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HOUSE BILL 345

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO TELECOMMUNICATIONS SERVICE; PROHIBITING CERTAIN ACTS; ESTABLISHING CRIMINAL PENALTIES; PROVIDING FOR PRIVATE REMEDIES; REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Telecommunications Service Theft Act".

Section 2. DEFINITIONS. -- As used in the Telecommunications Service Theft Act:

A. "provider" means a person that offers telecommunications service for lawful compensation; and

B. "telecommunications service" means any audio, video, data or programming offered for a fee or other consideration to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images,

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1 sounds or intelligence of any nature delivered by telephone or
2 telephone service, cable television service, including cellular
3 or other wireless telephones, wire, radio, electromagnetic,
4 photoelectronic or photo-optical equipment, coaxial or fiber
5 optic cable, terrestrial microwave, television broadcast or
6 satellite transmission.

7 Section 3. ILLEGAL SERVICE-- PROHIBITED ACTS-- PENALTIES. --

8 A. It is unlawful for any person to:

9 (1) obtain or attempt to obtain
10 telecommunications service by trick, artifice, deception, use of
11 an illegal device or decoder or other fraudulent means without
12 authorization of the provider;

13 (2) assist or instruct any person to obtain or
14 attempt to obtain any telecommunications service without
15 authorization of the provider;

16 (3) make or attempt to make or assist any
17 person to make or maintain a telecommunications service
18 connection, whether physical, electrical, mechanical, acoustical
19 or by other means, with any cables, wires, components or other
20 devices used for the distribution of telecommunications service
21 without authorization of the provider; or

22 (4) make or maintain any modification or
23 alteration to any device that was installed with the
24 authorization of the provider for the purpose of intercepting or
25 receiving any telecommunications service without authorization

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1 of the provider.

2 B. Any person who violates this section is guilty of
3 a misdemeanor upon conviction for a first offense and shall be
4 punished as provided in Section 31-19-1 NMSA 1978; and upon
5 conviction for a second or subsequent offense, is guilty of a
6 fourth degree felony and shall be punished as provided in
7 Section 31-18-15 NMSA 1978.

8 Section 4. ILLEGAL DEVICES--PROHIBITED ACTS--PENALTIES.--

9 A. It is unlawful for any person to:

10 (1) own or possess any device, including a
11 printed circuit board, designed to receive or permit reception
12 of any telecommunications service, regardless of whether that
13 service is encoded, filtered, scrambled or otherwise made
14 unintelligible, with the intent to distribute such device for
15 the purpose of permitting reception or use of telecommunications
16 service without authorization by the provider;

17 (2) publish or advertise for sale or lease any
18 kit or plan for a device designed in whole or in part to receive
19 without authorization of the provider any telecommunications
20 service, regardless of whether that service is encoded,
21 filtered, scrambled or otherwise made unintelligible;

22 (3) advertise for sale or lease any device or
23 printed circuit or kit for a device or printed circuit designed
24 in whole or in part to receive any telecommunications service
25 without authorization of the provider, regardless of whether the

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1 service is encoded, filtered, scrambled or otherwise made
2 unintelligible; or

3 (4) manufacture, import into New Mexico,
4 distribute, sell, lease or offer for sale or lease any device,
5 printed circuit or any plan or kit for a device or for a printed
6 circuit, designed in whole or in part to receive any
7 telecommunications service, regardless of whether the service is
8 encoded, filtered, scrambled or otherwise made unintelligible,
9 that can be used to receive that service without the
10 authorization of the provider.

11 B. Any person who violates this section is guilty of
12 a fourth degree felony upon conviction for a first offense and
13 shall be punished as provided in Section 31-18-15 NMSA 1978; and
14 upon conviction for a second or subsequent offense, is guilty of
15 a third degree felony and shall be punished as provided in
16 Section 31-18-15 NMSA 1978.

17 Section 5. PRIVATE REMEDIES. --

18 A. A person damaged by a violation of Section 3 or 4
19 of the Telecommunications Service Theft Act may be granted an
20 injunction under the principles of equity and on terms that the
21 court considers reasonable. Proof of monetary damage, loss of
22 revenue or intent to deceive and take unfair advantage of any
23 person is not required.

24 B. The relief provided in this section is in
25 addition to remedies otherwise available against the same

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1 conduct under the common law or other New Mexico statutes.

2 Section 6. REPEAL. -- Sections 63-10-1 through 63-10-3 NMSA
3 1978 (being Laws 1977, Chapter 95, Section 1 and Laws 1985,
4 Chapter 74, Sections 3 and 1, as amended) are repealed.

5 Section 7. SEVERABILITY. -- If any part of the
6 Telecommunications Service Theft Act is held invalid, the
7 remainder or its application to other situations or persons
8 shall not be affected.

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 7, 1997

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7 Mr. Speaker:

8
9 Your JUDICIARY COMMITTEE, to whom has been referred

10
11 HOUSE BILL 345

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 3, line 4, after "punished" strike "as provided
16 in Section 31-19-1 NMSA 1978" and insert in lieu thereof "by a
17 fine of up to five hundred dollars (\$500)".

18
19 2. On page 3, line 6, strike "fourth degree felony" and
20 insert in lieu thereof "misdemeanor".

21
22 3. On page 3, lines 6 and 7, strike "as provided in Section
23 31-18-15 NMSA 1978." and insert in lieu thereof "by either a fine
24 of not less than five hundred dollars (\$500) or more than one
25 thousand dollars (\$1,000), by imprisonment for a definite term not
to exceed thirty days, or both."

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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4. On page 4, line 12, strike "fourth degree felony" and insert in lieu thereof "misdemeanor".

5. On page 4, line 13, strike "as provided in Section 31-18-15 NMSA 1978;" and insert in lieu thereof "by either a fine of not less than one thousand dollars (\$1,000), imprisonment for a definite term of not less than thirty days, or both;".

6. On page 4, line 15, strike "third" and insert in lieu thereof "fourth".,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

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FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: King, Larranaga, Luna, Rios

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 6, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE BILL 345, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Gri ego, Ki dd, Robi nson

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 14 , 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 345, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____

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FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Sanchez, Tsosie, Vernon

Absent: None

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