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BILL ANALYSIS



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House Bill 6234 (Substitute H-3 as passed by the House)
Sponsor: Representative Jim Howell
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 10-5-04

CONTENT

The bill would create a new act to require an "online dating service provider" to conduct a criminal background check or provide notice that it had not done so. The bill would do all of the following:

- Allow the background checks to be conducted using the records of the Federal Bureau of Investigation (FBI), the states and the District of Columbia, or a private vendor.**
- Require a provider's website to disclose that it had not conducted criminal background checks or that it conducted them using the records of the 50 states and the District of Columbia or a private vendor, if it did not use the FBI system.**
- Require a provider to update its background check of each member at least every 90 days.**
- Require a provider to establish, and make available for review, a policy regarding the actions it would take after obtaining information through a criminal background check.**
- Allow a civil action by a person who suffered damages as a result of a violation of the proposed act.**
- Specify that a provider would not violate the proposed act as result of being an intermediary between the sender and recipient in the transmission of a message that violated the act.**

The bill would take effect on January 1, 2006.

"Online dating service provider" would mean a person or organization engaged, directly or indirectly, in the business of offering, promoting, or providing access to dating, relationship, compatibility, matrimonial, or social referral services primarily through the Internet.

"Criminal background check" would mean a search of a person's felony and sexual offense convictions by one of the following:

- Through the criminal history record system maintained by the FBI, based on fingerprint identification or any other method of positive identification used by the FBI.
- Through the criminal history record system maintained by each of the 50 states and the District of Columbia.
- Through a private vendor whose database contained more than 170,000 criminal records, had substantially national coverage, was updated at least once every 90 days, and was operated and maintained in the United States.

Background Checks/Disclosures

The bill would require an online dating service provider that offered services to Michigan residents to do one of the following:

- Conduct a criminal background check using the FBI's criminal history record system, for each member using the online dating service, before allowing him or her to communicate with another person through the service.
- Disclose prominently on the provider's home page that the online dating service had not conducted criminal background checks on people using its service.
- If the provider conducted criminal background checks through the criminal history record systems of the 50 states and the District of Columbia, display prominently on the provider's home page a disclosure that, based solely on the name provided by the member, the provider had conducted such a criminal background check.
- If the provider conducted criminal background checks through a private vendor, disclose that, based solely on the name provided by the member, the provider had conducted a criminal background check through a private vendor whose records might not include all convictions from all jurisdictions.

The bill would require the disclosures to be warning statements in a form specified in the bill. The required disclosures would have to be not more than three inches from the top of the website.

An online dating service provider would have to update its criminal background check for each member at least once every 90 days.

Policy

An online dating service provider would have to establish a policy on what actions the provider would initiate as a result of information obtained through a criminal background check. A copy of that policy would have to be made available to each person who applied for membership with the provider. Before being accepted for membership with a provider, a person would have to acknowledge that he or she had an opportunity to review the policy. The provider's home page would have to contain a link that would allow a person to review the policy.

Civil Action

A person who suffered damages as a result of a violation of the proposed act could bring a civil action. He or she could recover actual damages or \$250,000, whichever was less, as well as actual costs and actual and reasonable attorney fees.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that the bill would allow additional civil actions by people who suffered damages as a result of a violation of the proposed act, it potentially would increase costs to the judiciary.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.