

Legislative Analysis



ONLINE DATING SERVICES: CRIMINAL BACKGROUND CHECKS

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House Bill 6234 as passed by the House
Sponsor: Rep. Jim Howell
Committee: Judiciary
First Analysis (10-21-04)

BRIEF SUMMARY: The bill would create a new act to require online dating services to conduct criminal background checks and display certain notices and to provide for civil remedies.

FISCAL IMPACT: The bill would have no fiscal impact for the state and local units of government.

THE APPARENT PROBLEM:

According to media estimates, about 30-40 million people in the United States used Internet-based dating services last year. Given the relative anonymity afforded by Internet communications, some fear that sex offenders and others with criminal pasts may find online dating sites tempting places to meet and establish relationships with future victims.

One online dating service provider has recently taken a proactive step in protecting its members from possible harm by conducting a criminal background check on potential members before allowing them to communicate with other members. In particular, True.com screens for felony and sexual offense convictions and also conducts searches to verify that applicants are indeed single. In addition, the founder of True.com has begun a campaign to encourage states to adopt legislation requiring all online dating service providers to also screen for convicted felons and sex offenders. Michigan joins at least two states (Texas and Ohio) in introducing legislation to address this concern.

THE CONTENT OF THE BILL:

The bill would create a new act to require online dating services to conduct criminal background checks and/or disclose certain notices as well as provide civil remedies. The bill would define "criminal background check" to mean a search of a person's felony and sexual offense convictions by one of three listed methods. The bill would apply to online dating service providers in the business of offering, promoting, or providing access to dating, relationship, compatibility, matrimonial, or social referral services primarily through the Internet and that provide services to Michigan residents.

An online dating service provider would have to do one of the following:

- Disclose prominently on the online service provider's home page (not more than three inches from the top of the website) that it has not conducted criminal background checks on persons using its service. The disclosure would have to read: "Warning: [name of provider] has not conducted felony or sexual offense background checks on its members."
- Before allowing a member to communicate with other members through the service, conduct a criminal background check through the criminal history record system of the FBI based on fingerprint identification or any other method utilized by the FBI for positive identification.
- Conduct a criminal background check through the record systems maintained by each of the 50 states and the District of Columbia. The provider would also have to disclose prominently on its home page (not less than three inches from the top of the website) a warning that "based solely on the name provided by the member, [name of the provider] has conducted a criminal background check through the criminal history record systems maintained by each of the 50 states and the District of Columbia".
- Conduct a criminal background check through a private vendor whose database contained more than 170 million criminal records, had substantially national coverage, was updated at least once every 90 days, and was operated and maintained in the U.S. A disclosure would have to be posted on the provider's home page (not more than three inches from the top of the website) with the following warning: "Based solely on the name provided by the member, [name of provider] has conducted a criminal background check through a private vendor whose records may not include all convictions from all jurisdictions. Contact [name of provider] for information regarding which jurisdictions are included."

The criminal background check for each member would have to be updated at least once every 90 days by the online dating service provider.

Moreover, an online dating service provider would have to establish a policy on what actions it would take as a result of information obtained through a criminal background check. A copy of the policy would have to be made available to each person applying for membership with the provider. Before a person was accepted for membership, he or she would have to acknowledge that they had had an opportunity to review the provider's policy regarding information obtained by the criminal background checks. A link allowing a person to review the policy would have to be provided on the home page of the service provider.

A civil action could be brought by a person who suffered damages as a result of a violation; the person bringing the suit could recover actual costs, actual and reasonable attorney fees, and either the actual damages or \$250,000, whichever was less. A provider would not be considered as violating the act for being an intermediary between the sender and recipient in the transmission of a message that violated the bill.

ARGUMENTS:

For:

As more and more people turn to online dating services in the hope of finding a compatible person with which to establish a relationship, it is important that such service providers implement safeguards so that members are assured of a safe experience. One step that service providers can take is to conduct criminal background checks to screen potential members for felony convictions and for sexual offenders.

The bill would not mandate that service providers screen potential and current members for criminal conduct, but it would provide parameters for the types of criminal background checks that would be acceptable and would require a service provider to inform the public if it did not conduct criminal background checks. Furthermore, the bill would require certain disclosure notices based on the type of background check performed so that the public could make informed choices as to which service they were comfortable subscribing to. Obviously, no system is perfect, and not all felons or sex offenders would be accurately identified, but the bill represents an important first step in providing increased safety to Michigan residents who chose to seek companionship through an online service.

Against:

Most people are not familiar with the differences between the different methods of conducting a “criminal background check” in order to fully understand and appreciate the warnings required by the bill that would be posted on a service provider’s webpage. The only way to verify a person’s identity, and therefore his or her criminal background, is by a fingerprint check or DNA test. A name check is only as good as the name provided by an applicant. Even asking for additional information such as driver’s license or social security number is unreliable given the ease to forge or counterfeit such documents and to steal other persons’ identities.

Though fingerprint checks would be accurate, they are also expensive. For each member, it would be \$54 at the current rate (\$30 for the Michigan Department of State Police to check the state database and \$24 for the FBI portion). Since the bill would require the background checks to be updated every 90 days, it would be over \$200 a year per member. But, perhaps more prohibitive than the cost would be the time necessary to complete the background checks. The FBI generally completes a fingerprint check for civil purposes in 24 hours, but that is from the time the prints are received. Under current state law, only the Criminal Justice Information Center within the MSP can submit fingerprints to the FBI for non-criminal justice purposes and receive the FBI report. In addition, requests for fingerprint checks for civil purposes would be handled on a priority basis, meaning that checks for criminal purposes would be processed first, followed by requests for background checks that are required for some employment, such as school bus drivers and certain nursing home staff. Considering current staffing levels and the sheer number of requests done for criminal purposes and the statutorily-required employment purposes, it is fair to estimate that a request for a fingerprint check so that a person could join an online dating service could take more than a month (perhaps several

months depending on the volume of other requests received by the MSP). Repeating this process on a quarterly basis could result in serious backlogs, meaning long delays before a member could be accepted and making it difficult for service providers to be in compliance with updating the records every 90 days.

Therefore, it is doubtful that many online dating service providers would chose to do criminal background checks using fingerprints. However, statistics compiled by the FBI reveal that a significant number of false hits occur with name-based checks. These include false positives, meaning that an innocent person may be forced to prove his or her innocence, and false negatives, meaning that a person is using an alias to disguise his or her identity. Because criminal checks done via name checks are so unreliable, allowing clever criminals to evade the system, many online dating service providers have chosen not to conduct such tests. Without additional information informing members of the significant potential for inaccurate results generated by name checks, however, the public would be misled in thinking that they were choosing from a “safe” pool of screened applicants. In addition, even if person didn’t have a criminal conviction, it doesn’t mean that the person is not a batterer or abusive individual. Bolstered by a false sense of security, daters who then “let down their guard”, ignore gut instincts, or fail to exercise judgment and practice common sense guidelines such as meeting in public could place themselves in harm’s way.

At the very least, the warnings required to be posted with the two versions of criminal background checks using name checks need to be clearer as to the potential for inaccuracies, as well as distinguishing the reliability between databases kept by law enforcement agencies and databases gleaned from public records by private companies.

POSITIONS:

A representative from True.com testified in support of the bill. (9-29-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.