

SENATE BILL 379

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E1

2001 Regular Session
(11r2058)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senator Baker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

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, ~~unlawful access devices, and related plans and~~
6 ~~materials~~ and access codes and unlawful access devices; providing criminal
7 penalties, damages, injunction, impounding, forfeiture, and other enforcement
8 measures for violations of this Act; authorizing a civil cause of action for certain
9 damages for violations of this Act; providing certain rules of construction ~~and~~
10 jurisdiction of certain courts, and venue for prosecution of violations of this Act;
11 providing certain exceptions; defining certain terms; repealing certain
12 duplicative provisions; providing for the application of this Act; and generally
13 relating to telecommunication services and unlawful access.

14 BY adding to

15 Article 27 - Crimes and Punishments

16 Section 194A to be under the new subheading "Fraud - Telecommunication

1 Service Providers"
 2 Annotated Code of Maryland
 3 (1996 Replacement Volume and 2000 Supplement)

4 BY adding to
 5 Article - Courts and Judicial Proceedings
 6 Section 4-301(b)(15)
 7 Annotated Code of Maryland
 8 (1998 Replacement Volume and 2000 Supplement)

9 BY repealing and reenacting, with amendments,
 10 Article - Courts and Judicial Proceedings
 11 Section 4-302(a) and (d)(1)
 12 Annotated Code of Maryland
 13 (1998 Replacement Volume and 2000 Supplement)

14 BY repealing
 15 Article 27 - Crimes and Punishments
 16 Section 557C through 557F and the subheading "Telecommunications Act"
 17 Annotated Code of Maryland
 18 (1996 Replacement Volume and 2000 Supplement)

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

21 **Article 27 - Crimes and Punishments**

22 **FRAUD - TELECOMMUNICATION SERVICE PROVIDERS**

23 194A.

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

26 (2) "ANY PERSON AGGRIEVED" MEANS ANY PERSON WHO HAS
 27 SUFFERED A SPECIFIC AND DIRECT INJURY TO A RIGHT PROTECTED BY THIS
 28 SECTION.

29 ~~(2)~~ (3) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN
 30 UNLAWFUL ACCESS DEVICE, MEANS:

31 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL ACCESS
 32 DEVICE;

33 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM AN
 34 INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE, SO
 35 THAT IT IS CAPABLE OF DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE,

1 OR A DEVICE THAT IS USED BY THE PROVIDER, OWNER, OR LICENSEE OF A
 2 TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR
 3 TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO
 4 SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT,
 5 ACQUISITION, ACCESS, DESCRIPTION, DISCLOSURE, COMMUNICATION,
 6 TRANSMISSION, OR RETRANSMISSION; OR

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

8 (3) (4) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN
 9 UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE, MEANS:

10 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL
 11 TELECOMMUNICATION DEVICE OR ACCESS CODE;

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

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

19 (4) (5) "TELECOMMUNICATION DEVICE OR ACCESS CODE" MEANS:

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

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

37 (III) AN ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION
 38 NUMBER, SERVICE ACCESS CARD, ACCOUNT NUMBER, OR PERSONAL
 39 IDENTIFICATION NUMBER USED TO ACQUIRE, RECEIVE, USE, OR TRANSMIT A
 40 TELECOMMUNICATION SERVICE.

1 ~~(5)~~ (6) "TELECOMMUNICATION SERVICE" MEANS A SERVICE PROVIDED
2 FOR A CHARGE OR COMPENSATION:

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

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

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

17 ~~(6)~~ (7) (I) "TELECOMMUNICATION SERVICE PROVIDER" MEANS A
18 PERSON THAT:

19 1. ~~PROVIDES A TELECOMMUNICATION SERVICE, EITHER~~
20 ~~DIRECTLY, OR INDIRECTLY AS A RESELLER; OR~~

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

25 2. PROVIDES A TELECOMMUNICATION SERVICE DIRECTLY
26 OR INDIRECTLY USING ANY OF THE SYSTEMS, NETWORKS, OR FACILITIES
27 DESCRIBED IN ITEM 1 OF THIS SUBPARAGRAPH.

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

32 ~~(7)~~ (8) "UNLAWFUL ACCESS DEVICE" MEANS AN INSTRUMENT,
33 DEVICE, ACCESS CODE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE WHICH
34 IS PRIMARILY DESIGNED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED,
35 POSSESSED, USED, OFFERED, PROMOTED, OR ADVERTISED FOR THE PURPOSE OF
36 DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE, OR A DEVICE, OR A
37 COMPONENT OR PART OF ANY OF THEM USED BY THE PROVIDER, OWNER, OR
38 LICENSEE OF ANY TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO
39 PROGRAM OR TRANSMISSION, TO PROTECT ~~THE~~ THAT TELECOMMUNICATION, DATA,
40 AUDIO, OR VIDEO SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED

1 RECEIPT, ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,
2 TRANSMISSION, OR RETRANSMISSION.

3 ~~(8)~~ (9) (I) "UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS
4 CODE" MEANS:

5 ~~1. AN ELECTRONIC SERIAL NUMBER, MOBILE~~
6 ~~IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, OR A~~
7 ~~TELECOMMUNICATION DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING~~
8 ~~THE ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS~~
9 ~~CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE~~
10 ~~PROVIDER, OR THAT HAS BEEN ALTERED, MODIFIED, PROGRAMMED, OR~~
11 ~~REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER~~
12 ~~TELECOMMUNICATION DEVICE OR OTHER EQUIPMENT, TO SO ACQUIRE OR~~
13 ~~FACILITATE THE UNAUTHORIZED ACQUISITION OF A TELECOMMUNICATION~~
14 ~~SERVICE;~~

15 ~~2. A TELEPHONE ALTERED TO OBTAIN SERVICE WITHOUT~~
16 ~~THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE~~
17 ~~TELECOMMUNICATION SERVICE PROVIDER, TUMBLER PHONE, COUNTERFEIT OR~~
18 ~~CLONE PHONE, TUMBLER MICROCHIP, COUNTERFEIT OR CLONE MICROCHIP, OR~~
19 ~~OTHER INSTRUMENT CAPABLE OF DISGUIISING ITS IDENTITY OR LOCATION, OR OF~~
20 ~~GAINING UNAUTHORIZED ACCESS TO A COMMUNICATIONS SYSTEM OPERATED BY A~~
21 ~~TELECOMMUNICATION SERVICE PROVIDER; OR~~

22 ~~3. A TELECOMMUNICATION DEVICE OR ACCESS CODE THAT~~
23 ~~IS CAPABLE OF, OR HAS BEEN ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR~~
24 ~~REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER~~
25 ~~TELECOMMUNICATION DEVICE OR ACCESS CODE, SO AS TO BE CAPABLE OF,~~
26 ~~FACILITATING THE DISRUPTION, ACQUISITION, RECEIPT, TRANSMISSION, OR~~
27 ~~DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS~~
28 ~~CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE~~
29 ~~PROVIDER.~~

30 (II) "UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE"
31 INCLUDES A DEVICE, TECHNOLOGY, PRODUCT, SERVICE, EQUIPMENT, ACCESS CODE
32 , OR COMPUTER SOFTWARE, COMPONENT, OR PART, PRIMARILY DISTRIBUTED, SOLD,
33 DESIGNED, ASSEMBLED, MANUFACTURED, MODIFIED, PROGRAMMED,
34 REPROGRAMMED, OR USED TO PROVIDE THE UNAUTHORIZED RECEIPT OF,
35 TRANSMISSION OF, DISRUPTION OF, DECRYPTION OF, ACCESS TO, OR ACQUISITION
36 OF A TELECOMMUNICATION SERVICE PROVIDED BY A TELECOMMUNICATION
37 SERVICE PROVIDER.

38 (B) THIS SECTION DOES NOT APPLY TO:

39 (1) A LAW ENFORCEMENT OFFICER WHO POSSESSES OR USES A
40 TELECOMMUNICATION ~~ACCESS~~ DEVICE OR ACCESS CODE IN THE COURSE OF AN
41 OFFICIAL POLICE INVESTIGATION;

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

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

5 (I) MANUFACTURE TELECOMMUNICATION ACCESS DEVICES OR
6 ACCESS CODES FOR DISTRIBUTION OR SALE TO A LAW ENFORCEMENT AGENCY OR
7 TELECOMMUNICATION SERVICE PROVIDER; OR

8 (II) DISTRIBUTE OR SELL TELECOMMUNICATION
9 TELECOMMUNICATIONS DEVICES OR ACCESS CODE TO A LAW ENFORCEMENT
10 AGENCY OR TELECOMMUNICATION SERVICE PROVIDER.

11 (C) A PERSON MAY NOT KNOWINGLY:

12 (1) POSSESS, USE, MANUFACTURE, DISTRIBUTE, TRANSFER, SELL,
13 OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION, AN UNLAWFUL
14 TELECOMMUNICATION DEVICE ~~OR MODIFY, ALTER, PROGRAM, OR REPROGRAM A~~
15 ~~TELECOMMUNICATION DEVICE~~:

16 ~~(I)~~ OR ACCESS CODE:

17 (I) FOR THE COMMISSION OF A THEFT OF TELECOMMUNICATION
18 SERVICE ~~OR~~ ; OR

19 (II) TO RECEIVE, DISRUPT, TRANSMIT, DECRYPT, ACQUIRE, OR
20 FACILITATE THE RECEIPT, DISRUPTION, TRANSMISSION, DECRYPTION, OR
21 ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS
22 CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE
23 PROVIDER; ~~OR~~

24 ~~(II)~~ ~~TO CONCEAL OR TO ASSIST ANOTHER TO CONCEAL FROM A~~
25 ~~TELECOMMUNICATION SERVICE PROVIDER, OR FROM A LAWFUL AUTHORITY, THE~~
26 ~~EXISTENCE, PLACE OF ORIGIN, OR DESTINATION OF A TELECOMMUNICATION;~~

27 (2) POSSESS, USE, MANUFACTURE, ASSEMBLE, DISTRIBUTE, TRANSFER,
28 SELL, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION ANY
29 UNLAWFUL ACCESS DEVICE; OR

30 (3) POSSESS, USE, PREPARE, DISTRIBUTE, SELL, GIVE, TRANSFER,
31 OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION:

32 ~~(I)~~ ~~A PLAN OR INSTRUCTION FOR MAKING OR ASSEMBLING AN~~
33 ~~UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR AN UNLAWFUL ACCESS~~
34 ~~DEVICE UNDER CIRCUMSTANCES EVIDENCING AN INTENT TO USE OR EMPLOY THE~~
35 ~~UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE, OR TO ALLOW THE~~
36 ~~UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE TO BE USED FOR A PURPOSE~~
37 ~~PROHIBITED BY THIS SECTION, OR KNOWING OR HAVING REASON TO BELIEVE THAT~~
38 ~~THE UNLAWFUL TELECOMMUNICATION DEVICE IS INTENDED TO BE SO USED, OR~~

1 THAT THE PLAN OR INSTRUCTION IS INTENDED TO BE USED FOR MANUFACTURING
2 OR ASSEMBLING THE UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE; OR

3 (H) MATERIAL EQUIPMENT, INCLUDING HARDWARE, CABLES,
4 TOOLS, DATA, COMPUTER SOFTWARE, OR OTHER INFORMATION OR EQUIPMENT,
5 KNOWING COMPONENTS WITH THE KNOWLEDGE THAT THE PURCHASER OR A THIRD
6 PERSON INTENDS TO USE ~~THE MATERIAL~~ THEM TO MANUFACTURE OR ASSEMBLE AN
7 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR ACCESS CODE FOR A
8 PURPOSE PROHIBITED BY THIS SECTION.

9 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS ~~(2) AND (3)~~ PARAGRAPH (2) OF
10 THIS SUBSECTION, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
11 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
12 EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

13 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A ~~FELONY~~
14 ~~MISDEMEANOR~~ FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
15 EXCEEDING 5 (10) YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH IF:

16 (I) ~~THE DEFENDANT HAS BEEN CONVICTED PREVIOUSLY UNDER~~
17 ~~THIS SECTION OR CONVICTED OF ANY SIMILAR CRIME IN THIS OR ANY FEDERAL OR~~
18 ~~OTHER STATE JURISDICTION; OR~~

19 (II) ~~THE VIOLATION OF THIS SECTION INVOLVES AT LEAST 10, BUT~~
20 ~~NOT MORE THAN 50, MORE THAN 100~~ UNLAWFUL TELECOMMUNICATION OR DEVICES
21 OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES.

22 (3) ~~A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY~~
23 ~~AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A~~
24 ~~FINE NOT EXCEEDING \$10,000 OR BOTH IF:~~

25 (I) ~~THE DEFENDANT HAS BEEN CONVICTED PREVIOUSLY ON TWO~~
26 ~~OR MORE OCCASIONS FOR CRIMES UNDER THIS SECTION OR FOR ANY SIMILAR~~
27 ~~CRIME IN THIS OR ANY FEDERAL OR OTHER STATE JURISDICTION; OR~~

28 (II) ~~THE VIOLATION OF THIS SECTION INVOLVES MORE THAN 50~~
29 ~~UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICES.~~

30 (4) ~~FOR PURPOSES OF GRADING AN OFFENSE BASED UPON A PRIOR~~
31 ~~CONVICTION UNDER THIS SECTION OR FOR ANY SIMILAR CRIME UNDER~~
32 ~~PARAGRAPHS (2)(I) AND (3)(I) OF THIS SUBSECTION, A PRIOR CONVICTION SHALL~~
33 ~~CONSIST OF A CONVICTION ON A SEPARATE INDICTMENT OR CRIMINAL COMPLAINT~~
34 ~~FOR A CRIME UNDER THIS SECTION OR ANY SIMILAR CRIME IN THIS OR ANY~~
35 ~~FEDERAL OR OTHER STATE JURISDICTION, INCLUDING A CRIME INVOLVING THEFT~~
36 ~~OF SERVICE OR FRAUD, AND A VIOLATION OF THE FEDERAL CABLE~~
37 ~~COMMUNICATIONS POLICY ACT OF 1984 (PUBLIC LAW 98-549, 98 STAT. 2779).~~

38 (5) ~~FOR PURPOSES OF ALL CRIMINAL PENALTIES OR FINES~~
39 ~~ESTABLISHED FOR VIOLATIONS OF THIS SECTION, THE PROHIBITED ACTIVITY AS IT~~

1 ~~APPLIES TO EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE IS A~~
2 ~~SEPARATE VIOLATION.~~

3 ~~(6)~~ (6) FOR PURPOSES OF IMPOSING FINES ON CONVICTION OF A
4 DEFENDANT FOR A CRIME UNDER THIS SECTION, ALL FINES SHALL BE IMPOSED FOR
5 EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE
6 VIOLATION.

7 ~~(7)~~ (3) IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW,
8 THE COURT ~~SHALL~~ MAY REQUIRE A PERSON CONVICTED OF VIOLATING THIS
9 SECTION TO MAKE RESTITUTION IN ACCORDANCE WITH THE CRIMINAL PROCEDURE
10 ARTICLE.

11 ~~(8)~~ (4) ON CONVICTION OF A DEFENDANT UNDER THIS SECTION, THE
12 COURT MAY, IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, DIRECT
13 THAT THE DEFENDANT FORFEIT TO THE STATE ANY UNLAWFUL
14 TELECOMMUNICATION ~~OR DEVICES OR ACCESS CODES OR UNLAWFUL~~ ACCESS
15 DEVICES IN THE DEFENDANT'S POSSESSION OR CONTROL WHICH WERE INVOLVED
16 IN THE VIOLATION FOR WHICH THE DEFENDANT WAS CONVICTED.

17 (E) (1) A CRIME UNDER THIS SECTION MAY BE CONSIDERED TO HAVE BEEN
18 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT MANUFACTURES OR
19 ASSEMBLES AN UNLAWFUL TELECOMMUNICATION ~~OR DEVICE OR ACCESS CODE OR~~
20 UNLAWFUL ACCESS DEVICE OR ASSISTS OTHERS IN DOING SO, OR A PLACE WHERE
21 THE UNLAWFUL TELECOMMUNICATION ~~OR DEVICE OR ACCESS CODE OR UNLAWFUL~~
22 ACCESS DEVICE IS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT.

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

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

27 (2) THE COURT MAY:

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

30 (II) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE
31 IMPOUNDING, ON TERMS THE COURT CONSIDERS TO BE REASONABLE, OF ANY
32 UNLAWFUL TELECOMMUNICATION ~~OR DEVICE OR ACCESS CODE OR UNLAWFUL~~
33 ACCESS DEVICE THAT IS IN THE CUSTODY OR CONTROL OF THE VIOLATOR AND THAT
34 THE COURT HAS REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED
35 VIOLATION OF THIS SECTION;

36 (III) AWARD DAMAGES UNDER ~~PARAGRAPH (3)~~ PARAGRAPH (4) OF
37 THIS SUBSECTION; OR

1 (IV) IN ITS DISCRETION, AWARD TO AN AGGRIEVED PARTY WHO
 2 ~~PREVAILS REASONABLE ATTORNEY FEES AND COSTS, INCLUDING COSTS FOR~~
 3 ~~INVESTIGATION, TESTING, AND EXPERT WITNESS FEES; AND~~

4 ~~(V) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A~~
 5 ~~VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR~~
 6 ~~DESTRUCTION OF ANY UNLAWFUL TELECOMMUNICATION OR DEVICE OR ACCESS~~
 7 ~~CODE OR UNLAWFUL ACCESS DEVICE INVOLVED IN THE VIOLATION THAT IS IN THE~~
 8 ~~CUSTODY OR CONTROL OF THE VIOLATOR OR HAS BEEN IMPOUNDED UNDER~~
 9 ~~SUBPARAGRAPH (II) OF THIS PARAGRAPH.~~

10 ~~(3) THIS SUBSECTION MAY NOT BE CONSTRUED TO GRANT THE~~
 11 ~~DISTRICT COURT AUTHORITY TO GRANT RELIEF UNDER PARAGRAPH (2)(I) OF THIS~~
 12 ~~SUBSECTION.~~

13 ~~(3) (4) (I) DAMAGES AWARDED BY A COURT UNDER THIS SECTION~~
 14 ~~SHALL MAY BE COMPUTED AS:~~

15 ~~1. ON ELECTION BY THE COMPLAINING PARTY AT ANY TIME~~
 16 ~~BEFORE FINAL JUDGMENT IS ENTERED, ACTUAL DAMAGES SUFFERED BY THE~~
 17 ~~COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF THIS SECTION AND ANY~~
 18 ~~PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE~~
 19 ~~NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES; OR~~

20 ~~2. ON ELECTION BY THE COMPLAINING PARTY AT ANY TIME~~
 21 ~~BEFORE FINAL JUDGMENT IS ENTERED, AN AWARD OF STATUTORY DAMAGES~~
 22 ~~DETERMINED BY THE COURT, NOT THE JURY, AS THE COURT CONSIDERS JUST, OF:~~

23 ~~A. NOT LESS THAN \$250 AND NOT EXCEEDING \$10,000 FOR~~
 24 ~~EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE~~
 25 ~~ACTION; OR~~

26 ~~B. IN A CASE OF A WILLFUL VIOLATION OF THIS SECTION~~
 27 ~~COMMITTED FOR PURPOSES OF COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL~~
 28 ~~GAIN, NOT LESS THAN \$250 AND NOT EXCEEDING \$60,000 FOR EACH UNLAWFUL~~
 29 ~~TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE ACTION.~~

30 (II) IN DETERMINING THE PROFITS OF THE VIOLATOR UNDER
 31 SUBPARAGRAPH ~~(I)~~ (I) OF THIS PARAGRAPH:

32 1. THE COMPLAINING PARTY MUST PROVE ONLY THE
 33 VIOLATOR'S GROSS REVENUE; AND

34 2. THE VIOLATOR MUST PROVE THE DEDUCTIBLE EXPENSES
 35 AND ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE
 36 VIOLATION.

37 ~~(4) FOR THE PURPOSE OF ALL CIVIL REMEDIES ESTABLISHED FOR A~~
 38 ~~VIOLATION OF THIS SECTION, THE ACTIVITY PROHIBITED BY THIS SECTION APPLIES~~

1 ~~TO EACH UNLAWFUL TELECOMMUNICATION DEVICE OR UNLAWFUL ACCESS DEVICE,~~
 2 ~~AND EACH DEVICE SHALL BE CONSIDERED A SEPARATE VIOLATION.~~

3 Article - Courts and Judicial Proceedings

4 4-301.

5 (b) Except as provided in § 4-302 of this subtitle, the District Court also has
 6 exclusive original jurisdiction in a criminal case in which a person at least 18 years
 7 old or a corporation is charged with:

8 (15) VIOLATION OF ARTICLE 27, § 194A OF THE CODE, WHETHER A FELONY
 9 OR MISDEMEANOR.

10 4-302.

11 (a) Except as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13),
 12 [and] (14), AND (15) of this subtitle, the District Court does not have jurisdiction to
 13 try a criminal case charging the commission of a felony.

14 (d) (1) Except as provided in paragraph (2) of this subsection, the jurisdiction
 15 of the District Court is concurrent with that of the circuit court in a criminal case:

16 (i) In which the penalty may be confinement for [three] 3 years or
 17 more or a fine of \$2,500 or more; or

18 (ii) Which is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
 19 (10), (11), (12), (13), [and] (14), AND (15) of this subtitle.

20 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 557C through
 21 557F and the subheading "Telecommunications Act" of Article 27 - Crimes and
 22 Punishments of the Annotated Code of Maryland be repealed.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
 24 construed only prospectively to offenses and causes of action arising on or after the
 25 effective date of this Act and may not be applied or interpreted to have any effect on or
 26 application to any offenses or causes of action arising before the effective date of this
 27 Act.

28 ~~SECTION 4.~~ SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take
 29 effect October 1, 2001.

