

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:

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.

6 702.10 Law enforcement creation of fake accounts prohibited.

7 702.20 Law enforcement use of fake accounts prohibited.

8 702.30 Third party use of fake accounts.

9 702.40 Law enforcement collection of account information prohibited.

10 702.50 Law enforcement use of account information prohibited.

11 702.60 Fake accounts and collection of credentials; suppression
12 of evidence.

13 702.70 Fake accounts and collection of account information;
14 private right of action.

§ 702.00 Definitions.

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

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

19 LBD06096-01-3

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

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

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

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

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

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

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

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

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

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

39 § 702.10 Law enforcement creation of fake accounts prohibited.

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

42 § 702.20 Law enforcement use of fake accounts prohibited.

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

48 § 702.30 Third party use of fake accounts.

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

55 § 702.40 Law enforcement collection of account information prohibited.

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

4 § 702.50 Law enforcement use of account information prohibited.

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

12 § 702.60 Fake accounts and collection of credentials; suppression of
13 evidence.

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

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

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

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

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

26 § 702.70 Fake accounts and collection of account information; private
27 right of action.

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

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

36 (b) Punitive damages;

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

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

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

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

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

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

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

51 § 3. This act shall take effect immediately.