

REFERENCE TITLE: private prisons; regulation

State of Arizona
House of Representatives
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HB 2629

Introduced by
Representatives Campbell, Gallego, Otondo: Larkin, Wheeler, Senator
Pancrazi

AN ACT

AMENDING SECTIONS 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 41-1682, Arizona Revised Statutes, is amended to
3 read:

4 41-1682. Private prisons; operation; capacity; notice of major
5 incidents; civil penalties; liability for services;
6 financial responsibility; security officer
7 qualifications

8 A. No private prison may operate in this state unless the private
9 ~~contractor~~ PRISON complies with this section.

10 B. A PRIVATE PRISON SHALL COMPLY WITH THE AMERICAN CORRECTIONS
11 ASSOCIATION ACCREDITATION CAPACITY REQUIREMENTS OR MAY ADOPT THE STATE
12 DEPARTMENT OF CORRECTIONS' PUBLISHED PRISON CONSTRUCTION STANDARDS.

13 C. IF A MAJOR INCIDENT INVOLVING PUBLIC HEALTH OR SAFETY OCCURS AT A
14 PRIVATE PRISON, THE PRIVATE PRISON IMMEDIATELY SHALL NOTIFY THE STATE
15 DEPARTMENT OF CORRECTIONS OF THE NATURE OF THE MAJOR INCIDENT AND SHALL
16 PROVIDE THE STATE DEPARTMENT OF CORRECTIONS WITH ACCESS TO THE PRIVATE PRISON
17 FACILITY FOR THE PURPOSES OF INVESTIGATION AND INSPECTION. THE DIRECTOR OF
18 THE STATE DEPARTMENT OF CORRECTIONS MAY NOTIFY THE DEPARTMENT OF
19 ADMINISTRATION, THE DEPARTMENT OF HEALTH SERVICES AND THE DEPARTMENT OF
20 PUBLIC SAFETY OF THE NATURE OF THE MAJOR INCIDENT. THE DIRECTOR OF THE
21 DEPARTMENT OF ADMINISTRATION MAY IMPOSE CIVIL PENALTIES ON A PRIVATE PRISON
22 THAT FAILS TO TIMELY PROVIDE THE NOTICE REQUIRED BY THIS SUBSECTION. FOR THE
23 PURPOSES OF THIS SUBSECTION, "MAJOR INCIDENT" MEANS ANY OCCURRENCE THAT:

24 1. PRESENTS A THREAT TO THE PRISON OR THE HEALTH AND SAFETY OF ITS
25 POPULATION, STAFF OR COMMUNITY, INCLUDING THE OUTBREAK OF AN INFECTIOUS OR
26 CONTAGIOUS DISEASE.

27 2. DISRUPTS ANY UTILITY OR EMERGENCY SERVICES, AND THE DISRUPTION
28 REQUIRES INTERVENTION BY THIS STATE, ANY STATE AGENCY OR DEPARTMENT OR ANY
29 POLITICAL SUBDIVISION OF THIS STATE.

30 ~~B-~~ D. A private prison shall provide the department of administration
31 with PROOF OF financial responsibility to cover this state's potential
32 liability in ~~the~~ AN amount DETERMINED BY THE DEPARTMENT of NOT LESS THAN ten
33 million dollars. The monies shall be used by the state if the state OR ANY
34 POLITICAL SUBDIVISION OF THIS STATE is held liable for civil damages
35 resulting from ~~the escape of a prisoner from~~ OR ARISING OUT OF THE OPERATION
36 OF the private prison. The private prison ~~may file~~ SHALL PROVIDE proof of
37 financial responsibility by filing one of the following:

38 1. Proof that NOT LESS THAN ten million dollars is deposited in the
39 private prison escapee fund established by section 41-1830.31. MONIES
40 DEPOSITED IN THE PRIVATE PRISON ESCAPEE FUND SHALL BE USED FOR THE PURPOSES
41 OF THIS SECTION.

42 2. An insurance policy that is EXECUTED BY AN INSURANCE COMPANY
43 AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, THAT IS in a form approved by
44 the department of administration, that provides civil liability and civil

1 rights liability coverage in the amount of NOT LESS THAN ten million dollars
2 and ~~listing~~ THAT LISTS the state as an insured.

3 3. A surety bond with the principal sum of NOT LESS THAN ten million
4 dollars EXECUTED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS
5 STATE.

6 4. A certified financial statement that is not more than ninety days
7 old and that shows a net worth of more than fifteen million dollars. Every
8 ninety days the private prison shall submit a certified financial statement
9 to the department of administration signed under oath by the chief financial
10 officer of the prison. If the financial statement indicates a net worth of
11 less than fifteen million dollars, the private prison shall comply with
12 ~~paragraphs~~ PARAGRAPH 1, 2 or 3 of this subsection.

13 ~~C. An insurance company or surety company duly authorized to transact
14 business in this state shall execute the insurance policy or bond prescribed
15 in subsection B of this section.~~

16 ~~D.~~ E. The insurance policy or surety bond shall continue in effect
17 until ninety days after the private prison is sold or closed. Any monies
18 deposited in the private prison escapee fund by the private prison PURSUANT
19 TO THIS SECTION shall be refunded to the private prison within ninety days
20 after submission of evidence to the director of the department of
21 administration that the private prison is either sold or closed and there are
22 no remaining liabilities for which the state ~~might~~ OR ITS POLITICAL
23 SUBDIVISIONS MAY be required to assume responsibility.

24 ~~E.~~ F. On receipt by the director of the department of administration
25 of notice to cancel an insurance policy or bond by an insurance company or
26 surety, the director OF THE DEPARTMENT OF ADMINISTRATION shall immediately
27 notify the private prison NAMED on the insurance policy or the surety bond of
28 the effective date of cancellation of the insurance policy or the surety
29 bond. The private prison shall furnish a like insurance policy or surety
30 bond ~~within thirty days after mailing of the notice by the director~~ BEFORE
31 CANCELLATION. Unless a replacement insurance policy or surety bond is filed
32 with the director OF THE DEPARTMENT OF ADMINISTRATION, the ~~right~~ OPERATION of
33 the private ~~prisons to operate in this state~~ PRISON shall be suspended,
34 CANCELED OR REVOKED by operation of law on the date the bond is canceled.

35 ~~F.~~ G. If any of the monies required by subsection ~~B, paragraph 1~~ D of
36 this section are used to satisfy civil damage claims or civil rights claims,
37 the private prison shall reestablish the full amount of those monies within
38 thirty days after notification by the director of the department of
39 administration.

40 ~~G.~~ H. A security officer WHO IS employed by a private prison
41 contractor shall be at least twenty-one years of age and have no felony OR
42 DOMESTIC VIOLENCE convictions. A SECURITY OFFICER WHO IS SUBSEQUENTLY
43 CONVICTED OF A FELONY OR DOMESTIC VIOLENCE OFFENSE MAY NO LONGER BE EMPLOYED
44 BY THE PRIVATE PRISON.

1 Sec. 2. Section 41-1683, Arizona Revised Statutes, is amended to read:
2 41-1683. Prisoner identification; notice; civil penalties

3 A. Private prisons shall maintain CURRENT photographs and fingerprints
4 on site of all prisoners WHO ARE incarcerated in ~~the facility~~ PRIVATE PRISONS
5 IN THIS STATE.

6 B. PRIVATE PRISONS THAT HOUSE ANOTHER STATE'S PRISONERS OR FEDERAL
7 PRISONERS:

8 1. SHALL ONLY HOUSE PRISONERS WHO ARE CLASSIFIED AS MINIMUM OR MEDIUM
9 CUSTODY ACCORDING TO THE STATE DEPARTMENT OF CORRECTIONS CLASSIFICATION
10 PROCEDURES.

11 2. SHALL NOT HOUSE PRISONERS WHO:

12 (a) EXCEED THE CLASSIFICATION LEVEL FOR THE CUSTODY LEVEL OF THE
13 PRIVATE PRISON.

14 (b) HAVE A HISTORY OF ESCAPE OR RIOTING OR WHO HAVE ASSAULTED A PEACE
15 OFFICER OR CORRECTIONAL SERVICE OFFICER.

16 (c) HAVE BEEN CONVICTED OR WHO HAVE PREVIOUSLY BEEN CONVICTED OF A
17 SEXUAL OFFENSE.

18 (d) HAVE BEEN CONVICTED OR WHO HAVE PREVIOUSLY BEEN CONVICTED OF AN
19 OFFENSE THAT IF COMMITTED IN THIS STATE WOULD BE A CLASS 1 OR 2 FELONY.

20 (e) ARE INFECTED WITH THE HUMAN IMMUNODEFICIENCY VIRUS, HEPATITIS A, B
21 OR C OR TUBERCULOSIS.

22 3. SHALL NOT RELEASE FROM CUSTODY ANOTHER STATE'S PRISONERS IN THIS
23 STATE.

24 ~~B. C. Before another state transfers prisoners to a~~ FORTY-EIGHT HOURS
25 BEFORE TRANSFERRING OTHER STATE PRISONERS OR FEDERAL PRISONERS INTO AND OUT
26 OF A private prison in this state, the private prison ~~housing prisoners under~~
27 ~~incarceration orders from a court of another state~~ shall provide ~~the~~
28 ~~governor~~, the director of the department of public safety and the director of
29 the state department of corrections with the following information IN
30 WRITING:

31 1. The number of prisoners to be transferred.

32 2. The names AND IDENTIFYING INFORMATION of the prisoners to be
33 transferred.

34 3. The date of the transfer.

35 4. The ~~security level of each prisoner to be transferred, as~~
36 ~~determined by the sentencing state~~ CONVICTION FOR WHICH THE PRISONER IS
37 CURRENTLY CONFINED.

38 5. THE IDENTITY OF THE SENTENCING STATE OR DIVISION OF FEDERAL COURT
39 FOR EACH PRISONER.

40 6. THE FEDERAL IDENTIFICATION NUMBER OF EACH PRISONER.

41 7. THE NAMES OF THE PRISONERS WHO ARE BEING TRANSFERRED TO ANOTHER
42 STATE FOR RELEASE FROM CUSTODY.

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

1 ~~eleven or more prisoners are transferred into this state, the private prison~~
2 ~~shall comply with the notification requirements pursuant to subsection B at~~
3 ~~least seven days before the prisoners arrive in this state.~~

4 D. THE PRIVATE PRISON SHALL PROVIDE THE DIRECTOR OF THE DEPARTMENT OF
5 PUBLIC SAFETY AND THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS WITH A
6 MONTHLY REPORT OF THE FOLLOWING:

- 7 1. CHANGES IN THE PRISONER COUNT.
- 8 2. CHANGES IN CAPACITY TO CONFINES PRISONERS.
- 9 3. ANY CHANGE IN A PRISONER'S SECURITY LEVEL AFTER BEING TRANSFERRED
10 TO THIS STATE.

11 E. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY IMPOSE CIVIL
12 PENALTIES EQUAL TO ONE HUNDRED DOLLARS PER DAY PER INMATE FOR EACH DAY IN
13 WHICH THE PRIVATE PRISON FAILS TO TIMELY COMPLY WITH ANY REQUIREMENT OF THIS
14 SECTION. THIS SUBSECTION DOES NOT PRECLUDE THIS STATE FROM PURSUING ALL
15 OTHER EQUITABLE REMEDIES THAT ARE AVAILABLE AT LAW.

16 ~~D-~~ F. The information provided pursuant to ~~subsection~~ SUBSECTIONS A,
17 B, ~~paragraphs 2, 3 and 4 shall~~ AND C IS not ~~be~~ A public record until the
18 transfer of the prisoners ~~is~~ HAS BEEN completed.

19 G. THE PRIVATE PRISON IS LIABLE FOR ITS OPERATION AND THE PERSONS
20 UNDER ITS AUTHORITY.

21 Sec. 3. Section 41-1830.31, Arizona Revised Statutes, is amended to
22 read:

23 41-1830.31. Private prison escapee fund; monies; uses; lapsing;
24 definitions

25 A. A private prison escapee fund is established for the purposes of
26 providing monies to cover capture costs associated with escapees or
27 liabilities that the state may incur. The fund consists of the monies
28 deposited pursuant to subsection B of this section and section 41-1682,
29 subsection ~~B- D~~, paragraph 1. The director of the department of
30 administration shall administer the fund.

31 B. ~~All~~ A private ~~prisons~~ PRISON shall pay a penalty to the director of
32 the department of administration for the capture costs of an escapee in the
33 amount of ten thousand dollars per escapee or the actual capture costs per
34 escapee, whichever is more. The director of the department of administration
35 shall deposit the monies received from the private prison into the private
36 prison escapee fund.

37 C. Fund monies shall be used to reimburse law enforcement agencies of
38 this state for the costs incurred by them in capturing prisoners who escape
39 from private prisons **AND TO PAY ANY COSTS INCURRED BY THIS STATE RESULTING**
40 **FROM OR ARISING OUT OF THE OPERATION OF THE PRIVATE PRISON.**

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

44 E. Monies in the private prison escapee fund do not revert to the
45 state general fund. The monies in the fund are a continuing appropriation to

1 the director of the department of administration for the purposes prescribed
2 in this section.

3 F. The director of the department of administration shall reimburse
4 monies deposited in the fund by private prisons as prescribed by section
5 41-1682, subsection ~~B~~- D, paragraph 1 after receiving notification from the
6 director of the ~~state~~ department of public safety to reimburse the monies.

7 G. For the purposes of this section:

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

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