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## FISCAL IMPACT REPORT

SPONSOR Tallman ORIGINAL DATE 1/29/21  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Clarify Definition of Phone Cramming SB 38  
ANALYST Martinez

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates: House Bill 28

### **SOURCES OF INFORMATION**

LFC Files

Responses Received From

Public Regulation Commission (PRC)

### **SUMMARY**

#### Synopsis of Bill

House Bill 28 modifies the definition of “cramming” in NMSA 63-9G-2.C.(2) in the Slamming and Cramming Act to allow for the charging of goods or services that are not telecommunications services on a customer’s telephone bill with permission of the customer.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

House Bill 28 does not contain an appropriation and will not have a fiscal impact on the Public Regulation Commission (PRC).

### **SIGNIFICANT ISSUES**

The following was provided by the Public Regulation Commission:

In its current form, the definition of cramming in the statute implies that any non-

telecommunications charges on a customer's telephone bill are by definition a non-authorized cramming of a service or a good under the statute.

At the time of the original passage of the legislation, wireless and broadband voice service offerings were in a nascent stage and instances of cramming were limited to wireline local exchange service. Over time, the law was read to apply to wireless service, which was not problematic as wireless service was still an analog service. However, voice service is now commonly bundled with wireline broadband (as Voice over Internet Protocol –VoIP) and mobile broadband service, and providers include many charges for non-telecommunications services such as applications on the customer's wireless/broadband telephone bill. Thus, the current language is problematic as the Federal Communications Commission (FCC) has classified broadband service as a non-telecommunications service in its 2018 Restoring Internet Freedom Order (See definition of telecommunication service – NMSA 63-9G-2.I.) The added language removes the jeopardy posed to wireless and broadband providers under the statute by allowing non-telecommunications service charges to be added to wireless and broadband voice telecommunications service bills as long as the customer has given permission for the service provider to assess those charges. Without customer permission, those added charges will be considered a cramming violation under the proposed revised statute.

The statutory prohibition of slamming & cramming was addressed and codified in 1999 as Sections 63-9G-1 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 the item on the bill and would most likely refer the customer to the third party billing agent or vendor. FCC enforcement actions over time have significantly reduced wireline and wireless telecommunications provider and billing agent cramming and slamming activities.

## **ADMINISTRATIVE IMPLICATIONS**

The following was provided by the Public Regulation Commission:

The proposed change to the Slamming and Cramming Act should have a minimal effect on the number of slamming and cramming complaints filed with the Commission for processing.

This FIR reflects PRC's technical staff's analysis consistent with Commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full Commission.

**OTHER SUBSTANTIVE ISSUES**

The following was provided by the Public Regulation Commission:

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, and subsequent federal enforcement actions.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The following was provided by the Public Regulation Commission:

The addition of non-telecommunications charges on a customer's wireless/broadband voice service bills by voice service providers may still be read as a cramming violation under the current statute despite permission given by customers to assess those charges.

JM/rl