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BILL ANALYSIS

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Senate Bill 286 (as introduced 3-3-05)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 3-7-05

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, directly or indirectly, in the business of offering, promoting, or providing access to dating, relationship, compatibility, matrimonial, or social referral services primarily through 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. The disclosures could not be more than three inches from the top of the website.

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 Penalties & 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.

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 the proposed misdemeanor, it would increase local corrections costs, which vary by county. The proposed misdemeanor fines could create additional penal fine revenue, which benefits public libraries.

Fiscal Analyst: Bethany Wicksall

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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.