

1 A bill to be entitled
 2 An act relating to Internet predator awareness and online
 3 safety; creating s. 501.165, F.S.; providing a short
 4 title; providing legislative findings; providing
 5 definitions; requiring certain disclosures by online
 6 dating services; providing a clearinghouse for consumers;
 7 providing civil penalties for noncompliance; providing
 8 exclusions; providing a directive to the Division of
 9 Statutory Revision; providing for severability; providing
 10 an effective date.

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

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

16 501.165 Internet Predator Awareness and Online Safety
 17 Act.--

18 (1) SHORT TITLE.--This section may be cited as the
 19 "Internet Predator Awareness and Online Safety Act."

20 (2) LEGISLATIVE FINDINGS.--

21 (a) The Legislature has received public testimony that
 22 criminals and sex offenders use online dating services to prey
 23 upon the residents of this state.

24 (b) The Legislature finds, as part of its duty to protect
 25 the health, safety, and welfare of its citizens, that there
 26 presently exists a compelling state interest to develop a
 27 statewide uniform online safety policy that includes measures to
 28 enhance the public's awareness of the use of online dating

29 services by predators to communicate with potential victims. The
30 Legislature further finds that residents of this state need to
31 be informed when viewing websites of online dating services as
32 to the potential risks to personal safety associated with online
33 dating. Also, requiring disclosures in the form of guidelines
34 for safer dating and informing residents as to whether a
35 criminal background screening has been conducted on members of
36 an online dating service fulfills a compelling state interest to
37 increase public awareness of the possible risks associated with
38 Internet dating activities.

39 (c) The Legislature finds that the acts of transmitting
40 over the Internet electronic dating information addressed to
41 residents of this state and accepting membership fees from
42 residents of this state for Internet dating services establish
43 that an online dating service provider is operating, conducting,
44 engaging in, and otherwise carrying on a business in this state
45 and subject such online dating service provider to regulation by
46 this state and to the jurisdiction of this state's courts.

47 (3) DEFINITIONS.--As used in this section, the term:

48 (a) "Communicate," "communicating," or "communication"
49 means free-form text authored by a member or real-time voice
50 communication through an online dating service provider.

51 (b) "Convicted," "conviction," or "convictions" has the
52 same meaning as provided in s. 943.0435(1)(b). However, if an
53 offense was committed in another jurisdiction, these terms have
54 the same meaning as provided in that jurisdiction's equivalent
55 statute.

56 (c) "Criminal background screening" means, at a minimum, a

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57 search for a person's felony, misdemeanor, and sexual offense
58 convictions initiated by an online dating service provider and
59 conducted by one of the following means:

60 1. By searching available and regularly updated government
61 public record databases for felony, misdemeanor, and sexual
62 offense convictions if such databases, in the aggregate, provide
63 substantial national coverage for such felonies, misdemeanors,
64 and sexual offense convictions; or

65 2. By searching a database maintained by a private vendor
66 that is regularly updated and maintained in the United States
67 with substantial national coverage of such felonies,
68 misdemeanors, and sexual offense convictions.

69 (d) "Department" means the Department of Agriculture and
70 Consumer Services.

71 (e) "Felony" has the same meaning as provided in s.
72 775.08. However, if an offense was committed in another
73 jurisdiction, the term has the same meaning as provided in that
74 jurisdiction's equivalent statute.

75 (f) "Florida member" means a member as defined in this
76 section who provides a billing address located in Florida with
77 zip code and other required billing information when registering
78 with the provider.

79 (g) "Member" means a person who submits to an online
80 dating service provider the information required by the provider
81 to access the provider's service for the purpose of engaging in
82 dating, participating in compatibility evaluations with other
83 persons, or obtaining matrimonial matching services.

84 (h) "Misdemeanor" has the same meaning as provided in s.

85 775.08. However, if an offense was committed in another
 86 jurisdiction, the term has the same meaning as provided in that
 87 jurisdiction's equivalent statute.

88 (i) "Online dating service provider" or "provider" means a
 89 person engaged in the business of offering or providing to its
 90 members access to dating, compatibility evaluations between
 91 persons, or matrimonial matching services through the Internet.

92 (j) "Sexual offense conviction" means a conviction for an
 93 offense that would qualify the offender for registration as a
 94 sexual offender under s. 943.0435. However, if an offense was
 95 committed in another jurisdiction, the term has the same meaning
 96 as provided in that jurisdiction's equivalent statute.

97 (4) PROVIDER SAFETY AWARENESS DISCLOSURES.--

98 (a) An online dating service provider offering services to
 99 members in Florida shall provide a safety-awareness notification
 100 containing, at a minimum, information that includes a list and
 101 description of safety measures reasonably designed to increase
 102 awareness of safer dating practices as determined by the
 103 provider. Examples of such notifications include:

104 1. "Anyone who is able to commit identity theft can also
 105 falsify a dating profile."

106 2. "There is no substitute for acting with caution when
 107 communicating with a stranger who wants to meet you."

108 3. "Never include your last name, e-mail address, home
 109 address, phone number, place of work, or any other identifying
 110 information in your online profile or initial e-mail messages.
 111 Stop communicating with anyone who pressures you for personal or
 112 financial information or attempts in any way to trick you into

113 revealing it."

114 4. "If you choose to have a face-to-face meeting with
115 another member, always tell a family member or a friend where
116 you are going and when you will return. Never agree to be picked
117 up at your home. Always provide your own transportation to and
118 from your date and meet in a public place at a time with many
119 people around."

120 (b) If an online dating service provider does not conduct
121 criminal background screenings on its communicating members, the
122 provider shall disclose, clearly and conspicuously, to all
123 Florida members that the online dating service provider does not
124 conduct criminal background screenings. The disclosure shall be
125 provided, at a minimum, as a hyperlink titled "Safety Tips" from
126 the profile pages describing a member to a Florida member and
127 within the provider's terms and conditions contained on the
128 website pages used when a member registers as a Florida member
129 or changes his or her registration to become a Florida member
130 and on the confirmation e-mail sent when a Florida member
131 completes registration or a change of registration.

132 (c) If an online dating service provider conducts criminal
133 background screenings on all of its communicating members, the
134 provider shall disclose, clearly and conspicuously, to all
135 Florida members that the online dating service provider conducts
136 a criminal background screening on each member prior to
137 permitting a Florida member to communicate with another member.
138 Additionally, the provider shall disclose, clearly and
139 conspicuously, to all Florida members whether a member who has
140 been identified as having a felony, misdemeanor, or sexual

141 offense conviction is allowed to communicate with any Florida
142 member. The provider shall also disclose, clearly and
143 conspicuously, that background screenings of applicants can be
144 fallible and there is no way to guarantee that the name provided
145 by a person to be used in a background screening is the person's
146 true identity; that not all criminal records are publicly
147 available; and that the screenings may not identify every member
148 who has a felony, misdemeanor, or sexual offense conviction and
149 members should participate in the service at their own risk,
150 using caution when communicating with other members. The
151 disclosures under this subsection shall be provided, at a
152 minimum, as a hyperlink titled "Safety Tips" from the profile
153 pages describing a member to a Florida member and within the
154 provider's terms and conditions contained on the website pages
155 used when a member registers as a Florida member or changes his
156 or her registration to become a Florida member and on the
157 confirmation e-mail sent when a Florida member completes
158 registration or a change of registration.

159 (d) To address any concerns that the criminal background
160 screenings used by a provider may create a false sense of
161 security, and to allow Florida members to better evaluate and
162 compare the extent and scope of any criminal background
163 screenings conducted by a provider, the disclosures under
164 paragraph (c) shall be immediately followed by a clear and
165 conspicuous hyperlink labeled "Details about our Criminal
166 Background Screenings." This hyperlink shall provide Florida
167 members with access to a web page containing a supplemental
168 disclosure that includes, at a minimum, the name of any private

169 vendor used by the provider for conducting criminal background
 170 screenings of felony, misdemeanor, and sexual offense
 171 convictions, the frequency with which the database of felony,
 172 misdemeanor, and sexual offense criminal convictions used by the
 173 provider or private vendor is updated, a listing of each state
 174 that is included and excluded, along with any limitations or
 175 restrictions on access to the felony, misdemeanor, and sexual
 176 offense criminal conviction data available from a state, and
 177 whether, in addition to felonies, misdemeanors, and sexual
 178 offenses, any other types or categories of criminal convictions
 179 are included for each state in the database used by the provider
 180 or private vendor.

181 (5) CLEARINGHOUSE.--The department shall serve as the
 182 clearinghouse for intake of information concerning this section
 183 from consumers, residents, and victims. The consumer hotline may
 184 be used for this purpose. Information obtained shall be directed
 185 to the appropriate enforcement entity, as determined by the
 186 department.

187 (6) CIVIL PENALTIES.--

188 (a) An online dating service provider that registers
 189 Florida members must comply with all provisions of this section.

190 (b) Acts, conduct, practices, omissions, failings,
 191 misrepresentations, or nondisclosures committed in violation of
 192 this section constitute deceptive and unfair trade practices
 193 under part II of this chapter and the department, the Department
 194 of Legal Affairs, or the state attorney may institute a civil
 195 action in a court of competent jurisdiction to recover any
 196 penalties, damages, or injunctive relief to enforce compliance

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197 with this section. Each failure to provide a required disclosure
198 constitutes a separate violation.

199 (c) The court may impose a civil penalty of up to \$1,000
200 per violation, with an aggregate total not to exceed \$25,000 for
201 any 24-hour period, against any online dating service provider
202 that violates any requirement of this section. A lawsuit may be
203 brought by an enforcing authority as defined in s. 501.203 or
204 the department if the department, while acting as the
205 clearinghouse, does not refer the matter to the Department of
206 Legal Affairs or the state attorney. Any penalties collected
207 shall accrue to the enforcing authority or the department's
208 Division of Consumer Services for further consumer enforcement
209 efforts. A private cause of action is not created under this
210 section.

211 (7) EXCLUSIONS.--

212 (a) An Internet access service or other Internet service
213 provider does not violate this section solely as a result of
214 servicing as an intermediary for the transmission of
215 communications between members of an online dating service
216 provider.

217 (b) An Internet access service or other Internet service
218 provider is not an online dating service provider within the
219 meaning of this section as to any online dating service website
220 provided by another person or entity that is not affiliated with
221 the Internet access service or Internet service provider.
222 "Affiliate" or "affiliated" has the same meaning as provided in
223 s. 607.0901.

224 (c) This section does not create a cause of action against

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225 an Internet access service, an Internet service provider, or a
226 telecommunications provider whose equipment or network is used
227 to transport or handle the transmission of a communication by
228 any person.

229 Section 2. The Division of Statutory Revision is directed
230 to include the provisions of this section in part I of chapter
231 501, Florida Statutes.

232 Section 3. If any provision of this act or its application
233 to any individual or circumstance is held invalid, such
234 invalidity does not affect other provisions or applications of
235 which act that can be given effect without the invalid provision
236 or application, and to this end the provisions of this act are
237 severable.

238 Section 4. This act shall take effect July 1, 2008.