

HB 2243 -- CLASS ACTIONS

SPONSOR: Cornejo

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 7 to 5. Voted "Do Pass" by the Select Committee on Judiciary by a vote of 7 to 1.

This bill prohibits any county, city, village, town, or other political subdivision from participating in a class action case in federal court as a representative or member of a class to enforce or collect any tax.

PROPOSERS: Supporters say that there is a proceeding in St. Louis County where the municipality sued a telecommunications company, a local attorney got other municipalities to sign on for a class action, and then used that leverage to negotiate a settlement. This bill does not prevent the municipality from doing an audit of a utility, or prevent them from suing in their own capacity, it simply prevents a municipality from using the class action vehicle as leverage to settle tax issues. This is limited to a class action to enforce or collect any tax. These types of cases do not meet the qualifications of what a class action is meant to address. It is not cost effective to join these cases, as the damages differ from municipality to municipality because taxing ordinances vary greatly.

Testifying for the bill were Representative Cornejo; Missouri Cable Telecommunications Association; Missouri Chamber Of Commerce And Industry; Barry King, Charter Communication; Associated Industries Of Missouri; and Boone County Missouri.

OPPOSERS: Those who oppose the bill say that the current class action cases that would be impacted by these bills involve municipal business license taxes. There was a 1999 case in which a court of appeals found Southwestern Bell was a company within the municipal business license ordinance, and thus the cellphone companies should be paying the municipal business license tax. A lawyer got the big mobile phone companies together and they had meetings on how to resolve the issue. They do not want back taxes or class actions, they just want these companies to comply with the laws. As a last resort, 22 cities from around the state filed suit to get these companies to pay the taxes owed. In 2005, these companies came to the legislature looking for relief, legislation was passed saying such cases would be dismissed outright. The cases were thus dismissed. The Missouri Supreme Court later found that law was an unconstitutional special law. In 2007, they came back to the legislature, looking for more relief. At that point,

the companies tried to settle, and the 2007 legislation did not pass. At that time, Verizon was ready to resolve the issue. Verizon paid two years of back taxes and they agreed to pay going forward. Other companies saw the Verizon deal, and they then were able to work out settlements with the other companies. They talked to Charter about getting Charter to pay the same as the landline companies. Charter would not agree. They then had to file suit against Charter; that was six years ago, the litigation is ongoing. When they had the hearing to certify the class and the class was certified this summer, the judge ruled that it made sense to try all the issues in one case, instead of having different standards applied by different courts. Their settlements with the other companies have a non-discrimination clause, thus they can't give Charter a pass, their agreements with the other carriers prohibit them from doing it. That case is now in the damages phase.

Testifying against the bill was John Mulligan, Jr., Missouri Municipal League.