



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 286 (Substitute S-2 as reported)
Sponsor: Senator Alan L. Cropsy
Committee: Judiciary

Date Completed: 3-17-05

RATIONALE

According to some estimates, 30 million to 40 million people in the United States used internet-based dating services in 2003. While the relative anonymity afforded by online communications may give some internet users a sense of security in finding people to date, the same anonymity has led to concerns that people with a criminal history can easily hide their background and use online dating services to target their future victims. At least one online dating service provider conducts a criminal background check on applicants for membership before allowing them to communicate with members. That service provider also has been encouraging various state legislatures to require all online dating service providers to screen their memberships for convicted felons and sex offenders, or to disclose on their websites that no background check has been conducted. Some people believe that Michigan should require online dating service providers' websites to disclose whether the providers have or have not conducted criminal background checks.

CONTENT

The bill would create a new act to require an "online dating service provider" to disclose that it had conducted criminal background checks on its members or that it had not done so. The bill would do all of the following:

-- Allow the background checks to be conducted using publicly available records maintained by the states and the District of Columbia, or through a private vendor.

- Require a provider to update its background check of each member at least every 90 days.**
- Require a provider to establish, and make available, a policy regarding the actions it would take after obtaining information through a criminal background check.**
- Prescribe criminal penalties for violations.**
- Allow a civil action by the Attorney General or a person who suffered damages as a result of a violation.**

The bill would take effect on July 1, 2005.

"Online dating service provider" would mean a person or organization engaged in the business of offering, promoting, or providing access to dating, relationship, compatibility, matrimonial, or social referral services primarily through the use of a computer, a computer network, program, or system, or the internet.

"Criminal background check" would mean a search of a person's felony and sexual offense convictions by one of the following:

- Through any criminal history record system available to the public and maintained by each of the 50 states and the District of Columbia.
- Through a private vendor whose database contains more than 170.0 million criminal records that are otherwise available to the public, has substantially national coverage, is updated at least once every 90 days, and is operated and maintained in the United States.

Background Checks/Disclosures

The bill would require an online dating service provider that offered services to Michigan residents to do one of the following:

- Disclose prominently on the provider's home page that the online dating service had not conducted criminal background checks on people using its service.
- If the provider conducted criminal background checks through the criminal history record systems of the 50 states and the District of Columbia, display prominently on the provider's home page a disclosure that, based solely on the name provided by the member, the provider had conducted such a criminal background check.
- If the provider conducted criminal background checks through a private vendor, disclose that, based solely on the name provided by the member, the provider had conducted a criminal background check through a private vendor whose records might not include all convictions from all jurisdictions.

The disclosures would have to be warning statements in a form specified in the bill.

An online dating service provider would have to update its criminal background check for each member at least once every 90 days.

Policy

An online dating service provider would have to establish a policy on what actions the provider would initiate as a result of information obtained through a criminal background check. A copy of that policy would have to be made available to each person who applied for membership with the provider. Before being accepted for membership with a provider, a person would have to acknowledge that he or she had an opportunity to review the policy. The provider's home page would have to contain a link that would allow a person to review the policy.

Criminal Penalty & Civil Action

A violation of the proposed act would be a misdemeanor punishable by a fine of \$250 per day for each day the person was in violation of the act. It would be a separate

violation for each person for whom the provider failed to provide the required notice.

The Attorney General or a person who suffered damages as a result of a violation of the proposed act could bring a civil action. The Attorney General or other person could recover actual damages or \$500,000, whichever was less, as well as actual costs and actual and reasonable attorney fees.

The bill specifies that a provider would not violate the proposed act as result of being an intermediary between the sender and recipient in the transmission of a message that violated the act. It also specifies that the act would not apply to an internet or computer network service provider that in good faith merely provided the medium for disseminating information or communication between people.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Through such varied methods as e-mailing solicitations for money or personal identity information, using chat rooms to meet underage children for sexual encounters, and hacking into seemingly secure computer networks, internet predators have proliferated along with the growth of online services and websites. As online dating services become increasingly popular forums for people to try to find a compatible person with whom to establish a relationship, protecting the users of those services from internet predators is a growing public safety concern.

Providing users of online dating services with some degree of security that people they meet online are not known criminals would go a long way toward protecting them. To that end, online dating service providers should be required to disclose whether they conduct criminal background checks and, if so, whether they were accomplished by a search of public records or through a private vendor. Informing users of the service as to whether background checks were conducted would provide those users with a heightened

awareness of the possible dangers of meeting people online.

Opposing Argument

Requiring disclosure of a criminal background check could provide online dating service users with a false sense of security, making them even more vulnerable to predators. Even if a service provider conducted a background check under the bill's parameters, it would not necessarily protect a client of the provider from being matched with a criminal. Background checks conducted under the bill would be done only by the name supplied by a user. There would be no way to ensure that a person gave his or her real name. The only truly reliable background check would be one using fingerprints or DNA and conducted through State or Federal law enforcement agencies. In addition, disclosing that a background check was not conducted would do nothing to prevent a match with a criminal.

Response: Some level of protection would be better than none at all. Knowing whether a service provider conducted background checks would arm a user with valuable information, especially if he or she mistakenly assumed that background checks were being conducted. Being aware that no background check had been conducted would heighten a user's awareness if he or she chose to meet someone through an online service. Knowing that a check was done could provide a user with a basic level of security. In addition, the bill would provide for a warning, not a warrant. Nothing in the bill would suggest to internet dating service users that there was a guaranty regarding the criminal background check of any other user of that service.

Opposing Argument

The bill could endanger the security of the personal information of all clients of online dating services and leave them vulnerable to identity theft. In order to run background checks on their membership, providers would have to collect certain personal information and use it to search various databases or share it with a private vendor to do the background checks. Moreover, the parent company of the largest and best known private vendor conducting criminal background checks, rapsheets.com, reportedly was recently acquired by ChoicePoint. That company recently warned 145,000 people that criminals posing as

small businesses had gained access to their personal data. Reportedly, at least 750 of those people were defrauded, and investigators believe that more than 400,000 consumers' data may have been compromised (*Detroit Free Press*, "ID Theft Clampdown: Data Firms Under Fire", 3-10-05). The more frequently personal information is shared, the more likely it is to be stolen.

Opposing Argument

The bill would disrupt market forces, to the benefit of a few. Only one online dating service currently conducts criminal background checks and that provider is lobbying for this bill and promoting similar legislation in other states. Mandating that all online dating service providers display a warning on their websites as to whether they conduct background checks essentially would coerce other providers to perform the checks or risk losing their market share. If sufficient demand for background checks existed, the marketplace would lead providers to offer that service. Indeed, a committee of the Virginia General Assembly recently rejected similar legislation, reportedly because several committee members saw it as providing an unfair competitive advantage to one online dating service over all others ([washingtonpost.com](http://www.washingtonpost.com), "Va. Panel Rejects E-Dating Background Checks", 1-31-05).

Moreover, criminal records apparently are not universally available in all 50 states, so service providers that did offer a background check would have to contract with a private vendor. It is unclear at this time whether any vendor other than rapsheets.com would qualify under the bill. This legislation, then, essentially would require all online dating service providers to contract with a particular vendor if they chose to conduct background checks.

Opposing Argument

The bill would discriminate against online commerce. Traditional matchmaking services are far more prevalent than internet dating service providers, yet the bill would not require disclosure statements in such forums as newspaper ads or flyers sent through the U.S. mail. Singling out online dating service websites as dangerous places to meet dates is unfair and unrealistic. Meeting someone online is no less safe than meeting someone in a bar, at a party, in a

park, in a coffee shop, or even at a religious service, if the person chooses to hide his or her true identity.

Opposing Argument

The bill's application would be overly broad. The definition of "online dating service provider" actually could encompass website search engines, such as Google. Search engines do not, and realistically cannot, conduct background searches of their users. Under the bill, then, a search engine likely would have to include a pointless warning disclosing that it did not conduct criminal background checks.

Opposing Argument

Requiring every online dating service provider to meet a Michigan requirement, regardless of where the provider's business was located, could violate the Interstate Commerce Clause of the U.S. Constitution.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would allow additional civil actions by the Attorney General or people who suffered damages as a result of a violation of the proposed act, it potentially would increase costs to the judiciary and the Attorney General's office.

To the extent that the bill would increase the number of misdemeanants by creating a new misdemeanor, it would increase local corrections costs, which vary by county. The proposed misdemeanor fine would benefit public libraries.

Fiscal Analyst: Bethany Wicksall

A0506\s286a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.