
By: **Delegates Dembrow and Doory**
Introduced and read first time: February 8, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Fraud - Telecommunication Service Providers**

3 FOR the purpose of prohibiting use, possession, manufacture, assembly, transfer,
4 distribution, advertising, and related activities relating to certain unlawful
5 telecommunication devices and unlawful access devices; providing criminal
6 penalties, damages, injunction, impounding, forfeiture, and other enforcement
7 measures for violations of this Act; authorizing a civil cause of action for
8 violations of this Act; providing certain rules of construction and venue for
9 prosecution of violations of this Act; providing certain exceptions; defining
10 certain terms; repealing certain duplicative provisions; and generally relating to
11 telecommunication services and unlawful access.

12 BY adding to
13 Article 27 - Crimes and Punishments
14 Section 194A to be under the new subheading "Fraud - Telecommunication
15 Service Providers"
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 2000 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article 27 - Crimes and Punishments**

21 **FRAUD - TELECOMMUNICATION SERVICE PROVIDERS**

22 194A.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN UNLAWFUL
26 ACCESS DEVICE, MEANS:

27 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL ACCESS
28 DEVICE;

1 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM AN
2 INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE, SO
3 THAT IT IS CAPABLE OF DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE,
4 OR A DEVICE THAT IS USED BY THE PROVIDER, OWNER, OR LICENSEE OF A
5 TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR
6 TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO
7 SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT,
8 ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,
9 TRANSMISSION, OR RETRANSMISSION; OR

10 (III) KNOWINGLY TO ASSIST OTHERS IN THOSE ACTIVITIES.

11 (3) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN UNLAWFUL
12 TELECOMMUNICATION DEVICE, MEANS:

13 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL
14 TELECOMMUNICATION DEVICE;

15 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM A
16 TELECOMMUNICATION DEVICE TO BE CAPABLE OF ACQUIRING, DISRUPTING,
17 RECEIVING, TRANSMITTING, DECRYPTING, OR FACILITATING THE ACQUISITION,
18 DISRUPTION, RECEIPT, TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION
19 SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
20 TELECOMMUNICATION SERVICE PROVIDER; OR

21 (III) KNOWINGLY TO ASSIST OTHERS IN THOSE ACTIVITIES.

22 (4) "TELECOMMUNICATION DEVICE" MEANS:

23 (I) AN INSTRUMENT, DEVICE, MACHINE, EQUIPMENT,
24 TECHNOLOGY, OR SOFTWARE WHICH IS CAPABLE OF TRANSMITTING, ACQUIRING,
25 DECRYPTING, OR RECEIVING ANY TELEPHONIC, ELECTRONIC, DATA, INTERNET
26 ACCESS, AUDIO, VIDEO, MICROWAVE OR RADIO TRANSMISSIONS, SIGNALS,
27 COMMUNICATIONS, OR SERVICES, INCLUDING THE RECEIPT, ACQUISITION,
28 TRANSMISSION, OR DECRYPTION OF THOSE COMMUNICATIONS, TRANSMISSIONS,
29 SIGNALS, OR SERVICES PROVIDED BY OR THROUGH ANY CABLE TELEVISION, FIBER
30 OPTIC, TELEPHONE, SATELLITE, MICROWAVE, DATA TRANSMISSION, RADIO,
31 INTERNET-BASED, OR WIRELESS DISTRIBUTION NETWORK, SYSTEM, OR FACILITY;
32 OR

33 (II) A PART, ACCESSORY, OR COMPONENT OF AN ITEM LISTED IN
34 SUBPARAGRAPH (I) OF THIS PARAGRAPH, INCLUDING A COMPUTER CIRCUIT,
35 SECURITY MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, ELECTRONIC
36 MECHANISM, OR OTHER COMPONENT, ACCESSORY, OR PART OF ANY
37 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF FACILITATING THE
38 TRANSMISSION, DECRYPTION, ACQUISITION, OR RECEPTION OF ANY OF THOSE
39 COMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES.

40 (5) "TELECOMMUNICATION SERVICE" MEANS:

1 (I) SERVICE PROVIDED FOR A CHARGE OR COMPENSATION TO
2 FACILITATE THE ORIGINATION, TRANSMISSION, EMISSION, OR RECEPTION OF SIGNS,
3 SIGNALS, DATA, WRITINGS, IMAGES, AND SOUNDS OR INTELLIGENCE OF ANY
4 NATURE BY TELEPHONE, INCLUDING CELLULAR TELEPHONES, WIRE, WIRELESS,
5 RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEMS;

6 (II) SERVICE PROVIDED BY ANY RADIO, TELEPHONE, FIBER OPTIC,
7 CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR
8 INTERNET-BASED DISTRIBUTION SYSTEM, NETWORK, FACILITY, OR TECHNOLOGY,
9 INCLUDING ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS, TELEPHONIC,
10 MICROWAVE AND RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND
11 SERVICES; AND

12 (III) THOSE COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND
13 SERVICES PROVIDED DIRECTLY OR INDIRECTLY, BY OR THROUGH, A SYSTEM,
14 NETWORK, FACILITY, OR TECHNOLOGY LISTED IN THIS PARAGRAPH.

15 (6) (I) "TELECOMMUNICATION SERVICE PROVIDER" MEANS A PERSON
16 THAT:

17 1. PROVIDES A TELECOMMUNICATION SERVICE, EITHER
18 DIRECTLY, OR INDIRECTLY AS A RESELLER; OR

19 2. OWNS, OPERATES, OR PROVIDES A TELECOMMUNICATION
20 SERVICE DIRECTLY OR INDIRECTLY USING A FIBER OPTIC, CABLE TELEVISION,
21 SATELLITE, INTERNET-BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA
22 TRANSMISSION, OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY.

23 (II) "TELECOMMUNICATION SERVICE PROVIDER" INCLUDES A
24 CELLULAR, PAGING, OR OTHER WIRELESS COMMUNICATIONS COMPANY OR OTHER
25 PERSON THAT, FOR A FEE, SUPPLIES THE FACILITY, CELL SITE, MOBILE TELEPHONE
26 SWITCHING OFFICE, OR OTHER EQUIPMENT OR TELECOMMUNICATION SERVICE.

27 (7) "UNLAWFUL ACCESS DEVICE" MEANS AN INSTRUMENT, DEVICE,
28 MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE WHICH IS PRIMARILY
29 DESIGNED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED,
30 OFFERED, PROMOTED, OR ADVERTISED FOR THE PURPOSE OF DEFEATING OR
31 CIRCUMVENTING TECHNOLOGY, SOFTWARE, OR A DEVICE, OR A COMPONENT OR
32 PART OF ANY OF THEM USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY
33 TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR
34 TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO
35 SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT,
36 ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,
37 TRANSMISSION, OR RETRANSMISSION.

38 (8) (I) "UNLAWFUL TELECOMMUNICATION DEVICE" MEANS:

39 1. AN ELECTRONIC SERIAL NUMBER, MOBILE
40 IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, OR A
41 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING

1 THE ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS
 2 CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE
 3 PROVIDER, OR THAT HAS BEEN ALTERED, MODIFIED, PROGRAMMED, OR
 4 REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER
 5 TELECOMMUNICATION DEVICE OR OTHER EQUIPMENT, TO SO ACQUIRE OR
 6 FACILITATE THE UNAUTHORIZED ACQUISITION OF A TELECOMMUNICATION
 7 SERVICE;

8 2. A TELEPHONE ALTERED TO OBTAIN SERVICE WITHOUT
 9 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
 10 TELECOMMUNICATION SERVICE PROVIDER, TUMBLER PHONE, COUNTERFEIT OR
 11 CLONE PHONE, TUMBLER MICROCHIP, COUNTERFEIT OR CLONE MICROCHIP, OR
 12 OTHER INSTRUMENT CAPABLE OF DISGUIISING ITS IDENTITY OR LOCATION, OR OF
 13 GAINING UNAUTHORIZED ACCESS TO A COMMUNICATIONS SYSTEM OPERATED BY A
 14 TELECOMMUNICATION SERVICE PROVIDER; OR

15 3. A TELECOMMUNICATION DEVICE THAT IS CAPABLE OF,
 16 OR HAS BEEN ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR REPROGRAMMED,
 17 ALONE OR IN CONJUNCTION WITH ANOTHER TELECOMMUNICATION DEVICE, SO AS
 18 TO BE CAPABLE OF, FACILITATING THE DISRUPTION, ACQUISITION, RECEIPT,
 19 TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT
 20 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
 21 TELECOMMUNICATION SERVICE PROVIDER.

22 (II) "UNLAWFUL TELECOMMUNICATION DEVICE" INCLUDES A
 23 DEVICE, TECHNOLOGY, PRODUCT, SERVICE, EQUIPMENT, OR COMPUTER SOFTWARE,
 24 COMPONENT, OR PART, PRIMARILY DISTRIBUTED, SOLD, DESIGNED, ASSEMBLED,
 25 MANUFACTURED, MODIFIED, PROGRAMMED, REPROGRAMMED, OR USED TO
 26 PROVIDE THE UNAUTHORIZED RECEIPT OF, TRANSMISSION OF, DISRUPTION OF,
 27 DECRYPTION OF, ACCESS TO, OR ACQUISITION OF A TELECOMMUNICATION SERVICE
 28 PROVIDED BY A TELECOMMUNICATION SERVICE PROVIDER.

29 (B) THIS SECTION DOES NOT APPLY TO:

30 (1) A LAW ENFORCEMENT OFFICER WHO POSSESSES OR USES A
 31 TELECOMMUNICATION ACCESS DEVICE IN THE COURSE OF AN OFFICIAL POLICE
 32 INVESTIGATION;

33 (2) A TELECOMMUNICATION SERVICE PROVIDER WHILE LAWFULLY
 34 ACTING IN THAT CAPACITY ; OR

35 (3) A PERSON WHO IS EXPRESSLY AUTHORIZED BY A LAW
 36 ENFORCEMENT AGENCY OR OTHER LAWFUL AUTHORITY TO:

37 (I) MANUFACTURE TELECOMMUNICATION ACCESS DEVICES FOR
 38 DISTRIBUTION OR SALE TO A LAW ENFORCEMENT AGENCY; OR

39 (II) DISTRIBUTE OR SELL TELECOMMUNICATIONS DEVICES TO A
 40 LAW ENFORCEMENT AGENCY.

1 (C) A PERSON MAY NOT KNOWINGLY:

2 (1) POSSESS, USE, MANUFACTURE, DISTRIBUTE, TRANSFER, SELL,
3 OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION, AN UNLAWFUL
4 TELECOMMUNICATION DEVICE OR MODIFY, ALTER, PROGRAM, OR REPROGRAM A
5 TELECOMMUNICATION DEVICE:

6 (I) FOR THE COMMISSION OF A THEFT OF TELECOMMUNICATION
7 SERVICE OR TO RECEIVE, DISRUPT, TRANSMIT, DECRYPT, ACQUIRE, OR FACILITATE
8 THE RECEIPT, DISRUPTION, TRANSMISSION, DECRYPTION, OR ACQUISITION OF A
9 TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS
10 AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER; OR

11 (II) TO CONCEAL OR TO ASSIST ANOTHER TO CONCEAL FROM A
12 TELECOMMUNICATION SERVICE PROVIDER, OR FROM A LAWFUL AUTHORITY, THE
13 EXISTENCE, PLACE OF ORIGIN, OR DESTINATION OF A TELECOMMUNICATION; OR

14 (2) POSSESS, USE, MANUFACTURE, ASSEMBLE, DISTRIBUTE, TRANSFER,
15 SELL, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION ANY
16 UNLAWFUL ACCESS DEVICE.

17 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
18 PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
19 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE
20 NOT EXCEEDING \$2,500 OR BOTH.

21 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
22 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
23 EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH IF THE VIOLATION
24 OF THIS SECTION INVOLVES MORE THAN 50 UNLAWFUL TELECOMMUNICATION OR
25 ACCESS DEVICES.

26 (3) FOR PURPOSES OF ALL CRIMINAL PENALTIES OR FINES
27 ESTABLISHED FOR VIOLATIONS OF THIS SECTION, THE PROHIBITED ACTIVITY AS IT
28 APPLIES TO EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE IS A
29 SEPARATE VIOLATION.

30 (4) IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE
31 COURT MAY REQUIRE A PERSON CONVICTED OF VIOLATING THIS SECTION TO MAKE
32 RESTITUTION IN ACCORDANCE WITH THE CRIMINAL PROCEDURE ARTICLE.

33 (5) ON CONVICTION OF A DEFENDANT UNDER THIS SECTION, THE
34 COURT MAY, IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, DIRECT
35 THAT THE DEFENDANT FORFEIT TO THE STATE ANY UNLAWFUL
36 TELECOMMUNICATION OR ACCESS DEVICES IN THE DEFENDANT'S POSSESSION OR
37 CONTROL WHICH WERE INVOLVED IN THE VIOLATION FOR WHICH THE DEFENDANT
38 WAS CONVICTED.

39 (E) (1) A CRIME UNDER THIS SECTION MAY BE CONSIDERED TO HAVE BEEN
40 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT MANUFACTURES OR

1 ASSEMBLES AN UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR ASSISTS
2 OTHERS IN DOING SO, OR A PLACE WHERE THE UNLAWFUL TELECOMMUNICATION
3 OR ACCESS DEVICE IS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT.

4 (2) IT IS NOT A DEFENSE TO A VIOLATION OF THIS SECTION THAT SOME
5 OF THE ACTS CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF THIS STATE.

6 (F) (1) ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION MAY
7 BRING A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION.

8 (2) THE COURT MAY:

9 (I) IMPOSE PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT
10 OR RESTRAIN A VIOLATION OF THIS SECTION;

11 (II) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE
12 IMPOUNDING, ON TERMS THE COURT CONSIDERS TO BE REASONABLE, OF ANY
13 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE THAT IS IN THE CUSTODY OR
14 CONTROL OF THE VIOLATOR AND THAT THE COURT HAS REASONABLE CAUSE TO
15 BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION OF THIS SECTION;

16 (III) AWARD DAMAGES UNDER PARAGRAPH (3) OF THIS SUBSECTION;

17 (IV) IN ITS DISCRETION, AWARD TO AN AGGRIEVED PARTY WHO
18 PREVAILS REASONABLE ATTORNEY FEES AND COSTS, INCLUDING COSTS FOR
19 INVESTIGATION, TESTING, AND EXPERT WITNESS FEES; AND

20 (V) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A
21 VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR
22 DESTRUCTION OF ANY UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE
23 INVOLVED IN THE VIOLATION THAT IS IN THE CUSTODY OR CONTROL OF THE
24 VIOLATOR OR HAS BEEN IMPOUNDED UNDER SUBPARAGRAPH (II) OF THIS
25 PARAGRAPH.

26 (3) DAMAGES AWARDED BY A COURT UNDER THIS SECTION MAY BE
27 COMPUTED AS ACTUAL DAMAGES SUFFERED BY THE COMPLAINING PARTY AS A
28 RESULT OF THE VIOLATION OF THIS SECTION AND ANY PROFITS OF THE VIOLATOR
29 THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE NOT TAKEN INTO ACCOUNT
30 IN COMPUTING THE ACTUAL DAMAGES.

31 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 194B and
32 557C through 557F of Article 27 - Crimes and Punishments of the Annotated Code of
33 Maryland be repealed.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2001.