

STATE OF NEW YORK

8196

2019-2020 Regular Sessions

IN ASSEMBLY

June 7, 2019

Introduced by M. of A. VANEL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to online dating services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 394-c of the general business law, as amended by
2 chapter 468 of the laws of 1996, is amended to read as follows

3 § 394-c. Limitations on certain contracts involving social referral
4 services. 1. As used in this section, the following terms shall have
5 the following meanings:

6 (a) "social referral service" shall include any service for a fee
7 providing matching of members [~~of the opposite sex~~], by use of computer
8 or any other means, for the purpose of dating [~~and~~] or general social
9 contact.

10 (b) "ancillary services" shall refer to goods or services directly or
11 indirectly related to or to be provided in connection with the social
12 referral service process, including but not limited to photography,
13 grooming, cosmetology, dating etiquette, dating counseling, or other
14 services.

15 (c) "online dating service" shall mean any social referral service
16 where the services are offered primarily online, such as by means of an
17 internet website or a mobile application.

18 (d) "banned member" shall mean the member whose account or profile is
19 the subject of a fraud ban.

20 (e) "fraud ban" shall mean when a member's account or profile is
21 barred from an online dating service because, in the judgment of the
22 service, the member poses a significant risk of attempting to obtain
23 money from other members through fraudulent means.

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

LBD13138-01-9

1 (f) "New York member" shall mean a person who provides a New York
2 residential or billing address or zip code or is in New York when regis-
3 tering with the online dating service.

4 2. No contract for social referral service shall require payment by
5 the purchaser of such service of a cash price in excess of one thousand
6 dollars. Services to be rendered to the purchaser under the contract
7 may extend over a period not to exceed two years from the date the
8 contract is entered into. This subdivision shall not apply to an online
9 dating service contract where the initial term is one year or less and
10 any subsequent terms are one year or less.

11 2-a. No social referral service provider shall require the purchase of
12 an ancillary service by a purchaser of a social referral service as a
13 condition of entering into a social referral service contract with such
14 provider.

15 3. Every contract for social referral service which requires payment
16 by the purchaser of such service of a total amount in excess of twenty-
17 five dollars shall provide that the seller of such service must furnish
18 to the purchaser a specified certain number of social referrals per
19 month. This subdivision shall not apply to an online dating service
20 where the user can use a search functionality or is presented with
21 possible matches.

22 4. Every contract for social referral service which requires payment
23 by the purchaser of such service of a total amount in excess of twenty-
24 five dollars shall provide that in the event that the seller of such
25 service does not furnish to the purchaser the specified certain number
26 of social referrals for two or more successive months the purchaser
27 shall have the option to cancel the contract and to receive a refund of
28 all monies paid pursuant to the cancelled contract with the exception
29 that the seller shall be entitled to retain as a cancellation fee
30 fifteen per cent of the cash price or a pro rata amount for the number
31 of referrals furnished to the purchaser, whichever is greater. Every
32 such contract shall set forth in the contract and in the bill of rights
33 the manner in which such services provider determines its cancellation
34 fee pursuant to this subdivision. This subdivision shall not apply to
35 an online dating service where the user can use a search functionality
36 or is presented with possible matches.

37 5. Every contract for social referral service shall provide that the
38 seller will not without the prior written consent of the purchaser sell,
39 assign or otherwise transfer for business or for any other purpose to
40 any person any information and material of a personal or private nature
41 acquired from a purchaser directly or indirectly including but not
42 limited to answers to tests and questionnaires, photographs or back-
43 ground information.

44 5-a. Every contract for a social referral service shall provide each
45 purchaser with the unilateral right to place his or her membership on
46 hold for a period of up to one year; provided, however, that the
47 purchaser and social referral service may mutually agree to a longer
48 period not to exceed two years. To exercise the unilateral right
49 provided in this subdivision, a purchaser must notify the social refer-
50 ral service provider in writing of his or her intent to do so.

51 6. Every contract for social referral service shall provide that at
52 the expiration of the contract or at the expiration of services rendered
53 by the seller, for any reason, all information and material of a
54 personal or private nature acquired from a purchaser directly or indi-
55 rectly including but not limited to answers to tests and questionnaires,
56 photographs or background information shall be [~~promptly~~] returned by

1 the seller to the purchaser by certified mail and/or deleted from any
2 electronic storage devices within a reasonable amount of time.

3 7. (a) Every contract for social referral service shall provide that
4 such contract may be cancelled without a cancellation fee within three
5 business days after the date of receipt by the buyer of a copy of the
6 written contract.

7 (b) In every social referral service sale, the seller shall furnish to
8 the buyer a fully completed copy of the contract pertaining to such sale
9 at the time of its execution, which is in the same language, e.g., Span-
10 ish, as that principally used in the oral sales presentation and which
11 shows the date of the transaction and contains the name and address of
12 the seller, and in the immediate proximity to the space reserved in the
13 contract for the signature of the buyer and in not less than ten-point
14 bold face type, a statement in substantially the following form:

15 YOU, THE BUYER, MAY CANCEL THIS CONTRACT WITHOUT ANY CANCELLATION FEE
16 WITHIN THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT. SEE THE
17 ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

18 (c) Notice of cancellation shall be delivered by certified or regis-
19 tered United States mail at the address specified in the contract.

20 (d) At the time the buyer signs the social referral service contract,
21 a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which
22 shall be attached to the contract and easily detachable, and which shall
23 contain in not less than ten-point bold face type the following informa-
24 tion and statements in the same language, e.g., Spanish, as that used in
25 the contract:

26 NOTICE OF CANCELLATION
27 (enter date of transaction)
28 (Date)

29 YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN
30 THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT BY MAILING THIS
31 SIGNED AND DATED NOTICE OF CANCELLATION BY CERTIFIED OR REGISTERED
32 UNITED STATES MAIL TO THE SELLER AT THE ADDRESS SPECIFIED HEREIN. IF YOU
33 CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED
34 WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR
35 CANCELLATION NOTICE. TO CANCEL THIS TRANSACTION, MAIL BY CERTIFIED OR
36 REGISTERED UNITED STATES MAIL A SIGNED AND DATED COPY OF THIS CANCELLA-
37 TION NOTICE TO:

38 (Name of Seller) NOT LATER THAN _____
39 (Address of Seller) (Date)
40 _____

41 This subdivision shall not apply to an online dating service where the
42 online dating service contract includes the statement required by this
43 subdivision in a clear and conspicuous manner.

44 (e) In every social referral service sale or renewal, the seller shall
45 provide each purchaser with a clear and conspicuous, separate written
46 notice, which may be a conspicuous and appropriately labeled hyperlink
47 for an online dating service, to be known as the "Dating Service Consum-
48 er Bill of Rights", which shall contain at least the following informa-
49 tion:

50 Dating Service Consumer Bill of Rights

51 1. No social referral service contract shall require the payment by
52 you, the purchaser, of an amount greater than one thousand dollars. In
53 addition, no such contract may extend over a period of time greater than
54 two years.

1 2. No social referral service contract shall require you, the purchas-
2 er, to purchase a good or service which is directly or indirectly
3 related to the social referral service. These extra services are known
4 as ancillary services and, while these ancillary service may be offered
5 to you, the law prohibits the seller from requiring that you purchase
6 this service as a condition of your social referral service contract.

7 3. If your social referral service contract costs more than twenty-
8 five dollars, the seller must furnish a minimum number of referrals per
9 month to you. If this minimum amount is not furnished to you for two
10 successive months, you have the option of cancelling the contract and
11 receiving a full refund of all the money you paid, less a cancellation
12 fee which cannot exceed either fifteen percent of the cash price or a
13 pro rata amount for the number of referrals furnished to you.

14 4. Your social referral service contract must specify the distance
15 which you, the purchaser, are willing to travel to meet any social
16 referral. No social referrals shall be furnished where you and the
17 referral live at a distance greater than the distance specified in the
18 contract.

19 5. The provider must have an established policy to address the situ-
20 ation of your moving outside the area it services. This policy must be
21 explained in your contract.

22 6. If any provision of the social referral service contract is
23 violated, you have the right to bring a court action against the provid-
24 er which has violated the contract.

25 8. Every contract for social referral service shall specify the
26 distance which the buyer is willing to travel to meet any social refer-
27 ral. No social referral shall be furnished by the seller to the buyer if
28 either the buyer or the social referral reside at a distance further
29 than the distance specified in either the buyer's or social referral's
30 contracts. This subdivision shall not apply to online dating services
31 that are generally available to users on a regional, national, or global
32 basis.

33 8-a. Every social referral service provider must establish and admin-
34 ister a fair and reasonable policy for the situation in which a purchas-
35 er moves to permanently reside at a location outside the service area of
36 such provider. This policy must be set forth in every contract for
37 social referral service. This subdivision shall not apply to online
38 dating services that are generally available to users on a national or
39 global basis.

40 9. (a) Whenever there shall be a violation of this section an applica-
41 tion may be made by the attorney general in the name of the people of
42 the state of New York to a court or justice having jurisdiction by a
43 special proceeding to issue an injunction, and upon notice to the
44 defendant of not less than five days, to enjoin and restrain the contin-
45 uance of such violation; and if it shall appear to the satisfaction of
46 the court or justice that the defendant has, in fact, violated this
47 section, an injunction may be issued by the court or justice, enjoining
48 and restraining any further violations, without requiring proof that any
49 person has, in fact, been injured or damaged thereby. In any such
50 proceeding, the court may make allowances to the attorney general as
51 provided in paragraph six of subdivision (a) of section eighty-three
52 hundred three of the civil practice law and rules, and direct restitu-
53 tion. Whenever the court shall determine that a violation of this
54 section has occurred, the court may impose a civil penalty of not more
55 than one thousand dollars for each violation. In connection with any
56 such proposed application the attorney general is authorized to take

1 proof and make a determination of the relevant facts and to issue
2 subpoenas in accordance with the civil practice law and rules, and
3 direct restitution.

4 (b) Any person who has been injured by reason of a violation of this
5 section may bring an action in his or her own name to enjoin such
6 violation, an action to recover his or her actual damages or fifty
7 dollars whichever is greater, or both such actions.

8 (c) In cities having a population over one million, the provisions of
9 this section may be enforced concurrently with the attorney general by
10 the director of a local or municipal consumer affairs office. In cities
11 having a population over one million, such local entities may also
12 require social referral services to be licensed. Such licensing require-
13 ments may be promulgated as are reasonably necessary to effectuate
14 licensure, provided, however, that such localities may not impose
15 substantive requirements that are inconsistent with or more restrictive
16 than those set forth in this section. Any fee for such license may not
17 exceed three hundred forty dollars for a two year period.

18 10. (a) An online dating service shall disclose to all of its New York
19 members known to have previously received and responded to an on-site
20 message from a banned member:

21 (1) the user name, identification number, or other profile identifier
22 of the banned member;

23 (2) the fact that the banned member was banned because, in the judg-
24 ment of the online dating service, the banned member may have been
25 using a false identity or may pose a significant risk of attempting to
26 obtain money from other members through fraudulent means;

27 (3) that a member should never send money or personal financial infor-
28 mation to another member; and

29 (4) a hyperlink to online information that clearly and conspicuously
30 addresses the subject of how to avoid being defrauded by another member
31 of an online dating service.

32 (b) The notification required by paragraph (a) of this subdivision
33 shall be:

34 (1) clear and conspicuous;

35 (2) by e-mail, text message, or other appropriate means of communi-
36 cation; and

37 (3) sent within twenty-four hours after the fraud ban, or at a later
38 time if the service has determined, based on an analysis of effective
39 messaging, that a different time is more effective, but in no event
40 later than three days after the fraud ban.

41 (c) An online dating service shall not be liable to any person, other
42 than the state of New York, for disclosing to any member that it has
43 banned a member, the user name or identifying information of the banned
44 member, or the reasons for the online dating service's decision to ban
45 such member in accordance with this subdivision. An online dating
46 service also shall not be liable to any person, other than the state of
47 New York, for the decisions regarding whether to ban a member, or how or
48 when to notify a member pursuant to this subdivision.

49 (d) This section does not diminish or adversely affect the protections
50 for online dating services that are afforded in 47 USC 230.

51 § 2. This act shall take effect on the sixtieth day after it shall
52 have become a law.