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FISCAL IMPACT REPORT

SPONSOR Tallman/Diamond LAST UPDATED _____
ORIGINAL DATE 02/06/23
BILL _____
SHORT TITLE Telecomm Act "Cramming" Definition NUMBER Senate Bill 83
ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 170

Sources of Information

LFC Files

Responses Received From

Department of Information Technology

Public Regulation Commission

Attorney General

SUMMARY

Synopsis of Senate Bill 83

Senate Bill 83 (SB83) amends statute related to railroads and communications, particularly updating definitions as used in the Cramming and Slamming Act. The amendment clarifies the definition of “cramming” to include the charging of customers for goods or services that are not telecommunications services only if those services were not authorized by a customer. If the customer authorized those additional services, it would no longer be considered cramming under SB83.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill does not contain an appropriation and is not anticipated to have a fiscal impact because the bill simply provides a technical correction to prior statutory language.

SIGNIFICANT ISSUES

SB83 essentially allows entities to provide such non-telecommunications services so long as they are authorized by a customer and does not consider that to be cramming if authorized by the customer under the new proposed definition. As noted by the Department of Information Technology, “Current language in the Cramming and Slamming Act implies that any sale of goods or services to a customer through certain telecommunication processes is prohibited. Amending the definition of cramming would clarify that an authorized purchase would not be a violation.”

The Office of the Attorney General notes:

When the Slamming and Cramming Act was passed, the intent was to prevent wireline service providers from adding charges to customer bills for services that were largely unrelated to telecommunications services. However, with the advent of wireline and wireless broadband, which are commonly offered as bundled services, it is common for providers to offer subscriptions through their service to non-telecommunication services, such as apps like Apple Music or Netflix, which then appear on the customer’s bill. Accordingly, this bill clarifies that such practice is not contrary to the Cramming and Slamming Act.

Similarly, the Public Regulation Commission (PRC) notes that existing statutory language implies that “any non-telecommunications charge on a customer telephone bill are by definition a non-authorized cramming of a service or a good under the statute” and SB83 provides a needed correction to exclude authorized services. Further, the PRC notes:

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 [in SB83] 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.

Further, the PRC notes FCC enforcement actions over time have significantly reduced wireline and wireless telecommunications provider and billing agent cramming and slamming activities.

ADMINISTRATIVE IMPLICATIONS

The PRC notes the proposed change to the act should have a minimal effect on the number of slamming and cramming complaints filed with the Commission for processing. The number of

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

JH/rl/ne