

FIRST REGULAR SESSION

# HOUSE BILL NO. 671

## 99TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE SOMMER.

1443H.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To repeal sections 144.010 and 144.605, RSMo, and to enact in lieu thereof two new sections relating to sales and use taxes for delivery charges.

---

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

Section A. Sections 144.010 and 144.605, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 144.010 and 144.605, to read as follows:

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to  
2 144.525 have the meanings ascribed to them in this section, except when the context indicates  
3 a different meaning:

4 (1) "Admission" includes seats and tables, reserved or otherwise, and other similar  
5 accommodations and charges made therefor and amount paid for admission, exclusive of any  
6 admission tax imposed by the federal government or by sections 144.010 to 144.525;

7 (2) "Business" includes any activity engaged in by any person, or caused to be engaged  
8 in by him, with the object of gain, benefit or advantage, either direct or indirect, and the  
9 classification of which business is of such character as to be subject to the terms of sections  
10 144.010 to 144.525. A person is "engaging in business" in this state for purposes of sections  
11 144.010 to 144.525 if such person engages in business in this state or maintains a place of  
12 business in this state under section 144.605. The isolated or occasional sale of tangible personal  
13 property, service, substance, or thing, by a person not engaged in such business, does not  
14 constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the  
15 total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible  
16 personal property by persons which property is sold in the course of the partial or complete  
17 liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 calendar year. The provisions of this subdivision shall not be construed to make any sale of  
19 property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

20 (3) "Captive wildlife", includes but is not limited to exotic partridges, gray partridge,  
21 northern bobwhite quail, ring-necked pheasant, captive waterfowl, captive white-tailed deer,  
22 captive elk, and captive furbearers held under permit issued by the Missouri department of  
23 conservation for hunting purposes. The provisions of this subdivision shall not apply to sales  
24 tax on a harvested animal;

25 (4) "Gross receipts", except as provided in section 144.012, means the total amount of  
26 the sale price of the sales at retail including any services other than charges incident to the  
27 extension of credit that are a part of such sales made by the businesses herein referred to, capable  
28 of being valued in money, whether received in money or otherwise; except that, the term gross  
29 receipts shall not include the sale price of property returned by customers when the full sale price  
30 thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010  
31 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically  
32 exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price  
33 above mentioned shall be deemed to be the amount received. It shall also include the lease or  
34 rental consideration where the right to continuous possession or use of any article of tangible  
35 personal property is granted under a lease or contract and such transfer of possession would be  
36 taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale  
37 were made and considered as a sale of such article, and the tax shall be computed and paid by  
38 the lessee upon the rentals paid. **The term "gross receipts" shall not include reasonable**  
39 **delivery charges that are stated separately from the sale price unless the parties intended**  
40 **to include delivery costs in the sale price;**

41 (5) "Instructional class", includes any class, lesson, or instruction intended or used for  
42 teaching;

43 (6) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to,  
44 ostrich and emu, aquatic products as ~~defined~~ **described** in section 277.024, llamas, alpaca,  
45 buffalo, elk documented as obtained from a legal source and not from the wild, goats, horses,  
46 other equine, or rabbits raised in confinement for human consumption;

47 (7) "Motor vehicle leasing company" shall be a company obtaining a permit from the  
48 director of revenue to operate as a motor vehicle leasing company. Not all persons renting or  
49 leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to  
50 obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section  
51 144.070, as hereinafter provided;

52 (8) "Person" includes any individual, firm, copartnership, joint adventure, association,  
53 corporation, municipal or private, and whether organized for profit or not, state, county, political

54 subdivision, state department, commission, board, bureau or agency, except the state  
55 transportation department, estate, trust, business trust, receiver or trustee appointed by the state  
56 or federal court, syndicate, or any other group or combination acting as a unit, and the plural as  
57 well as the singular number;

58 (9) "Product which is intended to be sold ultimately for final use or consumption" means  
59 tangible personal property, or any service that is subject to state or local sales or use taxes, or any  
60 tax that is substantially equivalent thereto, in this state or any other state;

61 (10) "Purchaser" means a person who purchases tangible personal property or to whom  
62 are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

63 (11) "Research or experimentation activities" are the development of an experimental  
64 or pilot model, plant process, formula, invention or similar property, and the improvement of  
65 existing property of such type. Research or experimentation activities do not include activities  
66 such as ordinary testing or inspection of materials or products for quality control, efficiency  
67 surveys, advertising promotions or research in connection with literary, historical or similar  
68 projects;

69 (12) "Sale" or "sales" includes installment and credit sales, and the exchange of  
70 properties as well as the sale thereof for money, every closed transaction constituting a sale, and  
71 means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means  
72 whatsoever, of tangible personal property for valuable consideration and the rendering,  
73 furnishing or selling for a valuable consideration any of the substances, things and services  
74 herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

75 (13) "Sale at retail" means any transfer made by any person engaged in business as  
76 defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use  
77 or consumption and not for resale in any form as tangible personal property, for a valuable  
78 consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed  
79 thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists,  
80 optometrists and veterinarians and used in the practice of their professions shall be deemed to  
81 be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts,  
82 computer output or microfilm or microfiche and computer-assisted photo compositions to a  
83 purchaser to enable the purchaser to obtain for his or her own use the desired information  
84 contained in such computer printouts, computer output on microfilm or microfiche and  
85 computer-assisted photo compositions shall be considered as the sale of a service and not as the  
86 sale of tangible personal property. Where necessary to conform to the context of sections  
87 144.010 to 144.525 and the tax imposed thereby, the term sale at retail shall be construed to  
88 embrace:

89 (a) Sales of admission tickets, cash admissions, charges and fees to or in places of  
90 amusement, entertainment and recreation, games and athletic events, except amounts paid for  
91 any instructional class;

92 (b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic,  
93 commercial or industrial consumers;

94 (c) Sales of local and long distance telecommunications service to telecommunications  
95 subscribers and to others through equipment of telecommunications subscribers for the  
96 transmission of messages and conversations, and the sale, rental or leasing of all equipment or  
97 services pertaining or incidental thereto;

98 (d) Sales of service for transmission of messages by telegraph companies;

99 (e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern,  
100 inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in  
101 which rooms, meals or drinks are regularly served to the public;

102 (f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express  
103 car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and  
104 railroad safety of the department of economic development of Missouri, engaged in the  
105 transportation of persons for hire;

106 (14) "Seller" means a person selling or furnishing tangible personal property or rendering  
107 services, on the receipts from which a tax is imposed pursuant to section 144.020;

108 (15) The noun "tax" means either the tax payable by the purchaser of a commodity or  
109 service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities  
110 or services during the period for which he or she is required to report his or her collections, as  
111 the context may require; and

112 (16) "Telecommunications service", for the purpose of this chapter, the transmission of  
113 information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar  
114 means. As used in this definition, "information" means knowledge or intelligence represented  
115 by any form of writing, signs, signals, pictures, sounds, or any other symbols.  
116 Telecommunications service does not include the following if such services are separately stated  
117 on the customer's bill or on records of the seller maintained in the ordinary course of business:

118 (a) Access to the internet, access to interactive computer services or electronic publishing  
119 services, except the amount paid for the telecommunications service used to provide such access;

120 (b) Answering services and one-way paging services;

121 (c) Private mobile radio services which are not two-way commercial mobile radio  
122 services such as wireless telephone, personal communications services or enhanced specialized  
123 mobile radio services as defined pursuant to federal law; or

124 (d) Cable or satellite television or music services.

125           2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other  
126 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections  
127 144.010 to 144.525 by reference, the term manufactured homes shall have the same meaning  
128 given it in section 700.010.

129           3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".  
144.605. The following words and phrases as used in sections 144.600 to 144.745 mean  
2 and include:

3           (1) "Calendar quarter", the period of three consecutive calendar months ending on March  
4 thirty-first, June thirtieth, September thirtieth or December thirty-first;

5           (2) "Engages in business activities within this state" includes:

6           (a) Maintaining or having a franchisee or licensee operating under the seller's trade name  
7 in this state if the franchisee or licensee is required to collect sales tax pursuant to sections  
8 144.010 to 144.525;

9           (b) Soliciting sales or taking orders by sales agents or traveling representatives;

10           (c) A vendor is presumed to engage in business activities within this state if any person,  
11 other than a common carrier acting in its capacity as such, that has substantial nexus with this  
12 state:

13           a. Sells a similar line of products as the vendor and does so under the same or a similar  
14 business name;

15           b. Maintains an office, distribution facility, warehouse, or storage place, or similar place  
16 of business in the state to facilitate the delivery of property or services sold by the vendor to the  
17 vendor's customers;

18           c. Delivers, installs, assembles, or performs maintenance services for the vendor's  
19 customers within the state;

20           d. Facilitates the vendor's delivery of property to customers in the state by allowing the  
21 vendor's customers to pick up property sold by the vendor at an office, distribution facility,  
22 warehouse, storage place, or similar place of business maintained by the person in the state; or

23           e. Conducts any other activities in the state that are significantly associated with the  
24 vendor's ability to establish and maintain a market in the state for the sales;

25           (d) The presumption in paragraph (c) **of this subdivision** may be rebutted by  
26 demonstrating that the person's activities in the state are not significantly associated with the  
27 vendor's ability to establish or maintain a market in this state for the vendor's sales;

28           (e) Notwithstanding paragraph (c) **of this subdivision**, a vendor shall be presumed to  
29 engage in business activities within this state if the vendor enters into an agreement with one or  
30 more residents of this state under which the resident, for a commission or other consideration,  
31 directly or indirectly refers potential customers, whether by a link on an internet website, an

32 in-person oral presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross  
33 receipts from sales by the vendor to customers in the state who are referred to the vendor by all  
34 residents with this type of an agreement with the vendor is in excess of ten thousand dollars  
35 during the preceding twelve months;

36 (f) The presumption in paragraph (e) **of this subdivision** may be rebutted by submitting  
37 proof that the residents with whom the vendor has an agreement did not engage in any activity  
38 within the state that was significantly associated with the vendor's ability to establish or maintain  
39 the vendor's market in the state during the preceding twelve months. Such proof may consist of  
40 sworn written statements from all of the residents with whom the vendor has an agreement  
41 stating that they did not engage in any solicitation in the state on behalf of the vendor during the  
42 preceding year provided that such statements were provided and obtained in good faith;

43 (3) "Maintains a place of business in this state" includes maintaining, occupying, or  
44 using, permanently or temporarily, directly or indirectly, by whatever name called, an office,  
45 place of distribution, sales or sample room or place, warehouse or storage place, or other place  
46 of business in this state, whether owned or operated by the vendor or by any other person other  
47 than a common carrier acting in its capacity as such;

48 (4) "Person", any individual, firm, copartnership, joint venture, association, corporation,  
49 municipal or private, and whether organized for profit or not, state, county, political subdivision,  
50 state department, commission, board, bureau or agency, except the state transportation  
51 department, estate, trust, business trust, receiver or trustee appointed by the state or federal court,  
52 syndicate, or any other group or combination acting as a unit, and the plural as well as the  
53 singular number;

54 (5) "Purchase", the acquisition of the ownership of, or title to, tangible personal property,  
55 through a sale, as defined herein, for the purpose of storage, use or consumption in this state;

56 (6) "Purchaser", any person who is the recipient for a valuable consideration of any sale  
57 of tangible personal property acquired for use, storage or consumption in this state;

58 (7) "Sale", any transfer, barter or exchange of the title or ownership of tangible personal  
59 property, or the right to use, store or consume the same, for a consideration paid or to be paid,  
60 and any transaction whether called leases, rentals, bailments, loans, conditional sales or  
61 otherwise, and notwithstanding that the title or possession of the property or both is retained for  
62 security. For the purpose of this law the place of delivery of the property to the purchaser, user,  
63 storer or consumer is deemed to be the place of sale, whether the delivery be by the vendor or  
64 by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers,  
65 representatives, consignors, peddlers, canvassers or otherwise;

66 (8) "Sales price", the consideration including the charges for services, except charges  
67 incident to the extension of credit, paid or given, or contracted to be paid or given, by the

68 purchaser to the vendor for the tangible personal property, including any services that are a part  
69 of the sale, valued in money, whether paid in money or otherwise, and any amount for which  
70 credit is given to the purchaser by the vendor, without any deduction therefrom on account of the  
71 cost of the property sold, the cost of materials used, labor or service cost, losses or any other  
72 expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included  
73 and "sales price" shall not include the amount charged for property returned by customers upon  
74 rescission of the contract of sales when the entire amount charged therefor is refunded either in  
75 cash or credit or the amount charged for labor or services rendered in installing or applying the  
76 property sold, the use, storage or consumption of which is taxable pursuant to sections 144.600  
77 to 144.745. **The sales price shall not include reasonable delivery charges that are separately**  
78 **stated unless the parties intended to include delivery costs in the sales price.** In determining  
79 the amount of tax due pursuant to sections 144.600 to 144.745, any charge incident to the  
80 extension of credit shall be specifically exempted;

81 (9) "Selling agent", every person acting as a representative of a principal, when such  
82 principal is not registered with the director of revenue of the state of Missouri for the collection  
83 of the taxes imposed pursuant to sections 144.010 to 144.525 or sections 144.600 to 144.745 and  
84 who receives compensation by reason of the sale of tangible personal property of the principal,  
85 if such property is to be stored, used, or consumed in this state;

86 (10) "Storage", any keeping or retention in this state of tangible personal property  
87 purchased from a vendor, except property for sale or property that is temporarily kept or retained  
88 in this state for subsequent use outside the state;

89 (11) "Tangible personal property", all items subject to the Missouri sales tax as provided  
90 in subdivisions (1) and (3) of section 144.020;

91 (12) "Taxpayer", any person remitting the tax or who should remit the tax levied by  
92 sections 144.600 to 144.745;

93 (13) "Use", the exercise of any right or power over tangible personal property incident  
94 to the ownership or control of that property, except that it does not include the temporary storage  
95 of property in this state for subsequent use outside the state, or the sale of the property in the  
96 regular course of business;

97 (14) "Vendor", every person engaged in making sales of tangible personal property by  
98 mail order, by advertising, by agent or peddling tangible personal property, soliciting or taking  
99 orders for sales of tangible personal property, for storage, use or consumption in this state, all  
100 salesmen, solicitors, hawkers, representatives, consignees, peddlers or canvassers, as agents of  
101 the dealers, distributors, consignors, supervisors, principals or employers under whom they  
102 operate or from whom they obtain the tangible personal property sold by them, and every person  
103 who maintains a place of business in this state, maintains a stock of goods in this state, or

104 engages in business activities within this state and every person who engages in this state in the  
105 business of acting as a selling agent for persons not otherwise vendors as defined in this  
106 subdivision. Irrespective of whether they are making sales on their own behalf or on behalf of  
107 the dealers, distributors, consignors, supervisors, principals or employers, they must be regarded  
108 as vendors and the dealers, distributors, consignors, supervisors, principals or employers must  
109 be regarded as vendors for the purposes of sections 144.600 to 144.745.

✓