

1 HOUSE BILL 541

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Patricio Ruiloba

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9  
10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; AMENDING THE CRAMMING AND  
12 SLAMMING ACT; CLARIFYING DEFINITIONS; PROVIDING AN EXCEPTION TO  
13 PROHIBITED ACTS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 63-9G-2 NMSA 1978 (being Laws 1999,  
17 Chapter 138, Section 2) is amended to read:

18 "63-9G-2. DEFINITIONS.--As used in the Cramming and  
19 Slamming Act:

20 A. "billing aggregator" means a person that bills  
21 customers for goods or services provided by others and that  
22 uses a local exchange company as a billing agent;

23 B. "commission" means the public regulation  
24 commission;

25 C. "cramming" means:

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1 (1) charging a customer for telecommunications  
2 services that were not authorized by the customer;

3 (2) charging a customer for goods or services  
4 that are not telecommunications services and were not  
5 authorized by the customer; or

6 (3) using a sweepstakes, contest or drawing  
7 entry form as authorization to change or add telecommunications  
8 services to a customer's telephone bill;

9 D. "customer" means the person whose name appears  
10 on the telephone bill or the person responsible for payment of  
11 the telephone bill, or any person authorized to use the  
12 telecommunications service associated with the telephone bill;

13 E. "local exchange company" means a provider that  
14 provides local exchange services;

15 F. "local exchange services" means the transmission  
16 of two-way interactive communications within a local exchange  
17 area described in maps, tariffs or rate schedules filed with  
18 the commission where local exchange rates apply;

19 G. "provider" means a telephone company,  
20 transmission company, telecommunications common carrier,  
21 telecommunications company, cellular or other wireless  
22 telecommunications service company, cable television service,  
23 telecommunications reseller, billing aggregator or other person  
24 that bills directly or has a billing contract with a local  
25 exchange company;

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1 H. "slamming" means:

2 (1) changing a customer's provider without the  
3 customer's authorization; or

4 (2) using a sweepstakes, contest or drawing  
5 entry form as authorization to change a customer's provider;  
6 and

7 I. "telecommunications service" means the  
8 transmission of signs, signals, writings, images, sounds,  
9 messages, data or other information of any nature by wire,  
10 radio, lightwaves or other electromagnetic means or goods and  
11 services related to the transmission of information that are  
12 provided by the provider; provided that a good or service that  
13 does not meet the definition of "telecommunications service"  
14 does not become a telecommunications service merely because it  
15 is bundled with a telecommunications service for marketing or  
16 billing purposes."

17 SECTION 2. Section 63-9G-5 NMSA 1978 (being Laws 1999,  
18 Chapter 138, Section 5) is amended to read:

19 "63-9G-5. COMPLAINTS FILED WITH COMMISSION--RULES--  
20 ADMINISTRATIVE PENALTIES.--

21 A. The following acts are prohibited:

22 (1) cramming or slamming; and

23 (2) disconnecting or threatening to disconnect  
24 a customer's local exchange service because the customer  
25 refuses to pay charges resulting from cramming or slamming and

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1 the local exchange company has been notified of the cramming or  
2 slamming.

3 B. A customer or provider may file a complaint with  
4 the commission alleging cramming or slamming. A customer may  
5 file a complaint alleging disconnection or threats of  
6 disconnection to local exchange service. The commission may  
7 combine complaints.

8 C. If the commission finds after investigation and  
9 hearing that a provider engaged in cramming or slamming or  
10 disconnected or threatened to disconnect a customer's local  
11 exchange service, it may:

12 (1) assess an administrative penalty not to  
13 exceed ten thousand dollars (\$10,000) for each occurrence of  
14 cramming or slamming or for each disconnection or threat to  
15 disconnect; or

16 (2) after other sanctions have failed, suspend  
17 or revoke the provider's certificate of authority or  
18 certificate of public convenience and necessity for a  
19 deliberate pattern of cramming or slamming or disconnection or  
20 threat of disconnection.

21 D. A person aggrieved by an order of the commission  
22 pursuant to this section may appeal to the district court as  
23 provided in Section 39-3-1.1 NMSA 1978.

24 E. The remedies and penalties provided for in the  
25 Cramming and Slamming Act are in addition to any other

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1 penalties that may be imposed pursuant to any other state law  
2 or any other remedies available to consumers.

3 F. The provisions of Subsection A of this section  
4 shall not apply to a provider placing or causing a charge to be  
5 placed on a customer's telephone bill for third-party goods or  
6 services where the third party or its agent represents that it  
7 obtained the customer's consent or authorization."