

- SUBJECT:** Disclosure of background checks by online dating service providers
- COMMITTEE:** Technology — committee substitute recommended
- VOTE:** 4 ayes — Peña, Eissler, D. Howard, Muñoz
0 nays
1 absent — Button
- WITNESSES:** None
- DIGEST:** CSHB 1052 would amend the Business and Commerce Code to add chapter 106, which would be known as the Internet Dating Safety Act.
- The bill would require an online dating service provider to disclose to all Texas members whether it did or did not conduct criminal background checks before permitting a Texas member to communicate through it with another member. The disclosure would have to be in bold, capital letters in at least 12-point type on the provider's website.
- If performed, the criminal background check would have to include a name search for felony convictions, sex offenses, and offenses related to family violence.
- A provider who conducted criminal background checks would have to state the number of years of criminal history that were included in the background check and a statement on its website that:
- criminal background checks were not foolproof, could give members a false sense of security, and were not a perfect safety solution;
 - criminals could circumvent even the most sophisticated search technology;
 - not all criminal records were public in all states and not all databases up to date;
 - only publicly available convictions were included in the criminal background check; and

- the criminal background check did not cover other types of convictions other than those specified above, nor did it cover convictions from foreign countries.

An online dating service provider that offered services in Texas also would have to provide a safety awareness notification on its website that included a list and description of safety measures designed to increase awareness of safer online dating practices.

An online dating service provider in violation would be liable for a civil penalty not to exceed \$250 for each Texas member registered with the online dating service provider during the time of violation. The attorney general could seek an injunction to prevent or restrain a violation, bring suit to recover civil penalties, and recover reasonable expenses incurred in doing so.

CSHB 1052 would not create a private right of action.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1052 is a consumer transparency and protection measure that would empower consumers with information about online dating websites. Approximately 20 million Americans use online dating website services. Out of 1,500 Internet dating sites, only one major site requires criminal background searches of its members. There have been numerous reports of sex offenders and violent criminals using these sites to locate their victims. CSHB 1052 would give consumers a measure of transparency when they choose an Internet dating website.

CSHB 1052 would not require an Internet dating site to perform a criminal background check, but simply would require a website to disclose whether it did or did not conduct background checks. The bill would provide further transparency for Texans by requiring an Internet dating site to disclose the number of years included in the criminal background check. Similar measures have already been enacted to increase transparency for consumers in other states.

**OPPONENTS
SAY:**

Stating that an online dating service provider performs background checks could create a false sense of security and lead to a larger number of dangerous interactions.

Name-based background checks can be highly inaccurate and result in false negative results that could mislead dating website members. State and county databases often are incomplete or out of date, and many counties do not report criminal records to a central database that is publicly accessible for searches.

A lack of a criminal record does not make a person safe. A person who was arrested on a felony charge but had that charge pleaded down to a misdemeanor would not be prohibited from using a dating website. Also, a person could register on the dating website under a false name to evade a background check.

CSHB 1052 would place an undue burden on Internet communications. Once convicted felons are released from prison, they are free to socialize in other venues such as bars and at public events. Their ability to use an online dating website service should be no different. Users of Internet dating websites already are able to have background searches on others performed.

NOTES:

The committee substitute added a provision not in the original version of the bill that would require a statement regarding the number of years included in a member's criminal background check. The substitute also added a provision specifying that its provisions would not create a private right of action.

The companion bill, SB 488 by Van de Putte, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 24 and was reported favorably, without amendment, by the House Technology Committee on April 7, making it eligible to be considered in lieu of HB 1052.