

113TH CONGRESS  
1ST SESSION

# H. R. 2309

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2013

Ms. LOFGREN (for herself, Mr. FRANKS of Arizona, Mr. ALEXANDER, Mr. AMODEI, Mrs. BACHMANN, Mr. BARLETTA, Mr. BARTON, Ms. BASS, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mrs. BLACKBURN, Mr. BOUSTANY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mr. BROUN of Georgia, Ms. BROWN of Florida, Mr. BUCSHON, Mr. BUTTERFIELD, Mr. CALVERT, Mrs. CAPPS, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTER, Mr. CHABOT, Mr. CHAFFETZ, Mrs. CHRISTENSEN, Mr. COBLE, Mr. COFFMAN, Mr. COHEN, Mr. COLLINS of Georgia, Mr. CONAWAY, Mr. COSTA, Mr. COTTON, Mr. CRAWFORD, Mr. CRENSHAW, Mr. CULBERSON, Mr. CUELLAR, Mr. DENT, Mr. DOYLE, Ms. ESHOO, Mr. ENYART, Mr. FARENTHOLD, Mr. FLEMING, Mr. FLORES, Mr. FORBES, Mr. GARDNER, Mr. GARRETT, Mr. GERLACH, Mr. GINGREY of Georgia, Mr. GOSAR, Mr. GRAYSON, Mr. GENE GREEN of Texas, Mr. GRIFFIN of Arkansas, Mr. GRIJALVA, Mr. GRIMM, Mr. GUTIERREZ, Mr. HALL, Mr. HANNA, Mr. HARPER, Mr. HASTINGS of Florida, Mr. HASTINGS of Washington, Mr. HECK of Nevada, Mr. HOLDING, Mr. HOLT, Mr. HONDA, Mr. HUIZENGA of Michigan, Mr. HULTGREN, Mr. ISRAEL, Mr. ISSA, Ms. JACKSON LEE, Ms. JENKINS, Mr. JOHNSON of Ohio, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JONES, Mr. JORDAN, Mr. KELLY of Pennsylvania, Mr. KING of New York, Mr. KINZINGER of Illinois, Mr. KLINE, Mr. LABRADOR, Mr. CLAY, Mr. LANCE, Mr. LATTA, Mr. LONG, Mrs. CAROLYN B. MALONEY of New York, Mr. MARINO, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mrs. McMORRIS RODGERS, Mr. MCNERNEY, Mr. MEEHAN, Mr. MEEKS, Mr. NUGENT, Mr. OLSON, Mr. OWENS, Mr. PALLONE, Mr. PEARCE, Mr. PITTS, Mr. POE of Texas, Mr. POLIS, Mr. RADEL, Mr. REED, Mr. REICHERT, Mr. ROGERS of Michigan, Mr. ROKITA, Ms. ROSLEHTINEN, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. RUIZ, Mr. RUNYAN, Mr. RYAN of Ohio, Mr. SALMON, Ms. LORETTA SANCHEZ of California, Mr. SCALISE, Mr. SCHRADER, Mr. SENSENBRENNER, Mr. SESSIONS, Ms. SEWELL of Alabama, Mr. SHIMKUS, Mr. SIMPSON, Ms. SINEMA, Mr. SMITH of Nebraska, Mr. SMITH of Texas, Mr. STIVERS, Mr. STOCKMAN, Mr. SWALWELL of California, Mr. TAKANO, Mr. THOMPSON

of Mississippi, Mr. THORNBERRY, Mr. TIBERI, Mr. TONKO, Mr. VARGAS, Mr. VEASEY, Mr. WALBERG, Mr. WEBER of Texas, Mr. WEBSTER of Florida, Mr. WESTMORELAND, Mr. WITTMAN, Mr. WHITFIELD, Ms. WILSON of Florida, Mr. WILSON of South Carolina, Mr. YODER, Mr. MASSIE, Mr. GRAVES of Missouri, Ms. CLARKE, Mr. DESANTIS, and Mr. COLE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Wireless Tax Fairness  
5 Act of 2013”.

6 **SEC. 2. FINDINGS.**

7       Congress finds the following:

8           (1) It is appropriate to exercise congressional  
9       enforcement authority under section 5 of the 14th  
10       Amendment to the Constitution of the United States  
11       and Congress’ plenary power under article I, section  
12       8, clause 3 of the Constitution of the United States  
13       (commonly known as the “commerce clause”) in  
14       order to ensure that States and political subdivisions  
15       thereof do not discriminate against providers and  
16       consumers of mobile services by imposing new selec-

1       tive and excessive taxes and other burdens on such  
2       providers and consumers.

3           (2) In light of the history and pattern of dis-  
4       crimatory taxation faced by providers and con-  
5       sumers of mobile services, the prohibitions against  
6       and remedies to correct discriminatory State and  
7       local taxation in section 306 of the Railroad Revital-  
8       ization and Regulatory Reform Act of 1976 (49  
9       U.S.C. 11501) provide an appropriate analogy for  
10      congressional action, and similar Federal legislative  
11      measures are warranted that will prohibit imposing  
12      new discriminatory taxes on providers and con-  
13      sumers of mobile services and that will assure an ef-  
14      fective, uniform remedy.

15 **SEC. 3. MORATORIUM.**

16       (a) IN GENERAL.—No State or local jurisdiction shall  
17      impose a new discriminatory tax on or with respect to mo-  
18      bile services, mobile service providers, or mobile service  
19      property, during the 5-year period beginning on the date  
20      of enactment of this Act.

21       (b) DEFINITIONS.—In this Act:

22           (1) MOBILE SERVICE.—The term “mobile serv-  
23      ice” means commercial mobile radio service, as such  
24      term is defined in section 20.3 of title 47, Code of  
25      Federal Regulations, as in effect on the date of en-

1 actment of this Act, or any other service that is pri-  
2 marily intended for receipt on, transmission from, or  
3 use with a mobile telephone or other mobile device,  
4 including but not limited to the receipt of a digital  
5 good.

6 (2) MOBILE SERVICE PROPERTY.—The term  
7 “mobile service property” means all property used  
8 by a mobile service provider in connection with its  
9 business of providing mobile services, whether real,  
10 personal, tangible, or intangible (including goodwill,  
11 licenses, customer lists, and other similar intangible  
12 property associated with such business).

13 (3) MOBILE SERVICE PROVIDER.—The term  
14 “mobile service provider” means any entity that sells  
15 or provides mobile services, but only to the extent  
16 that such entity sells or provides mobile services.

17 (4) NEW DISCRIMINATORY TAX.—The term  
18 “new discriminatory tax” means a tax imposed by a  
19 State or local jurisdiction that is imposed on or with  
20 respect to, or is measured by, the charges, receipts,  
21 or revenues from or value of—

22 (A) a mobile service and is not generally  
23 imposed, or is generally imposed at a lower  
24 rate, on or with respect to, or measured by, the  
25 charges, receipts, or revenues from other serv-

1           ices or transactions involving tangible personal  
2           property;

3           (B) a mobile service provider and is not  
4           generally imposed, or is generally imposed at a  
5           lower rate, on other persons that are engaged  
6           in businesses other than the provision of mobile  
7           services; or

8           (C) a mobile service property and is not  
9           generally imposed, or is generally imposed at a  
10          lower rate, on or with respect to, or measured  
11          by the value of, other property that is devoted  
12          to a commercial or industrial use and subject to  
13          a property tax levy, except public utility prop-  
14          erty owned by a public utility subject to rate of  
15          return regulation by a State or Federal regu-  
16          latory authority;

17          unless such tax was imposed and actually enforced  
18          on mobile services, mobile service providers, or mo-  
19          bile service property prior to the date of enactment  
20          of this Act.

21           (5) STATE OR LOCAL JURISDICTION.—The term  
22          “State or local jurisdiction” means any of the sev-  
23          eral States, the District of Columbia, any territory  
24          or possession of the United States, a political sub-  
25          division of any State, territory, or possession, or any

1 governmental entity or person acting on behalf of  
2 such State, territory, possession, or subdivision that  
3 has the authority to assess, impose, levy, or collect  
4 taxes or fees.

5 (6) TAX.—

6 (A) IN GENERAL.—The term “tax” means  
7 a charge imposed by a governmental entity for  
8 the purpose of generating revenues for govern-  
9 mental purposes, and excludes a fee imposed on  
10 a particular entity or class of entities for a spe-  
11 cific privilege, service, or benefit conferred ex-  
12 clusively on such entity or class of entities.

13 (B) EXCLUSION.—The term “tax” does  
14 not include any fee or charge—

15 (i) used to preserve and advance Fed-  
16 eral universal service or similar State pro-  
17 grams authorized by section 254 of the  
18 Communications Act of 1934 (47 U.S.C.  
19 254);

20 (ii) specifically dedicated by a State or  
21 local jurisdiction for the support of E-911  
22 communications systems; or

23 (iii) used to preserve and advance  
24 Federal telecommunications relay services  
25 or State programs implementing this Fed-

1           eral mandate pursuant to title IV of the  
2           Americans with Disabilities Act of 1990  
3           (Public Law 101–336; 104 Stat. 327) and  
4           codified in section 225 of the Communica-  
5           tions Act of 1934 (47 U.S.C. 225).

6           (c) RULES OF CONSTRUCTION.—

7           (1) DETERMINATION.—For purposes of sub-  
8           section (b)(4), all taxes, tax rates, exemptions, de-  
9           ductions, credits, incentives, exclusions, and other  
10          similar factors shall be taken into account in deter-  
11          mining whether a tax is a new discriminatory tax.

12          (2) APPLICATION OF PRINCIPLES.—Except as  
13          otherwise provided in this Act, in determining  
14          whether a tax on mobile service property is a new  
15          discriminatory tax for purposes of subsection  
16          (b)(4)(C), principles similar to those set forth in sec-  
17          tion 306 of the Railroad Revitalization and Regu-  
18          latory Reform Act of 1976 (49 U.S.C. 11501) shall  
19          apply.

20          (3) EXCLUSIONS.—Notwithstanding any other  
21          provision of this Act—

22                  (A) the term “generally imposed” as used  
23                  in subsection (b)(4) shall not apply to any tax  
24                  imposed only on—

25                          (i) specific services;

1 (ii) specific industries or business seg-  
2 ments; or

3 (iii) specific types of property; and

4 (B) the term “new discriminatory tax”  
5 shall not include a new tax or the modification  
6 of an existing tax that either—

7 (i)(I) replaces one or more taxes that  
8 had been imposed on mobile services, mo-  
9 bile service providers, or mobile service  
10 property; and

11 (II) is designed so that, based on in-  
12 formation available at the time of the en-  
13 actment of such new tax or such modifica-  
14 tion, the amount of tax revenues generated  
15 thereby with respect to such mobile serv-  
16 ices, mobile service providers, or mobile  
17 service property is reasonably expected to  
18 not exceed the amount of tax revenues that  
19 would have been generated by the respec-  
20 tive replaced tax or taxes with respect to  
21 such mobile services, mobile service pro-  
22 viders, or mobile service property; or

23 (ii) is a local jurisdiction tax that may  
24 not be imposed without voter approval,  
25 provides for at least 90 days’ prior notice



1 to mobile service providers, and is required  
2 by law to be collected from mobile service  
3 customers.

4 **SEC. 4. ENFORCEMENT.**

5 Notwithstanding any provision of section 1341 of title  
6 28, United States Code, or the constitution or laws of any  
7 State, the district courts of the United States shall have  
8 jurisdiction, without regard to amount in controversy or  
9 citizenship of the parties, to grant such mandatory or pro-  
10 hibitive injunctive relief, interim equitable relief, and de-  
11 claratory judgments as may be necessary to prevent, re-  
12 strain, or terminate any acts in violation of this Act.

13 (1) JURISDICTION.—Such jurisdiction shall not  
14 be exclusive of the jurisdiction which any Federal or  
15 State court may have in the absence of this section.

16 (2) BURDEN OF PROOF.—The burden of proof  
17 in any proceeding brought under this Act shall be  
18 upon the party seeking relief and shall be by a pre-  
19 ponderance of the evidence on all issues of fact.

20 (3) RELIEF.—In granting relief against a tax  
21 which is discriminatory or excessive under this Act  
22 with respect to tax rate or amount only, the court  
23 shall prevent, restrain, or terminate the imposition,  
24 levy, or collection of not more than the discrimina-

1 tory or excessive portion of the tax as determined by  
2 the court.

3 **SEC. 5. GAO STUDY.**

4 (a) **STUDY.**—The Comptroller General of the United  
5 States shall conduct a study, throughout the 5-year period  
6 beginning on the date of the enactment of this Act, to  
7 determine—

8 (1) how, and the extent to which, taxes imposed  
9 by local and State jurisdictions on mobile services,  
10 mobile service providers, or mobile property, impact  
11 the costs consumers pay for mobile services; and

12 (2) the extent to which the moratorium on dis-  
13 criminatory mobile services taxes established in this  
14 Act has any impact on the costs consumers pay for  
15 mobile services.

16 (b) **REPORT.**—Not later than 6 years after the date  
17 of the enactment of this Act, the Comptroller General shall  
18 submit, to the Committee on the Judiciary of the House  
19 of Representatives and the Committee on the Judiciary  
20 of the Senate, a report containing the results of the study  
21 required under subsection (a) and shall include in such  
22 report recommendations for any changes to laws and regu-  
23 lations relating to such results.

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