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

3618--A

2011-2012 Regular Sessions

I N S E N A T E

February 28, 2011

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to enacting the "internet dating safety act of 2012" and requiring internet dating services to provide notice whether the service conducts criminal background screenings

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 of 2012".

S 2. Legislative findings and declarations. The legislature finds and declares:

a. residents of this state need to be informed of the potential risks of participating in internet dating services. There is a public safety need to disclose whether criminal history background screenings have been performed and to increase public awareness of the possible risks associated with internet dating activities; and

b. 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. Section 394-cc of the general business law, as added by chapter 425 of the laws of 2010, is amended to read as follows:

S 394-cc. Internet dating safety. 1. As used in this section, the following terms shall have the following meanings:

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

LBD07526-02-1

(a) "CRIMINAL BACKGROUND SCREENING" MEANS A NAME SEARCH FOR A PERSON'S CRIMINAL CONVICTIONS INITIATED BY AN ON-LINE DATING SERVICE PROVIDER AND CONDUCTED BY ONE OF THE FOLLOWING MEANS:

(I) BY SEARCHING AVAILABLE AND REGULARLY UPDATED GOVERNMENT PUBLIC RECORD DATABASES FOR CRIMINAL CONVICTIONS SO LONG AS SUCH DATABASES, IN THE AGGREGATE, PROVIDE SUBSTANTIAL NATIONAL COVERAGE; OR

(II) BY SEARCHING A DATABASE MAINTAINED BY A PRIVATE VENDOR THAT IS REGULARLY UPDATED AND IS MAINTAINED IN THE UNITED STATES WITH SUBSTANTIAL NATIONAL COVERAGE OF CRIMINAL HISTORY RECORDS AND SEXUAL OFFENDER REGISTRIES.

(B) "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)] (C) "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)] (D) "member" means a customer, client or participant who submits to an internet dating service information required to access the service for the purpose of engaging in dating, relationship, compatibility, matrimonial or social referral.

[(d)] (E) "New York member" means a member who provides an in-state billing address or zip code when registering with the service.

(F) "CRIMINAL CONVICTION" MEANS A CONVICTION FOR ANY CRIME INCLUDING, BUT NOT LIMITED TO, ANY SEX OFFENSE THAT WOULD QUALIFY THE OFFENDER FOR REGISTRATION PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW OR UNDER ANOTHER JURISDICTION'S EQUIVALENT STATUTE.

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."

(D) "ANYONE WHO IS ABLE TO COMMIT IDENTITY THEFT CAN ALSO FALSIFY A DATING PROFILE."

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)] IF AN INTERNET DATING SERVICE DOES NOT CONDUCT CRIMINAL BACKGROUND SCREENINGS ON ITS MEMBERS, THE SERVICE SHALL DISCLOSE, CLEARLY AND CONSPICUOUSLY, TO ALL NEW YORK MEMBERS THAT THE INTERNET DATING SERVICE DOES NOT CONDUCT CRIMINAL BACKGROUND SCREENINGS. THE DISCLOSURE SHALL BE PROVIDED WHEN AN ELECTRONIC MAIL MESSAGE IS SENT OR RECEIVED BY A NEW YORK MEMBER, ON THE PROFILE DESCRIBING A MEMBER TO A NEW YORK MEMBER, AND ON THE WEBSITE PAGES OF THE INTERNET DATING SERVICE USED WHEN A NEW YORK MEMBER SIGNS UP. A DISCLOSURE UNDER THIS PARAGRAPH SHALL BE IN BOLD, CAPITAL LETTERS IN AT LEAST TWELVE-POINT TYPE.

(B) IF AN INTERNET DATING SERVICE CONDUCTS CRIMINAL BACKGROUND SCREENINGS ON ALL OF ITS COMMUNICATING MEMBERS, THEN THE SERVICE SHALL DISCLOSE, CLEARLY AND CONSPICUOUSLY, TO ALL NEW YORK MEMBERS THAT THE INTERNET DATING SERVICE CONDUCTS A CRIMINAL BACKGROUND SCREENING ON EACH MEMBER PRIOR TO PERMITTING A NEW YORK MEMBER TO COMMUNICATE WITH ANOTHER MEMBER. THE DISCLOSURE SHALL BE PROVIDED ON THE WEBSITE PAGES USED WHEN A NEW YORK MEMBER SIGNS UP. A DISCLOSURE UNDER THIS PARAGRAPH SHALL BE IN BOLD, CAPITAL LETTERS IN AT LEAST TWELVE-POINT TYPE.

(C) IF AN INTERNET DATING SERVICE CONDUCTS CRIMINAL BACKGROUND SCREENINGS, THEN THE SERVICE SHALL DISCLOSE WHETHER IT HAS A POLICY ALLOWING A MEMBER WHO HAS BEEN IDENTIFIED AS HAVING A CRIMINAL CONVICTION TO HAVE ACCESS TO ITS SERVICE TO COMMUNICATE WITH ANY NEW YORK MEMBER; SHALL STATE THAT CRIMINAL BACKGROUND SCREENINGS ARE NOT FOOLPROOF; THAT THEY MAY GIVE MEMBERS A FALSE SENSE OF SECURITY; THAT THEY ARE NOT A PERFECT SAFETY SOLUTION; THAT CRIMINALS MAY CIRCUMVENT EVEN THE MOST SOPHISTICATED SEARCH TECHNOLOGY; THAT NOT ALL CRIMINAL RECORDS ARE PUBLIC IN ALL STATES AND NOT ALL DATABASES ARE UP TO DATE; THAT ONLY PUBLICLY AVAILABLE CONVICTIONS ARE INCLUDED IN THE SCREENING; AND THAT SCREENINGS DO NOT COVER OTHER TYPES OF CONVICTIONS OR ARRESTS OR ANY CONVICTIONS FROM FOREIGN COUNTRIES.

4. (A) IT SHALL BE AN UNLAWFUL PRACTICE AND A VIOLATION OF ARTICLE TWENTY-TWO-A OF THIS CHAPTER FOR AN INTERNET DATING SERVICE TO FAIL TO PROVIDE NOTICE OR FALSELY INDICATE THAT IT HAS PERFORMED CRIMINAL BACKGROUND SCREENINGS IN ACCORDANCE WITH THIS SECTION. IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

(B) Nothing in this section shall be construed to restrict any right which any person may have under any other statute or common law.

[4.] 5. 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 immediate-

ly, 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.