S T A T E O F N E W Y O R K

5180

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. PHEFFER, CAMARA, N. RIVERA -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to enacting the "internet dating safety act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "internet dating safety act".

S 2. Legislative findings and declarations. The legislature finds and declares that: residents of this state need to be informed of the potential risks of participating in internet dating services. The offer of internet dating services to residents of this state, and the acceptance of membership fees from residents of this state means that an internet dating service is conducting business in this state and is subject to regulation by this state and the jurisdiction of the state's courts.

S 3. The general business law is amended by adding a new section 394-cc to read as follows:

S 394-CC. INTERNET DATING SAFETY. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "INTERNET DATING SERVICE" MEANS A PERSON OR ENTITY DIRECTLY OR INDIRECTLY IN THE BUSINESS, FOR PROFIT, OF OFFERING, PROMOTING OR PROVIDING ACCESS TO DATING, RELATIONSHIP, COMPATIBILITY, MATRIMONIAL OR SOCIAL REFERRAL SERVICES PRINCIPALLY ON OR THROUGH THE INTERNET.

(B) "INTERNET SERVICE PROVIDER" MEANS ANY PERSON, BUSINESS OR ORGANIZATION QUALIFIED TO DO BUSINESS IN THIS STATE THAT PROVIDES INDIVIDUALS, CORPORATIONS, OR OTHER ENTITIES WITH THE ABILITY TO CONNECT TO THE INTERNET THROUGH EQUIPMENT THAT IS LOCATED IN THIS STATE.

(C) "MEMBER" MEANS A CUSTOMER, CLIENT OR PARTICIPANT WHO SUBMITS TO AN INTERNET DATING SERVICE INFORMATION REQUIRED TO ACCESS THE SERVICE FOR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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THE PURPOSE OF ENGAGING IN DATING, RELATIONSHIP, COMPATIBILITY, MATRIMONIAL OR SOCIAL REFERRAL.

(D) "NEW YORK MEMBER" MEANS A MEMBER WHO PROVIDES AN IN STATE BILLING ADDRESS OR ZIP CODE WHEN REGISTERING WITH THE SERVICE.

2. AN INTERNET DATING SERVICE OFFERING SERVICES TO NEW YORK MEMBERS SHALL PROVIDE SAFETY AWARENESS NOTIFICATION THAT INCLUDES, AT MINIMUM, A LIST AND DESCRIPTION OF SAFETY MEASURES REASONABLY DESIGNED TO INCREASE AWARENESS OF SAFER DATING PRACTICES IN A CLEAR AND CONSPICUOUS MANNER. SUCH NOTIFICATION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING STATEMENTS OR SUBSTANTIALLY SIMILAR STATEMENTS:

(A) "THERE IS NO SUBSTITUTE FOR ACTING WITH CAUTION WHEN COMMUNICATING WITH ANY STRANGER WHO WANTS TO MEET YOU."

(B) "NEVER INCLUDE YOUR LAST NAME, E-MAIL ADDRESS, HOME ADDRESS, PHONE NUMBER, PLACE OF WORK, OR ANY OTHER IDENTIFYING INFORMATION IN YOUR INTERNET PROFILE OR INITIAL E-MAIL MESSAGES. STOP COMMUNICATING WITH ANYONE WHO PRESSURES YOU FOR PERSONAL OR FINANCIAL INFORMATION OR ATTEMPTS IN ANY WAY TO TRICK YOU INTO REVEALING IT."

(C) "IF YOU CHOOSE TO HAVE A FACE-TO-FACE MEETING WITH ANOTHER MEMBER, ALWAYS TELL SOMEONE IN YOUR FAMILY OR A FRIEND WHERE YOU ARE GOING AND WHEN YOU WILL RETURN. NEVER AGREE TO BE PICKED UP AT YOUR HOME. ALWAYS PROVIDE YOUR OWN TRANSPORTATION TO AND FROM YOUR DATE AND MEET IN A PUBLIC PLACE WITH MANY PEOPLE AROUND."

SUCH NOTIFICATION SHALL BE GIVEN AT THE TIME A NEW YORK MEMBER REGISTERS WITH THE SERVICE AND BY WAY OF A LINK ON THE MAIN WEBSITE, OR THE FIRST ENTRY POINT, OF THE SERVICE.

3. (A) THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST AN INTERNET DATING SERVICE THAT VIOLATES THE PROVISIONS OF THIS SECTION:

(I) TO ENJOIN FURTHER VIOLATION OF THE PROVISIONS OF THIS SECTION; AND

(II) TO RECOVER UP TO TWO HUNDRED FIFTY DOLLARS FOR EACH NEW YORK MEMBER REGISTERED WITH THE INTERNET DATING SERVICE DURING THE TIME PERIOD THAT THE INTERNET DATING SERVICE WAS IN VIOLATION OF THIS SECTION.

(B) IN AN ACTION UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION, A COURT MAY INCREASE THE DAMAGES UP TO THREE TIMES THE DAMAGES ALLOWED BY SUCH PARAGRAPH WHERE THE DEFENDANT HAS BEEN FOUND TO HAVE ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING THE PROVISIONS OF THIS SECTION.

(C) NO INTERNET DATING SERVICE SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION IF SUCH INTERNET DATING SERVICE SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

(D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR COMMON LAW.

4. AN INTERNET SERVICE PROVIDER DOES NOT VIOLATE THIS SECTION SOLELY AS A RESULT OF SERVING AS AN INTERMEDIARY FOR THE TRANSMISSION OF ELECTRONIC MESSAGES BETWEEN MEMBERS OF AN INTERNET DATING SERVICE.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.