

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE MAY 17, 2010

AMENDED IN SENATE MAY 4, 2010

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1116

Introduced by Senators Huff, Romero, and Yee
(Coauthors: Senators Alquist and Liu)
(Coauthor: Assembly Member Tran)

February 17, 2010

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 1116, 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, as specified. 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 are required to submit their fingerprints to the Department of Justice for a background check. The Department of Justice 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, 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 bill would require every person, firm, association, partnership, or corporation operating a heritage school to annually file with the Superintendent an electronic registration form, under penalty of perjury, by the owner or other head setting forth specified information, together with a fee determined by the Superintendent to be sufficient to cover, but not exceed, the costs of the department in implementing these provisions. Because the bill creates a new crime, it would impose a state-mandated local program.

The bill would require heritage school contractors to submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all employees of specified entities that contract with a heritage school to obtain criminal history information, as specified. The Department of Justice would be required to forward requests for criminal history information to the Federal Bureau of Investigation, review reply information received from the bureau, and provide a determination and response to the heritage school contractor. The bill would require the contractor to request subsequent arrest information, as specified, from the Department of Justice. The Department of Justice would be required to charge a sufficient fee for the costs of processing requests for criminal history information. 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. The bill would require the director of a heritage school to undergo at least 15 hours of health and safety training, as specified, and would require employees and volunteers of the heritage school to be in good

health, as verified by a health screening performed by a licensed physician and surgeon. The bill would exempt a heritage school from licensure by the State Department of Social Services as a child day care center, as specified. The bill would require a heritage school to provide a notice to the parent or guardian of a pupil enrolling in the school stating that the school is exempt from child care licensure and that attendance at a heritage school does not satisfy state compulsory education requirements.

The bill would establish the Heritage Enrichment Resource Fund. The Superintendent would be authorized to expend moneys deposited in the fund, upon appropriation by statute, as specified.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(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: yes.

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 Operation
6

7 33195. (a) Every person, firm, association, partnership, or
8 corporation operating a heritage school as defined in Section
9 33195.4 shall, between the 1st and 31st day of January of each
10 year, commencing on January 1, 2011, file with the Superintendent
11 an electronic registration form, under penalty of perjury, by the
12 owner or other head setting forth the following information for the
13 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.

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

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

7 (4) The school enrollment, by grade span, number of teachers,
8 and coeducational or enrollment limited to boys or girls.

9 (5) 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 (6) Criminal record summary information that has been obtained
16 pursuant to Section 44237.

17 (7) The heritage school telephone number.

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

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

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

32 33195.1. (a) Commencing January 1, 2011, the electronic
33 registration form filed with the Superintendent pursuant to Section
34 33195 shall, under penalty of perjury, include a statement
35 manifesting compliance with the following paragraph:

36 (1) A person, firm, association, partnership, or corporation
37 offering or conducting heritage school instruction shall not employ
38 a person who would be prohibited from employment by a public
39 school district pursuant to any provision of this code because of
40 his or her conviction for any crime.

(b) In the case of any heritage school where an instructor also serves as the administrator of the school, the electronic registration form shall be made available upon request to the parents or guardians of all pupils currently enrolled in the school and to any parent or guardian considering whether to enroll his or her child in the school.

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

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

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a heritage school 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.

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

(d) A heritage school may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 33195.3 and

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

17 (e) (1) The heritage school contractor shall submit to the
18 Department of Justice fingerprint images and related information
19 required by the Department of Justice of all employees of entities,
20 as identified in subdivisions (a) and (d), that contract with a
21 heritage school, as defined in Section 33195.4, for the purposes
22 of obtaining information as to the existence and content of a record
23 of state or federal convictions and state or federal arrests and also
24 information as to the existence and content of a record of state and
25 federal arrests for which the Department of Justice establishes that
26 the person is free on bail or on his or her own recognizance pending
27 trial or appeal.

28 (2) When received, the Department of Justice shall forward to
29 the Federal Bureau of Investigation requests for federal summary
30 criminal history information received pursuant to this subdivision.
31 The Department of Justice shall review the information returned
32 from the Federal Bureau of Investigation and compile and
33 disseminate a fitness determination to the heritage school
34 contractor.

35 (3) The Department of Justice shall provide a state response to
36 the heritage school contractor pursuant to paragraph (1) of
37 subdivision (p) of Section 11105 of the Penal Code.

38 (4) The heritage school contractor shall request from the
39 Department of Justice subsequent arrest notification service, as

1 provided pursuant to Section 11105.2 of the Penal Code, for
2 employees described in paragraph (1).

3 (5) The Department of Justice shall charge a fee sufficient to
4 cover the cost of processing the request described in the
5 subdivision.

6 (f) An entity having a contract as specified in subdivision (a)
7 and an entity required to comply with this section pursuant to
8 subdivision (d) shall not permit an employee to come in contact
9 with pupils until the Department of Justice has ascertained that the
10 employee has not been convicted of a felony as defined in Section
11 45122.1.

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

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

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

33 (h) An entity having a contract as specified in subdivision (a)
34 on the effective date of the act adding this section and an entity
35 required to comply with this section pursuant to subdivision (d)
36 by a heritage school with which it has a contract on the effective
37 date of the act adding this section shall complete the requirements
38 of this section within 90 days of that date.

39 (i) Where reasonable access to the statewide electronic
40 fingerprinting network is available, the Department of Justice may

1 request electronic submission of the fingerprint cards and other
2 information required by this section.

3 33195.3. (a) A heritage school contracting with an entity for
4 the construction, reconstruction, rehabilitation, or repair of a school
5 facility where the employees of the entity will have contact, other
6 than limited contact, with pupils shall ensure the safety of the
7 pupils by one or more of the following methods:

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

10 (2) Continual supervision and monitoring of all employees of
11 the entity by an employee of the entity whom the Department of
12 Justice has ascertained has not been convicted of a violent or
13 serious felony. For purposes of this paragraph, an employee of the
14 entity may submit his or her fingerprints to the Department of
15 Justice pursuant to subdivision (a) of Section 33195.2 and the
16 Department of Justice shall comply with subdivision (d) of Section
17 33195.2.

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

19 (b) An entity that contracts with a heritage school for the
20 construction, reconstruction, rehabilitation, or repair of a school
21 facility is not required to comply with the requirements of Section
22 33195.2 if one or more of the methods described in subdivision
23 (a) is utilized.

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

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

33 33195.4. For purposes of this article, "heritage school" means
34 a school that serves children who are at least 4 years and 9 months
35 of age and no older than 18 years of age, who attend a public or
36 private full-time day school, that does all of the following:

37 (a) Specifies regular hours of operation.

38 (b) Offers education or academic tutoring, or both, in a foreign
39 language.

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

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

6 (e) Maintains membership in a state or national cultural or
7 language association.

8 (f) Complies with relevant local government regulations, where
9 applicable.

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

11 (h) Complies with the requirements of Section 33195 and
12 maintains in its possession a copy of the registration form
13 electronically filed with the Superintendent. The heritage school
14 shall make this form available upon request, including to the State
15 Department of Social Services, to verify ~~exception to licensure~~
16 *exemption from child care licensure*.

17 33195.5. (a) The Heritage Enrichment Resource Fund is hereby
18 established in the State Treasury. Moneys deposited in the fund
19 may be expended by the Superintendent upon appropriation by
20 statute, for the purposes of this article.

21 (b) The electronic registration form to be filed pursuant to this
22 article shall be filed together with a fee determined by the
23 Superintendent to be sufficient to cover, but not exceed, the costs
24 of the department in implementing this article. The fees shall be
25 deposited into the Heritage Enrichment Resource Fund. The fee
26 shall be received by the Superintendent no later than ~~February 28~~
27 *January 31* of each year in which the registration form is filed.

28 33195.6. (a) A director of a heritage school shall undergo at
29 least 15 hours of health and safety training. The training shall
30 include all of the following components:

31 (1) Pediatric first aid.

32 (2) Pediatric cardiopulmonary resuscitation (CPR).

33 (3) A preventive health practices course or courses that include
34 instruction in the recognition, management, and prevention of
35 infectious diseases, including immunizations, and prevention of
36 childhood injuries.

37 (4) Training in pediatric first aid and CPR pursuant to paragraphs
38 (1) and (2) shall be provided by a program approved by the
39 American Red Cross, the American Heart Association, or the

1 Emergency Medical Services Authority pursuant to Section
2 1797.191 of the Health and Safety Code.

3 (5) Training in preventive health practices pursuant to paragraph
4 (3) shall be provided by a training program approved by the
5 Emergency Medical Services Authority.

6 (6) In addition to the training programs specified in paragraphs
7 (4) and (5), training programs or courses in pediatric first aid,
8 pediatric CPR, and preventive health practices offered or approved
9 by an accredited postsecondary educational institution are
10 considered to be approved sources of training that may be used to
11 satisfy the training requirements of paragraphs (1) to (3), inclusive.

12 (7) Persons who, prior to the effective date of this section, have
13 completed a course or courses in preventive health practices as
14 described in paragraph (3), and have a certificate of completion
15 of a course or courses in preventive health practices, or certified
16 copies of transcripts that identify the number of hours and the
17 specific course or courses taken for training in preventive health
18 practices, shall be deemed to have met the training requirement
19 for preventive health practices pursuant to paragraph (3).

20 (b) All employees and volunteers of a heritage school shall be
21 in good health, as verified by a health screening, including a test
22 for tuberculosis, performed by, or under the supervision of, a
23 licensed physician and surgeon.

24 (c) Pupils attending heritage schools shall have access to
25 working sinks, toilets, and drinking water.

26 (d) No pupil attending a heritage school shall have access to
27 medication or cleaning supplies, except as otherwise provided by
28 law.

29 (e) A heritage school, as defined in Section 33195.4, shall not
30 be subject to licensure by the State Department of Social Services
31 as a child day care center pursuant to Chapter 3.4 (commencing
32 with Section 1596.70) or Chapter 3.5 (commencing with Section
33 1596.90) of Division 2 of the Health and Safety Code.

34 (f) Upon a pupil's enrollment in a heritage school, the heritage
35 school shall provide a notice to the pupil's parent or guardian
36 stating that the heritage school is exempt from child care licensure,
37 and that attendance at a heritage school does not satisfy California's
38 compulsory education requirements pursuant to Section 48200.

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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

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