

By: Carona

S.B. No. 337

A BILL TO BE ENTITLED

AN ACT

relating to criminal background checks on users of online relationship services; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 35, Business & Commerce Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. ONLINE RELATIONSHIP SERVICE SAFETY

Sec. 35.131. DEFINITIONS. In this subchapter:

(1) "Communicate" means to contact a person using real-time voice communication or in writing through the electronic transmission of free-form text.

(2) "Online relationship service" means a service through the Internet to arrange or facilitate the social introduction of two or more persons for the purpose of promoting the meeting of compatible individuals.

(3) "Online relationship service provider" means a person directly or indirectly engaged in the business of offering, promoting, or providing access to an online relationship service.

Sec. 35.132. CONDUCT OF CRIMINAL DATABASE SEARCH OR FEDERAL CRIMINAL BACKGROUND CHECK. (a) An online relationship service provider conducts a criminal database search on a person for purposes of this subchapter if the provider conducts a search for the person's felony and sexual offense convictions through a regularly updated database that:

- 1 (1) is a system or collection of public records;
- 2 (2) is operated and maintained in the United States;
- 3 (3) contains more than 170 million criminal records
4 and sex offender registries; and
- 5 (4) has substantial national coverage.

6 (b) An online relationship service provider conducts a
7 federal criminal background check on a person for the purposes of
8 this subchapter if the provider obtains any available criminal
9 history record information regarding the person from a system that
10 is maintained by the Federal Bureau of Investigation and based on
11 fingerprint identification or another method of positive
12 identification used by the Federal Bureau of Investigation.

13 Sec. 35.133. CONDUCT OF OR DISCLOSURE REGARDING CRIMINAL
14 DATABASE SEARCH OR FEDERAL CRIMINAL BACKGROUND CHECK REQUIRED. An
15 online relationship service provider that offers, provides access
16 to, or promotes online relationship services to a resident of this
17 state shall:

18 (1) for each person who uses the provider's
19 relationship service, conduct a criminal database search:

20 (A) before initially allowing that person to
21 communicate with another person using the same service; and

22 (B) at least as frequently as once every three
23 months;

24 (2) conduct a federal criminal background check on a
25 person before initially allowing that person to communicate with
26 another person using the same service; or

27 (3) disclose as provided by Section 35.134 to each

1 resident of this state who uses the provider's online relationship
2 service that the provider has not conducted a criminal database
3 search or a federal criminal background check on each person who
4 uses the service.

5 Sec. 35.134. DISCLOSURE OF FAILURE TO CONDUCT CRIMINAL
6 DATABASE SEARCH OR FEDERAL CRIMINAL BACKGROUND CHECK. (a) An
7 online relationship service provider that has not conducted a
8 criminal database search or a federal criminal background check on
9 each person who uses the service to communicate shall prominently
10 disclose, as required by Section 35.133(3), the provider's failure
11 to conduct the search or check:

12 (1) on the home page of the provider's website
13 accessible by a resident of this state and any other web page
14 accessible by a resident of this state where a person is likely to
15 first enter the provider's website, in a location visible without
16 scrolling down the page;

17 (2) at the beginning of each profile shown to a
18 resident of this state who uses the provider's online relationship
19 service; and

20 (3) at the beginning of each electronic mail message
21 received by a resident of this state in connection with the use of
22 the provider's online relationship service, including a
23 communication between persons using the service.

24 (b) A disclosure under Subsection (a)(1) or (3) shall state
25 in bold, capital letters in at least 12-point type:

26 "WARNING: WE HAVE NOT CONDUCTED CRIMINAL FELONY OR SEXUAL
27 OFFENSE BACKGROUND CHECKS ON OUR COMMUNICATING MEMBERS."

1 (c) A disclosure under Subsection (a)(2) shall state in
2 bold, capital letters in at least 12-point type:

3 "WARNING: WE HAVE NOT CONDUCTED A CRIMINAL FELONY OR SEXUAL
4 OFFENSE BACKGROUND CHECK ON THIS INDIVIDUAL."

5 Sec. 35.135. DISCLOSURE BY PROVIDER THAT CONDUCTS CRIMINAL
6 DATABASE SEARCHES OR FEDERAL CRIMINAL BACKGROUND CHECKS. (a) An
7 online relationship service provider that conducts a criminal
8 database search or federal criminal background check for each
9 person who uses the provider's online relationship service to
10 communicate shall provide a disclosure through a readily accessible
11 link on the home page of the provider's website that includes:

12 (1) a description of the coverage of any criminal
13 database used by the provider;

14 (2) an acknowledgement that:

15 (A) criminal background checks are not a
16 perfectly safe solution and it is possible for a criminal to
17 circumvent even the most sophisticated background search
18 technology;

19 (B) only felony or other sexual offense
20 convictions, and not arrests, are covered by the criminal
21 background check; and

22 (C) a person can commit a crime without having a
23 prior criminal conviction;

24 (3) a description of additional safety measures
25 reasonably designed to increase awareness of safer dating
26 practices; and

27 (4) a statement clearly describing whether the

1 provider excludes from its website all persons identified as having
2 a felony or sexual offense conviction.

3 (b) If an online relationship service provider does not
4 exclude from its website all persons identified as having a felony
5 or other sexual offense conviction, the provider shall prominently
6 disclose in the profile of each resident of this state identified as
7 having a felony or other sexual offense conviction:

8 "WARNING: THIS PERSON HAS BEEN IDENTIFIED THROUGH OUR
9 CRIMINAL BACKGROUND CHECK TO HAVE A PRIOR CRIMINAL CONVICTION."

10 Sec. 35.136. CIVIL ACTION. (a) A person injured as a
11 result of a violation of this subchapter may bring a civil action to
12 recover:

13 (1) court costs and reasonable attorney's fees; and

14 (2) the greater of:

15 (A) actual damages; or

16 (B) exemplary, special, consequential, and other
17 damages.

18 (b) An online relationship service provider is not liable
19 under this section if the provider:

20 (1) conducts a criminal database search or a federal
21 criminal background check as provided by Section 35.133(1) or (2)
22 on each person who uses the provider's relationship service to
23 communicate; and

24 (2) makes the disclosures required under Section
25 35.135.

26 Sec. 35.137. CRIMINAL OFFENSE. (a) A person, including an
27 entity, who violates this subchapter commits an offense.

1 (b) An offense under this section is a misdemeanor
2 punishable by a fine not to exceed \$250 for each day on which the
3 offense is committed.

4 (c) Each person for whom an online relationship service
5 provider does not meet the requirements of this subchapter
6 constitutes a separate offense.

7 (d) It is a defense to prosecution under this section that
8 the online relationship service provider:

9 (1) conducts a criminal database search or a federal
10 criminal background check as provided by Section 35.133(1) or (2)
11 on each person who communicates using the provider's relationship
12 service; and

13 (2) makes the disclosures required under Section
14 35.135.

15 Sec. 35.138. ENFORCEMENT BY ATTORNEY GENERAL. The attorney
16 general may file a civil action to enforce this subchapter.

17 SECTION 2. Not later than September 1, 2005, an online
18 relationship service provider must comply with Subchapter L,
19 Chapter 35, Business & Commerce Code, as added by this Act, with
20 respect to each person who is using the provider's service on that
21 date.

22 SECTION 3. This Act takes effect September 1, 2005.