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NEW JERSEY REGISTER
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VOLUME 40, ISSUE 13

ISSUE DATE: JULY 7, 2008

RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

40 N.J.R. 3957(a)

Proposed New Rules: *N.J.A.C. 13:45A-6*

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Internet Dating Services

Authorized By: Lawrence DeMarzo, Acting Director, New Jersey Division of Consumer Affairs, in consultation with Anne Milgram, Attorney General.

Authority: *N.J.S.A. 56:8-174*.

Calendar Reference: See Summary below for explanation of exemption to calendar requirement.

Proposal Number: PRN 2008-220.

Submit written comments by September 5, 2008 to:

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The agency proposal follows:

Summary

Finding that residents of this State need to be informed of the potential risks involved in using Internet dating services, the Legislature passed the Internet Dating Safety Act, P.L. 2007, c. 272 (*N.J.S.A. 56:8-168 et seq.*), which was enacted on January 13, 2008 (Act). The Legislature found that there is a public safety need for Internet dating services to disclose whether they perform criminal history background screenings and to increase public awareness of possible

risks associated with Internet dating activities.

The Act requires an Internet dating service to post safety awareness notifications and to disclose whether it conducts criminal background screenings. If an Internet dating service conducts criminal background screenings, it is required by the Act to state its policy with respect to allowing a member who has been identified as having a criminal conviction to have access to the service to communicate with any New Jersey member, and to post additional safety awareness notifications to the effect that criminal background screenings may be of limited value.

The Division of Consumer Affairs, in consultation with the Attorney General, is proposing new rules to effectuate the Act. The proposed new rules require certain disclosures in addition to those required by the Act that will enable users to more completely realize the benefits of the disclosures required by the Act.

Proposed new *N.J.A.C. 13:45A-6.1* sets forth the purpose and scope of the proposed rules. Proposed new *N.J.A.C. 13:45A-6.2* contains definitions used in the subchapter. Proposed new *N.J.A.C. 13:45A-6.3* requires Internet dating services that conduct criminal background screenings to disclose how they verify the identity of the person being screened, how they obtain the information and what crimes disqualify a person from using the service to communicate with other members. Proposed new *N.J.A.C. 13:45A-6.4* requires Internet dating services that conduct criminal background screenings to disclose the date as of which the screening on a particular member was conducted or updated.

The Director has determined that the comment period for this proposal shall be 60 days. Therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this proposal is excepted from the rulemaking calendar requirement.

Social Impact

The proposed new rules provide consumers with additional information with which to make assessments about the safety of Internet dating services.

Economic Impact

Although the proposed new rules do not impose fees on Internet dating services, they may incur costs to include the required disclosures on their web pages. These additional costs may be passed on to members in the fees charged for services. The amount of any costs incurred will vary among services, depending on the background screening policies adopted.

The proposed new rules do not require an Internet dating service to conduct criminal background screenings. The proposed rules may have an adverse economic impact on those Internet dating services that do conduct criminal background screenings and permit persons who have been convicted of certain crimes to have access to the service and communicate with other members. If the Internet dating service discloses that only certain crimes are disqualifying, some potential users might choose not to take the risk that they would be communicating with a person who has been convicted of a crime and, instead, use a different service.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards or requirements.

Jobs Impact

The Division does not anticipate that the proposed new rules will increase or decrease jobs in the State.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

Some Internet dating services may be small businesses as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Therefore, the following analysis applies.

As described in the Summary and Economic Impact above, the proposed new rules contain no recordkeeping or reporting requirements, but do contain compliance requirements depending upon the background screening polices adopted by a service and the potential for costs associated therewith. No professional services are expected to be required for compliance.

Because public safety is involved, no lesser standards based on the size of a business are appropriate or authorized by the Act.

Smart Growth Impact

The Division does not believe that the proposed new rules will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. [RESERVED] INTERNET DATING SERVICES

13:45A-6.1 Purpose and scope

(a) The purpose of this subchapter is to require Internet dating services to make disclosures in addition to those required by P.L. 2007, c. 272, *N.J.S.A. 56:8-168* et seq. (Act), in order to effectuate the purposes of the Act.

(b) The subchapter applies to Internet dating services that offer dating services over the Internet to residents of the State and accept membership applications from residents of the State.

13:45A-6.2 Definitions

The following words and terms as used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

"Criminal background screening" means a name search for a person's criminal convictions initiated by an on-line dating service provider and conducted by one of the following means:

- 1. By searching available and regularly updated government public record databases for criminal convictions, so long as such databases, in the aggregate, provide substantial national coverage; or**
- 2. By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.**

"Internet dating service" means a person or entity directly or indirectly in the business of offering, promoting or providing access to dating, relationship, compatibility, matrimonial or social referral services principally on or through the Internet for profit, where the profit is derived from fees from members, advertising, or any other source.

"Member" means a customer, client or participant who submits to an Internet dating service information required to access the service for the purpose of engaging in dating, relationship, compatibility, matrimonial or social referral.

"New Jersey member" means a member who provides a New Jersey address or zip code when registering with the service.

13:45A-6.3 Criminal background information

(a) An internet dating service that conducts criminal background screenings on its members shall, in addition to the disclosures required by P.L. 2007, c. 272 (*N.J.S.A. 56:8-171(d)*), disclose, clearly and conspicuously, to all New Jersey members:

- 1. The means that it uses to conduct the criminal background screenings;**
- 2. The means by which it verifies the identity of the member for the purpose of conducting the background screening;**
- 3. Whether it allows a member who has been identified as having a conviction for any crime, including, but not limited to, any sex offense, that would qualify the offender for registration pursuant to section 2 of P.L. 1994, c. 133 (*N.J.S.A. 2C:7-2*) or under another jurisdiction's equivalent statute to have access to its service to communicate with any New Jersey member; and**
- 4. What crimes, if any, disqualify a member from having access to its service to communicate with any New Jersey member.**

(b) The disclosures required by (a) above shall be provided in bold letters in at least 12-point type on the website pages used when a New Jersey member signs up.

13:45A-6.4 Date of criminal background information

An Internet dating service that discloses that it conducts a criminal background screening on members shall display on the webpage containing a member's profile the date as of which the criminal background screening on that member was conducted or updated.