

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 18, 2009

**SENATE BILL**

**No. 129**

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**Introduced by Senators Huff and Yee**  
**(Coauthor: Senator Romero)**

February 5, 2009

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An act to add Article 6 (commencing with Section 33195) to Chapter 2 of Part 20 of Division 2 of Title 2 of the Education Code, relating to heritage school instruction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as amended, Huff. Heritage school instruction.

(1) Existing law requires every entity offering or conducting private school instruction on the elementary or high school level to annually verify information by filing with the Superintendent of Public Instruction an affidavit or statement under penalty of perjury setting forth specified information relating to the current year. The affidavit or statement must be made available to any parent or guardian whose child is currently enrolled or is considering whether to enroll his or her child in the school. If the employees of any entities that have a contract with a private school to provide specified services may have any contact with pupils, those employees ~~must~~ *are required to* submit their fingerprints to the Department of Justice for a background check. The Department of Justice ~~may~~ *is authorized to* notify the private school when the employee has a pending criminal case, or a criminal conviction, of specified crimes. Private schools contracting with an entity for construction or other related services where employees of the entity will have other

than limited contact with pupils, ~~must~~ *are required to* ensure the safety of the pupils by utilizing one or more methods.

This bill would apply a substantially identical verification requirement to heritage schools, which is a school for children that serves children who are at least 4 years and 9 months of age to 18 years of age and who attend a public or private full-time school, and which offers foreign language education or tutoring and cultural education relating to a foreign country. The heritage school would also be required to maintain membership in a state or national cultural or language association, comply with relevant applicable local regulations, and not operate out of a residential home.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Article 6 (commencing with Section 33195) is  
2 added to Chapter 2 of Part 20 of Division 2 of Title 2 of the  
3 Education Code, to read:

4  
5 Article 6. Verification of Heritage School Instruction  
6

7 33195. (a) Every person, firm, association, partnership, or  
8 corporation offering or conducting heritage school instruction  
9 shall, between the first and 15th day of October of each year,  
10 commencing on October 1, 2011, file with the Superintendent of  
11 ~~Public Instruction~~ an affidavit or statement, under penalty of  
12 perjury, by the owner or other head setting forth the following  
13 information for the current year:

14 (1) All names, whether real or fictitious, of the person, firm,  
15 association, partnership, or corporation under which it has done  
16 and is doing business.

17 (2) The address, including city and street, of every place of  
18 doing business of the person, firm, association, partnership, or  
19 corporation within the State of California.

20 (3) The address, including city and street, of the location of the  
21 records of the person, firm, association, partnership, or corporation,

1 and the name and address, including city and street, of the  
2 custodian of the records.

3 (4) The names and addresses, including city and street, of the  
4 directors, if any, and principal officers of the person, firm,  
5 association, partnership, or corporation.

6 (5) The school enrollment, by grades, number of teachers,  
7 coeducational or enrollment limited to boys or girls, and boarding  
8 facilities.

9 (6) That the following records are maintained at the address  
10 stated, and are true and accurate:

11 (A) The courses of study offered by the institution.

12 (B) The names and addresses, including city and street, of its  
13 faculty, together with a record of the educational qualifications of  
14 each faculty member.

15 (7) Criminal record summary information *that* has been obtained  
16 pursuant to Section 44237.

17 (b) Whenever two or more heritage schools are under the  
18 effective control or supervision of a single administrative unit, the  
19 administrative unit may comply with the provisions of this section  
20 on behalf of each of the schools under its control or supervision  
21 by submitting one report.

22 (c) Filing pursuant to this section shall not be interpreted to  
23 mean, and it shall be unlawful for any school to expressly or  
24 impliedly represent, that the State of California, the Superintendent  
25 ~~of Public Instruction, the State Board of Education, the State~~  
26 ~~Department of Education, or any division or bureau of the, the~~  
27 ~~state board, the department, or any division or bureau of the~~  
28 department, or any accrediting agency has made any evaluation,  
29 recognition, approval, or endorsement of the school or course,  
30 unless this is an actual fact.

31 (d) *Filing pursuant to this section does not grant a heritage*  
32 *school any right to receive state funding.*

33 ~~(d)~~

34 (e) The Superintendent shall prepare and publish a list of  
35 heritage schools to include the name and address of the school and  
36 the name of the school owner or administrator.

37 33195.1. (a) Commencing October 1, 2011, the affidavit or  
38 statement filed with the Superintendent ~~of Public Instruction~~  
39 pursuant to Section 33195 shall, under penalty of perjury, include

1 a statement manifesting compliance with the provisions of Section  
2 44237.

3 (b) In the case of any heritage school where an instructor also  
4 serves as the administrator of the school, the affidavit or statement  
5 shall be made available upon request to the parents or guardians  
6 of all pupils currently enrolled in the school and to any parent or  
7 guardian considering whether to enroll his or her child in the  
8 school.

9 33195.2. (a) Except as provided in subdivisions (b) and (c),  
10 if the employees of any entity that has a contract with a heritage  
11 school to provide any of the following services may have any  
12 contact with pupils, those employees shall submit or have submitted  
13 their fingerprints in a manner authorized by the Department of  
14 Justice together with a fee determined by the Department of Justice  
15 to be sufficient to reimburse the department for its costs incurred  
16 in processing the application:

- 17 (1) School and classroom janitorial.
- 18 (2) Schoolsite administrative.
- 19 (3) Schoolsite grounds and landscape maintenance.
- 20 (4) Pupil transportation.
- 21 (5) Schoolsite food-related services.

22 (b) This section shall not apply to an entity providing any of  
23 the services listed in subdivision (a) to a heritage school in an  
24 emergency or exceptional situation, such as when a pupil's health  
25 or safety is endangered or when repairs are needed to make school  
26 facilities safe and habitable.

27 (c) This section shall not apply to an entity providing any of the  
28 services listed in subdivision (a) to a heritage school when the  
29 heritage school determines that the employees of the entity will  
30 have limited contact with pupils. In determining whether a contract  
31 employee has limited contact with pupils, the heritage school shall  
32 consider the totality of the circumstances, including factors such  
33 as the length of time the contractors will be on school grounds,  
34 whether pupils will be in proximity with the site where the  
35 contractors will be working, and whether the contractors will be  
36 working by themselves or with others. If a heritage school has  
37 made this determination, the heritage school shall take appropriate  
38 steps to protect the safety of any pupils that may come in contact  
39 with these employees.

1 (d) A heritage school may determine, on a case-by-case basis,  
2 to require an entity providing schoolsite services other than those  
3 listed in subdivision (a) or those described in Section 33195.3 and  
4 the entity's employees to comply with the requirements of this  
5 section, unless the heritage school determines that the employees  
6 of the entity will have limited contact with pupils. In determining  
7 whether a contract employee will have limited contact with pupils,  
8 the heritage school shall consider the totality of the circumstances,  
9 including factors such as the length of time the contractors will be  
10 on school grounds, whether pupils will be in proximity with the  
11 site where the contractors will be working, and whether the  
12 contractors will be working by themselves or with others. If a  
13 heritage school makes this determination, the heritage school shall  
14 take appropriate steps to protect the safety of any pupils that may  
15 come in contact with these employees. If a heritage school requires  
16 an entity providing services other than those listed in subdivision  
17 (a) and its employees to comply with the requirements of this  
18 section, the Department of Justice shall comply with subdivision  
19 (e).

20 (e) (1) The Department of Justice shall ascertain whether the  
21 individual whose fingerprints were submitted to it pursuant to  
22 subdivision (a) has been arrested or convicted of any crime insofar  
23 as that fact can be ascertained from information available to the  
24 department. When the Department of Justice ascertains that an  
25 individual whose fingerprints were submitted to it pursuant to  
26 subdivision (a) has a pending criminal proceeding for a felony as  
27 defined in Section 45122.1 or has been convicted of a felony as  
28 defined in Section 45122.1, the department shall notify the  
29 employer designated by the individual of that fact. The notification  
30 shall be delivered by telephone or electronic mail to the employer.

31 (2) The Department of Justice, at its discretion, may notify the  
32 heritage school of instances in which the employee is defined as  
33 having a pending criminal proceeding described in Section 45122.1  
34 or has been convicted of a felony as defined in Section 45122.1.

35 (3) The Department of Justice may forward one copy of the  
36 fingerprints to the Federal Bureau of Investigation to verify any  
37 record of previous arrests or convictions of the applicant. The  
38 Department of Justice shall review the criminal record summary  
39 it obtains from the Federal Bureau of Investigation and shall notify  
40 the employer only as to whether or not an applicant has any

1 convictions or arrests pending adjudication for offenses which, if  
2 committed in California, would have been punishable as a violent  
3 or serious felony. The Department of Justice shall not provide any  
4 specific offense information received from the Federal Bureau of  
5 Investigation to the employer. The Department of Justice shall  
6 provide written notification to the contract employer only  
7 concerning whether an applicant for employment has any  
8 conviction or arrest pending final adjudication for any of those  
9 crimes, as specified in Section 45122.1, but shall not provide any  
10 information identifying any offense for which an existing employee  
11 was convicted or has an arrest pending final adjudication.

12 (f) An entity having a contract as specified in subdivision (a)  
13 and an entity required to comply with this section pursuant to  
14 subdivision (d) shall not permit an employee to come in contact  
15 with pupils until the Department of Justice has ascertained that the  
16 employee has not been convicted of a felony as defined in Section  
17 45122.1.

18 (1) This prohibition does not apply to an employee solely on  
19 the basis that the employee has been convicted of a felony if the  
20 employee has obtained a certificate of rehabilitation and pardon  
21 pursuant to Chapter 3.5 (commencing with Section 4852.01) of  
22 Title 6 of Part 3 of the Penal Code.

23 (2) This prohibition does not apply to an employee solely on  
24 the basis that the employee has been convicted of a serious felony  
25 that is not also a violent felony if that employee can prove to the  
26 sentencing court of the offense in question, by clear and convincing  
27 evidence, that he or she has been rehabilitated for the purposes of  
28 schoolsite employment for at least one year. If the offense in  
29 question occurred outside this state, then the person may seek a  
30 finding of rehabilitation from the court having jurisdiction where  
31 he or she is resident.

32 (g) An entity having a contract as specified in subdivision (a)  
33 and an entity required to comply with this section pursuant to  
34 subdivision (d) shall certify in writing to the heritage school that  
35 neither the employer nor any of its employees who are required  
36 by this section to submit or have their fingerprints submitted to  
37 the Department of Justice and who may come in contact with pupils  
38 have been convicted of a felony as defined in Section 45122.1.

39 (h) An entity having a contract as specified in subdivision (a)  
40 on the effective date of the act adding this section and an entity

required to comply with this section pursuant to subdivision (d) by a heritage school with which it has a contract on the effective date of the act adding this section shall complete the requirements of this section within 90 days of that date.

(i) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may request electronic submission of the fingerprint cards and other information required by this section.

33195.3. (a) A heritage school contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 33195.2 and the ~~department~~ *Department of Justice* shall comply with subdivision (d) of Section 33195.2.

(3) Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a heritage school for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 33195.2 if one or more of the methods described in subdivision (a) is utilized.

(c) (1) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school facility in an emergency or exceptional situation, such as when a pupil's health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(2) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

33195.4. For purposes of this article, "heritage school" means a school that serves children who are at least 4 years and 9 months

1 of age and no older than 18 years of age, who attend a public or  
2 private full-time day school, that does all of the following:

3 (a) Specifies regular hours of operation.

4 (b) Offers education or academic tutoring, or both, in a foreign  
5 language.

6 (c) Offers education on the culture, traditions, or history of a  
7 country other than the United States.

8 (d) Offers culturally enriching activities, including, but not  
9 limited to, art, dancing, games, or singing, based on the culture or  
10 customs of a country other than the United States.

11 (e) Maintains membership in a state or national cultural or  
12 language association.

13 (f) Complies with relevant local government regulations, where  
14 applicable.

15 (g) Does not operate out of a residential home.

16 SEC. 2. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or safety within  
18 the meaning of Article IV of the Constitution and shall go into  
19 immediate effect. The facts constituting the necessity are:

20 In order to ensure that pupils have the opportunity to attend  
21 heritage schools to supplement their full-time day school  
22 curriculum with education of a foreign language and the culture,  
23 traditions, or history of a country other than the United States, it  
24 is necessary that this act take effect immediately.