

SENATE BILL NO. 1418

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (26).

5481S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, and to enact in lieu thereof seven new sections relating to municipal telecommunications business license taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 71.675, 92.074, 92.077, 92.080,
2 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, are repealed
3 and seven new sections enacted in lieu thereof, to be known as
4 sections 71.675, 92.074, 92.077, 92.080, 92.086, 92.089, and
5 92.092, to read as follows:

71.675. 1. Notwithstanding any other provision of law
2 to the contrary, no city or town shall bring any action in
3 federal or state court in this state as a representative
4 member of a class to enforce or collect any business license
5 tax imposed on a telecommunications company. A city or town
6 may, individually or as a single plaintiff in a multiple-
7 plaintiff lawsuit, bring an action in federal or state court
8 in this state to enforce or collect any business license tax
9 imposed on a telecommunications company.

10 2. Nothing in this section shall be construed to
11 preclude any taxpayer from initiating an action in federal
12 or state court as a representative member of a class seeking
13 injunctive relief against the Missouri department of revenue
14 to enforce the imposition, assessment, or collection of the

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 business license tax provided under sections 92.074 to
16 **[92.095] 92.092.**

92.074. Sections 92.074 to **[92.095] 92.092** shall be
2 known as the "Municipal Telecommunications Business License
3 Tax **[Simplification] Modernization Act**".

92.077. As used in sections 92.074 to **[92.095] 92.092,**
2 unless the context clearly requires otherwise, the following
3 terms mean:

4 (1) "Business license tax", any tax, including any
5 fee, charge, or assessment in the nature of a tax, assessed
6 by a municipality on a telecommunications company for the
7 privilege of doing business within the borders of such
8 municipality, and specifically includes any tax assessed on
9 a telecommunications company by a municipality under
10 **[section 66.300 and section 80.090, section 92.073, section**
11 **94.110, 94.270, or 94.360]** **this chapter or chapter 66, 80,**
12 **or 94,** or under authority granted in its charter, as well as
13 an occupation license tax, gross receipts tax, franchise
14 tax, or similar tax, but shall not include:

15 (a) Any state or municipal sales tax imposed under
16 sections 144.010 to 144.525; **[or]**

17 (b) Any municipal right-of-way usage fee imposed under
18 the authority of a municipality's police powers under
19 Section 253(c) of the Federal Telecommunications Act of
20 1996**[, or under sections 67.1830 to 67.1846];** or

21 (c) Any tax or fee levied for emergency services under
22 section 190.292, 190.305, 190.325, **or 190.335, [or 190.430,]**
23 or any tax authorized by the general assembly **[after August**
24 **28, 2005,]** for emergency services;

25 **[(d) Any flat tax duly imposed on or before August 28,**
26 **2005;]**

27 (2) "Director", the director of the department of
28 revenue;

29 (3) **"Gross receipts", receipts from the retail sale of**
30 **telecommunications service subject to tax under subdivision**
31 **(4) of subsection 1 of section 144.020;**

32 (4) "Municipal", of or relating to a municipality;

33 [(4)] (5) "Municipality", any city, county, town, or
34 village in Missouri entitled by authority of section 66.300,
35 section 80.090, section 92.073, section 94.110, 94.270, or
36 94.360, or under authority granted in its charter to assess
37 a business license tax on telecommunications companies;

38 [(5)] (6) "Telecommunications company", any company
39 doing business in this state that provides
40 telecommunications service. **The term "telephone company",**
41 **as used in sections 94.110, 94.270, and 94.360, shall have**
42 **the same meaning as "telecommunications company";**

43 [(6)] (7) "Telecommunications service", the same
44 meaning as such term is defined in section 144.010. The term
45 ["telephone company", as used in sections 94.110, 94.270,
46 and 94.360, shall have the same meaning as
47 telecommunications company as defined in this section] shall
48 include, but not be limited to, telephone service,
49 telecommunications, local exchange service, local exchange
50 telephone transmission service, exchange telephone service,
51 mobile telecommunications service, and voice over internet
52 protocol services.

92.080. Notwithstanding any provisions of this chapter
2 or chapter 66, 80, or 94, or the provisions of any municipal
3 charter, after August 28, [2005] 2024, no municipality [may]
4 shall impose any business license tax[, tower tax, or
5 antennae tax] on a telecommunications company except as
6 specified in sections 92.074 to [92.095] 92.092.

92.086. 1. On or before January 1, [2006] 2025, the
2 director shall publish a list of the municipalities [which]
3 **that** have, prior to August 28, [2005] 2024, enacted
4 ordinances imposing a business license tax on a
5 telecommunications company, **except that such list shall not**
6 **include municipalities that imposed a flat fee instead of a**
7 **tax or fee based on gross receipts as the municipality's**
8 **business license tax.** The list shall contain:

- 9 (1) The name of the municipality imposing the tax;
- 10 (2) The name of the tax as denoted by the municipality;
- 11 (3) The citation to the municipal code provisions
12 imposing the tax; and
- 13 (4) The percentage of gross receipts.

14 [The director shall not be required to include any figures
15 for the percentage of gross receipts if the municipality in
16 question at the time of August 28, 2005, had an ordinance
17 which imposed a flat fee instead of a fee based on gross
18 receipts as its business license tax. In compiling the
19 list, the director shall collect information from
20 telecommunications companies, municipalities, municipal
21 codes, and other reliable sources.

22 2. (1) On or before February 1, 2006, all
23 telecommunications companies in Missouri shall provide the
24 director and the state auditor with the amount of municipal
25 business license tax which they paid each Missouri
26 municipality identified by the director in accordance with
27 subsection 1 of this section for the previous four
28 quarters. On or before February 1, 2006, all
29 telecommunications companies in Missouri shall provide the
30 director and the state auditor with an itemized list
31 establishing their gross receipts for the previous four

32 quarters for each category of gross receipts in each
33 municipality identified by the director in accordance with
34 subsection 1 of this section upon which a sales tax is paid.

35 (2) On or before February 1, 2006, each municipality
36 shall provide the director and state auditor with the total
37 amount of tax revenue collected for the previous fiscal year
38 of taxable gross receipts from telecommunications
39 companies. Any inconsistency or dispute arising from the
40 information provided by the municipalities and
41 telecommunications companies shall be resolved through an
42 audit performed by the state auditor.

43 **3.] 2.** Beginning on July 1, ~~[2006]~~ **2025**, the director
44 shall henceforth collect, administer, and distribute
45 telecommunications business license tax revenues in
46 accordance with the provisions of sections 92.074 to
47 ~~[92.095]~~ **92.092**.

48 **[4.] 3.** Notwithstanding the provisions of any
49 municipal business license tax ordinance, effective July 1,
50 ~~[2006]~~ **2025**, all business license taxes shall ~~[be based~~
51 ~~solely and exclusively on]~~ **not exceed** those gross receipts
52 of telecommunications companies for the retail sale of
53 telecommunications services ~~[which are subject to taxation~~
54 ~~under sections 144.010 and 144.020]~~. Any provisions in any
55 municipal taxing ordinances ~~[which provide different]~~ **that**
56 **adopt** definitions, rules, or provisions **that purport to**
57 **impose any business license tax on gross receipts in excess**
58 **of telecommunications service including, but not limited to,**
59 **interstate or international telecommunications services as**
60 **described in paragraph (b) of subdivision (4) of subsection**
61 **1 of section 144.020**, are expressly preempted and are null
62 and void.

63 [5.] 4. The director is authorized to promulgate
64 regulations to establish the appropriate procedures for
65 collecting, administering, and distributing such taxes. A
66 telecommunications company shall file a quarterly return
67 with the director with an attached schedule setting forth
68 the total amount of taxable gross receipts for the quarter
69 and the amount of business license tax due to each
70 municipality. The director shall distribute the appropriate
71 amounts, as set forth in this section, to the
72 municipalities. In exchange for its collection,
73 administration, and distribution functions, the department
74 of revenue shall retain a collection fee of up to one
75 percent [(1), not to exceed the actual costs incurred[]], on
76 all funds collected and distributed and shall be allowed to
77 collect the interest off such funds during the time between
78 collection and distribution. In no event shall the director
79 fail to distribute the collected funds to a municipality
80 more than thirty days after the collection of the funds.

81 [6. It is the intent of the general assembly that
82 sections 92.074 to 92.095 comply with Article X, Section 22
83 of the Missouri Constitution, so that the application of
84 sections 92.074 to 92.095 shall have a revenue-neutral
85 effect. Because business license taxes shall now be based
86 on the gross receipts subject to the sales tax, it is
87 anticipated that the base of the existing business license
88 taxes in most cases shall be broadened, so in order to
89 comply with Article X, Section 22 of the Missouri
90 Constitution, the municipality shall adjust the gross
91 receipts percentage rate identified by the director in
92 accordance with subsection 2 of this section so that the
93 amount collectible, in total from all telecommunications
94 companies, excluding the collection fee authorized in

95 subsection 5 as defined herein, before and immediately after
96 enactment remains the same in each municipality. If the
97 determination is made by a municipality that in order to
98 comply with Article X, Section 22 of the Missouri
99 Constitution the gross receipts percentage rate must be
100 increased, such increase shall be passed by a majority vote
101 of the qualified voters voting in that municipality. The
102 existing tax base shall be an amount equal to the total
103 amount of telecommunications business license taxes
104 collected by a municipality for fiscal year 2005, increased
105 by fifty percent of the difference between such amount and
106 the business license tax receipts that would have been
107 yielded by applying the gross receipts percentage rate
108 identified in accordance with subsection 1 of this section
109 to the total gross receipts for all wireless
110 telecommunications services provided by telecommunications
111 companies as identified in 47 U.S.C. Section 332(D)(1) and
112 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to
113 the municipality. Based upon the rate information received
114 from the director under this section, each municipality
115 shall, no later than April 1, 2006, promulgate and publish
116 the revenue-neutral rates to be applied in each
117 municipality. Such tax rates shall be the applicable
118 business license tax rate for bills rendered on or after
119 July 1, 2006. Any percentages in any ordinance that are
120 contrary to that established by the municipality herein are
121 null and void. If any municipal business license tax
122 ordinance as of January 1, 2005, had a provision stating
123 that the tax only applied to business customers, the new
124 calculated rate under this section also shall be determined
125 based only on business customers and shall apply only to
126 business customers.

127 7. On or before April 1, 2007, the director, in
128 consultation with the state auditor and municipalities,
129 shall examine revenues collected and forecast whether a
130 shortfall or excess in municipal revenues for each
131 municipality is likely to occur for the fiscal year ending
132 June 30, 2007, due to data reporting errors or other errors
133 in the calculation of the revenue-neutral tax rate. Section
134 32.057 shall not restrict the disclosure of information to
135 perform such consultation. If a shortfall or excess is
136 expected, the director, after review and comment from
137 municipalities and telecommunications companies, shall
138 promulgate and publish an adjustment in the rate in such
139 municipalities. Such tax rate adjustment, if necessary,
140 shall apply to bills issued after July 1, 2007.

141 8.] 5. The director shall be notified in writing
142 within thirty days of any change in the municipal business
143 license tax rate adopted by a municipality. The director
144 shall promulgate such rate changes, but such rate changes
145 [may only] shall take effect **only** on the first day of a
146 calendar quarter and only after a minimum of ninety days
147 notice from the director to a telecommunications company.
148 Any subsequent increase in the business license tax rate
149 passed through an ordinance by a municipality [which] **that**
150 is above that rate as [established by the municipality
151 under] **identified in accordance with** subsection [6] 1 of
152 this section shall be passed by a majority vote of the
153 qualified voters voting in that municipality. No municipal
154 tax rate shall exceed the cap provided in subsection [9] 6
155 of this section.

156 [9.] 6. Notwithstanding the provisions of subsections
157 [3] 2 to [8] 5 of this section or any other provision of law
158 to the contrary, [for any municipality not subject to the

159 provisions of subsection 10 of this section,] the maximum
160 rate of taxation on gross receipts shall not exceed five
161 percent for bills rendered on or after July 1, [2006, except
162 if the business license tax rate for any municipality, as
163 calculated in subsection 6 of this section, or if necessary,
164 subsection 7 of this section, is determined to be greater
165 than five percent, then, notwithstanding the provisions of
166 such subsections, the business license tax rates for such
167 municipality on and after July 1, 2006, shall be as follows:

168 (1) For bills rendered between July 1, 2006, and June
169 30, 2008, the rate shall be the actual adjusted rate as
170 determined by subsection 6 of this section, or, if
171 necessary, subsection 7 of this section;

172 (2) For bills rendered between July 1, 2008, and June
173 30, 2010, the rate shall be half the sum of the rate
174 determined in subdivision (1) of this subsection and five
175 percent; and

176 (3) For all bills rendered on and after July 1, 2010,
177 five percent] **2025.**

178 [10. (1) Any municipality which prior to November 4,
179 1980, had an ordinance imposing a business license tax on
180 telecommunications companies which specifically included the
181 words "wireless", "cell phones", or "mobile phones" in its
182 business license tax ordinance as revenues upon which a
183 business license tax could be imposed, and had not limited
184 its tax to local exchange telephone service or landlines,
185 and had taken affirmative action to collect such tax from
186 wireless telecommunications providers prior to January 15,
187 2005, shall not be required to adjust its business license
188 tax rate as provided in subsection 6 of this section and
189 shall not be subject to the provisions of subsection 9 of
190 this section.

191 (2) Any municipality which has an ordinance or an
192 amendment to an ordinance imposing a business license tax on
193 telecommunications companies which was authorized or amended
194 by a public vote subsequent to November 4, 1980, and such
195 authorization specifically included the terms "wireless",
196 "cell phones", or "mobile telephones" as revenues upon which
197 a business license tax could be imposed, and had not limited
198 its tax to local exchange telephone service or landlines,
199 and had taken affirmative action to collect such tax from
200 wireless telecommunications providers prior to January 15,
201 2005, shall not be required to adjust its business license
202 tax rate as provided in subsection 6 of this section and
203 shall not be subject to the provisions of subsection 9 of
204 this section.

205 [11.] 7. For purposes of sections 92.074 to [92.095]
206 **92.092**, the director and any municipality shall have the
207 authority to audit any telecommunications company.
208 Notwithstanding the provisions of section 32.057, the
209 director of revenue shall furnish any municipality with
210 information it requests to permit the municipality to review
211 and audit the payments of any telecommunications company.

212 [12.] 8. The statute of limitations shall be three
213 years for the alleged nonpayment or underpayment of the
214 business license tax.

215 [13.] 9. Any telecommunications company is authorized
216 to pass through to its retail customers all or part of the
217 business license tax.

218 [14.] 10. The provisions of [subsection 5 of section
219 144.190] **section 144.013** and subdivision (3) of subsection
220 12 of section 32.087 shall apply to the tax imposed under
221 sections 92.074 to [92.095] **92.092**.

222 [15.] 11. Unless specifically stated otherwise in
223 sections 92.074 to [92.095] 92.092, taxpayer remedies,
224 enforcement mechanisms, tax refunds, tax protests,
225 assessments, and all other procedures shall be the same as
226 those provided in chapter 144.

227 [16.] 12. Any rule or portion of a rule, as that term
228 is defined in section 536.010, that is created under the
229 authority delegated in this section shall become effective
230 only if it complies with and is subject to all of the
231 provisions of chapter 536 and, if applicable, section
232 536.028. This section and chapter 536 are nonseverable and
233 if any of the powers vested with the general assembly
234 pursuant to chapter 536 to review, to delay the effective
235 date, or to disapprove and annul a rule are subsequently
236 held unconstitutional, then the grant of rulemaking
237 authority and any rule proposed or adopted after August 28,
238 [2005] 2024, shall be invalid and void.

92.089. 1. The general assembly finds and declares
2 [it to be the policy of the state of Missouri that costly
3 litigation which have or may be filed by Missouri
4 municipalities against telecommunications companies,
5 concerning the application of certain business license taxes
6 to certain telecommunications companies, and to certain
7 revenues of those telecommunications companies, as set forth
8 below, is detrimental to the economic well being of the
9 state, and the claims of the municipal governments regarding
10 such business licenses have neither been determined to be
11 valid nor liquidated. The general assembly further finds
12 and declares that the resolution of such uncertain
13 litigation, the uniformity, and the administrative
14 convenience and cost savings to municipalities resulting
15 from, and the revenues which will or may accrue to

16 municipalities in the future as a result of the enactment of
17 sections 92.074 to 92.095 are full and adequate
18 consideration to municipalities, as the term "consideration"
19 is used in Article III, Section 39(5) of the Missouri
20 Constitution, for the immunity and dismissal of lawsuits
21 outlined in subsection 2 of this section.

22 2. In the event any telecommunications company, prior
23 to July 1, 2006, failed to pay any amount to a municipality
24 based on a subjective good faith belief that either:

25 (1) It was not a telephone company covered by the
26 municipal business license tax ordinance, or the statute
27 authorizing the enactment of such taxing ordinance, or did
28 not provide telephone service as stated in the business
29 license tax ordinance, and therefore owed no business
30 license tax to the municipality; or

31 (2) That certain categories of its revenues did not
32 qualify under the definition or wording of the ordinance as
33 gross receipts or revenues upon which business license taxes
34 should be calculated;

35 such a telecommunications company is entitled to full
36 immunity from, and shall not be liable to a municipality
37 for, the payment of the disputed amounts of business license
38 taxes, up to and including July 1, 2006. However, such
39 immunity and release from liability shall not apply to any
40 business license tax imposed in accordance with subdivisions
41 (1) and (2) of subsection 10 of section 92.086 or sections
42 92.074 to 92.095 after July 1, 2006. If any municipality,
43 prior to July 1, 2006, has brought litigation or caused an
44 audit of back taxes for the nonpayment by a
45 telecommunications company of municipal business license
46 taxes, it shall immediately dismiss such lawsuit without

47 prejudice and shall cease and desist from continuing any
48 audit, except those cities described in subsection 10 of
49 section 92.086] that sections 92.074 to 92.092 apply to an
50 open-ended class of municipalities, consistent with
51 requirements in Article III, Section 40(30) of the
52 Constitution of Missouri and cases interpreting such
53 provision, and that sections 92.074 to 92.092 cover all
54 telephonic services, regardless of the type of technology
55 used to provide the services, consistent with City of
56 Jefferson City, MO. v. Cingular Wireless, LLC, 531 F.3d 595
57 (8th Cir. 2008). Sections 92.074 to 92.092 reaffirm
58 legislative intent that gross receipts from the provision of
59 interstate telecommunications service and international
60 telecommunications service in this state are not subject to
61 the business license tax. Accordingly, City of Aurora v.
62 Spectra Communications Group, LLC, 592 S.W.3d 764 (Mo. banc
63 2019) and Collector of Winchester v. Charter Communications,
64 Inc., 660 S.W.3d 405 (Mo. Ct. App. E.D. 2022) are abrogated
65 to the extent inconsistent with sections 92.074 to 92.092.

66 2. The general assembly finds and declares that
67 sections 92.074 to 92.092 do not authorize the adoption of a
68 new tax or the increase of an existing tax. No provision of
69 sections 92.074 to 92.092 shall be construed to:

- 70 (1) Authorize the expansion of any business license
71 tax base by a municipality;
- 72 (2) Authorize the increase of any business license tax
73 rate by a municipality; or
- 74 (3) Otherwise implicate Article X, Section 22 of the
75 Constitution of Missouri.

92.092. All provisions of sections 92.074 to 92.089
2 are so essentially and inseparably connected with, and so
3 dependent upon, each other that no such provision would be

4 enacted without all others. If a court of competent
5 jurisdiction enters a final judgment on the merits that is
6 not subject to appeal and that declares any provision or
7 part of sections 92.074 to 92.089 unconstitutional or
8 unenforceable [then], sections 92.074 to 92.089, in their
9 collective entirety, are invalid and shall have no legal
10 effect as of the date of such judgment. In such event, both
11 telecommunications companies and municipalities shall have
12 the same rights as existed before August 28, [2005] 2024,
13 but shall not be entitled to reimbursement, or required to
14 pay reimbursement, for any sums paid in the good faith
15 belief in the validity and constitutionality of sections
16 92.074 to 92.089.

[92.083. 1. On or after July 1, 2006, if
2 any city, county, village, or town has imposed a
3 business license tax on a telecommunications
4 company, as authorized in this chapter, or
5 chapter 66, 80, or 94, or under the authority
6 granted in its charter, the terms used in such
7 ordinance shall be construed, for the purposes
8 of sections 92.074 to 92.095, to have the
9 meanings set forth in this section, regardless
10 of any contrary definition in the ordinance:

11 (1) "Gross receipts" means all receipts
12 from the retail sale of telecommunications
13 service taxable under section 144.020 and from
14 any retail customer now or hereafter exempt from
15 the state sales tax;

16 (2) "Telephone service",
17 "telecommunications service",
18 "telecommunications", "local exchange service",
19 "local exchange telephone transmission service",
20 "exchange telephone service" or similar terms
21 means telecommunications service as defined in
22 section 92.077.

23 2. Nothing in this section shall have the
24 effect of repealing any existing ordinance
25 imposing a business license tax on a
26 telecommunications company; provided that a city

27 with an ordinance in effect prior to August 28,
28 2005, complies with the provisions of section
29 92.086.

30 3. Any business license tax imposed on a
31 telecommunications company after July 1, 2006,
32 shall be imposed on the retail sale of
33 telecommunications service.]

[92.095. The provisions of section 71.675
2 are severable from the provisions of sections
3 92.074 to 92.092. If any portion of sections
4 92.074 to 92.092 is declared unconstitutional or
5 the application of any part of sections 92.074
6 to 92.092 to any person or circumstance is held
7 invalid, section 71.675 and its applicability to
8 any person or circumstance shall remain valid
9 and enforceable. If any portion of section
10 71.675 is declared unconstitutional or the
11 application of any part of section 71.675 to any
12 person or circumstance is held invalid, sections
13 92.074 to 92.092 and its applicability to any
14 person or circumstance shall remain valid and
15 enforceable.]

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