

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 165

94TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means March 5, 2007 with recommendation that House Committee Substitute for House Bill No. 165 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules March 7, 2007 with recommendation that House Committee Substitute for House Bill No. 165 Do Pass.

Taken up for Perfection March 26, 2007. House Committee Substitute for House Bill No. 165 ordered Perfected and printed.

D. ADAM CRUMBLISS, Chief Clerk

0613L.04P

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 eight new sections relating to assessment and collection of various taxes on telecommunications companies.

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, 92.083, 92.086, 92.089, 92.092, and
2 92.095, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as
3 sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, to read as follows:

71.675. 1. Notwithstanding any other provision of law to the contrary, no city, **county**,
2 **village**, or town shall bring **or maintain** any action in federal or state court in this state as a
3 representative member of a class to enforce or collect any business license tax imposed on a
4 telecommunications company. **This subsection shall not apply to any action that is certified**
5 **as a class action before August 28, 2007.**

6 **2. If otherwise permitted by any other provision of law**, a city, **county**, **village**, or
7 town may, individually or as a single plaintiff in a multiple-plaintiff lawsuit, bring an action in
8 federal or state court in this state to enforce or collect any business license tax imposed on a
9 telecommunications company.

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.

10 [2.] **3.** Nothing in this section shall be construed to preclude any taxpayer from initiating
11 an action in federal or state court as a representative member of a class seeking injunctive relief
12 against the Missouri department of revenue to enforce the imposition, assessment, or collection
13 of the business license tax provided under sections 92.074 to [92.095] **92.092**, RSMo.

92.074. Sections 92.074 to [92.095] **92.092** shall be known as the "2007 Municipal
2 Telecommunications Business License Tax Simplification Act".

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

3 (1) "Business license tax", any tax, including any fee, charge, or assessment in the nature
4 of a tax, assessed by a municipality on a telecommunications company for the privilege of doing
5 business within the borders of such municipality, and specifically includes any tax assessed on
6 a telecommunications company by a municipality under section 66.300, RSMo, [and] section
7 80.090, RSMo, section **92.045 or** 92.073, section 94.110, 94.270, or 94.360, RSMo, or under
8 authority granted in its charter, as well as an occupation license tax, gross receipts tax, franchise
9 tax, or similar tax, but shall not include:

10 (a) Any state or municipal sales tax imposed under sections 144.010 to 144.525, RSMo;
11 or

12 (b) Any municipal right-of-way usage fee imposed under the authority of a municipality's
13 police powers under Section 253(c) of the Federal Telecommunications Act of 1996, or under
14 sections 67.1830 to 67.1846, RSMo; or

15 (c) Any tax or fee levied for emergency services under section 190.292, 190.305,
16 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the general assembly after August
17 28, [2005] **2007**, for emergency services;

18 (d) Any flat tax [duly imposed on or before August 28, 2005] **not exceeding twenty-**
19 **seven thousand five hundred dollars per taxpayer per year;**

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

21 (3) "Municipal", of or relating to a municipality;

22 (4) "Municipality", any city, county, town, or village in Missouri entitled by authority
23 of section 66.300, RSMo, section 80.090, RSMo, section **92.045 or** 92.073, section 94.110,
24 94.270, or 94.360, RSMo, or under authority granted in its charter to assess a business license
25 tax on **any type of** telecommunications [companies] **company;**

26 (5) "Telecommunications company", any company doing business in this state that
27 provides telecommunications service;

28 (6) "Telecommunications service", the same meaning as such term is defined in section
29 144.010, RSMo. The term telephone company, as used in sections 94.110, 94.270, and 94.360,
30 RSMo, shall have the same meaning as telecommunications company as defined in this section;

31 (7) "Protested tax", a business license tax that is not available for the unrestricted
 32 use of a municipality because it has been either:

33 (a) Paid to a municipality under protest under section 139.031, RSMo; or

34 (b) Paid into, or segregated under, an escrow or other similar arrangement under
 35 an agreement between a telecommunications company and a municipality, or under a court
 36 order issued in a pending case involving the business license tax liability of a
 37 telecommunications company to a municipality.

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80, or 94, RSMo,
 2 or the provisions of any municipal charter, after August 28, [2005] **2007**, no municipality [may]
 3 **shall** impose any business license tax, tower tax, or antennae tax on a telecommunications
 4 company except as specified in sections 92.074 to [92.095] **92.092**.

92.083. 1. On or after July 1, [2006] **2008**, if any city, county, village, or town has
 2 imposed a business license tax on a telecommunications company, as authorized in this chapter,
 3 or chapter 66, 80, or 94, RSMo, or under the authority granted in its charter, the terms used in
 4 such ordinance shall be construed, for the purposes of sections 92.074 to [92.095] **92.092**, to
 5 have the meanings set forth in this section, regardless of any contrary definition in the ordinance:

6 (1) "Gross receipts", **or any similar term**, means all receipts from the retail sale of
 7 telecommunications service taxable under section 144.020, RSMo, and from any retail customer
 8 now or hereafter exempt from the state sales tax;

9 (2) "Telephone service", "**telephonic service**", "telecommunications service",
 10 "telecommunications", "local exchange service", "local exchange telephone transmission
 11 service", "exchange telephone service" or similar terms means telecommunications service as
 12 defined in section 92.077.

13 2. Nothing in this section shall have the effect of repealing any existing ordinance
 14 imposing a business license tax on a telecommunications company; provided that a city with an
 15 ordinance in effect [prior to August 28, 2005] **before July 1, 2008**, complies with the provisions
 16 of section 92.086.

17 3. Any business license tax imposed on a telecommunications company **on and** after
 18 July 1, [2006] **2008**, shall be imposed on the retail sale of telecommunications service.

92.086. 1. On or before January 1, [2006] **2008**, the director shall publish a list of the
 2 municipalities which have[, prior to August 28, 2005,] enacted ordinances imposing a business
 3 license tax on a telecommunications company. The list shall contain:

4 (1) The name of the municipality imposing the tax;

5 (2) The name of the tax as denoted by the municipality;

6 (3) **Classifications, if any, of revenues from certain customers that are subject to**
 7 **different tax rates or that are excluded from tax;**

8 (4) The citation to the municipal code provisions imposing the tax; and
9 [(4)] (5) The percentage of gross receipts **for each listed classification.**

10

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

16 2. (1) On or before [February] **March 1, [2006] 2008**, all telecommunications
17 companies in Missouri shall provide the director and the state auditor with the amount of
18 municipal business license tax which they paid each Missouri municipality identified by the
19 director in accordance with subsection 1 of this section for **telecommunications services**
20 **provided in** the previous [four quarters] **calendar year, excluding any protested tax.** On or
21 before [February] **March 1, [2006] 2008**, all telecommunications companies in Missouri shall
22 provide the director and the state auditor with an itemized list establishing their gross receipts
23 for **telecommunications services provided in** the previous [four quarters] **calendar year** for
24 each category of gross receipts in each municipality identified by the director in accordance with
25 subsection 1 of this section [upon which a sales tax is paid] , **including receipts from retail**
26 **sales to customers that are exempt from sales tax, but excluding gross receipts from sales**
27 **to nonbusiness customers or other classifications of customers with respect to those**
28 **municipalities that exclude such receipts from their business license tax. If a**
29 **telecommunications company does not maintain records that segregate gross receipts into**
30 **the listed classification, then such company may use any reasonable method to estimate**
31 **such receipts.**

32 (2) On or before [February] **March 1, [2006] 2008**, each municipality shall provide the
33 director and state auditor with the total amount of **municipal business license** tax revenue
34 collected for [the previous fiscal year of taxable gross receipts from] telecommunications
35 [companies] **services provided in the previous calendar year, excluding protested tax.** Any
36 inconsistency or dispute arising from the information provided by the municipalities and
37 telecommunications companies shall be resolved through an audit performed by the state auditor.

38 (3) **Within thirty days of receiving a written request, the director shall provide a**
39 **telecommunications company with the aggregate gross receipts and aggregate tax revenue**
40 **by municipality that is reported to the director by all telecommunications companies and**
41 **municipalities, so that the company may verify the new rates determined by the**
42 **municipalities.**

43 3. Beginning on July 1, [2006] **2008**, the director shall henceforth collect, administer,
44 and distribute telecommunications business license tax revenues in accordance with the
45 provisions of sections 92.074 to [92.095] **92.092**.

46 4. [Notwithstanding the provisions of any municipal business license tax ordinance,
47 effective] **On and after** July 1, [2006,] **2008**:

48 (1) All business license taxes shall be based solely and exclusively on those gross
49 receipts of telecommunications companies for the retail sale of telecommunications services
50 [which are subject to taxation under sections 144.010 and 144.020, RSMo] ; **and**

51 (2) **In order to impose a business license tax, a municipality shall have previously**
52 **amended its business license tax ordinance to accomplish the following:**

53 (a) **Incorporate the tax base definitions provided in subdivisions (1) and (2) of**
54 **subsection 1 of section 92.083;**

55 (b) **Adopt the tax rate promulgated by the director under subsection 6 of this**
56 **section; and**

57 (c) **Adopt the provisions of subsection 13 of this section.**

58

59 Any provisions in any municipal taxing ordinances which provide different definitions, rules,
60 or provisions are expressly preempted and are null and void; **provided, however, that any such**
61 **provisions classifying revenues from certain customers as being either subject to different**
62 **tax rates or excluded from tax shall not be preempted; and provided further that a**
63 **telecommunications company may rely on its existing customer classifications maintained**
64 **in its books and records to implement any such tax classifications. No municipality shall**
65 **require any telecommunications company to change the customer classifications it**
66 **maintains in its books and records and, if a municipality requires any customer**
67 **classification to be matched to a different tax classification, such change shall apply**
68 **prospectively only.**

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

79 distribute the collected funds to a municipality more than thirty days after the collection of the
80 funds.

81 6. It is the intent of the general assembly that sections 92.074 to [92.095] **92.092** comply
82 with article X, section 22 of the Missouri Constitution, so that the application of sections 92.074
83 to [92.095] **92.092** shall have a revenue-neutral effect. Because business license taxes shall now
84 be based on [the] gross receipts [subject] , **defined by reference** to the sales tax, it is anticipated
85 that the base of the existing business license taxes in most cases shall be broadened, so in order
86 to comply with article X, section 22 of the Missouri Constitution, the municipality shall adjust
87 the gross receipts percentage rate identified by the director in accordance with subsection 2 of
88 this section so that the amount collectible, in total from all telecommunications companies,
89 excluding the collection fee authorized in subsection 5 as defined herein, before and immediately
90 after enactment remains the same in each municipality. If the determination is made by a
91 municipality that in order to comply with article X, section 22 of the Missouri Constitution the
92 gross receipts percentage rate must be increased, such increase shall be passed by a majority vote
93 of the qualified voters voting in that municipality. The existing tax base shall be an amount
94 equal to the total amount of [telecommunications] **telecommunication** business license taxes
95 collected by a municipality for [fiscal year 2005,] **telecommunications services provided**
96 **during calendar year 2007 (excluding any protested tax), and** increased by fifty percent of
97 the [difference between such amount and the] business license tax receipts that would have been
98 yielded by applying the gross receipts percentage rate identified in accordance with subsection
99 1 of this section to the total gross receipts for all wireless telecommunications services provided
100 by telecommunications companies as identified in 47 U.S.C. Section 332(D)(1) and 47 C.F.R.
101 Parts 22 or 24 in such [fiscal] **calendar** year attributable to the municipality, **excluding any**
102 **gross receipts upon which taxes were paid without protest but including any gross receipts**
103 **upon which protested tax was paid.** Based upon the rate information received from the
104 director under this section, each municipality shall, no later than April 1, [2006, promulgate and
105 publish] **2008, provide to the director** the revenue-neutral rates to be applied in each
106 municipality. **The director shall verify that each rate was computed under the methodology**
107 **provided in this section and, after verifying all such rates and modifying any such rates as**
108 **needed to bring them into compliance with the methodology provided in this section, shall**
109 **promulgate such rates and notify municipalities and telecommunications companies of**
110 **such rates.** Such tax rates shall be the applicable business license tax rate for bills rendered on
111 or after July 1, [2006] **2008.** Any percentages in any ordinance that are contrary to that
112 established by the [municipality herein] **methodology set forth in this section** are null and void.
113 If any municipal business license tax ordinance [as of January 1, 2005, had] **has** a provision
114 stating that the tax only applied to **receipts from** business customers, the new calculated rate

115 under this section also shall be determined based only on **receipts from** business customers and
116 shall apply only to business customers.

117 7. On or before April 1, [2007] **2009**, the director, in consultation with the state auditor
118 and municipalities, shall examine revenues collected and forecast whether a shortfall or excess
119 in municipal revenues for each municipality is likely to occur for the fiscal year ending June 30,
120 [2007] **2009**, due to data reporting errors or other errors in the calculation of the revenue-neutral
121 tax rate. Section 32.057, RSMo, shall not restrict the disclosure of information to perform such
122 consultation. If a shortfall or excess is expected, the director, after review and comment from
123 municipalities and telecommunications companies, shall promulgate and publish an adjustment
124 in the rate in such municipalities. Such tax rate adjustment, if necessary, shall apply to bills
125 issued after July 1, [2007] **2009**.

126 8. The director shall be notified in writing within thirty days of any change in the
127 municipal business license tax rate adopted by a municipality. The director shall promulgate
128 such rate changes, but such rate changes [may] **shall** only take effect on the first day of a
129 calendar quarter and only after a minimum of ninety days notice from the director to a
130 telecommunications company. Any subsequent increase in the business license tax rate passed
131 through an ordinance by a municipality which is above that rate as established by the
132 [municipality under] **methodology provided by** subsection 6 of this section shall be passed by
133 a majority vote of the qualified voters voting in that municipality. No municipal tax rate shall
134 exceed the cap provided in subsection 9 of this section.

135 9. Notwithstanding the provisions of subsections 3 to 8 of this section or any other
136 provision of law to the contrary, [for any municipality not subject to the provisions of subsection
137 10 of this section,] the maximum rate of taxation on gross receipts shall not exceed five percent
138 for bills rendered on or after July 1, [2006] **2008**, except if the business license tax rate for any
139 municipality, as calculated in subsection 6 of this section, or if necessary, subsection 7 of this
140 section, is determined to be greater than five percent, then, notwithstanding the provisions of
141 such subsections, the business license tax rates for such municipality on and after July 1, [2006]
142 **2008**, shall be as follows:

143 (1) For bills rendered between July 1, [2006] **2008**, and June 30, [2008] **2009**, the rate
144 shall be the actual adjusted rate as determined by subsection 6 of this section[, or, if necessary,
145 subsection 7 of this section];

146 (2) For bills rendered between July 1, [2008] **2009**, and June 30, 2010, the rate shall be
147 half the sum of the rate determined in subdivision (1) of this subsection and five percent; and

148 (3) For all bills rendered on and after July 1, 2010, five percent.

149 10. [(1) Any municipality which prior to November 4, 1980, had an ordinance imposing
150 a business license tax on telecommunications companies which specifically included the words

151 "wireless", "cell phones", or "mobile phones" in its business license tax ordinance as revenues
152 upon which a business license tax could be imposed, and had not limited its tax to local
153 exchange telephone service or landlines, and had taken affirmative action to collect such tax
154 from wireless telecommunications providers prior to January 15, 2005, shall not be required to
155 adjust its business license tax rate as provided in subsection 6 of this section and shall not be
156 subject to the provisions of subsection 9 of this section.

157 (2) Any municipality which has an ordinance or an amendment to an ordinance imposing
158 a business license tax on telecommunications companies which was authorized or amended by
159 a public vote subsequent to November 4, 1980, and such authorization specifically included the
160 terms "wireless", "cell phones", or "mobile telephones" as revenues upon which a business
161 license tax could be imposed, and had not limited its tax to local exchange telephone service or
162 landlines, and had taken affirmative action to collect such tax from wireless telecommunications
163 providers prior to January 15, 2005, shall not be required to adjust its business license tax rate
164 as provided in subsection 6 of this section and shall not be subject to the provisions of subsection
165 9 of this section.

166 11.] For purposes of sections 92.074 to [92.095] **92.092**, the director and any
167 municipality shall have the authority to audit any telecommunications company.
168 Notwithstanding the provisions of section 32.057, RSMo, the director of revenue shall furnish
169 any municipality with information it requests to permit the municipality to review and audit the
170 payments of any telecommunications company.

171 [12.] **11.** The statute of limitations shall be three years for the alleged nonpayment or
172 underpayment of the business license tax.

173 [13.] **12.** Any telecommunications company is authorized to pass through to its retail
174 customers all or part of the business license tax.

175 [14.] **13.** The provisions of subsection 5 of section 144.190, RSMo, and subdivision (3)
176 of subsection 12 of section 32.087, RSMo, shall apply to the tax imposed under sections 92.074
177 to [92.095] **92.092**.

178 [15.] **14.** Unless specifically stated otherwise in sections 92.074 to [92.095] **92.092**,
179 taxpayer remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all other
180 procedures shall be the same as those provided in chapter 144, RSMo.

181 [16.] **15.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
182 that is created under the authority delegated in this section shall become effective only if it
183 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
184 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of
185 the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay
186 the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then

187 the grant of rulemaking authority and any rule proposed or adopted after August 28, [2005] **2007**,
188 shall be invalid and void.

92.089. 1. The general assembly finds and declares it to be the policy of the state of
2 Missouri that costly litigation which [have] **has been** or may be filed by Missouri municipalities
3 against telecommunications companies, concerning the application of certain business license
4 taxes to certain telecommunications companies, and to certain revenues of those
5 telecommunications companies, as set forth below, is detrimental to the economic well being of
6 the state[, and the claims of the municipal governments regarding such business licenses have
7 neither been determined to be valid nor liquidated].

8 **2.** The general assembly further finds and declares that the [resolution of such uncertain
9 litigation, the uniformity, and the administrative convenience and cost savings to municipalities
10 resulting from, and the revenues which will or may accrue to municipalities in the future as a
11 result of the enactment of sections 92.074 to 92.095 are full and adequate] **payment of deemed**
12 **past liability as provided in this section represents** consideration to municipalities, as the term
13 "consideration" is used in article III, section 39(5) of the Missouri Constitution, for the immunity
14 and dismissal of lawsuits outlined in subsection [2] **3** of this section.

15 [2. In the event any] **3. If a** telecommunications company, prior to July 1, [2006, failed
16 to pay any amount to a municipality based on a subjective good faith belief that either:

17 (1) It was not a telephone company covered by the municipal business license tax
18 ordinance, or the statute authorizing the enactment of such taxing ordinance, or did not provide
19 telephone service as stated in the business license tax ordinance, and therefore owed no business
20 license tax to the municipality; or

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

24

25 such a] **2008, failed to pay to a municipality some or all of the business license tax that is**
26 **or may be claimed by such municipality to be due from such** telecommunications company
27 [is], **then upon the tendering of payment to such municipality by such telecommunications**
28 **company on or before January 1, 2008, of the deemed past liability of such**
29 **telecommunications company, such telecommunications company shall be** entitled to full
30 immunity from, and shall not be liable to a municipality for, the payment of [the] **any** disputed
31 [amounts] **amount** of business license taxes[,] **for any period** up to and including [July 1, 2006]
32 **June 30, 2008.** [However, such immunity and release from liability shall not apply to any
33 business license tax imposed in accordance with subdivisions (1) and (2) of subsection 10 of
34 section 92.086 or sections 92.074 to 92.095 after July 1, 2006. If any municipality, prior to July

35 1, 2006, has brought litigation or caused an audit of back taxes for the nonpayment] **Upon such**
36 **payment** by a telecommunications company of [municipal business license taxes, it shall
37 immediately dismiss such lawsuit without] **such deemed past liability to a municipality:**

38 (1) **Such municipality shall dismiss with prejudice any pending lawsuit**, and shall
39 cease and desist from [continuing any audit, except those cities described in subsection 10 of
40 section 92.086] **any efforts to collect any amount of business license tax liability that is**
41 **claimed to be due from such company, or from any person associated with or affiliated**
42 **with such company, or to otherwise enforce any alleged liability or obligation with respect**
43 **to business license taxes, with respect to all periods up to and including July 1, 2008; and**

44 (2) **All protested tax with respect to such telecommunications company and such**
45 **municipality shall be turned over and released to such telecommunications company, and**
46 **any refund suit with respect to such protested tax payments shall thereafter be dismissed**
47 **with prejudice by such telecommunications company. If a telecommunications company**
48 **collected a specific surcharge from a customer to fund all or a portion of the payment of**
49 **protested tax that is returned to such telecommunications company under this subdivision,**
50 **and if such customer is still a customer of such telecommunications company when such**
51 **protested tax is returned to such telecommunications company, then such**
52 **telecommunications company shall refund the surcharged portion of such protested tax to**
53 **such customer. Any remaining amount of the protested tax shall be refunded to existing**
54 **consumers and any remaining balance in the escrow accounts shall be remitted to the**
55 **unclaimed property fund.**

56 4. For purposes of subsections 2 and 3 of this section, "deemed past liability" means
57 the excess, if any, of:

58 (1) **The liability that a telecommunications company would owe to a municipality**
59 **under its business license tax for the period beginning January 1, 2007, and ending March**
60 **31, 2007, without regard to any interest or penalty, which shall not be considered in**
61 **determining deemed past liability, determined by construing such municipality's business**
62 **license tax ordinance as if section 92.083 were in effect as of January 1, 2007; over**

63 (2) **The business license tax (other than protested tax) actually paid by such**
64 **telecommunications company for such period.**

92.092. 1. All provisions of sections 92.074 to 92.089 are [so essentially and inseparably
2 connected with, and so dependent upon, each other that no such provision would be enacted
3 without all others. If a court of competent jurisdiction enters a final judgment on the merits that
4 is not subject to appeal and that declares any provision or part of sections 92.074 to 92.089]
5 **severable, such that if any provision therein is found to be unconstitutional or unenforceable**
6 [then sections 92.074 to 92.089, in their collective entirety, are invalid and shall have no legal

7 effect as of the date of such judgment. In such event, both telecommunications companies and
8 municipalities shall have the same rights as existed before August 28, 2005, but shall not be
9 entitled to reimbursement, or required to pay reimbursement, for any sums paid in the good faith
10 belief in the validity and constitutionality of sections 92.074 to 92.089] , **then the remaining**
11 **provisions shall remain valid and enforceable.**

12 **2. If a court of competent jurisdiction determines that any rate established under**
13 **sections 92.074 to 92.089 exceeds the rate permitted under article X, section 22 of the**
14 **Missouri Constitution, then such rate shall be reduced so that it complies with such section**
15 **of the Constitution.**

16 **3. If a court of competent jurisdiction determines that a telecommunications**
17 **company is not entitled to full immunity from a municipality as provided in subsection 3**
18 **of section 92.089, then such municipality shall immediately return to such**
19 **telecommunications company any deemed past liability paid by such company to such**
20 **municipality.**

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

✓