

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1035

Online Dating Services

SPONSOR(S): Ambler

TIED BILLS: none

IDEN./SIM. BILLS: SB 1768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	_____	Bond	Kramer
2) Justice Appropriations Committee	_____	_____	_____
3) Justice Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill requires online dating services to post certain notices on their websites. Which notice a website is required to post depends on whether the website operator conducts criminal history background checks on its members. This bill provides civil remedies for persons who access an online dating service that is not in compliance, and provides civil and criminal penalties against the owners of an online dating service that does not comply with this bill's requirements.

There are a number of constitutional concerns regarding this bill.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates government regulation over a currently unregulated business.

Safeguard individual liberty -- This bill creates government regulation over a currently unregulated business.

Promote personal responsibility -- This bill may increase personal responsibility for past unlawful behavior. This bill creates new criminal offenses.

B. EFFECT OF PROPOSED CHANGES:

Online dating services provide an opportunity for persons using the internet to advertise themselves as available for dating, and to search for others similarly available. There are thousands of online dating services, including large generalized services and smaller specialized services. The two largest services claim to have approximately 13 million subscribers each. Smaller specialized versions often cater to particular ethnic and religious groups, or offer specialized services. Online dating services are currently unregulated by the state.

Effect of Bill

This bill requires an online dating service provider that provides services to Florida residents to either conduct a criminal background check for each member using the online dating service before allowing that person to communicate with another person through the service, or disclose to each Florida resident accessing the website that the provider has not conducted such checks.

This bill defines the following terms:

- "Communicate" or "communicating" means free-form text or real-time voice communication.
- "Criminal background check" means a search for a person's felony and sexual offense convictions by one of the following means:
 - Through the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification used by the Federal Bureau of Investigation.¹
 - Through the criminal history record systems maintained by each of the 50 states and the District of Columbia.²
 - Through a private vendor whose database contains more than 170,000,000 criminal records, has substantially national coverage, is updated at least once every 30 days, and is operated and maintained in the United States.³

¹ The Federal Bureau of Investigation does not allow private entities to access this database. This option is not feasible under current law.

² Only 38 states allow public access to their criminal history background system. This option is not feasible under current law.

³ Proponents claim that there is only one known vendor that qualifies under this definition, although there may be more than one vendor who qualifies.

- Through a database search conducted by the Florida Department of Law Enforcement, together with one of the searches provided for above.
- "Member" means a person who is either a member or who submits a profile or other information for the purpose of dating, matrimonial, or social referral services to an online dating service provider.
- "Online dating service provider" or "provider" means a person or organization engaged, directly or indirectly, in the business of offering, promoting, or providing access to dating, relationship, compatibility, matrimonial, or social referral services primarily through the Internet.

Required Disclosures

If the website provider is not conducting background checks, the disclosure that must be given to every Florida resident must be on the provider's homepage, all other pages where visitors or members first enter the provider's website, on a profile page, and on all e-mails sent through the service. The disclosure must appear in the top one-third of the webpage, and must read:

WARNING: [NAME OF PROVIDER] HAS NOT CONDUCTED FELONY OR SEXUAL OFFENSE BACKGROUND CHECKS ON ITS MEMBERS.

If the provider conducts a criminal background check of all 50 states, the website must provide a link on its homepage to a disclosure page where, on the top one-third of the webpage, the following statement appears:

WARNING: BASED SOLELY ON THE NAME PROVIDED BY THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL BACKGROUND CHECK THROUGH THE CRIMINAL HISTORY RECORD SYSTEMS MAINTAINED BY EACH OF THE 50 STATES AND THE DISTRICT OF COLUMBIA.

If the provider conducts a criminal background check through a private vendor, the website must provide a link on its homepage to a disclosure page where, on the top one-third of the webpage, the following statement appears:

WARNING: BASED SOLELY ON THE NAME PROVIDED BY THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL DATABASE SEARCH THROUGH A PRIVATE VENDOR WHOSE RECORDS MAY NOT INCLUDE ALL CONVICTIONS FROM ALL JURISDICTIONS. CONTACT [NAME OF PROVIDER] FOR INFORMATION REGARDING WHICH JURISDICTIONS ARE INCLUDED.

If the provider conducts a criminal background check of through the records of the Florida Department of Law Enforcement in addition to a search of the 50 states, the website must provide a link on its homepage to a disclosure page where, on the top one-third of the webpage, the following statement appears:

WARNING: BASED SOLELY ON THE NAME PROVIDED BY THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL DATABASE SEARCH THROUGH FLORIDA RECORDS MAINTAINED BY THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT. ADDITIONALLY, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL BACKGROUND CHECK THROUGH THE CRIMINAL HISTORY RECORD SYSTEMS MAINTAINED BY EACH OF THE 50 STATES AND THE DISTRICT OF COLUMBIA.

If the provider conducts a criminal background check of through the records of the Florida Department of Law Enforcement in addition to the search through the private vendor, the website must provide a link on its homepage to a disclosure page where, on the top one-third of the webpage, the following statement appears:

WARNING: BASED SOLELY ON THE NAME PROVIDED BY THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL DATABASE SEARCH THROUGH FLORIDA RECORDS MAINTAINED BY THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT. ADDITIONALLY, [NAME OF PROVIDER] HAS CONDUCTED A CRIMINAL BACKGROUND CHECK THROUGH A PRIVATE VENDOR WHOSE RECORDS MAY NOT INCLUDE ALL CONVICTIONS FROM ALL JURISDICTIONS. CONTACT [NAME OF PROVIDER] FOR INFORMATION REGARDING WHICH JURISDICTIONS ARE INCLUDED

An online dating service provider that conducts criminal background checks must update each criminal background check at least once every 90 days.

Required Provider Policies

This bill requires every online dating service provider to develop policies providing how the provider will deal with information obtained through a criminal background check or database search. The policy must contain:

- An acknowledgement that criminal background checks are not a perfect safety solution
- An acknowledgement that criminals may circumvent even the most sophisticated search technology.
- An acknowledgement that only felony convictions, not all arrests, are covered by the criminal background checks, unless the provider uses the Federal Bureau of Investigation database.
- An acknowledgement that first-time offenders can commit crimes and will not have a prior criminal conviction.
- A description of additional safety measures reasonably designed to increase awareness of safer dating practices.
- A statement clearly describing whether the provider excludes from its website all persons identified as having a criminal conviction.

A copy of the policy must be made available to each person who applies for membership with the provider. The provider's homepage must provide a link so that persons may review the policy. If a provider chooses not to exclude from its website all persons identified as having a criminal conviction, then the provider shall prominently disclose on the profile of each such person when shown or sent to a member residing in this state the following warning:

WARNING: THIS PERSON HAS BEEN IDENTIFIED AS HAVING A PRIOR CRIMINAL CONVICTION.

Civil Remedies

This bill creates a civil cause of action for any damages resulting from a violation of the requirements of this bill. A person who suffers damages as a result of a violation of this bill may recover actual costs, actual and reasonable attorney fees, and the greater of actual damages or \$250 for each day for which that the provider does not comply with the requirements created by this bill.

Under current tort law, in general one is not liable for the criminal acts of a third party. *Boynton v. Burglass*, 590 So.2d 436 (Fla. 3rd DCA 1991)(finding a psychiatrist not liable to the family of a person murdered by a patient of the psychiatrist). This general rule would likely shield online dating providers who merely provide advertising and message forwarding from civil liability should one member of the service victimize another member. The civil cause of action created by this bill appears to provide that, if a member is injured by the criminal act of a person that they met through an online dating service provider, and the online dating service provider was not complying with this bill at the time, the provider may be liable for the injuries sustained by the member.

This bill provides that, if the online dating service provider fails to meet the disclosure requirements of this act for any of its members or visitors, such failure constitutes a separate violation for each member or visitor for whom the required disclosure was not provided.

This bill also provides that the Attorney General may bring a civil action against a provider violating the requirements of this bill.

Criminal Penalties

This bill provides that a person who violates the requirements of this bill commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A special fine of \$250 per day is authorized. This bill also provides that it is separate criminal violation for each person who accesses the website and is not provided the required disclosure.

A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000, unless a higher fine is authorized by statute.

Exception to Bill

This bill provides: "A provider does not violate this act as a result of being an intermediary between the sender and recipient in the transmission of a message that violates this act."

Effective Date

This bill has an effective date of upon becoming a law.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law creating definitions applicable to regulations of online dating providers.

Section 2 creates an unnumbered section of law requiring certain disclosures by online dating providers.

Section 3 creates an unnumbered section of law requiring online dating providers to adopt and publish certain policies.

Section 4 creates an unnumbered section of law creating a civil cause of action against an online dating provider.

Section 5 creates an unnumbered section of law creating criminal penalties assessable against an online dating provider.

Section 6 creates an unnumbered section of law providing an exception.

Section 7 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears as if it will have a significant fiscal impact on thousands of website owners, who will be required to reprogram their websites in order to comply with this bill's requirements, or cease offering services to Florida residents. Website operators who elect to change their operation because of this bill may also incur the cost of ordering and analyzing criminal history background checks.

This bill may increase the cost to Florida residents who utilize online dating services should more providers start requiring criminal history background checks.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

There have been many attempts by federal and state governments to regulate the internet. Most have failed on constitutional grounds. Constitutional concerns may be raised by the bill, including concerns related to the Commerce Clause, the First Amendment, and Due Process. The First Amendment issue applies regardless of where the website operator resides. The Commerce Clause and Due Process issues apply only to websites operated outside of the state. Staff is unaware of any major online dating service provider headquartered in Florida.⁴

Commerce Clause

The United States Supreme Court describes the Commerce Clause as follows:

⁴ Two of the three largest online dating services are located in California, the third is located in Texas.

The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.

Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (internal citations omitted).

The Commerce Clause allows Congress to regulate commerce between the states. Congress has stated that "it is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. 230(b). It could be argued that this clause states a congressional intent that the states may not regulate the internet.⁵

The dormant commerce clause can be thought of as a subset of the Commerce Clause. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se," *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001), while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir.2003) (citations omitted).

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989). Because the internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate internet activities without "project[ing] its legislation into other States." *Id.* at 334. "We think it likely that the internet will soon be seen as falling within the class of subjects that are protected from State regulation because they 'imperatively demand[] a single uniform rule.'" *American Booksellers Foundation v. Dean*, 342 F.3d 96, 104 (2d Cir. 2003). See also, *ACLU v. Johnson*, 194 F.3d 1149, 1162 (10th Cir. 1999); and *American Libraries Association v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997)(all three cases striking a state law regulating internet commerce as a violation of the dormant commerce clause).

In *Johnson*, the court discussed three ways a statute can violate the Commerce Clause. First, a statute may violate the Commerce Clause if it directly regulates conduct outside the state's borders. *Johnson* at 1160-1161. Second, a statute may violate the Commerce Clause if the burdens on interstate commerce exceed the local benefit of the statute. *Id.* at 1161-1162. See also, *Quill* at 312 (the Commerce Clause "bars state regulations that unduly burden interstate commerce."). Finally,

⁵ The Commerce Clause also allows Congress to specifically leave regulation of an area to the states. The most notable example of this is regulation of insurance.

statutes that subject individuals to inconsistent regulations where the subject of the regulation has been recognized as requiring national regulation have been held to run afoul of the Commerce Clause. *Johnson* at 1162.

The *Johnson* court acknowledged the state's compelling interest in protecting minors from harmful, sexually oriented materials. *Id.* at 1161-1162. However, the court held that the statute excessively burdened interstate commerce compared to the local benefits that the statute actually conferred. The court expressed doubt over the state's ability to exercise criminal jurisdiction over out-of-state offenders. The court also stated that as between in-state victims and in-state offenders, the benefit conferred by the statute is "extremely small." Finally, the court held that the statute violated the Commerce Clause because it subjected the use of the Internet to inconsistent regulation. *Id.* at 1162.

The *Johnson* Court relied heavily on the Commerce Clause analysis contained in *American Libraries Ass'n v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997). In *Pataki*, the court enjoined New York from enforcing a statute which prevented communications with minors over the Internet "which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors." *Pataki*, 969 F.Supp. at 163. The court found that the statute violated the Commerce Clause for three reasons:

First, the practical impact of the New York Act results in the extraterritorial application of New York law to transactions involving citizens of other states and is therefore per se violative of the Commerce Clause. Second, the benefits derived from the Act are inconsequential in relation to the severe burdens it imposes on interstate commerce. Finally, the unique nature of cyberspace necessitates uniform national treatment and bars the states from enacting inconsistent regulatory schemes.

Pataki, 969 F.Supp. at 183-184.

Taken together, these cases could be viewed to stand for the following propositions:

1. All legislation that effects the use of the Internet is a direct regulation on interstate commerce because there is no way to effectively limit Internet communications to within state borders.
2. Even where the state has a compelling interest, the local benefits do not outweigh the international and interstate burdens imposed by any regulation that effects the use of Internet.
3. The use of the Internet is recognized as a subject requiring national regulation.

The bill provides that it only applies to web pages viewed by persons in Florida. However, "it remains difficult for 'publishers' who post information on the internet to limit website access to . . . viewers from certain states." *American Booksellers v. Dean*, 342 F.3d 96, 99 (2nd Cir. 2003). Additionally, the primary means that online dating providers claim to know the state that a person is in is by self-reporting of the members. An online dating provider cannot avoid the regulation by trying to prevent dissemination of its signal in the state. Thus, it appears that online dating providers throughout the nation will be required to comply with the regulations created by this bill and applicable only to this state.

Neither the United States Supreme Court nor the 11th Circuit have addressed the impact of the Commerce Clause on state regulation of the Internet. No federal case was found in any of the other circuits other than cases striking a state law that purported to regulate the internet.⁶ Two Florida

⁶ Staff did not review any of the "wine cases" in this regard. The wine cases discuss whether the commerce clause allows a state to prohibit wine shipments from out of state. The constitutional issue in those cases is which part of the Constitution applies: the Commerce Clause, which clearly prohibits such laws, or the 21st Amendment (repealing
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district court cases uphold a criminal conviction based on a law banning certain internet activities, despite Commerce Clause arguments made by the defendants. Both, however, relate to luring or enticing a child for sex through the use of the internet. *Cachett v. State*, 873 So.2d 430 (Fla. 1st DCA 2004); *Simmons v. State*, 886 So.2d 399 (Fla. 1st DCA 2004) (one defendant was a state resident, the other traveled to Florida believing he was meeting a minor for sex).

First Amendment

This bill requires that an internet provider give one or more specific messages to all persons who access the website, and provides civil and criminal penalties for the failure to provide that message.

The First Amendment right to free speech applies to commercial speech. *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). In later decisions, the Supreme Court gradually articulated a test based on the "commonsense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. *Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.*, 447 U.S. 557 (1980). *Central Hudson* identified several factors that courts should consider in determining whether a regulation of commercial speech survives First Amendment scrutiny:

For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

447 U.S., at 566. In *Edenfeld v. Fane*, 507 U.S. 761 (1993), the Supreme Court explained that the Government carries the burden of showing that a challenged regulation directly advances the governmental interest asserted in a direct and material way. That burden "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Id.*, at 770-771. The Court cautions that this requirement is critical; otherwise, "a State could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression." *Id.*, at 771. *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995)(prohibiting certain government regulation of beer labeling despite a government argument that such restrictions were necessary for health, safety and welfare).

A state cannot compel a person to distribute a particular statement that the person disagrees with. Florida law used to require that a newspaper that published an editorial critical of a candidate for political office was required to provide the politician with space to make a reply. This right of reply law was found unconstitutional in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). In *Pacific Gas and Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986), the United States Supreme Court ruled that California cannot compel a utility company to give its excess space in billing envelopes to other entities. "Compelled access like that ordered in this case [by the utilities commission] both penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set." *Id.* at 9.⁷ It is possible that a court may find that the statements required by this bill rise to the level of compelled speech.

prohibition), which clearly provides that the states may regulate the sale and consumption of alcohol within their borders. The issues is currently pending decision in the Supreme Court.

⁷ This bill assumes that all operators of an online dating service would want to encourage their members to conduct a background check before meeting a prospective date. An operator that wanted to take a contrary view, perhaps to say that such a search is not warranted, would have difficulty taking that position because this bill requires disclosures that contradict this view.

Jurisdiction Over Non-Residents

The due process clause of the state and federal constitutions require the courts to provide due process to all litigants in any court case, civil or criminal. One part of the concept of due process is the requirement that a court not act unless the court has legal jurisdiction over a party to the litigation. It is a violation of due process for a court to enter a judgment affecting a person unless the court has jurisdiction over that person.

Whether the State of Florida can exercise civil or criminal jurisdiction over a website operator in a foreign country is a matter of treaty. While it is possible that the State, or a citizen of the state, may be able to prosecute a civil cause of action against a website operator located in a foreign country who is violating the provisions of this bill, staff is unaware of any treaty giving a state the right to extradite a foreign citizen to the United States in order to prosecute that person for a misdemeanor.

It is possible that the state can impose civil court jurisdiction over a citizen of another state who violates the provisions of this bill. It appears that there may be jurisdiction to file such a civil suit. The leading case on civil jurisdiction over internet commerce is *Zippo Mfg. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa. 1997). Zippo makes a distinction between a passive website, one that just provides information, versus an active website that actively takes orders and allows the operator to enter into contracts with citizens of the state. The Zippo rule is that the operator of a passive website is not subject to personal jurisdiction in any state where someone may happen to view the website. On the other hand, the operator of an active website that accepts sales orders from the resident of a state should anticipate having to defend a civil lawsuit in that state.

As to criminal law jurisdiction, there are significant hurdles against enforcing criminal laws even in the United States. For Florida to enforce its criminal law against an offender in another state, it must extradite him or her. But extradition from one state to another is limited to individuals who have fled the state that is seeking extradition. A website operator who has never had a presence in Florida cannot be extradited.⁸ It appears that the criminal sanctions of this bill may only be imposed against Florida residents.

The due process issues related to jurisdiction over a potential defendant make it difficult to enforce this bill against non-residents citizens of the United States, and unlikely that it will be able to be enforced against citizens of foreign countries. Accordingly, it is more likely that this bill will result in inconsistent regulation between the states, and thus it is more likely to fail a dormant commerce clause analysis.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill may require substantial modification to the programming of thousands of websites, yet has an effective date of upon becoming law. An effective date of a date certain may perhaps be advisable in order that regulated persons have time to prepare to comply with the law.

This analysis has not determined whether this bill conflicts with the Fair Credit Reporting Act, the Driver's Privacy Protection Act, or the Gramm-Leach-Bliley Act.

⁸ Goldsmith, *The Internet and the Dormant Commerce Clause*, University of Chicago John M. Olin Law & Economics Working Paper No. 105 (2nd Series), at page 25. See also, *Innes v. Tobin*, 240 U.S. 127, 131 (1916).

The following is a brief summary of the comments of the Florida Department of Law Enforcement regarding the bill:

FDLE has a public safety concern related to bills that either provide for or mandate “criminal history” background checks and allow such checks to be conducted by private vendors. When a criminal history check is required by statute, it should provide the most comprehensive, current and accurate check available in the state. Private vendor “background checks” by companies that house records in a data warehouse rely on buying publicly available data. Rapsheets.com owned by Choicepoint is one such company advertising on their website that they provide Florida criminal history data when in fact, their own site indicates that their checks are only of 15 counties.⁹ People who petition and receive a court order sealing or expunging their record are not removed from the databases of private record check companies. The continued use of these records presents a serious breach of the personal privacy rights of these people.

Even if FDLE is used for background checks for this bill, a public safety concern remains in that there is no way of confirming that the person who has purchased the service and is subject to the background check is in fact the same person as the information provided via the internet. Reference to the FDLE criminal history database is significantly more accurate because it is fingerprint based, comprehensive, accurate, and current.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

⁹ On March 28, 2005, staff reviewed Rapsheets.com. They claim to have records from 15 Florida counties, plus Department of Corrections records from 1974 to August 2004, and Florida registered sex offenders.