

114TH CONGRESS  
1ST SESSION

# H. R. 4287

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

DECEMBER 17, 2015

Ms. LOFGREN (for herself, Mr. FRANKS of Arizona, Mr. CÁRDENAS, Mr. COHEN, Mr. COLLINS of Georgia, Mr. DIAZ-BALART, Ms. ESHOO, Mr. FARENTHOLD, Mr. FORBES, Mr. FOSTER, Mr. GENE GREEN of Texas, Mr. GOSAR, Mr. ISRAEL, Mr. ISSA, Ms. JACKSON LEE, Mr. MILLER of Florida, Mr. KILMER, Mr. SMITH of Texas, Mr. LANCE, Mr. MASSIE, Mr. OLSON, Mr. KING of New York, Mr. POLIS, Mr. ROKITA, Mr. SCHRADER, Mr. SESSIONS, Ms. SEWELL of Alabama, Mr. SWALWELL of California, Ms. CLARK of Massachusetts, Mr. TONKO, Mr. WHITFIELD, Mr. WILLIAMS, Mr. THOMPSON of Pennsylvania, Mr. TAKANO, Mr. MARINO, Mr. JORDAN, Mr. WEBER of Texas, Mr. HUIZENGA of Michigan, Mr. AL GREEN of Texas, Mr. JEFFRIES, Mr. CALVERT, Mr. CRENSHAW, Mr. FLORES, Mr. PITTS, Mr. WEBSTER of Florida, Mr. BARTON, Mr. CHABOT, Mr. HONDA, Mr. MCGOVERN, and Mr. DENHAM) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wireless Tax Fairness  
3 Act of 2015”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

17 (2) In light of the history and pattern of dis-  
18 criminatory taxation faced by providers and con-  
19 sumers of mobile services, the prohibitions against  
20 and remedies to correct discriminatory State and  
21 local taxation in section 306 of the Railroad Revital-  
22 ization and Regulatory Reform Act of 1976 (49  
23 U.S.C. 11501) provide an appropriate analogy for  
24 congressional action, and similar Federal legislative  
25 measures are warranted that will prohibit imposing  
26 new discriminatory taxes on providers and con-

1       sumers of mobile services and that will assure an ef-  
2       fective, uniform remedy.

3       **SEC. 3. MORATORIUM.**

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

9       (b) DEFINITIONS.—In this Act:

10           (1) MOBILE SERVICE.—The term “mobile serv-  
11       ice” means commercial mobile radio service, as such  
12       term is defined in section 20.3 of title 47, Code of  
13       Federal Regulations, as in effect on the date of en-  
14       actment of this Act, or any other service that is pri-  
15       marily intended for receipt on, transmission from, or  
16       use with a mobile telephone or other mobile device,  
17       including but not limited to the receipt of a digital  
18       good.

19           (2) MOBILE SERVICE PROPERTY.—The term  
20       “mobile service property” means all property used  
21       by a mobile service provider in connection with its  
22       business of providing mobile services, whether real,  
23       personal, tangible, or intangible (including goodwill,  
24       licenses, customer lists, and other similar intangible  
25       property associated with such business).

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

5           (4) NEW DISCRIMINATORY TAX.—The term  
6           “new discriminatory tax” means a tax imposed by a  
7           State or local jurisdiction that is imposed on or with  
8           respect to, or is measured by, the charges, receipts,  
9           or revenues from or value of—

10                   (A) a mobile service and is not generally  
11                   imposed, or is generally imposed at a lower  
12                   rate, on or with respect to, or measured by, the  
13                   charges, receipts, or revenues from other serv-  
14                   ices or transactions involving tangible personal  
15                   property;

16                   (B) a mobile service provider and is not  
17                   generally imposed, or is generally imposed at a  
18                   lower rate, on other persons that are engaged  
19                   in businesses other than the provision of mobile  
20                   services; or

21                   (C) a mobile service property and is not  
22                   generally imposed, or is generally imposed at a  
23                   lower rate, on or with respect to, or measured  
24                   by the value of, other property that is devoted  
25                   to a commercial or industrial use and subject to

1 a property tax levy, except public utility prop-  
2 erty owned by a public utility subject to rate of  
3 return regulation by a State or Federal regu-  
4 latory authority;

5 unless such tax was imposed and actually enforced  
6 on mobile services, mobile service providers, or mo-  
7 bile service property prior to the date of enactment  
8 of this Act.

9 (5) STATE OR LOCAL JURISDICTION.—The term  
10 “State or local jurisdiction” means any of the sev-  
11 eral States, the District of Columbia, any territory  
12 or possession of the United States, a political sub-  
13 division of any State, territory, or possession, or any  
14 governmental entity or person acting on behalf of  
15 such State, territory, possession, or subdivision that  
16 has the authority to assess, impose, levy, or collect  
17 taxes or fees.

18 (6) TAX.—

19 (A) IN GENERAL.—The term “tax” means  
20 a charge imposed by a governmental entity for  
21 the purpose of generating revenues for govern-  
22 mental purposes, and excludes a fee imposed on  
23 a particular entity or class of entities for a spe-  
24 cific privilege, service, or benefit conferred ex-  
25 clusively on such entity or class of entities.

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

3 (i) used to preserve and advance Fed-  
4 eral universal service or similar State pro-  
5 grams authorized by section 254 of the  
6 Communications Act of 1934 (47 U.S.C.  
7 254);

8 (ii) specifically dedicated by a State or  
9 local jurisdiction for the support of E-911  
10 communications systems; or

11 (iii) used to preserve and advance  
12 Federal telecommunications relay services  
13 or State programs implementing this Fed-  
14 eral mandate pursuant to title IV of the  
15 Americans with Disabilities Act of 1990  
16 (Public Law 101-336; 104 Stat. 327) and  
17 codified in section 225 of the Communica-  
18 tions Act of 1934 (47 U.S.C. 225).

19 (c) RULES OF CONSTRUCTION.—

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

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

9           (3) EXCLUSIONS.—Notwithstanding any other  
10 provision of this Act—

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

14                           (i) specific services;

15                           (ii) specific industries or business seg-  
16 ments; or

17                           (iii) specific types of property; and

18                   (B) the term “new discriminatory tax”  
19 shall not include a new tax or the modification  
20 of an existing tax that either—

21                           (i)(I) replaces one or more taxes that  
22 had been imposed on mobile services, mo-  
23 bile service providers, or mobile service  
24 property; and

1 (II) is designed so that, based on in-  
2 formation available at the time of the en-  
3 actment of such new tax or such modifica-  
4 tion, the amount of tax revenues generated  
5 thereby with respect to such mobile serv-  
6 ices, mobile service providers, or mobile  
7 service property is reasonably expected to  
8 not exceed the amount of tax revenues that  
9 would have been generated by the respec-  
10 tive replaced tax or taxes with respect to  
11 such mobile services, mobile service pro-  
12 viders, or mobile service property; or

13 (ii) is a local jurisdiction tax that may  
14 not be imposed without voter approval,  
15 provides for at least 90 days' prior notice  
16 to mobile service providers, and is required  
17 by law to be collected from mobile service  
18 customers.

19 **SEC. 4. ENFORCEMENT.**

20 Notwithstanding any provision of section 1341 of title  
21 28, United States Code, or the constitution or laws of any  
22 State, the district courts of the United States shall have  
23 jurisdiction, without regard to amount in controversy or  
24 citizenship of the parties, to grant such mandatory or pro-  
25 hibitive injunctive relief, interim equitable relief, and de-



1 claratory judgments as may be necessary to prevent, re-  
2 strain, or terminate any acts in violation of this Act.

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

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

10 (3) RELIEF.—In granting relief against a tax  
11 which is discriminatory or excessive under this Act  
12 with respect to tax rate or amount only, the court  
13 shall prevent, restrain, or terminate the imposition,  
14 levy, or collection of not more than the discrimina-  
15 tory or excessive portion of the tax as determined by  
16 the court.

17 **SEC. 5. GAO STUDY.**

18 (a) STUDY.—The Comptroller General of the United  
19 States shall conduct a study, throughout the 5-year period  
20 beginning on the date of the enactment of this Act, to  
21 determine—

22 (1) how, and the extent to which, taxes imposed  
23 by local and State jurisdictions on mobile services,  
24 mobile service providers, or mobile property, impact  
25 the costs consumers pay for mobile services; and

1           (2) the extent to which the moratorium on dis-  
2           criminatory mobile services taxes established in this  
3           Act has any impact on the costs consumers pay for  
4           mobile services.

5           (b) REPORT.—Not later than 6 years after the date  
6           of the enactment of this Act, the Comptroller General shall  
7           submit, to the Committee on the Judiciary of the House  
8           of Representatives and the Committee on the Judiciary  
9           of the Senate, a report containing the results of the study  
10          required under subsection (a) and shall include in such  
11          report recommendations for any changes to laws and regu-  
12          lations relating to such results.

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