

By: Patrick

H.B. No. 1052

Substitute the following for H.B. No. 1052:

By: Eissler

C.S.H.B. No. 1052

A BILL TO BE ENTITLED

1 AN ACT
2 relating to criminal background checks on users of online dating
3 services and to disclosures of online dating safety measures;
4 providing a civil penalty.

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

6 SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is
7 amended by adding Chapter 106 to read as follows:

8 CHAPTER 106. INTERNET DATING SAFETY ACT

9 Sec. 106.001. DEFINITIONS. In this chapter:

10 (1) "Member" means a person who submits to an online
11 dating service provider the information required by the provider to
12 access the provider's service for the purpose of engaging in dating
13 or participating in a compatibility evaluation with other persons.

14 (2) "Online dating service provider" means a person
15 engaged in the business of offering or providing to its members
16 access to dating or compatibility evaluations between persons
17 through the Internet to arrange or facilitate the social
18 introduction of two or more persons for the purpose of promoting the
19 meeting of individuals.

20 (3) "Texas member" means a member who provides a
21 billing address or zip code in this state when registering with the
22 online dating service provider.

23 Sec. 106.002. APPLICABILITY OF CHAPTER. This chapter does
24 not apply to an Internet service provider serving as an

1 intermediary for the transmission of electronic messages between
2 members of an online dating service provider.

3 Sec. 106.003. CONDUCT OF CRIMINAL BACKGROUND CHECK. (a)
4 For purposes of this chapter, an online dating service provider
5 conducts a criminal background check on a person if the provider
6 initiates a name search for the person's convictions for any:

7 (1) felony offense;

8 (2) offense the conviction or adjudication of which
9 requires registration as a sex offender under Chapter 62, Code of
10 Criminal Procedure; and

11 (3) offense for which an affirmative finding of family
12 violence was made under Article 42.013, Code of Criminal Procedure.

13 (b) The name search described by Subsection (a) must be
14 conducted by searching:

15 (1) available and regularly updated government public
16 record databases for criminal conviction records described by
17 Subsections (a)(1)-(3) that in the aggregate provide substantially
18 national coverage of those records; or

19 (2) regularly updated databases that contain at least
20 the same or substantially similar coverage as would be accessible
21 through searching databases described by Subdivision (1).

22 Sec. 106.004. DISCLOSURE BY PROVIDER THAT DOES NOT CONDUCT
23 CRIMINAL BACKGROUND CHECK. (a) An online dating service provider
24 that offers services to residents of this state and does not conduct
25 a criminal background check on each member before permitting a
26 Texas member to communicate through the provider with another
27 member shall clearly and conspicuously disclose to all Texas

1 members that the provider does not conduct criminal background
2 checks, as described by Section 106.003.

3 (b) The disclosure required by this section must be stated
4 in bold, capital letters, in at least 12-point type on the online
5 dating service provider's Internet website.

6 Sec. 106.005. DISCLOSURES BY PROVIDER THAT CONDUCTS
7 CRIMINAL BACKGROUND CHECKS. (a) An online dating service provider
8 that offers services to residents of this state and conducts a
9 criminal background check on each member before permitting a Texas
10 member to communicate through the provider with another member
11 shall clearly and conspicuously disclose to all Texas members that
12 the provider conducts a criminal background check, as described by
13 Section 106.003, on each member before permitting a Texas member to
14 communicate through the provider with another member.

15 (b) An online dating service provider that offers services
16 to residents of this state and conducts a criminal background check
17 on each member shall include on the provider's Internet website:

18 (1) a statement of whether the provider excludes from
19 its online dating service all persons identified as having been
20 convicted of:

21 (A) a felony offense;

22 (B) an offense the conviction or adjudication of
23 which requires registration as a sex offender under Chapter 62,
24 Code of Criminal Procedure; or

25 (C) an offense for which an affirmative finding
26 of family violence was made under Article 42.013, Code of Criminal
27 Procedure;

1 (2) a statement of the number of years of a member's
2 criminal history that is included in a criminal background check;
3 and

4 (3) a statement that:

5 (A) criminal background checks are not
6 foolproof;

7 (B) criminal background checks may give members a
8 false sense of security;

9 (C) criminal background checks are not a perfect
10 safety solution;

11 (D) criminals may circumvent even the most
12 sophisticated search technology;

13 (E) not all criminal records are public in all
14 states and not all databases are up to date;

15 (F) only publicly available convictions are
16 included in the criminal background check; and

17 (G) the criminal background check does not cover
18 other types of convictions than convictions for offenses described
19 by Section 106.003(a) or any convictions from foreign countries.

20 (c) A disclosure required by Subsection (a) must be stated
21 in bold, capital letters, in at least 12-point type on the online
22 dating service provider's Internet website.

23 Sec. 106.006. SAFETY AWARENESS DISCLOSURE BY ALL PROVIDERS.
24 An online dating service provider that offers services to residents
25 of this state shall clearly and conspicuously provide a safety
26 awareness notification on the provider's Internet website that
27 includes a list and description of safety measures reasonably

1 designed to increase awareness of safer online dating practices.
2 Examples of the safety awareness notification include the following
3 statements or substantially similar statements:

4 (1) "Anyone who is able to commit identity theft can
5 also falsify a dating profile.";

6 (2) "There is no substitute for acting with caution
7 when communicating with any stranger who wants to meet you.";

8 (3) "Never include your last name, e-mail address,
9 home address, phone number, place of work, or any other identifying
10 information in your Internet profile or initial e-mail messages.
11 Stop communicating with anyone who pressures you for personal or
12 financial information or attempts in any way to trick you into
13 revealing it."; and

14 (4) "If you choose to have a face-to-face meeting with
15 another member, always tell someone in your family or a friend where
16 you are going and when you will return. Never agree to be picked up
17 at your home. Always provide your own transportation to and from
18 your date and meet in a public place with many people around."

19 Sec. 106.007. CIVIL PENALTY; INJUNCTION. (a) An online
20 dating service provider who violates this chapter is liable to the
21 state for a civil penalty in an amount not to exceed \$250 for each
22 Texas member registered with the online dating service provider
23 during the time of the violation.

24 (b) The attorney general may:

25 (1) seek an injunction to prevent or restrain a
26 violation of this chapter; or

27 (2) bring suit to recover the civil penalty imposed

1 under Subsection (a).

2 (c) The attorney general may recover reasonable expenses
3 incurred in obtaining an injunction or civil penalty under this
4 section, including court costs and reasonable attorney's fees.

5 Sec. 106.008. NO PRIVATE RIGHT OF ACTION. This chapter does
6 not create a private right of action.

7 SECTION 2. Not later than September 1, 2011, an online
8 dating service provider must comply with Chapter 106, Business &
9 Commerce Code, as added by this Act, with respect to each person who
10 is using the provider's service on that date.

11 SECTION 3. This Act takes effect September 1, 2011.