

112TH CONGRESS  
1ST SESSION

# S. 543

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 SENATE OF THE UNITED STATES

MARCH 10, 2011

Mr. WYDEN (for himself, Ms. SNOWE, Mrs. GILLIBRAND, Mr. MCCAIN, Mr. MENENDEZ, Mr. ENSIGN, Mr. NELSON of Florida, and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on Finance

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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 2011”.

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

1 amendment to the Constitution of the United States  
2 and Congress' plenary power under article I, section  
3 8, clause 3 of the Constitution of the United States  
4 (commonly known as the "commerce clause") in  
5 order to ensure that States and political subdivisions  
6 thereof do not discriminate against providers and  
7 consumers of mobile services by imposing new selec-  
8 tive and excessive taxes and other burdens on such  
9 providers and consumers.

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

22 **SEC. 3. MORATORIUM.**

23 (a) IN GENERAL.—No State or local jurisdiction shall  
24 impose a new discriminatory tax on or with respect to mo-  
25 bile services, mobile service providers, or mobile service

1 property, during the 5-year period beginning on the date  
2 of enactment of this Act.

3 (b) DEFINITIONS.—In this Act:

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

13 (2) MOBILE SERVICE PROPERTY.—The term  
14 “mobile service property” means all property used  
15 by a mobile service provider in connection with its  
16 business of providing mobile services, whether real,  
17 personal, tangible, or intangible (including goodwill,  
18 licenses, customer lists, and other similar intangible  
19 property associated with such business).

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

24 (4) NEW DISCRIMINATORY TAX.—The term  
25 “new discriminatory tax” means a tax imposed by a

1 State or local jurisdiction that is imposed on or with  
2 respect to, or is measured by, the charges, receipts,  
3 or revenues from or value of—

4 (A) a mobile service and is not generally  
5 imposed, or is generally imposed at a lower  
6 rate, on or with respect to, or measured by, the  
7 charges, receipts, or revenues from other serv-  
8 ices or transactions involving tangible personal  
9 property;

10 (B) a mobile service provider and is not  
11 generally imposed, or is generally imposed at a  
12 lower rate, on other persons that are engaged  
13 in businesses other than the provision of mobile  
14 services; or

15 (C) a mobile service property and is not  
16 generally imposed, or is generally imposed at a  
17 lower rate, on or with respect to, or measured  
18 by the value of, other property that is devoted  
19 to a commercial or industrial use and subject to  
20 a property tax levy, except public utility prop-  
21 erty owned by a public utility subject to rate of  
22 return regulation by a State or Federal regu-  
23 latory authority;

24 unless such tax was imposed and actually enforced  
25 on mobile services, mobile service providers, or mo-

1       bile service property prior to the date of enactment  
2       of this Act.

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

12           (6) TAX.—

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

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

22           (i) used to preserve and advance Fed-  
23       eral universal service or similar State pro-  
24       grams authorized by section 254 of the

1                   Communications Act of 1934 (47 U.S.C.  
2                   254); or

3                   (ii) specifically dedicated by a State or  
4                   local jurisdiction for the support of E-911  
5                   communications systems.

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)(A)(iii), principles similar to those set forth in  
17                  section 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—

7 (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.

23 **SEC. 4. ENFORCEMENT.**

24 Notwithstanding any provision of section 1341 of title  
25 28, United States Code, or the constitution or laws of any

1 State, the district courts of the United States shall have  
2 jurisdiction, without regard to amount in controversy or  
3 citizenship of the parties, to grant such mandatory or pro-  
4 hibitive injunctive relief, interim equitable relief, and de-  
5 claratory judgments as may be necessary to prevent, re-  
6 strain, or terminate any acts in violation of this Act.

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

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

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

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