

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19
 LAST UPDATED 3/01/19 HB 541/aHCPAC

SPONSOR Ruiloba

SHORT TITLE Telecommunications Cramming & Slamming SB _____

ANALYST Martinez/Woods

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		No Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of HCPAC amendment

The House Consumer and Public Affairs Committee amendment to House Bill 541 stakes line 12 after “definitions” through the entirety of line 13. The amendment also strikes section 1, subsection D lines 11, after “bill” through line 12, effectively removing some redundancy in language.

The amendment also strikes lines 17 on page 3 through line 7 on page 5, removing section 2 from bill language. As such, this bill will not change statute language in section 63-9G-5 NMSA 1978.

The bill only expands the definition of cramming in section 63-9G-2 NMSA 1978.

Synopsis of Original Bill

HB541 provides an exemption to the Administrative Penalties Section (63-9G-5) of the Slamming and Cramming Act that would allow a “provider” (defined in the Act as any type of company that provides telecommunications services who bills directly or has a billing contract with a local exchange company) place a charge on a customer’s telephone bill for third-party goods or services, where the third party or its agent represents that it obtained the customer’s

consent or authorization.

HB541 changes the definition of “cramming” to permit a provider to charge/bill a customer for goods or services that are not telecommunications services as long as that charge is authorized by the “customer”. The bill further expands the definition of customer to “any person authorized to use the telecommunications service associated with the telephone bill.” It appears that the combined result of the proposed amendments would dilute the Commission’s enforcement authority to prevent a provider that is billing for unauthorized “cramming” with an argument that somehow the customer authorized this non-related to telecommunications service charge.

FISCAL IMPLICATIONS

HB541 does not carry an appropriation and will not have a financial impact on the PRC’s operating budget.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following:

The statutory prohibition of slamming & cramming was addressed and codified in 1999 as Sections 63-9G-1 et seq to address problems of vendors utilizing the customer’s phone bill to charge for goods and services that were totally unrelated to telecommunications services. This was a very beneficial collection technique for the vendors because the phone companies would enter into contracts with them to include these unrelated charges on a customer’s telephone bill.

This unrelated charge on the customer’s phone bill often resulted in a perception by the customer that non-payment of these unrelated charges would result in termination of their phone service. Because these charges included on the phone bill did not relate to the phone company’s charges, phone company customer service representatives would not be able to address an inquiry or challenge of the item on the bill and would most likely refer the customer to the third party billing agent or vendor.

The amendments proposed herein would create an enforcement dilemma for the Commission regarding cramming because it would allow the third party or its agent to “represent” that the customer approved it in some form or fashion. The expanded definition of customer could potentially allow anyone who had access to a customer’s phone to unwittingly or intentionally “authorize” the charge, thereby relieving both the phone company and the third party of any liability for cramming, and the customer, who had nothing to do with incurring the charge in the first place, liable for the charge because it was contained on his/her phone bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Public Regulation Commission provided the following:

There were amendments to the New Mexico Telecommunications Act (Sections 63-9A-1 et seq.) that went into effect in 2017 and changed the law regarding the authority of the Commission to accept and handle complaints and limited the scope of the Commission’s

authority and method of imposing penalties. However, that law (SB53) specifically exempts application to the Slamming & Cramming Act. Therefore, any complaints about slamming & cramming and penalties stemming there from fall under the purview of Sections 63-9G-1 et seq.

OTHER SUBSTANTIVE ISSUES

The Public Regulation Commission provided the following:

If the Slamming and Cramming Act is relaxed, it may encourage cramming behavior by “providers” of non-telecommunications services on telephone service provider bills in New Mexico. This in turn may leading to an increase in slamming and cramming complaints at the Commission, many of which the Commission may not be able to resolve as a result of the dilution of the enforcement provisions of the statute as a result of this bill. The Commission used to receive a fair number of slamming and cramming complaints, but the number has been reduced by a large margin over time since the passage of the slamming and cramming statute.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The enforcement provisions of the Slamming and Cramming Act will remain unchanged.

JM/CW/al/sb