

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2036

**Introduced by Assembly Member Lopez
(Coauthor: Assembly Member Cristina Garcia)**

February 16, 2016

An act to add Chapter 2.3 (commencing with Section 18890) to Division 8 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2036, as amended, Lopez. Online child care job posting services: background check service providers: enforcement.

Existing law prohibits a person, firm, partnership, association, or corporation from operating, establishing, managing, conducting, or maintaining a child day care facility without a current valid license.

Existing law requires the Community Care Licensing Division of the State Department of Social Services to regulate child care licensees. Existing law requires the department to establish a registry of child care providers who are not required to be licensed, but who have undergone criminal background checks. These license-exempt providers are known as registered trustline child care providers. Existing law also requires a licensed child day care facility to make available to the public licensing

reports and other licensing documents that pertain to a facility visit or a substantiated complaint investigation, among other licensing issues.

Existing law establishes in the State Treasury the Child Health and Safety Fund. Existing law authorizes the department to allocate these funds, upon appropriation by the Legislature, for purposes that include, among other things, technical assistance, orientation, training, and education of child day care facility providers.

This bill would require an online child care job posting service providing online information about nonlicensed potential child care providers to include a specified statement regarding the trustline registry on its Internet Web site in California. The bill would also require an online child care job posting service providing online information about licensed potential child care providers to include a ~~specified~~ statement regarding a parent's right to ~~specified~~ complaint information on its Internet Web ~~site~~. *site in California*. If an online child care job posting service provides access to a background check, the bill would require the service to include, on its Internet Web ~~site~~, *site in California*, a written description of the background check provided by the background check service provider. The bill would make a background check service provider responsible for providing the online child care job posting service with certain information. ~~The bill would make the Attorney General responsible for the enforcement of these provisions, as specified. The bill would impose a fine of \$1,000 per violation for a 2nd or subsequent violation of these requirements, after written notice and an opportunity for a hearing. The bill would require fines to be deposited in the Child Health and Safety Fund and would authorize these fines to be available, upon appropriation, for, among other things, education and training of child day care facility providers. The bill would authorize an online child care job posting service or background check service provider to be liable for a civil penalty for failing to comply with these requirements and would authorize the Attorney General, a city attorney, or a county counsel to bring such an action if certain requirements are met.~~ The bill would also authorize an individual damaged by willful violation of these provisions to bring a civil cause of action for damages, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 2.3 (commencing with Section 18890)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 2.3. ONLINE CHILD CARE JOB POSTING SERVICES
6

7 18890. For the purposes of this chapter, the following
8 definitions apply:

9 (a) "Online child care job posting service" means any person
10 or business that provides or offers to provide child care providers.

11 (b) "Background check service provider" means any person or
12 business that provides or offers to provide background check
13 services.

14 18890.2. (a) (1) An online child care job posting service that
15 provides online information about potential child care providers
16 who are not required to be licensed in California shall include the
17 following ~~statement~~, *statement on its Internet Web site in*
18 *California*, which ~~must~~ *shall* be accessible no more than one click
19 away from the providers' profile:

20
21 "Trustline is California's official background check for
22 license-exempt child care providers (i.e. babysitters and nannies)
23 and the only authorized screening program in California with
24 access to fingerprint records at the California Department of Justice
25 and the Federal Bureau of Investigation and access to the California
26 Child Abuse Central Index. The Trustline registry toll-free
27 telephone number is 1-800-822-8490."
28

29 (2) An online child care job posting service that provides online
30 information in California about potential child care providers who
31 are required to be licensed in California shall include the following
32 statement on its Internet Web site in California, which shall be
33 accessible no more than one click away from the providers' profile:
34

35 "Pursuant to Section 1596.859 of the Health and Safety Code,
36 parents have the right to receive information regarding any
37 substantiated or inconclusive complaint about licensed child care
38 providers. That information is public and can be acquired by

1 visiting the California Department of Social Services’ Internet
 2 Web site at “www.cclid.ca.gov.””

3
 4 (b) If the online child care job-listing *posting* service provides
 5 access to a background check for the child care providers listed
 6 on its Internet Web-site, *site in California*, it shall provide, by
 7 means of a one-click link on each California child care provider
 8 profile for which background checks are offered, the written
 9 description of the background check provided to it, as described
 10 in subdivision (c).

11 (c) Background check service providers that provide background
 12 checks for online child care job posting services in California shall
 13 provide to the online child care job posting services a written
 14 description of the background checks conducted that includes at
 15 a minimum:

16 (1) A detailed description of what is included in the background
 17 check.

18 (2) A chart that lists each county in California and the databases
 19 that are checked for each county, including the following
 20 information for each database, as applicable:

21 (A) The source of the data, the name of the database used, and
 22 a brief description of the data included in the database.

23 (B) The date range of the oldest data and the most recent data
 24 included.

25 (C) How often the information is updated.

26 (D) How the databases are checked (by name, social security
 27 number, fingerprints, etc.).

28 (E) A list of the counties for which no data is available.

29 ~~18890.4. (a) Upon a complaint received by the Attorney~~
 30 ~~General, the Attorney General shall review the online child care~~
 31 ~~job posting service or background check service provider named~~
 32 ~~in the complaint. If the Attorney General determines that an online~~
 33 ~~child care job posting service or background check service provider~~
 34 ~~is in violation of this chapter or any rules or regulations adopted~~
 35 ~~under this chapter pursuant to the Administrative Procedure Act~~
 36 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
 37 ~~Division 3 of Title 2 of the Government Code), a notice of violation~~
 38 ~~shall be served upon the online child care job posting service or~~
 39 ~~background check service provider. Each notice of violation shall~~
 40 ~~be in writing and shall specify the nature of the violation and the~~

1 statute, rule, or regulation alleged to have been violated, describe
2 the opportunity for a fair hearing pursuant to regulations adopted
3 by the Attorney General consistent with the requirements described
4 in subdivision (b), and specify the potential fine that may be
5 imposed for a second or third violation pursuant to subdivision
6 (e).

7 (b) In the first case of alleged noncompliance, the Attorney
8 General shall provide written notice of the violation to the online
9 child care job posting service or background check service
10 provider. The online child care job posting service or background
11 check service provider shall have 30 calendar days to correct the
12 violation or request a hearing on the matter. If the online child care
13 job posting service or background check service provider has
14 evidence that the Internet Web site in question is in compliance,
15 the online child care job posting service or background check
16 service provider shall submit proof of that compliance directly to
17 the Attorney General. Evidence of compliance may be in the form
18 of printouts, Internet Web site links, screenshots, or other means
19 determined to be acceptable to the Attorney General. Consistent
20 with due process, the Attorney General shall adopt regulations to
21 govern the notice, hearing, and the submission of evidence for
22 purposes of this section.

23 (c) For second and subsequent violations, after reasonable
24 written notice and time to correct the violation, and the opportunity
25 for a fair hearing on the matter, pursuant to regulations adopted
26 by the Attorney General, if the online child care job posting service
27 or background check service provider is found to be in violation
28 of this chapter, the Attorney General shall impose a fine of one
29 thousand dollars (\$1,000) per violation.

30 (d) Any fines imposed and collected pursuant to this section
31 shall be deposited into the Child Health and Safety Fund created
32 in Section 18285 of the Welfare and Institutions Code. These fines
33 and penalties shall be available, upon appropriation by the
34 Legislature, for the purposes described in subdivisions (d), (e),
35 and (f) of Section 18285 of the Welfare and Institutions Code.

36 18890.4. (a) *An online child care job posting service or*
37 *background check service provider that fails to comply with the*
38 *requirements of this chapter may be liable for a civil penalty of*
39 *one thousand dollars (\$1,000) for each offense. The Attorney*
40 *General, a city attorney, or a county counsel may bring an action*

1 to impose a civil penalty pursuant to this section after doing both
2 of the following:

3 (1) Providing the online job posting service or background
4 check service provider with reasonable notice of noncompliance.
5 The notice shall inform the online job posting service or
6 background check service provider that it will be subject to a civil
7 penalty if it does not correct the violation within 30 days from the
8 date the notice is sent to the online job posting service or
9 background check service provider.

10 (2) Verifying that the violation was not corrected within the
11 30-day period described in paragraph (1).

12 (b) The civil penalty shall be deposited into the General Fund
13 if the action is brought by the Attorney General. If the action is
14 brought by a city attorney, the civil penalty shall be paid to the
15 treasurer of the city in which the judgment is entered. If the action
16 is brought by a county counsel, the civil penalty shall be paid to
17 the treasurer of the county in which the judgment is entered.

18 18890.6. (a) In addition to the authority granted to the Attorney
19 ~~General~~ General, a city attorney, or a county counsel in Section
20 18890.4, an individual damaged by a willful violation of the
21 provisions of this chapter may bring a civil cause of action against
22 an online child care job posting service or background check
23 service provider for damages, including, but not limited to, general
24 damages, special damages, and punitive damages.

25 (b) The court in an action pursuant to this section may award
26 equitable relief, including, but not limited to, an injunction, costs,
27 and any other relief the court deems proper.

28 (c) The rights and remedies provided in this chapter are in
29 addition to any other rights and remedies provided by law.

O