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AB-949 School employees: contracts: sole proprietors: criminal background checks. (2017-2018)

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Assembly Bill No. 949

CHAPTER 84

An act to amend Section 45125.1 of the Education Code, relating to school employees.

[Approved by Governor July 21, 2017. Filed with Secretary of State July 21, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 949, Gipson. School employees: contracts: sole proprietors: criminal background checks.

Existing law requires an employee of an entity that has a contract with a school district to provide janitorial, administrative, grounds and landscape maintenance, transportation, and food services for the school, if that employee may have contact with pupils, to submit or have submitted his or her fingerprints to the Department of Justice, which is required to ascertain whether that individual has been arrested or convicted of a crime and to notify the employer designated by the individual of that fact. Existing law also authorizes a school district, on a case-by-case basis as specified, to require an entity providing schoolsite services other than those listed above to submit or have submitted its employee's fingerprints. The Department of Justice is authorized to forward a copy of the fingerprints to the Federal Bureau of Investigation to verify the record of previous arrests or convictions of the applicant. The Department of Justice is required to review the criminal record summary it obtains from the Federal Bureau of Investigation and notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony and is required to provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes.

This bill would provide that an individual operating as a sole proprietor of an entity that has a contract with a school district, as specified, is considered to be an employee of the entity for purposes of the criminal background check requirements described above. The bill would also require a school district to prepare and submit that employee's fingerprints to the Department of Justice. Because this bill would create a new duty for school districts, it would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 45125.1 of the Education Code is amended to read:

45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, 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.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil 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 school district when the school district 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 school district 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 school district has made this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) A school district 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 45125.2 and the entity's employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school district 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 school district makes this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school district requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision (e).

(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) or (d) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department of Justice. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) or (d) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the Department of Justice shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

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

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

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

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

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

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

(h) An entity having a contract as specified in subdivision (a) on the effective date of this section and an entity required to comply with this section pursuant to subdivision (d) by a school district with which it has a contract on the effective date of the amendments made to this section during the 1997–98 Regular Session shall complete the requirements of this section within 90 days of that date.

(i) For purposes of this section, a charter school shall be deemed to be a school district.

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

(k) (1) For purposes of this section, an individual operating as a sole proprietor of an entity that has a contract with a school district, as specified in subdivision (a), or an entity required to comply with this section pursuant to subdivision (d), shall be considered an employee of that entity.

(2) To protect the safety of any pupil that may come into contact with an employee of an entity that is a sole proprietorship and has a contract as specified in subdivision (a), or is required to comply with this section pursuant to subdivision (d), a school district shall prepare and submit the employee's fingerprints to the Department of Justice, as described in subdivision (a).

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.