

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1681

**Introduced by Assembly Member Pavley
(Coauthors: Assembly Members ~~Bermudez and
Negrete McLeod~~ Chan and Goldberg)**

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. An act to add Article 10.2.2 (commencing with Section 25214.8.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to toxic substances.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1681, as amended, Pavley. ~~Online—relationship services~~Lead-containing jewelry.

(1) Existing hazardous waste control laws regulate the disposal of discarded appliances, lead acid batteries, small household batteries, recyclable latex paint, and household hazardous waste, except as provided in the hazardous waste control laws and regulations.

This bill would prohibit, on and after January 1, 2007, a person from advertising, selling, offering to sell, or distributing for promotional purposes in this state, or importing into the state, jewelry, as defined, that contains more than 200 parts per million total lead. Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

(2) 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.

~~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. Article 10.2.2 (commencing with Section
2 25214.8.5) is added to Chapter 6.5 of Division 20 of the Health
3 and Safety Code, to read:

4
5 Article 10.2.2. Lead-Containing Jewelry

6
7 25214.8.5. The Legislature finds and declares all of the
8 following:

9 (a) Lead is neurotoxic. Acute lead toxicity can cause seizures,
10 coma, and even death. Chronic lead toxicity is associated with
11 attention deficit problems, learning disabilities, mental

1 *retardation, and antisocial and delinquent behaviors. Even very*
2 *low dose exposures of lead have been linked to intellectual*
3 *impairment.*

4 *(b) Lead is particularly hazardous to children. Lead in young*
5 *children, even at minute levels, causes brain function*
6 *impairment. Current studies indicate that no level of lead*
7 *exposure is safe for a developing child.*

8 *(c) Lead enters the body when a person breathes or swallows*
9 *lead objects, dust, fumes, or mist. Lead is absorbed into the*
10 *bloodstream and distributed throughout the body. The lead that*
11 *is not excreted right away is stored in soft tissue and bone.*
12 *Eventually, 90 percent or more of the lead body burden is*
13 *accumulated in the bones and may stay there for years.*

14 *(d) Studies have demonstrated that when children ingest lead,*
15 *their bodies absorb between 40 to 50 percent of the lead.*

16 *(e) When a pregnant woman has lead in her body, the lead*
17 *easily crosses the placenta and can harm the developing child.*

18 *(f) High concentrations of lead have been consistently found in*
19 *jewelry, particularly inexpensive jewelry that is marketed to*
20 *children.*

21 *(g) A March 2005 study by the University of North Carolina*
22 *found that of 312 jewelry items purchased from California*
23 *retailers, 123 samples were found to contain more than 50*
24 *percent lead by weight, and 36 of these 123 samples contained*
25 *more than 75 percent lead. Experiments simulating handling of*
26 *these samples demonstrated that a child under the age of seven*
27 *years could be exposed to extremely hazardous levels of lead*
28 *when just briefly touching at least one of the jewelry samples.*
29 *The study further indicated that more intensive handling or direct*
30 *mouthing activity would result in even greater lead exposures to*
31 *children.*

32 *(h) From September 2003 to July 2004, the Consumer Product*
33 *Safety Commission oversaw three recalls of nearly 150 million*
34 *pieces of toy jewelry because those jewelry pieces contained*
35 *toxic levels of lead. Then, again in December 2004, January*
36 *2005, and March 2005, the commission recalled an additional 3*
37 *million pieces of lead-containing jewelry.*

38 *(i) These frequent recalls of lead products and the recent*
39 *research clearly show that lead in low-cost jewelry is a*
40 *significant threat to public health.*

1 25214.8.6. (a) For purposes of this article, “jewelry” means
 2 (1) an ornament worn by a person on the body, including, but not
 3 limited to, a necklace, bracelet, anklet, earring, locket, pendant,
 4 charm bracelet, ring, pinky ring, chain, broach, pin, lapel pin,
 5 headband, watchband, or (2) any pendant, bead, chain, link, or
 6 other component of such an ornament.

7 (b) On and after January 1, 2007, a person shall not advertise,
 8 sell, offer to sell, distribute for promotional purposes in this
 9 state, or import into the state, jewelry that contains more than
 10 200 parts per million total lead.

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

14
 15 ~~CHAPTER 33. ONLINE RELATIONSHIP SERVICES~~

16
 17 ~~22948. (a) For purposes of this section, the following~~
 18 ~~definitions apply:~~

19 (1) ~~“Communicate” means to directly contact a person, through~~
 20 ~~an online relationship service provider, in writing using the~~
 21 ~~electronic transmission of free form text or using real-time voice~~
 22 ~~communication.~~

23 (2) ~~“Criminal background check” means a search of a person’s~~
 24 ~~felony and sexual offense convictions through a regularly~~
 25 ~~updated system or other collection of public records operated and~~
 26 ~~maintained in the United States with substantial national~~
 27 ~~coverage and more than 170 million criminal and sexual offender~~
 28 ~~records.~~

29 (3) ~~“Member” means any person who is either a member or~~
 30 ~~who submits a profile or other information for the purpose of~~
 31 ~~dating, matrimonial, or social referral services to a particular~~
 32 ~~online relationship service provider.~~

33 (4) ~~“Online relationship service provider” or “provider” means~~
 34 ~~a person or entity engaged, directly or indirectly, in the business,~~
 35 ~~for profit, of offering, promoting, or providing access to dating,~~
 36 ~~relationship, compatibility, matrimonial, or social referral~~
 37 ~~services principally on or through their Web site or otherwise~~
 38 ~~through the Internet.~~

39 (b) ~~An online relationship service provider that provides~~
 40 ~~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.