

AMENDED IN SENATE JUNE 18, 2009

**SENATE BILL**

**No. 129**

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**Introduced by Senator Huff *Senators Huff and Yee***

February 5, 2009

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An act to ~~repeal Sections 48314.5 and 48315 of the Education Code, relating to pupil attendance~~ *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. ~~Pupil attendance; interdistrict transfers. 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 submit their fingerprints to the Department of Justice for a background check. The Department of Justice may 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 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.*

~~(1) Existing law requires each person between the ages of 6 and 18 years, who is not otherwise exempt, to attend the public full-time day school in the school district in which his or her parent or guardian is a resident. The governing board of a school district is authorized to accept interdistrict transfers by admitting pupils residing in other school districts to attend its schools, subject to specified conditions. A school district that elects to accept interdistrict transfers is required to keep an accounting of all requests made for alternative attendance and records of all disposition of those requests and to report this information to the Superintendent of Public Instruction who is required to make this information available to the Governor, the Legislature, and the public on an annual basis. Existing law prohibits a school district that had not elected to accept interdistrict transfers prior to a specified date from electing to accept interdistrict transfers.~~

~~This bill would delete that prohibition.~~

~~(2) Existing law makes the provisions governing interdistrict transfers inoperative on July 1, 2009, and repeals these provisions on January 1, 2010.~~

~~This bill would delete the inoperative and repeal dates of these provisions thereby extending the operation of these provisions indefinitely except as described in (1), above.~~

~~(3) 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*  
22 *corporation, and the name and address, including city and street,*  
23 *of the custodian of the records.*

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

27         (5) *The school enrollment, by grades, number of teachers,*  
28 *coeducational or enrollment limited to boys or girls, and boarding*  
29 *facilities.*

30         (6) *That the following records are maintained at the address*  
31 *stated, and are true and accurate:*

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

33             (B) *The names and addresses, including city and street, of its*  
34 *faculty, together with a record of the educational qualifications*  
35 *of each faculty member.*

36         (7) *Criminal record summary information has been obtained*  
37 *pursuant to Section 44237.*

1 (b) Whenever two or more heritage schools are under the  
2 effective control or supervision of a single administrative unit, the  
3 administrative unit may comply with the provisions of this section  
4 on behalf of each of the schools under its control or supervision  
5 by submitting one report.

6 (c) Filing pursuant to this section shall not be interpreted to  
7 mean, and it shall be unlawful for any school to expressly or  
8 impliedly represent, that the State of California, the Superintendent  
9 of Public Instruction, the State Board of Education, the State  
10 Department of Education, or any division or bureau of the  
11 department, or any accrediting agency has made any evaluation,  
12 recognition, approval, or endorsement of the school or course,  
13 unless this is an actual fact.

14 (d) The Superintendent shall prepare and publish a list of  
15 heritage schools to include the name and address of the school  
16 and the name of the school owner or administrator.

17 33195.1. (a) Commencing October 1, 2011, the affidavit or  
18 statement filed with the Superintendent of Public Instruction  
19 pursuant to Section 33195 shall, under penalty of perjury, include  
20 a statement manifesting compliance with the provisions of Section  
21 44237.

22 (b) In the case of any heritage school where an instructor also  
23 serves as the administrator of the school, the affidavit or statement  
24 shall be made available upon request to the parents or guardians  
25 of all pupils currently enrolled in the school and to any parent or  
26 guardian considering whether to enroll his or her child in the  
27 school.

28 33195.2. (a) Except as provided in subdivisions (b) and (c),  
29 if the employees of any entity that has a contract with a heritage  
30 school to provide any of the following services may have any  
31 contact with pupils, those employees shall submit or have submitted  
32 their fingerprints in a manner authorized by the Department of  
33 Justice together with a fee determined by the Department of Justice  
34 to be sufficient to reimburse the department for its costs incurred  
35 in processing the application:

- 36 (1) School and classroom janitorial.
- 37 (2) Schoolsite administrative.
- 38 (3) Schoolsite grounds and landscape maintenance.
- 39 (4) Pupil transportation.
- 40 (5) Schoolsite food-related services.

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

6     ***(c) This section shall not apply to an entity providing any of the***  
7 ***services listed in subdivision (a) to a heritage school when the***  
8 ***heritage school determines that the employees of the entity will***  
9 ***have limited contact with pupils. In determining whether a contract***  
10 ***employee has limited contact with pupils, the heritage school shall***  
11 ***consider the totality of the circumstances, including factors such***  
12 ***as the length of time the contractors will be on school grounds,***  
13 ***whether pupils will be in proximity with the site where the***  
14 ***contractors will be working, and whether the contractors will be***  
15 ***working by themselves or with others. If a heritage school has***  
16 ***made this determination, the heritage school shall take appropriate***  
17 ***steps to protect the safety of any pupils that may come in contact***  
18 ***with these employees.***

19     ***(d) A heritage school may determine, on a case-by-case basis,***  
20 ***to require an entity providing schoolsite services other than those***  
21 ***listed in subdivision (a) or those described in Section 33195.3 and***  
22 ***the entity's employees to comply with the requirements of this***  
23 ***section, unless the heritage school determines that the employees***  
24 ***of the entity will have limited contact with pupils. In determining***  
25 ***whether a contract employee will have limited contact with pupils,***  
26 ***the heritage school shall consider the totality of the circumstances,***  
27 ***including factors such as the length of time the contractors will***  
28 ***be on school grounds, whether pupils will be in proximity with the***  
29 ***site where the contractors will be working, and whether the***  
30 ***contractors will be working by themselves or with others. If a***  
31 ***heritage school makes this determination, the heritage school shall***  
32 ***take appropriate steps to protect the safety of any pupils that may***  
33 ***come in contact with these employees. If a heritage school requires***  
34 ***an entity providing services other than those listed in subdivision***  
35 ***(a) and its employees to comply with the requirements of this***  
36 ***section, the Department of Justice shall comply with subdivision***  
37 ***(e).***

38     ***(e) (1) The Department of Justice shall ascertain whether the***  
39 ***individual whose fingerprints were submitted to it pursuant to***  
40 ***subdivision (a) has been arrested or convicted of any crime insofar***

1 as that fact can be ascertained from information available to the  
2 department. When the Department of Justice ascertains that an  
3 individual whose fingerprints were submitted to it pursuant to  
4 subdivision (a) has a pending criminal proceeding for a felony as  
5 defined in Section 45122.1 or has been convicted of a felony as  
6 defined in Section 45122.1, the department shall notify the  
7 employer designated by the individual of that fact. The notification  
8 shall be delivered by telephone or electronic mail to the employer.

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

13 (3) The Department of Justice may forward one copy of the  
14 fingerprints to the Federal Bureau of Investigation to verify any  
15 record of previous arrests or convictions of the applicant. The  
16 Department of Justice shall review the criminal record summary  
17 it obtains from the Federal Bureau of Investigation and shall notify  
18 the employer only as to whether or not an applicant has any  
19 convictions or arrests pending adjudication for offenses which, if  
20 committed in California, would have been punishable as a violent  
21 or serious felony. The Department of Justice shall not provide any  
22 specific offense information received from the Federal Bureau of  
23 Investigation to the employer. The Department of Justice shall  
24 provide written notification to the contract employer only  
25 concerning whether an applicant for employment has any  
26 conviction or arrest pending final adjudication for any of those  
27 crimes, as specified in Section 45122.1, but shall not provide any  
28 information identifying any offense for which an existing employee  
29 was convicted or has an arrest pending final adjudication.

30 (f) An entity having a contract as specified in subdivision (a)  
31 and an entity required to comply with this section pursuant to  
32 subdivision (d) shall not permit an employee to come in contact  
33 with pupils until the Department of Justice has ascertained that  
34 the employee has not been convicted of a felony as defined in  
35 Section 45122.1.

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

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

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

17 (h) An entity having a contract as specified in subdivision (a)  
18 on the effective date of the act adding this section and an entity  
19 required to comply with this section pursuant to subdivision (d)  
20 by a heritage school with which it has a contract on the effective  
21 date of the act adding this section shall complete the requirements  
22 of this section within 90 days of that date.

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

27 33195.3. (a) A heritage school contracting with an entity for  
28 the construction, reconstruction, rehabilitation, or repair of a  
29 school facility where the employees of the entity will have contact,  
30 other than limited contact, with pupils shall ensure the safety of  
31 the pupils by one or more of the following methods:

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

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

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

2 (b) *An entity that contracts with a heritage school for the*  
3 *construction, reconstruction, rehabilitation, or repair of a school*  
4 *facility is not required to comply with the requirements of Section*  
5 *33195.2 if one or more of the methods described in subdivision*  
6 *(a) is utilized.*

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

12 (2) *For purposes of this section, a violent felony is any felony*  
13 *listed in subdivision (c) of Section 667.5 of the Penal Code and a*  
14 *serious felony is any felony listed in subdivision (c) of Section*  
15 *1192.7 of the Penal Code.*

16 33195.4. *For purposes of this article, “heritage school” means*  
17 *a school that serves children who are at least 4 years and 9 months*  
18 *of age and no older than 18 years of age, who attend a public or*  
19 *private full-time day school, that does all of the following:*

20 (a) *Specifies regular hours of operation.*

21 (b) *Offers education or academic tutoring, or both, in a foreign*  
22 *language.*

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

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

28 (e) *Maintains membership in a state or national cultural or*  
29 *language association.*

30 (f) *Complies with relevant local government regulations, where*  
31 *applicable.*

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

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

37 *In order to ensure that pupils have the opportunity to attend*  
38 *heritage schools to supplement their full-time day school*  
39 *curriculum with education of a foreign language and the culture,*

1 *traditions, or history of a country other than the United States, it*  
2 *is necessary that this act take effect immediately.*

3 ~~SECTION 1. Section 48314.5 of the Education Code is~~  
4 ~~repealed.~~

5 ~~SEC. 2. Section 48315 of the Education Code is repealed.~~

6 ~~SEC. 3. This act is an urgency statute necessary for the~~  
7 ~~immediate preservation of the public peace, health, or safety within~~  
8 ~~the meaning of Article IV of the Constitution and shall go into~~  
9 ~~immediate effect. The facts constituting the necessity are:~~

10 ~~In order to ensure that pupils continue to have the opportunity~~  
11 ~~to apply for interdistrict transfers, it is necessary that this act take~~  
12 ~~effect immediately.~~