

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to online dating services; creating ss.
7 501.165, 501.166, 501.167, 501.168, 501.169, and 501.171,
8 F.S.; providing a short title; providing legislative
9 intent; defining terms; requiring certain disclosures by
10 online dating services; requiring certain online dating
11 services to develop and publish policies; providing civil
12 penalties; providing exclusions; providing a severability
13 clause; providing a directive to the Division of Statutory
14 Revision; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 501.165, Florida Statutes, is created
19 to read:

20 501.165 Short title; legislative intent.--Sections
21 501.165-501.171 may be cited as the "Florida Internet Dating
22 Disclosure and Safety Awareness Act." The Legislature finds that
23 a disclosure in the form of a notice on the websites of online

HB 1035

2005
CS

24 dating services informing the residents of Florida that a
 25 criminal background check may or may not have been conducted on
 26 its members fulfills a compelling state interest to increase
 27 public awareness of the possible risks to personal safety
 28 involved with online dating.

29 Section 2. Section 501.166, Florida Statutes, is created
 30 to read:

31 501.166 Definitions.--As used in ss. 501.165-501.171:

32 (1) "Communicate," "communicating," or "communication"
 33 means free-form text authored by a member or real-time voice
 34 communication through an online dating service provider.

35 (2) "Criminal background check" means a search for a
 36 person's felony and sexual offense convictions initiated by an
 37 online dating service provider conducted by one of the following
 38 means:

39 (a) By searching available and regularly updated
 40 government public record databases for felony and sexual offense
 41 convictions so long as such databases, in the aggregate, provide
 42 substantially national coverage; or

43 (b) By searching a database maintained by a private vendor
 44 that is updated at least every 30 days and that contains at
 45 least the same or substantially similar criminal history records
 46 as would be otherwise accessible through searches of all the
 47 available government databases specified in paragraph (a).

48 (3) "Member" means a person who submits to an online
 49 dating service provider the information required by the provider
 50 to access the provider's service for the purpose of engaging in

51 dating, participating in compatibility evaluations with other
 52 persons, or obtaining matrimonial matching services.

53 (4) "Online dating service provider" or "provider" means a
 54 person engaged in the business of offering or providing to its
 55 members for a fee access to dating, compatibility evaluations
 56 between persons, or matrimonial matching services through the
 57 Internet.

58 (5) "Sexual offense conviction" means a conviction for an
 59 offense that would qualify the offender for registration as a
 60 sexual offender pursuant to s. 943.0435, or under another
 61 state's equivalent statute.

62 Section 3. Section 501.167, Florida Statutes, is created
 63 to read:

64 501.167 Criminal background check; required
 65 disclosures.--An online dating service provider offering
 66 services to residents of this state shall disclose clearly and
 67 conspicuously to any member who provides a Florida billing
 68 address or Florida zip code when registering with the provider,
 69 that the online dating provider either initiates a background
 70 search of felony and sexual offense convictions on each member
 71 prior to permitting any member to communicate with a member from
 72 Florida or that the online dating service provider does not
 73 initiate such a background search.

74 (1) If the online dating service provider does not
 75 initiate background searches, the provider must make a
 76 disclosure that shall read:

77
 78 NO BACKGROUND SEARCH OF FELONY OR SEXUAL OFFENSE

79 | CONVICTIONS IS DONE ON MEMBERS WHO USE THIS SERVICE.
 80 | PLEASE TAKE APPROPRIATE SAFETY MEASURES TO INCREASE
 81 | AWARENESS OF POSSIBLE RISKS ASSOCIATED WITH DATING.

83 | (2) If the online dating service provider does
 84 | initiate criminal background searches, the disclosure shall
 85 | read:

87 | [NAME OF PROVIDER] . . . INITIATES A LIMITED
 88 | BACKGROUND SEARCH FOR FELONY AND SEXUAL OFFENSE
 89 | CONVICTIONS BEFORE A MEMBER IS PERMITTED TO
 90 | COMMUNICATE WITH ANY MEMBER FROM FLORIDA.

92 | (3) The disclosure required by either subsection (1)
 93 | or subsection (2) shall appear on a webpage required to be
 94 | viewed by a person applying to be a member who has
 95 | indicated a Florida billing address or Florida zip code in
 96 | the registration process and such disclosure shall be no
 97 | more than 3 inches from the top of the webpage, in bold
 98 | capital letters, in at least 12-point type, in a color that
 99 | contrasts from the background. The provider shall require
 100 | the Florida applicant to make an electronic acknowledgement
 101 | that the applicant has been provided the disclosure before
 102 | the applicant is accepted as a member. The disclosure
 103 | required by either subsection (1) or subsection (2) shall
 104 | additionally appear on any page that appears to a member
 105 | from Florida each time that member initiates or receives a
 106 | communication with another member through the provider's

HB 1035

2005
CS

107 service.

108 (4) If the online dating service provider does conduct
109 criminal background checks, and the provider has a policy
110 allowing a member who has been identified as having a felony or
111 sexual offense conviction to have access to its service to
112 communicate with any member from Florida, the provider shall
113 clearly and conspicuously disclose on any communication to a
114 member from Florida from the member who has been identified as
115 having a felony or sexual offense conviction, and on any webpage
116 that is seen by or transmitted to a member from Florida that
117 contains the personal information for the member who has been
118 identified as having a felony or sexual offense conviction and
119 that is seen by or communicated to a member from Florida, a
120 disclosure that shall read:

121
122 THIS PERSON HAS BEEN IDENTIFIED AS HAVING A FELONY OR
123 SEXUAL OFFENSE CONVICTION.

124
125 Section 4. Section 501.168, Florida Statutes, is created
126 to read:

127 501.168 Provider policies; disclosure.--An online dating
128 service provider that does conduct criminal background checks
129 shall establish an electronic link from any webpage containing
130 the disclosure required by s. 501.167(2) to a webpage that
131 provides a safety awareness notification. The webpage containing
132 the safety awareness notification shall be configured so that it
133 shall automatically appear each time a member makes the
134 electronic acknowledgement of the disclosure under s.

135 501.167(2). The member shall be required to make an electronic
 136 acknowledgement of the safety awareness notification each time
 137 it appears and such acknowledgement shall appear at the bottom
 138 of the webpage containing such notification. At a minimum, the
 139 safety awareness notification shall provide for the following:

140 (1) A statement that reads:

141
 142 PERSONAL SAFETY AWARENESS NOTICE

143
 144 CAUTION: Before allowing Florida members to
 145 communicate with other members. . . [Name of provider]
 146 . . . initiates a background search of available
 147 public records to determine if any felony or sexual
 148 offense convictions are identified based on the name
 149 and other information we require of members to create
 150 a profile. The purpose is to provide a preliminary
 151 background screening for protection of our members
 152 before they are permitted to begin communicating
 153 directly with each other.

154
 155 The background searches for felony and sexual offense
 156 convictions are not foolproof and are not intended to
 157 give members a false sense of security. Background
 158 checks are not a perfect safety solution, and
 159 criminals may circumvent even the most sophisticated
 160 search technology.

161
 162 Not all criminal records are public in all states and

HB 1035

2005
CS

163 not all databases are up-to-date. Only publicly
164 available felony and sexual offense convictions are
165 included in the search, but searches do not cover
166 other convictions or arrests or any convictions from
167 foreign countries.

168
169 Anyone who is able to commit identity theft can also
170 falsify a dating profile.

171
172 There is no substitute for using good common sense and
173 acting with caution when communicating with any
174 stranger who wants to meet you.

175
176 (2) Additional information that includes a list and
177 description of safety measures reasonably designed to increase
178 awareness of safer dating practices as determined by the
179 provider.

180 (3) A statement as to whether the provider permits a
181 member who has been identified as having a felony or sexual
182 offense conviction to communicate with any other member.

183 Section 5. Section 501.169, Florida Statutes, is created
184 to read:

185 501.169 Civil penalties.--An online dating service
186 provider that registers members from Florida must comply with
187 the provisions of ss. 501.165-501.171.

188 (1) The Legislature finds that the act of transmitting
189 files over the Internet addressed to residents of the state, and
190 the act of accepting membership fees from residents of the

HB 1035

2005
CS

191 state, means that an online dating service is operating,
 192 conducting, engaging in, and otherwise carrying on a business in
 193 the state subjecting such online dating service providers to
 194 regulation by the state and to the jurisdiction of the state's
 195 courts.

196 (2) Failure to comply with the disclosure requirements of
 197 ss. 501.165-501.171 shall constitute a deceptive and unfair
 198 trade practice under part II. Each failure to provide a required
 199 disclosure constitutes a separate violation.

200 (3) In addition to the remedy provided in subsection (1),
 201 the court may impose a civil penalty of up to \$1,000 per
 202 violation, with an aggregate total not to exceed \$25,000 for any
 203 24-hour period, against any online dating service provider who
 204 violates any requirement of ss. 501.165-501.171. Suit may be
 205 brought by an enforcing authority, as defined by s. 501.203, or
 206 by the Division of Consumer Services of the Department of
 207 Agriculture and Consumer Services. Any penalties collected shall
 208 accrue to the enforcing authority or the division to further
 209 consumer enforcement efforts.

210 Section 6. Section 501.171, Florida Statutes, is created to
 211 read:

212 501.171 Exclusions.--

213 (1) An Internet service provider does not violate ss.
 214 501.165-501.171 solely as a result of serving as an intermediary
 215 for the transmission of electronic messages between members of
 216 an online dating service provider.

217 (2) An Internet access service or other Internet service
 218 provider shall not be considered an online dating service

HB 1035

2005
CS

219 provider within the meaning of ss. 501.165-501.171 as to any
220 online dating service website provided by another person or
221 entity.

222 (3) A provider that has fewer than 1,000 members is exempt
223 from the requirements of ss. 501.165-501.171.

224 Section 7. If any provision of this act or the application
225 thereof to any person or circumstance is held invalid, the
226 invalidity does not affect other provisions or applications of
227 this act that can be given effect without the invalid provision
228 or application, and to this end the provisions of this act are
229 declared to be severable.

230 Section 8. The Division of Statutory Revision is requested
231 to include the provisions of this act in part I of chapter 501,
232 Florida Statutes.

233 Section 9. This act shall take effect July 1, 2005.