

**ASSEMBLY BILL**

**No. 1681**

---

---

**Introduced by Assembly Members Pavley, Bermudez, and  
Negrete McLeod**

February 22, 2005

---

---

An act to add Chapter 33 (commencing with Section 22948) to Division 8 of the Business and Professions Code, relating to online services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1681, as introduced, Pavley. Online relationship services.

Existing law provides for the regulation of various businesses.

This bill would require online relationship service providers, as defined, to either conduct criminal background checks for each member using the service before allowing that person to communicate with another person through the service or disclose to all Web site visitors residing in the state that the provider has not conducted criminal background checks. The bill would authorize the Attorney General to bring an action for a violation of these provisions, and would make a provider that violates these provisions guilty of a misdemeanor, punishable by a fine of \$250 for each day the violation continues. The bill would exempt a provider that conducts criminal background checks in compliance with these provisions from civil liability for the actions of its members.

Because this bill would make the failure to meet specified requirements a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 33 (commencing with Section 22948) is  
2 added to Division 8 of the Business and Professions Code, to  
3 read:

4  
5 CHAPTER 33. ONLINE RELATIONSHIP SERVICES  
6

7 22948. (a) For purposes of this section, the following  
8 definitions apply:

9 (1) "Communicate" means to directly contact a person, through  
10 an online relationship service provider, in writing using the  
11 electronic transmission of free form text or using real-time voice  
12 communication.

13 (2) "Criminal background check" means a search of a person's  
14 felony and sexual offense convictions through a regularly  
15 updated system or other collection of public records operated and  
16 maintained in the United States with substantial national  
17 coverage and more than 170 million criminal and sexual offender  
18 records.

19 (3) "Member" means any person who is either a member or  
20 who submits a profile or other information for the purpose of  
21 dating, matrimonial, or social referral services to a particular  
22 online relationship service provider.

23 (4) "Online relationship service provider" or "provider" means  
24 a person or entity engaged, directly or indirectly, in the business,  
25 for profit, of offering, promoting, or providing access to dating,  
26 relationship, compatibility, matrimonial, or social referral  
27 services principally on or through their Web site or otherwise  
28 through the Internet.

29 (b) An online relationship service provider that provides  
30 services to residents of the state shall do one of the following:

1 (1) Conduct a criminal background check for each member  
2 using the online relationship service before allowing that person  
3 to communicate with another person through the online  
4 relationship service.

5 (2) Disclose prominently to all Web site visitors residing in the  
6 state that the online relationship service provider has not  
7 conducted criminal background checks on its members or other  
8 persons using its service.

9 (c) If the provider conducts criminal background checks  
10 pursuant to paragraph (1) of subdivision (b), the provider shall  
11 provide the following additional disclosure information through  
12 a readily accessible link on the provider's home page:

13 (1) A description of the criminal background check database  
14 used by the provider and, if the provider uses a private vendor to  
15 conduct the criminal background check, a readily accessible link  
16 to the page on the vendor's Web site that describes the contents  
17 of its database.

18 (2) An acknowledgment that criminal background checks are  
19 supplemental information for the member and should not be  
20 considered a substitute for reasonable precaution whenever  
21 meeting another person.

22 (3) An acknowledgment that only felony convictions and not  
23 arrests are covered by the criminal background check.

24 (4) An acknowledgment that a person can commit crimes  
25 without ever having a prior criminal conviction.

26 (5) A description of additional safety measures reasonably  
27 designed to increase awareness of safer dating practices.

28 (6) A statement clearly declaring whether or not the provider  
29 excludes from its Web site all persons identified as having a  
30 conviction for a felony or sexual offense.

31 (d) If the provider chooses to disclose that it does not conduct  
32 a criminal background check pursuant to paragraph (2) of  
33 subdivision (b), the disclosure shall meet all of the following  
34 requirements:

35 (1) The prominent disclosure shall appear to all Web site  
36 visitors residing in the state in the following locations:

37 (A) On the provider's home page and on all other pages where  
38 visitors or members are likely to first enter the provider's Web  
39 site.

1 (B) On the profile page for each member whose profile is  
2 shown to residents of this state and for whom the provider has  
3 not conducted a criminal background check.

4 (C) At the beginning of all electronic mail messages sent or  
5 received by communicating members residing in the state.

6 (2) For the provider's home page for each visitor from the  
7 state, the disclosure shall take the following form: "WARNING:  
8 [NAME OF PROVIDER] HAS NOT CONDUCTED FELONY  
9 OR SEXUAL OFFENSE BACKGROUND CHECKS ON ITS  
10 MEMBERS."

11 (3) For the profile page of each member shown to each visitor  
12 from the state, and on all electronic mail sent by communicating  
13 members to members of the state that go through the provider's  
14 service, the disclosure shall take the following form:  
15 "WARNING: [NAME OF PROVIDER] HAS NOT  
16 CONDUCTED FELONY OR SEXUAL OFFENSE  
17 BACKGROUND CHECKS ON THIS INDIVIDUAL."

18 (4) The disclosure shall be in bold, capital letters in at least  
19 12-point type and in clear contrast to the surrounding  
20 background, and shall be located within three inches of the top of  
21 each relevant Web page or electronic mail message.

22 (e) If the provider chooses not to exclude a person with a  
23 felony or sexual offense conviction, the provider shall  
24 prominently display on the profile page of that person and on all  
25 electronic mail from that person that go through the provider's  
26 service, when shown or sent to a member of this state, the  
27 following notice, consistent with the requirements of paragraph  
28 (4) of subdivision (d): "WARNING: THIS PERSON HAS BEEN  
29 IDENTIFIED THROUGH OUR CRIMINAL BACKGROUND  
30 CHECK TO HAVE A PRIOR FELONY OR SEXUAL  
31 OFFENSE CONVICTION."

32 (f) A provider shall update the criminal background check for  
33 each member at least once every 90 days.

34 (g) A provider that violates this section is guilty of a  
35 misdemeanor punishable by a fine of two hundred and fifty  
36 dollars (\$250) for each day that the requirements of this section  
37 are not met. If the provider fails to meet the requirements of this  
38 section for any of its members or visitors, each failure shall  
39 constitute a separate violation for each member or visitor for  
40 whom the required disclosure is not provided. The Attorney

1 General may bring an action against a provider that has violated  
2 this section.

3 (h) A provider that conducts criminal background checks in  
4 compliance with the provisions of this section shall not be  
5 subject to civil liability on the basis of the actions of one or more  
6 of its members.

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the  
12 penalty for a crime or infraction, within the meaning of Section  
13 17556 of the Government Code, or changes the definition of a  
14 crime within the meaning of Section 6 of Article XIII B of the  
15 California Constitution.