

STATE OF NEW YORK

1057--C

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IN ASSEMBLY

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Introduced by M. of A. VANEL -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- advanced to a third reading, passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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.

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

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

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

8 (g) "personally identifying information" shall mean any representation
9 of information that permits the identity of an individual to whom the
10 information applies to be reasonably inferred by either direct or indi-
11 rect means which shall include, but shall not be limited to, a person's
12 full name, home address, telephone number, geographic location, email
13 address, social security number, or a combination of non-personally
14 identifying information which, when put together, can permit the iden-
15 tification of the person. The first name, last name, and image of an
16 individual, where voluntarily provided to an online dating service with
17 the knowledge that it will be communicated to individuals on the
18 service's platform other than the individual providing it, shall not be
19 considered personally identifying information when disclosed in
20 connection with a fraud ban.

21 2. No contract for social referral service shall require payment by
22 the purchaser of such service of a cash price in excess of one thousand
23 dollars. Services to be rendered to the purchaser under the contract
24 may extend over a period not to exceed two years from the date the
25 contract is entered into. This subdivision shall not apply to an online
26 dating service contract where the initial term is one year or less and
27 any subsequent terms are one year or less where payment in excess of the
28 amount provided under this subdivision is reasonable in light of the
29 service's offerings.

30 2-a. No social referral service provider shall require the purchase of
31 an ancillary service by a purchaser of a social referral service as a
32 condition of entering into a social referral service contract with such
33 provider.

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

41 4. Every contract for social referral service which requires payment
42 by the purchaser of such service of a total amount in excess of twenty-
43 five dollars shall provide that in the event that the seller of such
44 service does not furnish to the purchaser the specified certain number
45 of social referrals, or in case of an online dating service with search
46 functionality or algorithm or location based matching, any social refer-
47 ral, for two or more successive months the purchaser shall have the
48 option to cancel the contract and to receive a refund of all monies paid
49 pursuant to the cancelled contract with the exception that the seller
50 shall be entitled to retain as a cancellation fee fifteen per cent of
51 the cash price or a pro rata amount for the number of referrals
52 furnished to the purchaser, whichever is greater. Every such contract
53 shall set forth in the contract and in the bill of rights the manner in
54 which such services provider determines its cancellation fee pursuant to
55 this subdivision.

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

8 5-a. Every contract for a social referral service shall provide each
9 purchaser with the unilateral right to place his or her membership on
10 hold for a period of up to one year; provided, however, that the
11 purchaser and social referral service may mutually agree to a longer
12 period not to exceed two years. To exercise the unilateral right
13 provided in this subdivision, a purchaser must notify the social refer-
14 ral service provider in writing of his or her intent to do so.

15 6. Every contract for social referral service shall provide that at
16 the expiration of the contract or at the expiration of services rendered
17 by the seller, for any reason, all information and material of a
18 personal or private nature acquired from a purchaser directly or indi-
19 rectly including but not limited to answers to tests and questionnaires,
20 photographs or background information shall be promptly returned by the
21 seller to the purchaser by certified mail and deleted from any electron-
22 ic storage devices.

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

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

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

38 (c) Notice of cancellation shall be delivered by certified or regis-
39 tered United States mail at the address, or electronically at the email
40 address, specified in the contract.

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

47 NOTICE OF CANCELLATION
48 (enter date of transaction)
49 (Date)

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

1 REGISTERED UNITED STATES MAIL A SIGNED AND DATED COPY OF THIS CANCELLA-
 2 TION NOTICE TO:
 3 (Name of Seller) NOT LATER THAN _____
 4 (Address of Seller) (Date)
 5 _____

6 In case of an online dating service, the contract, including the
 7 statement required by this subdivision, may be furnished and signed
 8 electronically, provided such contract is provided to the buyer in a
 9 clear and conspicuous manner.

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

16 Dating Service Consumer Bill of Rights

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

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

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

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

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

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

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

53 8-a. Every social referral service provider must establish and admin-
 54 ister a fair and reasonable policy for the situation in which a purchas-
 55 er moves to permanently reside at a location outside the service area of

1 such provider. This policy must be set forth in every contract for
2 social referral service.

3 9. (a) Whenever there shall be a violation of this section an applica-
4 tion may be made by the attorney general in the name of the people of
5 the state of New York to a court or justice having jurisdiction by a
6 special proceeding to issue an injunction, and upon notice to the
7 defendant of not less than five days, to enjoin and restrain the contin-
8 uance of such violation; and if it shall appear to the satisfaction of
9 the court or justice that the defendant has, in fact, violated this
10 section, an injunction may be issued by the court or justice, enjoining
11 and restraining any further violations, without requiring proof that any
12 person has, in fact, been injured or damaged thereby. In any such
13 proceeding, the court may make allowances to the attorney general as
14 provided in paragraph six of subdivision (a) of section eighty-three
15 hundred three of the civil practice law and rules, and direct restitu-
16 tion. Whenever the court shall determine that a violation of this
17 section has occurred, the court may impose a civil penalty of not more
18 than one thousand dollars for each violation. In connection with any
19 such proposed application the attorney general is authorized to take
20 proof and make a determination of the relevant facts and to issue
21 subpoenas in accordance with the civil practice law and rules, and
22 direct restitution.

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

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

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

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

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

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

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

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

53 (1) clear and conspicuous;

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

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

5 (c) An online dating service shall not be liable to any member who has
6 an account or profile that is the subject of a fraud ban, for disclosing
7 to any member that it has banned the member, the user name or account
8 identifier of the banned member, or the reasons for the online dating
9 service's decision to ban such member in accordance with this subdivi-
10 sion where such disclosure does not contain their personally identifying
11 information.

12 (d) This section does not diminish or adversely affect the protections
13 for online dating services that are afforded in 47 USC 230, or any
14 rights or protections otherwise provided to a consumer in law.

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