STATE OF NEW YORK

1764

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

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:

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

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

ARTICLE 702

DECEPTIVE LAW ENFORCEMENT ACCESS TO ELECTRONIC COMMUNICATION SERVICE ACCOUNTS PROHIBITED

Section 702.00 Definitions.

702.10 Law enforcement creation of fake accounts prohibited.

702.20 Law enforcement use of fake accounts prohibited.

702.30 Third party use of fake accounts.

702.40 Law enforcement collection of account information prohibited.

702.50 Law enforcement use of account information prohibited.

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

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

§ 702.00 Definitions.

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

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

LBD06096-01-3

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

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

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

4. "Electronic communication information" means information related to an electronic communication or the use of an electronic communication service including, but not limited to the contents, sender, recipients, or format of an electronic communication; the precise or approximate location of the sender or recipient of an electronic communication at any time during such electronic communication; the time or date such electronic communication was created, sent, or received and information pertaining to an individual or device involved in such electronic communication including but not limited to an internet protocol address. "Electronic communication information" shall not include information in the public domain.

5. "Electronic communication service" means a service that provides subscribers to or users of such service the ability to send or receive an electronic communication, including a service that acts as an intermediary in the transmission of electronic communications, or that stores electronic communication information.

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

7. "Account information" means information used to access or identify an individual's account including, but not limited to, access credentials, usernames, passwords, and/or biometric identifiers.

8. "Fake account" means any account created with or used with false identifying information, including, but not limited to, name, occupation, or pictures.

9. "Collect" or "collection" means any method used to obtain an individual's account information, including but not limited to, requesting, demanding, and/or coercing any individual to provide such account information from individuals in person, electronically, in writing, or otherwise.

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

§ 702.10 Law enforcement creation of fake accounts prohibited.

No law enforcement officer shall create a fake account with an electronic communication service.

§ 702.20 Law enforcement use of fake accounts prohibited.

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

§ 702.30 Third party use of fake accounts.

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

§ 702.40 Law enforcement collection of account information prohibited.

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

§ 702.50 Law enforcement use of account information prohibited.

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

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

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

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

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

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

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

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

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

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

(b) Punitive damages;

(c) Injunctive or declaratory relief; and/or

(d) Any other relief the court deems proper.

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

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

(b) The targeting of accounts with heightened privacy concerns, including, but not limited to, houses of worship, political organizations, and medical facilities, and individuals associated therewith; and

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

3. In any action brought under this section, the court shall award reasonable attorneys' fees, expenses, and costs to a prevailing plaintiff.

§ 3. This act shall take effect immediately.