

BILL ANALYSIS

C.S.H.B. 1052
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Technology
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Large numbers of people use Internet dating sites, but it appears that few of these sites perform a criminal history background check on the people who use them. Some states require such a site to disclose whether or not a check is performed on site users so that members can make more informed choices. It has been suggested that it would also benefit the members if Internet dating sites were to publish a description of safety measures reasonably designed to increase awareness of safer online dating practices. C.S.H.B. 1052 addresses these issues by establishing provisions for Internet dating safety relating to criminal background checks on users of online dating services and for disclosures of online dating safety measures.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1052 amends the Business & Commerce Code to require an online dating service provider that offers services to Texas residents and does not conduct a criminal background check on each member before permitting a Texas member to communicate through the provider with another member to clearly and conspicuously disclose to all Texas members, in a specified format on the online dating service provider's Internet website, that the provider does not conduct criminal background checks. The bill requires an online dating service provider that offers services to Texas residents and conducts a criminal background check on each member before permitting a Texas member to communicate through the provider with another member to clearly and conspicuously disclose to all Texas members that the provider conducts a criminal background check on each member before permitting a Texas member to communicate through the provider with another member.

C.S.H.B. 1052 specifies that an online dating service provider conducts a criminal background check on a person if the provider initiates a name search for the person's convictions for any felony offense, any offense the conviction or adjudication of which requires registration as a sex offender under the sex offender registration program, and any offense for which an affirmative finding of family violence was made. The bill requires the name search to be conducted by searching available and regularly updated government public record databases for criminal conviction records relating to any of the specified offenses that in the aggregate provide substantially national coverage of those records or by searching regularly updated databases that contain at least the same or substantially similar coverage as would be accessible through searching those government databases.

C.S.H.B. 1052 requires an online dating service provider that offers services to Texas residents and conducts a criminal background check on each member to include on the provider's Internet website, in a specified format, a statement of whether the provider excludes from its online dating service all persons identified as having been convicted of one of the specified offenses; a

statement of the number of years of a member's criminal history that is included in a criminal background check; and a statement that criminal background checks are not foolproof, criminal background checks may give members a false sense of security, criminal background checks are not a perfect safety solution, criminals may circumvent even the most sophisticated search technology, not all criminal records are public in all states and not all databases are up to date, only publicly available convictions are included in the criminal background check, and the criminal background check does not cover types of convictions other than convictions described by the bill's provisions or any convictions from foreign countries.

C.S.H.B. 1052 requires an online dating service provider that offers services to Texas residents to clearly and conspicuously provide a safety awareness notification on the provider's Internet website that includes a list and description of safety measures reasonably designed to increase awareness of safer online dating practices. The bill sets out examples of statements that satisfy the safety awareness notification requirement.

C.S.H.B. 1052 makes an online dating service provider who violates the bill's provisions liable to the state for a civil penalty in an amount not to exceed \$250 for each Texas member registered with the provider during the time of the violation. The bill authorizes the attorney general to seek an injunction to prevent or restrain a violation of the bill's provisions, to bring suit to recover a civil penalty imposed for such a violation, and to recover reasonable expenses incurred in obtaining any such injunction or civil penalty, including court costs and reasonable attorney's fees. The bill specifies that its provisions do not create a private right of action.

C.S.H.B. 1052 excludes from application of its provisions an Internet service provider serving as an intermediary for the transmission of electronic messages between members of an online dating service provider. The bill requires an online dating service provider, not later than September 1, 2011, to comply with the bill's provisions with respect to each person who is using the provider's service on that date and defines "member," "online dating service provider," and "Texas member."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1052, in provisions requiring an online dating service provider that offers services to Texas residents and conducts a criminal background check on each member to include certain information on the provider's Internet website, contains a provision not in the original requiring the provider to include a statement of the number of years of a member's criminal history that is included in a criminal background check. The substitute contains a provision not in the original specifying that its provisions do not create a private right of action.