

REFERENCE TITLE: private prisons; regulation

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SB 1142

Introduced by  
Senator Blendu

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 IN AN AMOUNT DEEMED  
22 APPROPRIATE BY THE DEPARTMENT OF ADMINISTRATION ON A PRIVATE PRISON THAT  
23 FAILS TO TIMELY PROVIDE THE NOTICE REQUIRED BY THIS SUBSECTION. FOR THE  
24 PURPOSES OF THIS SUBSECTION, "MAJOR INCIDENT" MEANS ANY OCCURRENCE THAT:

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

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

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

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

1           2. An insurance policy that is EXECUTED BY AN INSURANCE COMPANY  
2 AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE THAT IS in a form approved by  
3 the department of administration, that provides civil liability and civil  
4 rights liability coverage in the amount of NOT LESS THAN ten million dollars  
5 and ~~listing~~ THAT LISTS the state as an insured.

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

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

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

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

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

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

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

6 Sec. 2. Section 41-1683, Arizona Revised Statutes, is amended to read:  
7 41-1683. Prisoner identification; notice; civil penalties

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

11 B. PRIVATE PRISONS THAT HOUSE ANOTHER STATE'S PRISONERS OR FEDERAL  
12 PRISONERS:

13 1. SHALL ONLY HOUSE PRISONERS WHO ARE CLASSIFIED AS MINIMUM OR MEDIUM  
14 CUSTODY ACCORDING TO THE STATE DEPARTMENT OF CORRECTIONS CLASSIFICATION  
15 PROCEDURES.

16 2. SHALL NOT HOUSE PRISONERS WHO EXCEED THE CLASSIFICATION LEVEL FOR  
17 THE CUSTODY LEVEL OF THE PRIVATE PRISON.

18 3. SHALL NOT HOUSE PRISONERS WHO HAVE A HISTORY OF ESCAPE OR RIOTING.

19 4. SHALL NOT HOUSE PRISONERS WHO HAVE BEEN CONVICTED OR WHO HAVE  
20 PREVIOUSLY BEEN CONVICTED OF A SEXUAL OFFENSE.

21 5. SHALL NOT HOUSE PRISONERS WHO HAVE BEEN CONVICTED OR WHO HAVE  
22 PREVIOUSLY BEEN CONVICTED OF AN OFFENSE THAT IF COMMITTED IN THIS STATE WOULD  
23 BE A CLASS 1 OR 2 FELONY.

24 6. SHALL NOT HOUSE PRISONERS WHO ARE INFECTED WITH THE HUMAN  
25 IMMUNODEFICIENCY VIRUS, HEPATITIS A, B OR C OR TUBERCULOSIS.

26 7. SHALL NOT RELEASE FROM CUSTODY ANOTHER STATE'S PRISONERS IN THIS  
27 STATE.

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

35 1. The number of prisoners to be transferred.

36 2. The names AND IDENTIFYING INFORMATION of the prisoners to be  
37 transferred.

38 3. The date of the transfer.

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

42 5. THE IDENTITY OF THE SENTENCING STATE OR DIVISION OF FEDERAL COURT  
43 FOR EACH PRISONER.

44 6. THE FEDERAL IDENTIFICATION NUMBER OF EACH PRISONER.

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

3           ~~C. If one to ten prisoners are transferred into this state, the~~  
4 ~~private prison shall comply with the notification requirements in subsection~~  
5 ~~B at least forty eight hours before the prisoners arrive in this state. If~~  
6 ~~eleven or more prisoners are transferred into this state, the private prison~~  
7 ~~shall comply with the notification requirements pursuant to subsection B at~~  
8 ~~least seven days before the prisoners arrive in this state.~~

9           D. THE PRIVATE PRISON SHALL PROVIDE THE DIRECTOR OF THE DEPARTMENT OF  
10 PUBLIC SAFETY AND THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS WITH A  
11 MONTHLY REPORT OF THE CHANGE IN THE PRISONER COUNT AND CAPACITY TO CONFIN  
12 PRISONERS.

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

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

21           G. THE PRIVATE PRISON IS LIABLE FOR ITS OPERATION AND THE PERSONS  
22 UNDER ITS AUTHORITY.

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

25           41-1830.31. Private prison escapee fund; monies; uses; lapsing;  
26 definitions

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

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

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

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

1           E. Monies in the private prison escapee fund do not revert to the  
2 state general fund. The monies in the fund are a continuing appropriation to  
3 the director of the department of administration for the purposes prescribed  
4 in this section.

5           F. The director of the department of administration shall reimburse  
6 monies deposited in the fund by private prisons as prescribed by section  
7 41-1682, subsection ~~B~~-D, paragraph 1 after receiving notification from the  
8 director of the ~~state~~ department of public safety to reimburse the monies.

9           G. For the purposes of this section:

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

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