

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2071 Session of
2009

INTRODUCED BY HARHART, TRUE, KULA, O'NEILL, BEYER, BOBACK,
FARRY, GEIST, GILLESPIE, GINGRICH, HELM, HORNAMAN, KILLION,
MAJOR, MANN, MILLARD, MUNDY, MURT, PASHINSKI, PICKETT, QUINN,
READSHAW, REICHLEY, SIPTROTH, SONNEY, STERN, SWANGER AND
WATSON, NOVEMBER 10, 2009

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 10, 2009

AN ACT

1 Requiring online dating service providers to disclose
2 information relating to criminal background checks of its
3 users; imposing penalties; and establishing the Internet
4 Dating Disclosure and Safety Awareness Fund.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Internet
9 Dating Disclosure and Safety Awareness Act.

10 Section 2. Findings.

11 The General Assembly finds and declares as follows:

12 (1) Criminals and sex offenders use online dating
13 services to prey upon the residents of this Commonwealth.

14 (2) Residents of this Commonwealth need to be informed
15 when viewing Internet websites of online dating services as
16 to the potential risks to personal safety associated with
17 online dating. Requiring disclosures in the form of

1 guidelines for safer dating and informing residents as to
2 whether a criminal background screening has been conducted on
3 members of an online dating service fulfills a compelling
4 State interest to increase public awareness of the possible
5 risks associated with Internet dating activities.

6 Section 3. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Criminal background check." A search for a person's felony
11 and sex offense convictions initiated by an online dating
12 service provider conducted through one of the means provided for
13 in section 4.

14 "Member." A person who submits to an online dating service
15 provider the information required by the provider to access the
16 provider's service for the purpose of engaging in dating,
17 participating in compatibility evaluations with other persons or
18 obtaining matrimonial matching services.

19 "Provider." A person engaged in the business of offering or
20 providing to its members for a fee access to dating,
21 compatibility evaluations between persons or matrimonial
22 matching services through the Internet.

23 "Sex offense conviction." A conviction for an offense that
24 would qualify the offender for registration as a sex offender
25 pursuant to 42 Pa.C.S. Ch. 97 Subch. H (relating to registration
26 of sexual offenders) or under another state's equivalent
27 statute.

28 Section 4. Criminal background check.

29 For purposes of this act, a criminal background check shall
30 be conducted through one of the following means:

1 (1) By searching available and regularly updated
2 government public record databases for felony and sex offense
3 convictions so long as the databases, in the aggregate,
4 provide substantially national coverage.

5 (2) By searching a database maintained by a private
6 vendor whose database:

7 (i) contains more than 170,000,000 criminal records
8 that are otherwise available to the public;

9 (ii) has substantially national coverage;

10 (iii) is updated at least every 30 days;

11 (iv) is operated and maintained in the United
12 States; and

13 (v) contains at least the same or substantially
14 similar criminal history records as would be otherwise
15 accessible through searches of all the available
16 government databases specified in paragraph (1).

17 Section 5. Disclosures.

18 (a) General rule.--An online dating service provider
19 offering services to residents of this Commonwealth shall
20 disclose clearly and conspicuously, to any member who provides a
21 billing address or a zip code in this Commonwealth when
22 registering with the provider, that the online dating service
23 provider either initiates a background check of felony and sex
24 offense convictions on each member prior to permitting any
25 member to communicate with a member in this Commonwealth or that
26 the online dating service provider does not initiate such a
27 background check.

28 (b) Background check not conducted.--If the online dating
29 service provider does not initiate criminal background checks,
30 the provider must make a disclosure that shall read:

1 NO BACKGROUND CHECK OF FELONY OR SEX OFFENSE CONVICTIONS
2 IS DONE ON MEMBERS WHO USE THIS SERVICE. PLEASE TAKE
3 APPROPRIATE SAFETY MEASURES TO INCREASE AWARENESS OF
4 POSSIBLE RISKS ASSOCIATED WITH DATING.

5 (c) Background check conducted.--If the online dating
6 service provider does initiate criminal background checks, the
7 disclosure shall read:

8 (NAME OF PROVIDER) INITIATES A LIMITED BACKGROUND CHECK
9 FOR FELONY AND SEX OFFENSE CONVICTIONS BEFORE A MEMBER IS
10 PERMITTED TO COMMUNICATE WITH ANY MEMBER FROM
11 PENNSYLVANIA.

12 (d) Appearance.--The disclosure required under subsection
13 (b) or (c) shall appear on a web page required to be viewed by a
14 person applying to be a member who has indicated a billing
15 address or zip code in this Commonwealth in the registration
16 process. The disclosure cannot be more than three inches from
17 the top of the web page and must be:

18 (1) In bold capital letters.

19 (2) In at least 12 point type.

20 (3) In a color that contrasts from the background.

21 (e) Acknowledgment.--The provider shall require the
22 applicant in this Commonwealth to make an electronic
23 acknowledgment that the applicant has been provided the
24 disclosure before the applicant is accepted as a member. The
25 disclosure required under subsection (b) or (c) shall
26 additionally appear on any page that appears to a member in this
27 Commonwealth each time that member initiates or receives a
28 communication with another member through the provider's
29 service.

30 (f) Additional disclosure.--If the online dating service

1 provider conducts criminal background checks and the provider
2 has a policy allowing a member who has been identified as having
3 a felony or sex offense conviction to have access to its service
4 to communicate with any member in this Commonwealth, the
5 provider shall clearly and conspicuously disclose on any
6 communication to a member in this Commonwealth from the member
7 who has been identified as having a felony or sex offense
8 conviction, and on any web page that is seen by or transmitted
9 to a member in this Commonwealth that contains the personal
10 information for the member who has been identified as having a
11 felony or sex offense conviction and that is seen by or
12 communicated to a member in this Commonwealth, a disclosure that
13 shall read:

14 THIS PERSON HAS BEEN IDENTIFIED AS HAVING A FELONY OR SEX
15 OFFENSE CONVICTION.

16 Section 6. Provider policies.

17 An online dating service provider that conducts criminal
18 background checks shall establish an automatic electronic link
19 from any web page containing the disclosure required by section
20 5(c) to a web page that provides a safety awareness
21 notification. The web page containing the safety awareness
22 notification shall be configured such that it shall
23 automatically appear each time a member makes the electronic
24 acknowledgment of the disclosure under section 5(c). The member
25 is required to make an electronic acknowledgment of the safety
26 awareness notification each time it appears and the
27 acknowledgment shall appear at the bottom of the web page
28 containing the notification. At a minimum, the safety awareness
29 notification shall provide the following:

30 (1) A statement that reads:

1 PERSONAL SAFETY AWARENESS NOTICE CAUTION: Before
2 allowing Pennsylvania members to communicate with other
3 members (Name of provider) initiates a background check
4 of available public records to determine if any felony or
5 sex offense convictions are identified based on the name
6 and other information we require of members to create a
7 profile. The purpose is to provide a preliminary
8 background screening for protection of our members before
9 they are permitted to begin communicating directly with
10 each other.

11 The background checks for felony and sex offense
12 convictions are not foolproof and are not intended to
13 give members a false sense of security. Background checks
14 are not a perfect safety solution and criminals may
15 circumvent even the most sophisticated search technology.

16 Not all criminal records are public in all states and
17 not all databases are up to date. Only publicly available
18 felony and sex offense convictions are included in the
19 background check, but background checks do not cover
20 other convictions or arrests or any convictions from
21 foreign countries.

22 Anyone who is able to commit identity theft can also
23 falsify a dating profile.

24 There is no substitute for using good common sense
25 and acting with caution when communicating with any
26 stranger who wants to meet you.

27 (2) A list and description of safety measures reasonably
28 designed to increase awareness of safer dating practices as
29 determined by the provider.

30 Section 7. Application.

Any online dating service provider that enrolls members from Pennsylvania must comply with this act.

Section 8. Jurisdiction.

An online dating service that engages in the act of transmitting files over the Internet addressed to residents of this Commonwealth, and the act of accepting membership fees from residents of this Commonwealth, means that the online dating service is operating, conducting, engaging in and otherwise carrying on a business in this Commonwealth, subjecting the online dating service providers to regulation by the Commonwealth and to the jurisdiction of the courts of this Commonwealth.

Section 9. Violation of Unfair Trade Practices and Consumer Protection Law.

A violation of this act constitutes unfair methods of competition and unfair or deceptive acts or practices within the meaning of section 2(4) of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. Each failure to provide the required disclosure constitutes a separate violation.

Section 10. Civil penalties.

In addition to the remedy provided in this act and the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, the Attorney General may bring an action and the court may impose a civil penalty of up to \$1,000 per violation, with an aggregate total not to exceed \$25,000 for any 24-hour period, against any online dating service provider who violates any requirement of this act.

Section 11. Internet Dating Disclosure and Safety Awareness Fund.

1 There is hereby established the Internet Dating Disclosure
2 and Safety Awareness Fund as a special fund in the State
3 Treasury. All civil monetary penalties imposed as a result of
4 any action filed under this act shall be deposited into the
5 fund. Moneys in the fund shall be allocated, subject to
6 appropriation, to the Office of Attorney General for enforcement
7 of this act.

8 Section 12. Exemptions.

9 (a) Intermediaries.--An Internet service provider does not
10 violate this act solely as a result of serving as an
11 intermediary for the transmission of electronic messages between
12 members of an online dating service provider. An Internet access
13 service or other Internet service provider shall not be
14 considered an online dating service provider within the meaning
15 of this act as to any online dating service Internet website
16 provided by another person or entity.

17 (b) Number of members.--An Internet service provider that
18 has fewer than 1,000 members is exempt from the requirements of
19 this act.

20 Section 13. Effective date.

21 This act shall take effect in 60 days.