

STATE OF NEW YORK

9247

IN SENATE

May 12, 2022

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

AN ACT to amend the criminal procedure law, in relation to prohibiting the creation of fake electronic communication service accounts and to prohibiting the collection and use of individuals' account information by law enforcement officers and other government entities

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "stop online police fake accounts and keep everyone safe act" or the
3 "stop fakes act".

4 § 2. The criminal procedure law is amended by adding a new article 702
5 to read as follows:

ARTICLE 702

DECEPTIVE LAW ENFORCEMENT ACCESS TO ELECTRONIC COMMUNICATION SERVICE ACCOUNTS PROHIBITED

Section 702.00 Definitions.

10 702.10 Law enforcement creation of fake accounts prohibited.

11 702.20 Law enforcement use of fake accounts prohibited.

12 702.30 Third party use of fake accounts.

13 702.40 Law enforcement collection of account information prohib-
14 ited.

15 702.50 Law enforcement use of account information prohibited.

16 702.60 Fake accounts and collection of credentials; suppression
17 of evidence.

18 702.70 Fake accounts and collection of account information;
19 private right of action.

§ 702.00 Definitions.

21 As used in this article, the following terms shall have the following
22 meanings:

23 1. "Government entity" shall mean any department or agency of the
24 state or any political subdivision thereof, or any individual acting for
25 or on behalf of such department or agency of the state or political
26 subdivision thereof.

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

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1 2. "Law enforcement officer" means any police officer, peace officer,
2 school resource officer or prosecutor.

3 3. "Electronic communication" means any communication sent between
4 account holders using an electronic communication service.

5 4. "Electronic communication information" means information related to
6 an electronic communication or the use of an electronic communication
7 service including, but not limited to the contents, sender, recipients,
8 or format of an electronic communication; the precise or approximate
9 location of the sender or recipient of an electronic communication at
10 any time during such electronic communication; the time or date such
11 electronic communication was created, sent, or received and information
12 pertaining to an individual or device involved in such electronic commu-
13 nication including but not limited to an internet protocol address.
14 "Electronic communication information" shall not include information in
15 the public domain.

16 5. "Electronic communication service" means a service that provides
17 subscribers to or users of such service the ability to send or receive
18 an electronic communication, including a service that acts as an inter-
19 mediary in the transmission of electronic communications, or that stores
20 electronic communication information.

21 6. "Account" means an individual profile or account created using an
22 electronic communication service.

23 7. "Account information" means information used to access or identify
24 an individual's account including, but not limited to, access creden-
25 tials, usernames, passwords, and/or biometric identifiers.

26 8. "Fake account" means any account created with or used with false
27 identifying information, including, but not limited to, name, occupa-
28 tion, or pictures.

29 9. "Collect" or "collection" means any method used to obtain an indi-
30 vidual's account information, including but not limited to, requesting,
31 demanding, and/or coercing any individual to provide such account infor-
32 mation from individuals in person, electronically, in writing, or other-
33 wise.

34 10. "Account holder" means the creator and operator of an account.

35 § 702.10 Law enforcement creation of fake accounts prohibited.

36 No law enforcement officer shall create a fake account with an elec-
37 tronic communication service.

38 § 702.20 Law enforcement use of fake accounts prohibited.

39 No law enforcement officer shall access or use a fake account for any
40 purpose, including, but not limited to, communication with individual
41 accounts, public communications, updates to account information, and/or
42 requests to access information or content from the user of any electron-
43 ic communication service.

44 § 702.30 Third party use of fake accounts.

45 No government entity or government official shall seek the assistance
46 of any non-government entity, any agency of the federal government, or
47 any agency of the government of another state or subdivision thereof in
48 obtaining information or data using a fake account if such government
49 entity or government official would be barred from directly seeking such
50 information under this article.

51 § 702.40 Law enforcement collection of account information prohibited.

52 No law enforcement officer or government official shall request,
53 demand, and/or coerce any account holder to provide such account hold-
54 er's account information.

55 § 702.50 Law enforcement use of account information prohibited.

1 No law enforcement officer or government official shall use any
2 account information obtained in violation of section 702.40 of this
3 article, including, but not limited to, by logging into an individual's
4 account. Nothing in this section shall prohibit a law enforcement offi-
5 cer or government official from creating and maintaining accounts for
6 personal use, provided that such accounts are not used in the scope of
7 any law enforcement or investigative duties.

8 § 702.60 Fake accounts and collection of credentials; suppression of
9 evidence.

10 1. Upon motion from a defendant, a court shall order that evidence be
11 suppressed or excluded if the court finds that such evidence:

12 (a) consists of a record acquired via a fake account;

13 (b) was obtained as a result of other records obtained via a fake
14 account; or

15 (c) consists of a record, or was obtained as a result of other
16 records, acquired via account access credentials obtained in violation
17 of this article.

18 2. This section shall apply regardless of any claim that the informa-
19 tion or evidence is attenuated from an unlawful order or request, would
20 inevitably have been discovered, or was simultaneously or subsequently
21 obtained or reobtained through other means.

22 § 702.70 Fake accounts and collection of account information; private
23 right of action.

24 1. Any individual whose account information, records, evidence, or
25 other information were either accessed by any government entity or
26 government official or by a third party at the request of a government
27 entity or government official in violation of this article may institute
28 a civil action against such government entity or government official for
29 any or all of the following:

30 (a) Ten thousand dollars per violation or actual damages, whichever is
31 greater;

32 (b) Punitive damages;

33 (c) Injunctive or declaratory relief; and/or

34 (d) Any other relief the court deems proper.

35 2. In assessing the amount of punitive damages under this section, the
36 court shall consider:

37 (a) The number of people whose electronic communication information
38 was disclosed;

39 (b) The targeting of accounts with heightened privacy concerns,
40 including, but not limited to, houses of worship, political organiza-
41 tions, and medical facilities, and individuals associated therewith; and

42 (c) The persistence of violations by the particular government entity
43 or government official.

44 3. In any action brought under this section, the court shall award
45 reasonable attorneys' fees, expenses, and costs to a prevailing plain-
46 tiff.

47 § 3. This act shall take effect immediately.