

By the Committee on Commerce and Consumer Services; and
Senator Crist

577-2096-05

1 A bill to be entitled
2 An act relating to online dating services;
3 creating ss. 501.165, 501.166, 501.167,
4 501.168, 501.169, and 501.171, F.S.; providing
5 a short title; providing legislative intent;
6 defining terms; requiring disclosures by online
7 dating services; requiring certain online
8 dating services to develop and publish
9 policies; creating civil penalties; providing
10 exclusions; providing a severability clause;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 501.165, Florida Statutes, is
16 created to read:

17 501.165 Short title; legislative intent.--Sections
18 501.165-501.171 may be cited as the "Florida Internet Dating
19 Disclosure and Safety Awareness Act." The Legislature finds
20 that a disclosure in the form of a notice on the websites of
21 online dating services informing the residents of Florida that
22 a criminal background check may or may not have been conducted
23 on its members fulfills a compelling state interest to
24 increase public awareness of the possible risks to personal
25 safety involved with online dating.

26 Section 2. Section 501.166, Florida Statutes, is
27 created to read:

28 501.166 Definitions.--As used in ss. 501.165-501.171:
29 (1) "Communicate" or "communicating" means free-form
30 text authored by a member or real-time voice communication
31 through an online dating service provider.

1 (2) "Criminal background check" means a search for a
2 person's felony and sexual offense convictions initiated by an
3 online dating service provider, conducted through one of the
4 following means:

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

9 (b) By searching a database maintained by a private
10 vendor which is updated at least every 30 days and which
11 contains at least the same or substantially similar criminal
12 history records as would be otherwise accessible through
13 searches of all the available government databases specified
14 in paragraph (a).

15 (3) "Member" means a person who submits to an online
16 dating service provider the information required by the
17 provider to access the provider's service for the purpose of
18 engaging in dating, participating in compatibility evaluations
19 with other persons, or obtaining matrimonial matching
20 services.

21 (4) "Online dating service provider" or "provider"
22 means a person engaged in the business of offering or
23 providing to its members for a fee access to dating,
24 compatibility evaluations between persons, or matrimonial
25 matching services through the Internet.

26 (5) "Sexual offense conviction" means a conviction for
27 an offense which would qualify the offender for registration
28 as a sexual offender pursuant to s. 943.0435, or under another
29 state's equivalent statute.

30 Section 3. Section 501.167, Florida Statutes, is
31 created to read:

1 501.167 Criminal background check; required
2 disclosures.--An online dating service provider offering
3 services to residents of this state shall disclose clearly and
4 conspicuously, to any member who provides a billing address in
5 this state or a zip code in this state when registering with
6 the provider, that the online dating provider either initiates
7 a background search of felony and sexual offense convictions
8 on each member prior to permitting any member to communicate
9 with a member in this state, or that the online dating service
10 provider does not initiate such a background search.

11 (1) If the online dating service provider does not
12 initiate criminal background checks, the provider must make a
13 disclosure that shall read:

14
15 NO BACKGROUND SEARCH OF FELONY OR SEXUAL
16 OFFENSE CONVICTIONS IS DONE ON MEMBERS WHO USE
17 THIS SERVICE. PLEASE TAKE APPROPRIATE SAFETY
18 MEASURES TO INCREASE AWARENESS OF POSSIBLE
19 RISKS ASSOCIATED WITH DATING.

20
21 (2) If the online dating service provider does
22 initiate criminal background checks, the disclosure shall
23 read:

24
25 . . . [NAME OF PROVIDER] . . . INITIATES A
26 LIMITED BACKGROUND SEARCH FOR FELONY AND SEXUAL
27 OFFENSE CONVICTIONS BEFORE A MEMBER IS
28 PERMITTED TO COMMUNICATE WITH ANY MEMBER FROM
29 FLORIDA.

1 (3) The disclosure required by either subsection (1)
2 or subsection (2) shall appear on a web page required to be
3 viewed by a person applying to be a member who has indicated a
4 billing address in this state or zip code in this state in the
5 registration process and such disclosure cannot be more than 3
6 inches from the top of the web page, in bold capital letters,
7 in at least 12 point type, in a color that contrasts from the
8 background. The provider shall require the applicant in this
9 state to make an electronic acknowledgement that the applicant
10 has been provided the disclosure before the applicant is
11 accepted as a member. The disclosure required by either
12 subsection (1) or subsection (2) shall additionally appear on
13 any page that appears to a member in this state each time that
14 member initiates or receives a communication with another
15 member through the provider's service.

16 (4) If the online dating service provider conducts
17 criminal background checks, and the provider has a policy
18 allowing a member who has been identified as having a felony
19 or sexual offense conviction to have access to its service to
20 communicate with any member in this state, the provider shall
21 clearly and conspicuously disclose on any communication to a
22 member in this state from the member who has been identified
23 as having a felony or sexual offense conviction, and on any
24 web page that is seen by or transmitted to a member in this
25 state that contains the personal information for the member
26 who has been identified as having a felony or sexual offense
27 conviction and that is seen by or communicated to a member in
28 this state a disclosure that shall read:

29
30 THIS PERSON HAS BEEN IDENTIFIED AS HAVING A
31 FELONY OR SEXUAL OFFENSE CONVICTION.

1
2 Section 4. Section 501.168, Florida Statutes, is
3 created to read:

4 501.168 Provider policies; disclosure.--An online
5 dating service provider that conducts criminal background
6 checks shall establish an automatic electronic link from any
7 web page containing the disclosure required by s. 501.167(2)
8 to a web page that provides a "safety awareness notification".
9 The web page containing the safety awareness notification
10 shall be configured such that it shall automatically appear
11 each time a member makes the electronic acknowledgement of the
12 disclosure under s. 501.167(2). The member is required to make
13 an electronic acknowledgement of the safety awareness
14 notification each time it appears and such acknowledgement
15 shall appear at the bottom of the web page containing such
16 notification. At a minimum, the safety awareness notification
17 shall provide the following:

18 (1) A statement that reads:

19
20 PERSONAL SAFETY AWARENESS NOTICE

21 CAUTION: Before allowing Florida members to
22 communicate with other members . . . [Name of
23 provider] . . . initiates a background search
24 of available public records to determine if any
25 felony or sexual offense convictions are
26 identified based on the name and other
27 information we require of members to create a
28 profile. The purpose is to provide a
29 preliminary background screening for protection
30 of our members before they are permitted to
31 begin communicating directly with each other.

1
2 The background searches for felony and sexual
3 offense convictions are not foolproof and are
4 not intended to give members a false sense of
5 security. Background checks are not a perfect
6 safety solution and criminals may circumvent
7 even the most sophisticated search technology.
8
9 Not all criminal records are public in all
10 states and not all databases are up-to-date.
11 Only publicly available felony and sexual
12 offense convictions are included in the search
13 but searches do not cover other convictions or
14 arrests or any convictions from foreign
15 countries.
16
17 Anyone who is able to commit identity theft can
18 also falsify a dating profile.
19
20 There is no substitute for using good common
21 sense and acting with caution when
22 communicating with any stranger who wants to
23 meet you.
24
25 (2) Additional information to be part of the minimum
26 content of the safety awareness notification shall include a
27 list and description of safety measures reasonably designed to
28 increase awareness of safer dating practices as determined by
29 the provider.
30 Section 5. Section 501.169, Florida Statutes, is
31 created to read:

1 501.169 Civil penalties.--An online dating service
2 provider that signs up members from Florida must comply with
3 the provisions of this act.

4 (1) The Legislature finds that the act of transmitting
5 files over the Internet addressed to residents of the state,
6 and the act of accepting membership fees from residents of the
7 state, means that an online dating service is operating,
8 conducting, engaging in, and otherwise carrying on a business
9 in the state subjecting such online dating service providers
10 to regulation by the state and to the jurisdiction of the
11 state's courts.

12 (2) Failure to comply with the disclosure requirements
13 of this act shall constitute a deceptive and unfair trade
14 practice under part II of chapter 501. Each failure to provide
15 a required disclosure constitutes a separate violation.

16 (3) In addition to the remedy provided in subsection
17 (1), the court may impose a civil penalty of up to \$1,000 per
18 violation, with an aggregate total not to exceed \$25,000 for
19 any 24-hour period, against any online dating service provider
20 who violates any requirement of this act. Suit may be brought
21 by an enforcing authority, as defined by s. 501.203(2), or by
22 the Division of Consumer Services of the Department of
23 Agriculture and Consumer Services. Any penalties collected
24 shall accrue to the enforcing authority or the division to
25 further consumer enforcement efforts.

26 Section 6. Section 501.171, Florida Statutes, is
27 created to read:

28 501.171 Exclusions.--

29 (1) An Internet service provider does not violate this
30 act solely as a result of serving as an intermediary for the
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1 transmission of electronic messages between members of an
2 online dating service provider.

3 (2) An Internet access service or other Internet
4 service provider shall not be considered an online dating
5 service provider within the meaning of this act as to any
6 online dating service website provided by another person or
7 entity.

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

10 Section 7. If any provision of this act or the
11 application thereof to any person or circumstance is held
12 invalid, the invalidity does not affect other provisions or
13 applications of this act which can be given effect without the
14 invalid provision or application, and to this end the
15 provisions of this act are declared to be severable.

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

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

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21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 Senate Bill 1768

24 This committee substitute differs from the bill as filed in
25 that it requires online dating services that conduct criminal
26 background checks to provide a "safety awareness notification"
27 and develop a policy as to how to handle members with felony
28 or sexual offense convictions. Additionally, exemptions are
29 provided for smaller providers, intermediaries, and Internet
30 access service providers. Also, provisions providing for
31 criminal penalties have been deleted.