
By: **Senator Baker**
Introduced and read first time: February 2, 2001
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 14, 2001

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; providing criminal penalties, damages, injunction, impounding,
7 forfeiture, and other enforcement measures for violations of this Act;
8 authorizing a civil cause of action for violations of this Act; providing certain
9 rules of construction and venue for prosecution of violations of this Act;
10 providing certain exceptions; defining certain terms; 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:

1

Article 27 - Crimes and Punishments

2

FRAUD - TELECOMMUNICATION SERVICE PROVIDERS

3 194A.

4 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

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

8 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL ACCESS
9 DEVICE;

10 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM AN
11 INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE, SO
12 THAT IT IS CAPABLE OF DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE,
13 OR A DEVICE THAT IS USED BY THE PROVIDER, OWNER, OR LICENSEE OF A
14 TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR
15 TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO
16 SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT,
17 ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,
18 TRANSMISSION, OR RETRANSMISSION; OR

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

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

22 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL
23 TELECOMMUNICATION DEVICE;

24 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM A
25 TELECOMMUNICATION DEVICE TO BE CAPABLE OF ACQUIRING, DISRUPTING,
26 RECEIVING, TRANSMITTING, DECRYPTING, OR FACILITATING THE ACQUISITION,
27 DISRUPTION, RECEIPT, TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION
28 SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
29 TELECOMMUNICATION SERVICE PROVIDER; OR

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

31 (4) "TELECOMMUNICATION DEVICE" MEANS:

32 (I) AN INSTRUMENT, DEVICE, MACHINE, EQUIPMENT,
33 TECHNOLOGY, OR SOFTWARE WHICH IS CAPABLE OF TRANSMITTING, ACQUIRING,
34 DECRYPTING, OR RECEIVING ANY TELEPHONIC, ELECTRONIC, DATA, INTERNET
35 ACCESS, AUDIO, VIDEO, MICROWAVE OR RADIO TRANSMISSIONS, SIGNALS,
36 COMMUNICATIONS, OR SERVICES, INCLUDING THE RECEIPT, ACQUISITION,
37 TRANSMISSION, OR DECRYPTION OF THOSE COMMUNICATIONS, TRANSMISSIONS,

1 SIGNALS, OR SERVICES PROVIDED BY OR THROUGH ANY CABLE TELEVISION, FIBER
2 OPTIC, TELEPHONE, SATELLITE, MICROWAVE, DATA TRANSMISSION, RADIO,
3 INTERNET-BASED, OR WIRELESS DISTRIBUTION NETWORK, SYSTEM, OR FACILITY;
4 OR

5 (II) A PART, ACCESSORY, OR COMPONENT OF AN ITEM LISTED IN
6 SUBPARAGRAPH (I) OF THIS PARAGRAPH, INCLUDING A COMPUTER CIRCUIT,
7 SECURITY MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, ELECTRONIC
8 MECHANISM, OR OTHER COMPONENT, ACCESSORY, OR PART OF ANY
9 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF FACILITATING THE
10 TRANSMISSION, DECRYPTION, ACQUISITION, OR RECEPTION OF ANY OF THOSE
11 COMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES.

12 (5) "TELECOMMUNICATION SERVICE" MEANS:

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

18 (II) SERVICE PROVIDED BY ANY RADIO, TELEPHONE, FIBER OPTIC,
19 CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR
20 INTERNET-BASED DISTRIBUTION SYSTEM, NETWORK, FACILITY, OR TECHNOLOGY,
21 INCLUDING ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS, TELEPHONIC,
22 MICROWAVE AND RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND
23 SERVICES; AND

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

27 (6) (I) "TELECOMMUNICATION SERVICE PROVIDER" MEANS A PERSON
28 THAT:

29 1. PROVIDES A TELECOMMUNICATION SERVICE, EITHER
30 DIRECTLY, OR INDIRECTLY AS A RESELLER; OR

31 2. OWNS, OPERATES, OR PROVIDES A TELECOMMUNICATION
32 SERVICE DIRECTLY OR INDIRECTLY USING A FIBER OPTIC, CABLE TELEVISION,
33 SATELLITE, INTERNET-BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA
34 TRANSMISSION, OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY.

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

39 (7) "UNLAWFUL ACCESS DEVICE" MEANS AN INSTRUMENT, DEVICE,
40 MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE WHICH IS PRIMARILY

1 DESIGNED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED,
2 OFFERED, PROMOTED, OR ADVERTISED FOR THE PURPOSE OF DEFEATING OR
3 CIRCUMVENTING TECHNOLOGY, SOFTWARE, OR A DEVICE, OR A COMPONENT OR
4 PART OF ANY OF THEM USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY
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.

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

11 1. AN ELECTRONIC SERIAL NUMBER, MOBILE
12 IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, OR A
13 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING
14 THE ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS
15 CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE
16 PROVIDER, OR THAT HAS BEEN ALTERED, MODIFIED, PROGRAMMED, OR
17 REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER
18 TELECOMMUNICATION DEVICE OR OTHER EQUIPMENT, TO SO ACQUIRE OR
19 FACILITATE THE UNAUTHORIZED ACQUISITION OF A TELECOMMUNICATION
20 SERVICE;

21 2. A TELEPHONE ALTERED TO OBTAIN SERVICE WITHOUT
22 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
23 TELECOMMUNICATION SERVICE PROVIDER, TUMBLER PHONE, COUNTERFEIT OR
24 CLONE PHONE, TUMBLER MICROCHIP, COUNTERFEIT OR CLONE MICROCHIP, OR
25 OTHER INSTRUMENT CAPABLE OF DISGUIISING ITS IDENTITY OR LOCATION, OR OF
26 GAINING UNAUTHORIZED ACCESS TO A COMMUNICATIONS SYSTEM OPERATED BY A
27 TELECOMMUNICATION SERVICE PROVIDER; OR

28 3. A TELECOMMUNICATION DEVICE THAT IS CAPABLE OF,
29 OR HAS BEEN ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR REPROGRAMMED,
30 ALONE OR IN CONJUNCTION WITH ANOTHER TELECOMMUNICATION DEVICE, SO AS
31 TO BE CAPABLE OF, FACILITATING THE DISRUPTION, ACQUISITION, RECEIPT,
32 TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT
33 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
34 TELECOMMUNICATION SERVICE PROVIDER.

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

42 (B) THIS SECTION DOES NOT APPLY TO:

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

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

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

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

10 (II) DISTRIBUTE OR SELL TELECOMMUNICATION DEVICES TO A
11 LAW ENFORCEMENT AGENCY.

12 (C) A PERSON MAY NOT KNOWINGLY:

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

17 (I) FOR THE COMMISSION OF A THEFT OF TELECOMMUNICATION
18 SERVICE OR TO RECEIVE, DISRUPT, TRANSMIT, DECRYPT, ACQUIRE, OR FACILITATE
19 THE RECEIPT, DISRUPTION, TRANSMISSION, DECRYPTION, OR ACQUISITION OF A
20 TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS
21 AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER; OR

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

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

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

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

1 ~~(H)~~ MATERIAL, INCLUDING HARDWARE, CABLES, TOOLS, DATA,
2 COMPUTER SOFTWARE, OR OTHER ~~INFORMATION OR~~ EQUIPMENT, KNOWING THAT
3 THE PURCHASER OR A THIRD PERSON INTENDS TO USE THE MATERIAL TO
4 MANUFACTURE OR ASSEMBLE AN UNLAWFUL TELECOMMUNICATION OR ACCESS
5 DEVICE.

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

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

13 (I) THE DEFENDANT HAS BEEN CONVICTED PREVIOUSLY UNDER
14 THIS SECTION OR CONVICTED OF ANY SIMILAR CRIME IN THIS OR ANY FEDERAL OR
15 OTHER STATE JURISDICTION; OR

16 (II) THE VIOLATION OF THIS SECTION INVOLVES AT LEAST 10, BUT
17 NOT MORE THAN 50, UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICES.

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

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

24 (II) THE VIOLATION OF THIS SECTION INVOLVES MORE THAN 50
25 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICES.

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

34 (5) FOR PURPOSES OF ALL CRIMINAL ~~PENALTIES OR~~ FINES
35 ESTABLISHED FOR VIOLATIONS OF THIS SECTION, THE PROHIBITED ACTIVITY AS IT
36 APPLIES TO EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE IS A
37 SEPARATE VIOLATION.

38 (6) FOR PURPOSES OF IMPOSING FINES ON CONVICTION OF A
39 DEFENDANT FOR A CRIME UNDER THIS SECTION, ALL FINES SHALL BE IMPOSED FOR

1 EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE
2 VIOLATION.

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

6 (8) ON CONVICTION OF A DEFENDANT UNDER THIS SECTION, THE
7 COURT MAY, IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, DIRECT
8 THAT THE DEFENDANT FORFEIT TO THE STATE ANY UNLAWFUL
9 TELECOMMUNICATION OR ACCESS DEVICES IN THE DEFENDANT'S POSSESSION OR
10 CONTROL WHICH WERE INVOLVED IN THE VIOLATION FOR WHICH THE DEFENDANT
11 WAS CONVICTED.

12 (E) (1) A CRIME UNDER THIS SECTION MAY BE CONSIDERED TO HAVE BEEN
13 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT MANUFACTURES OR
14 ASSEMBLES AN UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR ASSISTS
15 OTHERS IN DOING SO, OR A PLACE WHERE THE UNLAWFUL TELECOMMUNICATION
16 OR ACCESS DEVICE IS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT.

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

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

21 (2) THE COURT MAY:

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

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

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

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

33 (V) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A
34 VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR
35 DESTRUCTION OF ANY UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE
36 INVOLVED IN THE VIOLATION THAT IS IN THE CUSTODY OR CONTROL OF THE
37 VIOLATOR OR HAS BEEN IMPOUNDED UNDER SUBPARAGRAPH (II) OF THIS
38 PARAGRAPH.

1 (3) (I) DAMAGES AWARDED BY A COURT UNDER THIS SECTION SHALL
2 BE COMPUTED AS:

3 1. ON ELECTION BY THE COMPLAINING PARTY AT ANY TIME
4 BEFORE FINAL JUDGMENT IS ENTERED, ACTUAL DAMAGES SUFFERED BY THE
5 COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF THIS SECTION AND ANY
6 PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE
7 NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES; OR

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

11 A. NOT LESS THAN \$250 AND NOT EXCEEDING \$10,000 FOR
12 EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE
13 ACTION; OR

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

18 (II) IN DETERMINING THE PROFITS OF THE VIOLATOR UNDER
19 SUBPARAGRAPH (I)1 OF THIS PARAGRAPH:

20 1. THE COMPLAINING PARTY MUST PROVE ONLY THE
21 VIOLATOR'S GROSS REVENUE; AND

22 2. THE VIOLATOR MUST PROVE THE DEDUCTIBLE EXPENSES
23 AND ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE
24 VIOLATION.

25 (4) FOR THE PURPOSE OF ALL CIVIL REMEDIES ESTABLISHED FOR A
26 VIOLATION OF THIS SECTION, THE ACTIVITY PROHIBITED BY THIS SECTION APPLIES
27 TO EACH UNLAWFUL TELECOMMUNICATION DEVICE OR UNLAWFUL ACCESS DEVICE,
28 AND EACH DEVICE SHALL BE CONSIDERED A SEPARATE VIOLATION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2001.