

By Senator Crist

12-885A-05

See HB

1 A bill to be entitled

2 An act relating to online dating services;

3 providing definitions; requiring criminal

4 background checks before allowing a member of a

5 dating service to perform certain acts;

6 providing exceptions; requiring disclosures in

7 certain circumstances; requiring each service

8 to establish a policy concerning criminal

9 background check results; providing minimum

10 requirements for a policy; requiring

11 opportunities for certain persons to review the

12 policy; requiring a specified disclosure on the

13 profile of a person having a criminal

14 conviction; providing for civil actions for

15 violations of the act; providing for damages,

16 including specified liquidated damages, costs,

17 and attorney's fees; providing for actions by

18 the Attorney General to enforce the act;

19 providing specified immunity for the state;

20 providing for criminal violations of the act;

21 providing penalties; providing that specified

22 acts by operators do not violate the act;

23 providing an effective date.

24

25 Be It Enacted by the Legislature of the State of Florida:

26

27 Section 1. Definitions.--As used in this act:

28 (1) "Communicate" or "communicating" means free-form

29 text or real-time voice communication.

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1 (2) "Criminal background check" means a search for a
2 person's felony and sexual offense convictions by one of the
3 following means:

4 (a) Through the criminal history record system
5 maintained by the Federal Bureau of Investigation based on
6 fingerprint identification or any other method of positive
7 identification used by the Federal Bureau of Investigation.

8 (b) Through the criminal history record systems
9 maintained by each of the 50 states and the District of
10 Columbia.

11 (c) Through a private vendor whose database contains
12 more than 170,000,000 criminal records, has substantially
13 national coverage, is updated at least once every 30 days, and
14 is operated and maintained in the United States.

15 (d) Through a database search conducted by the Florida
16 Department of Law Enforcement and one of the searches provided
17 for in paragraphs (a)-(c).

18 (3) "Member" means a person who is either a member or
19 who submits a profile or other information for the purpose of
20 dating, matrimonial, or social referral services to an online
21 dating service provider.

22 (4) "Online dating service provider" or "provider"
23 means a person or organization engaged, directly or
24 indirectly, in the business of offering, promoting, or
25 providing access to dating, relationship, compatibility,
26 matrimonial, or social referral services primarily through the
27 Internet.

28 Section 2. Criminal background check; required
29 disclosures.--
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1 (1) An online dating service provider that provides
2 services to residents of this state shall do one of the
3 following:

4 (a) Conduct a criminal background check for each
5 member using the online dating service before allowing that
6 person to communicate with another person through the service.

7 (b) Disclose clearly and conspicuously, to all website
8 visitors residing in this state, on the provider's homepage
9 and all other pages where visitors or members first enter the
10 provider's website, on the profile page, and on all e-mails
11 sent through the service by communicating members, within the
12 top one-third of the webpage, that the online dating service
13 provider has not conducted criminal background checks under
14 paragraph (a). The disclosure shall state the following:

15
16 "WARNING: [NAME OF PROVIDER] HAS NOT CONDUCTED
17 FELONY OR SEXUAL OFFENSE BACKGROUND CHECKS ON
18 ITS MEMBERS."

19
20 (c) If the provider conducts a criminal background
21 check as provided in section 1(2)(b), display through a
22 readily accessible link on the provider's homepage, within the
23 top one-third of the webpage visible after selecting the
24 disclosure link, a conspicuous disclosure that states the
25 following:

26
27 "WARNING: BASED SOLELY ON THE NAME PROVIDED BY
28 THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A
29 CRIMINAL BACKGROUND CHECK THROUGH THE CRIMINAL
30 HISTORY RECORD SYSTEMS MAINTAINED BY EACH OF
31 THE 50 STATES AND THE DISTRICT OF COLUMBIA."

1
2 (d) If the provider conducts a criminal background
3 check as provided in section 1(2)(c), display through a
4 readily accessible link on the provider's homepage, within the
5 top one-third of the webpage visible after selecting the
6 disclosure link, a conspicuous disclosure that states the
7 following:

8
9 "WARNING: BASED SOLELY ON THE NAME PROVIDED BY
10 THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A
11 CRIMINAL DATABASE SEARCH THROUGH A PRIVATE
12 VENDOR WHOSE RECORDS MAY NOT INCLUDE ALL
13 CONVICTIONS FROM ALL JURISDICTIONS. CONTACT
14 [NAME OF PROVIDER] FOR INFORMATION REGARDING
15 WHICH JURISDICTIONS ARE INCLUDED."

16
17 (e)1. If the provider conducts a criminal background
18 check as provided in section 1(2)(d), display through a
19 readily accessible link on the provider's homepage, within the
20 top one-third of the webpage visible after selecting the
21 disclosure link, a conspicuous disclosure that states the
22 following:

23
24 "WARNING: BASED SOLELY ON THE NAME PROVIDED BY
25 THE MEMBER, [NAME OF PROVIDER] HAS CONDUCTED A
26 CRIMINAL DATABASE SEARCH THROUGH FLORIDA
27 RECORDS MAINTAINED BY THE FLORIDA DEPARTMENT OF
28 LAW ENFORCEMENT."

29
30 2. If the provider has made the required additional
31 search under section 1(2)(d) using the method provided in

1 section 1(2)(b) or section 1(2)(c), a sentence shall be added
2 to the disclaimer as follows:

3 a. If the additional search was done pursuant to
4 section 1(2)(b), add the following:

5
6 "ADDITIONALLY, [NAME OF PROVIDER] HAS CONDUCTED
7 A CRIMINAL BACKGROUND CHECK THROUGH THE
8 CRIMINAL HISTORY RECORD SYSTEMS MAINTAINED BY
9 EACH OF THE 50 STATES AND THE DISTRICT OF
10 COLUMBIA."

11
12 b. If the additional search was done pursuant to
13 section 1(2)(c), add the following:

14
15 "ADDITIONALLY, [NAME OF PROVIDER] HAS CONDUCTED
16 A CRIMINAL BACKGROUND CHECK THROUGH A PRIVATE
17 VENDOR WHOSE RECORDS MAY NOT INCLUDE ALL
18 CONVICTIONS FROM ALL JURISDICTIONS. CONTACT
19 [NAME OF PROVIDER] FOR INFORMATION REGARDING
20 WHICH JURISDICTIONS ARE INCLUDED."

21
22 (2) An online dating service provider that conducts
23 criminal background checks shall update each criminal
24 background check at least once every 90 days.

25 Section 3. Provider policy.--

26 (1) Each online dating service provider shall
27 establish a policy that conforms to the requirements of this
28 act as to what actions the provider will initiate as a result
29 of information obtained through a criminal background check or
30 database search. At a minimum, the policy shall contain the
31 following:

1 (a) An acknowledgement that criminal background checks
2 are not a perfect safety solution and an acknowledgement that
3 criminals may circumvent even the most sophisticated search
4 technology.

5 (b) An acknowledgement that only felony convictions,
6 not all arrests, are covered by the criminal background
7 checks, unless the provider uses the Federal Bureau of
8 Investigation database.

9 (c) An acknowledgement that first-time offenders can
10 commit crimes and will not have a prior criminal conviction.

11 (d) A description of additional safety measures
12 reasonably designed to increase awareness of safer dating
13 practices.

14 (e) A statement clearly describing whether the
15 provider excludes from its website all persons identified as
16 having a criminal conviction.

17 (2) A copy of the policy established under subsection
18 (1) shall be made available to each person who applies for
19 membership with the provider.

20 (3) The provider's homepage shall contain a link that
21 will allow a person to review the policy established under
22 subsection (1).

23 (4) If a provider chooses not to exclude from its
24 website all persons identified as having a criminal
25 conviction, then the provider shall prominently disclose on
26 the profile of each such person when shown or sent to a member
27 residing in this state the following warning:

28
29 "WARNING: THIS PERSON HAS BEEN IDENTIFIED AS
30 HAVING A PRIOR CRIMINAL CONVICTION."
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1 Section 4. Civil remedies.--

2 (1) A civil action may be brought by a person who
3 suffers damages as a result of a violation of this act.

4 (2) In an action brought under this section, a person
5 who suffers damages as a result of a violation of this act may
6 recover actual costs, actual and reasonable attorney's fees,
7 and the greater of the following:

8 (a) Actual damages; or

9 (b) Damages of \$250 for each day for which the
10 requirements of this act are not met.

11 (3) If the online dating service provider fails to
12 meet the disclosure requirements of this act for any of its
13 members or visitors, such failure constitutes a separate
14 violation for each member or visitor for whom the required
15 disclosure was not provided.

16 (4) A civil action may be brought by the Attorney
17 General against a violator of this act as provided in this
18 section. However, existence of the right of action in this
19 subsection does not impose any liability on the state or its
20 agents.

21 Section 5. Criminal violations.--

22 (1) A person who violates this act commits a
23 misdeemeanor of the first degree, punishable as provided in s.
24 775.082 or s. 775.083, except that, as provided in s.
25 775.083(1)(g), a fine of \$250 is authorized for each day for
26 which the requirements of this act are not met.

27 (2) If the online dating service provider fails to
28 meet the disclosure requirements of this act for any of its
29 members or visitors, each such failure constitutes a separate
30 violation for each person for whom the required disclosure was
31 not provided.

1 Section 6. Provider acting as intermediary.--A
2 provider does not violate this act as a result of being an
3 intermediary between the sender and recipient in the
4 transmission of a message that violates this act.

5 Section 7. This act shall take effect upon becoming a
6 law.

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