STATE OF NEW YORK

3889

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notice of cancellation shall be delivered by certified or registered United States mail at the address specified in the contract.

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

NOTICE OF CANCELLATION
(enter date of transaction)
(Date)

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

(Name of Seller) NOT LATER THAN _____
(Address of Seller) (Date)
_____

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

(e) In every social referral service sale or renewal, the seller shall provide each purchaser with a clear and conspicuous, separate written notice, **which may be a conspicuous and appropriately labeled hyperlink for an online dating service,** to be known as the "Dating Service Consumer Bill of Rights", which shall contain at least the following information:

Dating Service Consumer Bill of Rights

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

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

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

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

5. The provider must have an established policy to address the situation of your moving outside the area it services. This policy must be explained in your contract.

6. If any provision of the social referral service contract is violated, you have the right to bring a court action against the provider which has violated the contract.

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

8-a. Every social referral service provider must establish and administer a fair and reasonable policy for the situation in which a purchaser moves to permanently reside at a location outside the service area of such provider. This policy must be set forth in every contract for social referral service. **This subdivision shall not apply to online dating services that are generally available to users on a national or global basis.**

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

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

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

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

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

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

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

(3) that a member should never send money or personal financial information to another member; and

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

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

(1) clear and conspicuous;

(2) by e-mail, text message, or other appropriate means of communication; and

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

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

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

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