

SECOND REGULAR SESSION

# SENATE BILL NO. 1025

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KRAUS.

Read 1st time February 3, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 144.010, 144.018, and 144.020, RSMo, and to enact in lieu thereof three new sections relating to the taxation of instructional classes.

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

Section A. Sections 144.010, 144.018, and 144.020, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 144.010,  
3 144.018, and 144.020, to read as follows:

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

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

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 property is sold in the course of the partial or complete liquidation of a  
20 household, farm or nonbusiness enterprise, exceeds three thousand dollars in any  
21 calendar year. The provisions of this subdivision shall not be construed to make  
22 any sale of property which is exempt from sales tax or use tax on June 1, 1977,  
23 subject to that tax thereafter;

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

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

46 (5) **"Instructional class", includes any class, lesson, or instruction**  
47 **intended or used for teaching;**

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

53 [(6)] (7) "Motor vehicle leasing company" shall be a company obtaining  
54 a permit from the director of revenue to operate as a motor vehicle leasing

55 company. Not all persons renting or leasing trailers or motor vehicles need to  
56 obtain such a permit; however, no person failing to obtain such a permit may  
57 avail itself of the optional tax provisions of subsection 5 of section 144.070, as  
58 hereinafter provided;

59 [(7)] (8) "Person" includes any individual, firm, copartnership, joint  
60 adventure, association, corporation, municipal or private, and whether organized  
61 for profit or not, state, county, political subdivision, state department,  
62 commission, board, bureau or agency, except the state transportation department,  
63 estate, trust, business trust, receiver or trustee appointed by the state or federal  
64 court, syndicate, or any other group or combination acting as a unit, and the  
65 plural as well as the singular number;

66 [(8)] (9) "Purchaser" means a person who purchases tangible personal  
67 property or to whom are rendered services, receipts from which are taxable under  
68 sections 144.010 to 144.525;

69 [(9)] (10) "Research or experimentation activities" are the development  
70 of an experimental or pilot model, plant process, formula, invention or similar  
71 property, and the improvement of existing property of such type. Research or  
72 experimentation activities do not include activities such as ordinary testing or  
73 inspection of materials or products for quality control, efficiency surveys,  
74 advertising promotions or research in connection with literary, historical or  
75 similar projects;

76 [(10)] (11) "Sale" or "sales" includes installment and credit sales, and the  
77 exchange of properties as well as the sale thereof for money, every closed  
78 transaction constituting a sale, and means any transfer, exchange or barter,  
79 conditional or otherwise, in any manner or by any means whatsoever, of tangible  
80 personal property for valuable consideration and the rendering, furnishing or  
81 selling for a valuable consideration any of the substances, things and services  
82 herein designated and defined as taxable under the terms of sections 144.010 to  
83 144.525;

84 [(11)] (12) "Sale at retail" means any transfer made by any person  
85 engaged in business as defined herein of the ownership of, or title to, tangible  
86 personal property to the purchaser, for use or consumption and not for resale in  
87 any form as tangible personal property, for a valuable consideration; except that,  
88 for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i)  
89 purchases of tangible personal property made by duly licensed physicians,  
90 dentists, optometrists and veterinarians and used in the practice of their

91 professions shall be deemed to be purchases for use or consumption and not for  
92 resale; and (ii) the selling of computer printouts, computer output or microfilm  
93 or microfiche and computer-assisted photo compositions to a purchaser to enable  
94 the purchaser to obtain for his or her own use the desired information contained  
95 in such computer printouts, computer output on microfilm or microfiche and  
96 computer-assisted photo compositions shall be considered as the sale of a service  
97 and not as the sale of tangible personal property. Where necessary to conform to  
98 the context of sections 144.010 to 144.525 and the tax imposed thereby, the term  
99 "sale at retail" shall be construed to embrace:

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

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

105 (c) Sales of local and long distance telecommunications service to  
106 telecommunications subscribers and to others through equipment of  
107 telecommunications subscribers for the transmission of messages and  
108 conversations, and the sale, rental or leasing of all equipment or services  
109 pertaining or incidental thereto;

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

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

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

119 [(12)] (13) "Seller" means a person selling or furnishing tangible personal  
120 property or rendering services, on the receipts from which a tax is imposed  
121 pursuant to section 144.020;

122 [(13)] (14) The noun "tax" means either the tax payable by the purchaser  
123 of a commodity or service subject to tax, or the aggregate amount of taxes due  
124 from the vendor of such commodities or services during the period for which he  
125 or she is required to report his or her collections, as the context may require;

126 [(14)] (15) "Telecommunications service", for the purpose of this chapter,

127 the transmission of information by wire, radio, optical cable, coaxial cable,  
128 electronic impulses, or other similar means. As used in this definition,  
129 "information" means knowledge or intelligence represented by any form of  
130 writing, signs, signals, pictures, sounds, or any other  
131 symbols. Telecommunications service does not include the following if such  
132 services are separately stated on the customer's bill or on records of the seller  
133 maintained in the ordinary course of business:

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

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

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

141 (d) Cable or satellite television or music services; and

142 **[(15)] (16)** "Product which is intended to be sold ultimately for final use  
143 or consumption" means tangible personal property, or any service that is subject  
144 to state or local sales or use taxes, or any tax that is substantially equivalent  
145 thereto, in this state or any other state.

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

150 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales  
151 Tax Law".

144.018. 1. Notwithstanding any other provision of law to the contrary,  
2 except as provided under subsection 2 or 3 of this section, when a purchase of  
3 tangible personal property or service subject to tax is made for the purpose of  
4 resale, such purchase shall be either exempt or excluded under this chapter if the  
5 subsequent sale is:

6 (1) Subject to a tax in this or any other state;

7 (2) For resale;

8 (3) Excluded from tax under this chapter;

9 (4) Subject to tax but exempt under this chapter; or

10 (5) Exempt from the sales tax laws of another state, if the subsequent sale  
11 is in such other state. The purchase of tangible personal property by a taxpayer

12 shall not be deemed to be for resale if such property is used or consumed by the  
13 taxpayer in providing a service on which tax is not imposed by subsection 1 of  
14 section 144.020, except purchases made in fulfillment of any obligation under a  
15 defense contract with the United States government.

16         2. For purposes of subdivision (2) of subsection 1 of section 144.020, a  
17 place of amusement, entertainment or recreation, including games or athletic  
18 events, shall remit tax on the amount paid for admissions or seating  
19 accommodations, or fees paid to, or in such place of amusement, entertainment  
20 or recreation, **except amounts paid for any instructional class**. Any  
21 subsequent sale of such admissions or seating accommodations shall not be  
22 subject to tax if the initial sale was an arms length transaction for fair market  
23 value with an unaffiliated entity. If the sale of such admissions or seating  
24 accommodations is exempt or excluded from payment of sales and use taxes, the  
25 provisions of this subsection shall not require the place of amusement,  
26 entertainment, or recreation to remit tax on that sale.

27         3. For purposes of subdivision (6) of subsection 1 of section 144.020, a  
28 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist  
29 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly  
30 served to the public shall remit tax on the amount of sales or charges for all  
31 rooms, meals, and drinks furnished at such hotel, motel, tavern, inn, restaurant,  
32 eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in  
33 which rooms, meals, or drinks are regularly served to the public. Any subsequent  
34 sale of such rooms, meals, or drinks shall not be subject to tax if the initial sale  
35 was an arms length transaction for fair market value with an unaffiliated entity.  
36 If the sale of such rooms, meals, or drinks is exempt or excluded from payment  
37 of sales and use taxes, the provisions of this subsection shall not require the  
38 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist  
39 cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly  
40 served to the public to remit tax on that sale.

41         4. The provisions of this section are intended to reject and abrogate  
42 earlier case law interpretations of the state's sales and use tax law with regard  
43 to sales for resale as extended in *Music City Centre Management, LLC v. Director*  
44 *of Revenue*, 295 S.W.3d 465, (Mo. 2009) and *ICC Management, Inc. v. Director of*  
45 *Revenue*, 290 S.W.3d 699, (Mo. 2009). The provisions of this section are intended  
46 to clarify the exemption or exclusion of purchases for resale from sales and use  
47 taxes as originally enacted in this chapter.

144.020. 1. A tax is hereby levied and imposed for the privilege of titling  
2 new and used motor vehicles, trailers, boats, and outboard motors purchased or  
3 acquired for use on the highways or waters of this state which are required to be  
4 titled under the laws of the state of Missouri and, except as provided in  
5 subdivision (9) of this subsection, upon all sellers for the privilege of engaging in  
6 the business of selling tangible personal property or rendering taxable service at  
7 retail in this state. The rate of tax shall be as follows:

8 (1) Upon every retail sale in this state of tangible personal property,  
9 excluding motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and  
10 outboard motors required to be titled under the laws of the state of Missouri and  
11 subject to tax under subdivision (9) of this subsection, a tax equivalent to four  
12 percent of the purchase price paid or charged, or in case such sale involves the  
13 exchange of property, a tax equivalent to four percent of the consideration paid  
14 or charged, including the fair market value of the property exchanged at the time  
15 and place of the exchange, except as otherwise provided in section 144.025;

16 (2) A tax equivalent to four percent of the amount paid for admission and  
17 seating accommodations, or fees paid to, or in any place of amusement,  
18 entertainment or recreation, games and athletic events, **except amounts paid**  
19 **for any instructional class;**

20 (3) A tax equivalent to four percent of the basic rate paid or charged on  
21 all sales of electricity or electrical current, water and gas, natural or artificial, to  
22 domestic, commercial or industrial consumers;

23 (4) A tax equivalent to four percent on the basic rate paid or charged on  
24 all sales of local and long distance telecommunications service to  
25 telecommunications subscribers and to others through equipment of  
26 telecommunications subscribers for the transmission of messages and  
27 conversations and upon the sale, rental or leasing of all equipment or services  
28 pertaining or incidental thereto; except that, the payment made by  
29 telecommunications subscribers or others, pursuant to section 144.060, and any  
30 amounts paid for access to the internet or interactive computer services shall not  
31 be considered as amounts paid for telecommunications services;

32 (5) A tax equivalent to four percent of the basic rate paid or charged for  
33 all sales of services for transmission of messages of telegraph companies;

34 (6) A tax equivalent to four percent on the amount of sales or charges for  
35 all rooms, meals and drinks furnished at any hotel, motel, tavern, inn,  
36 restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or

37 other place in which rooms, meals or drinks are regularly served to the  
38 public. The tax imposed under this subdivision shall not apply to any automatic  
39 mandatory gratuity for a large group imposed by a restaurant when such gratuity  
40 is reported as employee tip income and the restaurant withholds income tax  
41 under section 143.191 on such gratuity;

42 (7) A tax equivalent to four percent of the amount paid or charged for  
43 intrastate tickets by every person operating a railroad, sleeping car, dining car,  
44 express car, boat, airplane and such buses and trucks as are licensed by the  
45 division of motor carrier and railroad safety of the department of economic  
46 development of Missouri, engaged in the transportation of persons for hire;

47 (8) A tax equivalent to four percent of the amount paid or charged for  
48 rental or lease of tangible personal property, provided that if the lessor or renter  
49 of any tangible personal property had previously purchased the property under  
50 the conditions of sale at retail or leased or rented the property and the tax was  
51 paid at the time of purchase, lease or rental, the lessor, sublessor, renter or  
52 subrenter shall not apply or collect the tax on the subsequent lease, sublease,  
53 rental or subrental receipts from that property. The purchase, rental or lease of  
54 motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard  
55 motors shall be taxed and the tax paid as provided in this section and section  
56 144.070. In no event shall the rental or lease of boats and outboard motors be  
57 considered a sale, charge, or fee to, for or in places of amusement, entertainment  
58 or recreation nor shall any such rental or lease be subject to any tax imposed to,  
59 for, or in such places of amusement, entertainment or recreation. Rental and  
60 leased boats or outboard motors shall be taxed under the provisions of the sales  
61 tax laws as provided under such laws for motor vehicles and trailers. Tangible  
62 personal property which is exempt from the sales or use tax under section  
63 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the  
64 lease or rental thereof;

65 (9) A tax equivalent to four percent of the purchase price, as defined in  
66 section 144.070, of new and used motor vehicles, trailers, boats, and outboard  
67 motors purchased or acquired for use on the highways or waters of this state  
68 which are required to be registered under the laws of the state of Missouri. This  
69 tax is imposed on the person titling such property, and shall be paid according  
70 to the procedures in section 144.440.

71 2. All tickets sold which are sold under the provisions of sections 144.010  
72 to 144.525 which are subject to the sales tax shall have printed, stamped or



73 otherwise endorsed thereon, the words "This ticket is subject to a sales tax."

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Unofficial

Bill

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