapee" means a prisoner who leaves a private prison facility
38 without lawful authorization and whose leaving requires law enforcement
39 personnel to undertake actions to capture the prisoner.

40 2. "Private prison" means any privately owned prison that does not
41 contract exclusively with the state department of corrections ~~and is~~
42 ~~primarily directed at housing adult prisoners who are sentenced to serve a~~
43 ~~term of detention or incarceration by a court from a state other than this~~
44 ~~state.~~