STATE OF NEW YORK

8138

IN SENATE

April 6, 2018

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offenses of phishing in the third degree, phishing in the second degree and phishing in the first degree; and to amend the criminal procedure law, in relation to the time in which a prosecution of such offenses must be commenced

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 156.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. "Malware" means computer software specifically designed to cause damage to a device or a network.

§ 2. The penal law is amended by adding three new sections 156.41, 156.42 and 156.43 to read as follows:

§ 156.41 Phishing in the third degree.

A person is guilty of phishing in the third degree when he or she sends an email to an individual:

1. urging the individual to:

a. send money to the person or to a third-party account to which the person has access;

b. download an attachment which contains malware infecting the individual's computer or electronic device; or

c. click on a link which redirects the individual to a website requiring the individual to input his or her login credentials, banking information, or personal information or which causes malware to automatically be downloaded onto the individual's computer or electronic device;

2. with the intent to:

a. steal such person's login credentials, passwords, money, financial or personal information; or

b. introduce a malware attack on such person's computer data.

Phishing in the third degree is a class A misdemeanor.

§ 156.42 Phishing in the second degree.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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A person is guilty of phishing in the second degree when he or she commits the crime of phishing in the third degree and causes an individual to send money in the aggregate exceeding five hundred dollars or causes damage to the individual's computer or electronic device or the loss of data in an amount in the aggregate exceeding five hundred dollars.

Phishing in the second degree is a class E felony.

§ 156.43 Phishing in the first degree.

A person is guilty of phishing in the first degree when he or she commits the crime of phishing in the third degree and causes an individual to send money in the aggregate exceeding two thousand dollars or causes damage to the individual's computer or electronic device or the loss of data in an amount in the aggregate exceeding two thousand dollars.

Phishing in the first degree is a class D felony.

§ 3. Subdivision 3 of section 30.10 of the criminal procedure law is amended by adding a new paragraph (h) to read as follows:

(h) A prosecution for phishing in the first degree as defined in section 156.43, phishing in the second degree as defined in section 156.42 or phishing in the third degree as defined in section 156.41 of the penal law may be commenced within twenty years after the commission thereof.

§ 4. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.