

**As Introduced**

**132nd General Assembly**

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**H. B. No. 569**

**Representatives Lipps, Reineke**

**Cosponsors: Representatives Brenner, Merrin, Smith, K., Antani, Romanchuk,  
Lang, Riedel**

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**A BILL**

To amend section 5739.01 of the Revised Code to 1  
modify the standard for determining when the 2  
sales and use tax applies to business-related 3  
electronic services that are provided together 4  
with other services. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 5739.01 of the Revised Code be 6  
amended to read as follows: 7

**Sec. 5739.01.** As used in this chapter: 8

(A) "Person" includes individuals, receivers, assignees, 9  
trustees in bankruptcy, estates, firms, partnerships, 10  
associations, joint-stock companies, joint ventures, clubs, 11  
societies, corporations, the state and its political 12  
subdivisions, and combinations of individuals of any form. 13

(B) "Sale" and "selling" include all of the following 14  
transactions for a consideration in any manner, whether 15  
absolutely or conditionally, whether for a price or rental, in 16  
money or by exchange, and by any means whatsoever: 17

(1) All transactions by which title or possession, or	18
both, of tangible personal property, is or is to be transferred,	19
or a license to use or consume tangible personal property is or	20
is to be granted;	21
(2) All transactions by which lodging by a hotel is or is	22
to be furnished to transient guests;	23
(3) All transactions by which:	24
(a) An item of tangible personal property is or is to be	25
repaired, except property, the purchase of which would not be	26
subject to the tax imposed by section 5739.02 of the Revised	27
Code;	28
(b) An item of tangible personal property is or is to be	29
installed, except property, the purchase of which would not be	30
subject to the tax imposed by section 5739.02 of the Revised	31
Code or property that is or is to be incorporated into and will	32
become a part of a production, transmission, transportation, or	33
distribution system for the delivery of a public utility	34
service;	35
(c) The service of washing, cleaning, waxing, polishing,	36
or painting a motor vehicle is or is to be furnished;	37
(d) Until August 1, 2003, industrial laundry cleaning	38
services are or are to be provided and, on and after August 1,	39
2003, laundry and dry cleaning services are or are to be	40
provided;	41
(e) Automatic data processing, computer services,	42
<u>electronic publishing services,</u> or electronic information	43
services are or are to be provided for use in business when the	44
true object of the transaction is the receipt by the consumer of	45
automatic data processing, computer services, <u>electronic</u>	46

publishing services, or electronic information services rather 47  
than the receipt of personal ~~or and~~ professional services to 48  
which. When provided in conjunction with one or more other 49  
services, the receipt by a consumer of automatic data 50  
processing, computer services, electronic publishing services, 51  
or electronic information services ~~are incidental or~~ 52  
supplemental is not the true object of the transaction when 53  
either of the following conditions applies: 54

(i) The automatic data processing, computer services, 55  
electronic publishing services, or electronic information 56  
services are provided primarily for the performance, delivery, 57  
receipt, or use of the other service or services; 58

(ii) The primary benefit sought by the consumer is the 59  
receipt of personal and professional services. 60

Notwithstanding any other provision of this chapter, ~~such~~ 61  
~~transactions~~ sales of automatic data processing, computer 62  
services, electronic publishing services, or electronic 63  
information services that occur between members of an affiliated 64  
group are not sales. An "affiliated group" means two or more 65  
persons related in such a way that one person owns or controls 66  
the business operation of another member of the group. In the 67  
case of corporations with stock, one corporation owns or 68  
controls another if it owns more than fifty per cent of the 69  
other corporation's common stock with voting rights. 70

(f) Telecommunications service, including prepaid calling 71  
service, prepaid wireless calling service, or ancillary service, 72  
is or is to be provided, but not including coin-operated 73  
telephone service; 74

(g) Landscaping and lawn care service is or is to be 75

provided;	76
(h) Private investigation and security service is or is to be provided;	77 78
(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;	79 80
(j) Building maintenance and janitorial service is or is to be provided;	81 82
(k) Employment service is or is to be provided;	83
(l) Employment placement service is or is to be provided;	84
(m) Exterminating service is or is to be provided;	85
(n) Physical fitness facility service is or is to be provided;	86 87
(o) Recreation and sports club service is or is to be provided;	88 89
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	90 91
(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.	92 93 94 95 96 97 98 99 100
(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided,	101 102

when the transportation is entirely within this state, except 103  
for transportation provided by an ambulance service, by a 104  
transit bus, as defined in section 5735.01 of the Revised Code, 105  
and transportation provided by a citizen of the United States 106  
holding a certificate of public convenience and necessity issued 107  
under 49 U.S.C. 41102; 108

(s) On and after August 1, 2003, motor vehicle towing 109  
service is or is to be provided. As used in this division, 110  
"motor vehicle towing service" means the towing or conveyance of 111  
a wrecked, disabled, or illegally parked motor vehicle. 112

(t) On and after August 1, 2003, snow removal service is 113  
or is to be provided. As used in this division, "snow removal 114  
service" means the removal of snow by any mechanized means, but 115  
does not include the providing of such service by a person that 116  
has less than five thousand dollars in sales of such service 117  
during the calendar year. 118

~~(u) Electronic publishing service is or is to be provided 119  
to a consumer for use in business, except that such transactions 120  
occurring between members of an affiliated group, as defined in 121  
division (B) (3) (e) of this section, are not sales. 122~~

(4) All transactions by which printed, imprinted, 123  
overprinted, lithographic, multilithic, blueprinted, 124  
photostatic, or other productions or reproductions of written or 125  
graphic matter are or are to be furnished or transferred; 126

(5) The production or fabrication of tangible personal 127  
property for a consideration for consumers who furnish either 128  
directly or indirectly the materials used in the production of 129  
fabrication work; and include the furnishing, preparing, or 130  
serving for a consideration of any tangible personal property 131

consumed on the premises of the person furnishing, preparing, or 132  
serving such tangible personal property. Except as provided in 133  
section 5739.03 of the Revised Code, a construction contract 134  
pursuant to which tangible personal property is or is to be 135  
incorporated into a structure or improvement on and becoming a 136  
part of real property is not a sale of such tangible personal 137  
property. The construction contractor is the consumer of such 138  
tangible personal property, provided that the sale and 139  
installation of carpeting, the sale and installation of 140  
agricultural land tile, the sale and erection or installation of 141  
portable grain bins, or the provision of landscaping and lawn 142  
care service and the transfer of property as part of such 143  
service is never a construction contract. 144

As used in division (B) (5) of this section: 145

(a) "Agricultural land tile" means fired clay or concrete 146  
tile, or flexible or rigid perforated plastic pipe or tubing, 147  
incorporated or to be incorporated into a subsurface drainage 148  
system appurtenant to land used or to be used primarily in 149  
production by farming, agriculture, horticulture, or 150  
floriculture. The term does not include such materials when they 151  
are or are to be incorporated into a drainage system appurtenant 152  
to a building or structure even if the building or structure is 153  
used or to be used in such production. 154

(b) "Portable grain bin" means a structure that is used or 155  
to be used by a person engaged in farming or agriculture to 156  
shelter the person's grain and that is designed to be 157  
disassembled without significant damage to its component parts. 158

(6) All transactions in which all of the shares of stock 159  
of a closely held corporation are transferred, or an ownership 160  
interest in a pass-through entity, as defined in section 5733.04 161

of the Revised Code, is transferred, if the corporation or pass- 162  
through entity is not engaging in business and its entire assets 163  
consist of boats, planes, motor vehicles, or other tangible 164  
personal property operated primarily for the use and enjoyment 165  
of the shareholders or owners; 166

(7) All transactions in which a warranty, maintenance or 167  
service contract, or similar agreement by which the vendor of 168  
the warranty, contract, or agreement agrees to repair or 169  
maintain the tangible personal property of the consumer is or is 170  
to be provided; 171

(8) The transfer of copyrighted motion picture films used 172  
solely for advertising purposes, except that the transfer of 173  
such films for exhibition purposes is not a sale; 174

(9) On and after August 1, 2003, all transactions by which 175  
tangible personal property is or is to be stored, except such 176  
property that the consumer of the storage holds for sale in the 177  
regular course of business; 178

(10) All transactions in which "guaranteed auto 179  
protection" is provided whereby a person promises to pay to the 180  
consumer the difference between the amount the consumer receives 181  
from motor vehicle insurance and the amount the consumer owes to 182  
a person holding title to or a lien on the consumer's motor 183  
vehicle in the event the consumer's motor vehicle suffers a 184  
total loss under the terms of the motor vehicle insurance policy 185  
or is stolen and not recovered, if the protection and its price 186  
are included in the purchase or lease agreement; 187

(11) (a) Except as provided in division (B) (11) (b) of this 188  
section, on and after October 1, 2009, all transactions by which 189  
health care services are paid for, reimbursed, provided, 190

delivered, arranged for, or otherwise made available by a 191  
medicaid health insuring corporation pursuant to the 192  
corporation's contract with the state. 193

(b) If the centers for medicare and medicaid services of 194  
the United States department of health and human services 195  
determines that the taxation of transactions described in 196  
division (B) (11) (a) of this section constitutes an impermissible 197  
health care-related tax under the "Social Security Act," section 198  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 199  
the medicaid director shall notify the tax commissioner of that 200  
determination. Beginning with the first day of the month 201  
following that notification, the transactions described in 202  
division (B) (11) (a) of this section are not sales for the 203  
purposes of this chapter or Chapter 5741. of the Revised Code. 204  
The tax commissioner shall order that the collection of taxes 205  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 206  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 207  
for transactions occurring on or after that date. 208

(12) All transactions by which a specified digital product 209  
is provided for permanent use or less than permanent use, 210  
regardless of whether continued payment is required. 211

Except as provided in this section, "sale" and "selling" 212  
do not include transfers of interest in leased property where 213  
the original lessee and the terms of the original lease 214  
agreement remain unchanged, or professional, insurance, or 215  
personal service transactions that involve the transfer of 216  
tangible personal property as an inconsequential element, for 217  
which no separate charges are made. 218

(C) "Vendor" means the person providing the service or by 219  
whom the transfer effected or license given by a sale is or is 220



to be made or given and, for sales described in division (B) (3) 221  
(i) of this section, the telecommunications service vendor that 222  
provides the nine hundred telephone service; if two or more 223  
persons are engaged in business at the same place of business 224  
under a single trade name in which all collections on account of 225  
sales by each are made, such persons shall constitute a single 226  
vendor. 227

Physicians, dentists, hospitals, and veterinarians who are 228  
engaged in selling tangible personal property as received from 229  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 230  
articles, are vendors. Veterinarians who are engaged in 231  
transferring to others for a consideration drugs, the dispensing 232  
of which does not require an order of a licensed veterinarian or 233  
physician under federal law, are vendors. 234

(D) (1) "Consumer" means the person for whom the service is 235  
provided, to whom the transfer effected or license given by a 236  
sale is or is to be made or given, to whom the service described 237  
in division (B) (3) (f) or (i) of this section is charged, or to 238  
whom the admission is granted. 239

(2) Physicians, dentists, hospitals, and blood banks 240  
operated by nonprofit institutions and persons licensed to 241  
practice veterinary medicine, surgery, and dentistry are 242  
consumers of all tangible personal property and services 243  
purchased by them in connection with the practice of medicine, 244  
dentistry, the rendition of hospital or blood bank service, or 245  
the practice of veterinary medicine, surgery, and dentistry. In 246  
addition to being consumers of drugs administered by them or by 247  
their assistants according to their direction, veterinarians 248  
also are consumers of drugs that under federal law may be 249  
dispensed only by or upon the order of a licensed veterinarian 250

or physician, when transferred by them to others for a 251  
consideration to provide treatment to animals as directed by the 252  
veterinarian. 253

(3) A person who performs a facility management, or 254  
similar service contract for a contractee is a consumer of all 255  
tangible personal property and services purchased for use in 256  
connection with the performance of such contract, regardless of 257  
whether title to any such property vests in the contractee. The 258  
purchase of such property and services is not subject to the 259  
exception for resale under division (E) of this section. 260

(4) (a) In the case of a person who purchases printed 261  
matter for the purpose of distributing it or having it 262  
distributed to the public or to a designated segment of the 263  
public, free of charge, that person is the consumer of that 264  
printed matter, and the purchase of that printed matter for that 265  
purpose is a sale. 266

(b) In the case of a person who produces, rather than 267  
purchases, printed matter for the purpose of distributing it or 268  
having it distributed to the public or to a designated segment 269  
of the public, free of charge, that person is the consumer of 270  
all tangible personal property and services purchased for use or 271  
consumption in the production of that printed matter. That 272  
person is not entitled to claim exemption under division (B) (42) 273  
(f) of section 5739.02 of the Revised Code for any material 274  
incorporated into the printed matter or any equipment, supplies, 275  
or services primarily used to produce the printed matter. 276

(c) The distribution of printed matter to the public or to 277  
a designated segment of the public, free of charge, is not a 278  
sale to the members of the public to whom the printed matter is 279  
distributed or to any persons who purchase space in the printed 280

matter for advertising or other purposes.	281
(5) A person who makes sales of any of the services listed	282
in division (B) (3) of this section is the consumer of any	283
tangible personal property used in performing the service. The	284
purchase of that property is not subject to the resale exception	285
under division (E) of this section.	286
(6) A person who engages in highway transportation for	287
hire is the consumer of all packaging materials purchased by	288
that person and used in performing the service, except for	289
packaging materials sold by such person in a transaction	290
separate from the service.	291
(7) In the case of a transaction for health care services	292
under division (B) (11) of this section, a medicaid health	293
insuring corporation is the consumer of such services. The	294
purchase of such services by a medicaid health insuring	295
corporation is not subject to the exception for resale under	296
division (E) of this section or to the exemptions provided under	297
divisions (B) (12), (18), (19), and (22) of section 5739.02 of	298
the Revised Code.	299
(E) "Retail sale" and "sales at retail" include all sales,	300
except those in which the purpose of the consumer is to resell	301
the thing transferred or benefit of the service provided, by a	302
person engaging in business, in the form in which the same is,	303
or is to be, received by the person.	304
(F) "Business" includes any activity engaged in by any	305
person with the object of gain, benefit, or advantage, either	306
direct or indirect. "Business" does not include the activity of	307
a person in managing and investing the person's own funds.	308
(G) "Engaging in business" means commencing, conducting,	309

or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H) (1) (a) "Price," except as provided in divisions (H) (2), (3), and (4) of this section, means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(i) The vendor's cost of the property sold;

(ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, including the tax imposed under Chapter 5751. of the Revised Code, and any other expense of the vendor;

(iii) Charges by the vendor for any services necessary to complete the sale;

(iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.

(v) Installation charges;

(vi) Credit for any trade-in.

(b) "Price" includes consideration received by the vendor from a third party, if the vendor actually receives the consideration from a party other than the consumer, and the

consideration is directly related to a price reduction or 338  
discount on the sale; the vendor has an obligation to pass the 339  
price reduction or discount through to the consumer; the amount 340  
of the consideration attributable to the sale is fixed and 341  
determinable by the vendor at the time of the sale of the item 342  
to the consumer; and one of the following criteria is met: 343

(i) The consumer presents a coupon, certificate, or other 344  
document to the vendor to claim a price reduction or discount 345  
where the coupon, certificate, or document is authorized, 346  
distributed, or granted by a third party with the understanding 347  
that the third party will reimburse any vendor to whom the 348  
coupon, certificate, or document is presented; 349

(ii) The consumer identifies the consumer's self to the 350  
seller as a member of a group or organization entitled to a 351  
price reduction or discount. A preferred customer card that is 352  
available to any patron does not constitute membership in such a 353  
group or organization. 354

(iii) The price reduction or discount is identified as a 355  
third party price reduction or discount on the invoice received 356  
by the consumer, or on a coupon, certificate, or other document 357  
presented by the consumer. 358

(c) "Price" does not include any of the following: 359

(i) Discounts, including cash, term, or coupons that are 360  
not reimbursed by a third party that are allowed by a vendor and 361  
taken by a consumer on a sale; 362

(ii) Interest, financing, and carrying charges from credit 363  
extended on the sale of tangible personal property or services, 364  
if the amount is separately stated on the invoice, bill of sale, 365  
or similar document given to the purchaser; 366

(iii) Any taxes legally imposed directly on the consumer 367  
that are separately stated on the invoice, bill of sale, or 368  
similar document given to the consumer. For the purpose of this 369  
division, the tax imposed under Chapter 5751. of the Revised 370  
Code is not a tax directly on the consumer, even if the tax or a 371  
portion thereof is separately stated. 372

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 373  
this section, any discount allowed by an automobile manufacturer 374  
to its employee, or to the employee of a supplier, on the 375  
purchase of a new motor vehicle from a new motor vehicle dealer 376  
in this state. 377

(v) The dollar value of a gift card that is not sold by a 378  
vendor or purchased by a consumer and that is redeemed by the 379  
consumer in purchasing tangible personal property or services if 380  
the vendor is not reimbursed and does not receive compensation 381  
from a third party to cover all or part of the gift card value. 382  
For the purposes of this division, a gift card is not sold by a 383  
vendor or purchased by a consumer if it is distributed pursuant 384  
to an awards, loyalty, or promotional program. Past and present 385  
purchases of tangible personal property or services by the 386  
consumer shall not be treated as consideration exchanged for a 387  
gift card. 388

(2) In the case of a sale of any new motor vehicle by a 389  
new motor vehicle dealer, as defined in section 4517.01 of the 390  
Revised Code, in which another motor vehicle is accepted by the 391  
dealer as part of the consideration received, "price" has the 392  
same meaning as in division (H) (1) of this section, reduced by 393  
the credit afforded the consumer by the dealer for the motor 394  
vehicle received in trade. 395

(3) In the case of a sale of any watercraft or outboard 396

motor by a watercraft dealer licensed in accordance with section 397  
1547.543 of the Revised Code, in which another watercraft, 398  
watercraft and trailer, or outboard motor is accepted by the 399  
dealer as part of the consideration received, "price" has the 400  
same meaning as in division (H) (1) of this section, reduced by 401  
the credit afforded the consumer by the dealer for the 402  
watercraft, watercraft and trailer, or outboard motor received 403  
in trade. As used in this division, "watercraft" includes an 404  
outdrive unit attached to the watercraft. 405

(4) In the case of transactions for health care services 406  
under division (B) (11) of this section, "price" means the amount 407  
of managed care premiums received each month by a medicaid 408  
health insuring corporation. 409

(I) "Receipts" means the total amount of the prices of the 410  
sales of vendors, provided that the dollar value of gift cards 411  
distributed pursuant to an awards, loyalty, or promotional 412  
program, and cash discounts allowed and taken on sales at the 413  
time they are consummated are not included, minus any amount 414  
deducted as a bad debt pursuant to section 5739.121 of the 415  
Revised Code. "Receipts" does not include the sale price of 416  
property returned or services rejected by consumers when the 417  
full sale price and tax are refunded either in cash or by 418  
credit. 419

(J) "Place of business" means any location at which a 420  
person engages in business. 421

(K) "Premises" includes any real property or portion 422  
thereof upon which any person engages in selling tangible 423  
personal property at retail or making retail sales and also 424  
includes any real property or portion thereof designated for, or 425  
devoted to, use in conjunction with the business engaged in by 426

such person. 427

(L) "Casual sale" means a sale of an item of tangible 428  
personal property that was obtained by the person making the 429  
sale, through purchase or otherwise, for the person's own use 430  
and was previously subject to any state's taxing jurisdiction on 431  
its sale or use, and includes such items acquired for the 432  
seller's use that are sold by an auctioneer employed directly by 433  
the person for such purpose, provided the location of such sales 434  
is not the auctioneer's permanent place of business. As used in 435  
this division, "permanent place of business" includes any 436  
location where such auctioneer has conducted more than two 437  
auctions during the year. 438

(M) "Hotel" means every establishment kept, used, 439  
maintained, advertised, or held out to the public to be a place 440  
where sleeping accommodations are offered to guests, in which 441  
five or more rooms are used for the accommodation of such 442  
guests, whether the rooms are in one or several structures, 443  
except as otherwise provided in division (G) of section 5739.09 444  
of the Revised Code. 445

(N) "Transient guests" means persons occupying a room or 446  
rooms for sleeping accommodations for less than thirty 447  
consecutive days. 448

(O) "Making retail sales" means the effecting of 449  
transactions wherein one party is obligated to pay the price and 450  
the other party is obligated to provide a service or to transfer 451  
title to or possession of the item sold. "Making retail sales" 452  
does not include the preliminary acts of promoting or soliciting 453  
the retail sales, other than the distribution of printed matter 454  
which displays or describes and prices the item offered for 455  
sale, nor does it include delivery of a predetermined quantity 456



of tangible personal property or transportation of property or 457  
personnel to or from a place where a service is performed. 458

(P) "Used directly in the rendition of a public utility 459  
service" means that property that is to be incorporated into and 460  
will become a part of the consumer's production, transmission, 461  
transportation, or distribution system and that retains its 462  
classification as tangible personal property after such 463  
incorporation; fuel or power used in the production, 464  
transmission, transportation, or distribution system; and 465  
tangible personal property used in the repair and maintenance of 466  
the production, transmission, transportation, or distribution 467  
system, including only such motor vehicles as are specially 468  
designed and equipped for such use. Tangible personal property 469  
and services used primarily in providing highway transportation 470  
for hire are not used directly in the rendition of a public 471  
utility service. In this definition, "public utility" includes a 472  
citizen of the United States holding, and required to hold, a 473  
certificate of public convenience and necessity issued under 49 474  
U.S.C. 41102. 475

(Q) "Refining" means removing or separating a desirable 476  
product from raw or contaminated materials by distillation or 477  
physical, mechanical, or chemical processes. 478

(R) "Assembly" and "assembling" mean attaching or fitting 479  
together parts to form a product, but do not include packaging a 480  
product. 481

(S) "Manufacturing operation" means a process in which 482  
materials are changed, converted, or transformed into a 483  
different state or form from which they previously existed and 484  
includes refining materials, assembling parts, and preparing raw 485  
materials and parts by mixing, measuring, blending, or otherwise 486

committing such materials or parts to the manufacturing process. 487

"Manufacturing operation" does not include packaging. 488

(T) "Fiscal officer" means, with respect to a regional 489  
transit authority, the secretary-treasurer thereof, and with 490  
respect to a county that is a transit authority, the fiscal 491  
officer of the county transit board if one is appointed pursuant 492  
to section 306.03 of the Revised Code or the county auditor if 493  
the board of county commissioners operates the county transit 494  
system. 495

(U) "Transit authority" means a regional transit authority 496  
created pursuant to section 306.31 of the Revised Code or a 497  
county in which a county transit system is created pursuant to 498  
section 306.01 of the Revised Code. For the purposes of this 499  
chapter, a transit authority must extend to at least the entire 500  
area of a single county. A transit authority that includes 501  
territory in more than one county must include all the area of 502  
the most populous county that is a part of such transit 503  
authority. County population shall be measured by the most 504  
recent census taken by the United States census bureau. 505

(V) "Legislative authority" means, with respect to a 506  
regional transit authority, the board of trustees thereof, and 507  
with respect to a county that is a transit authority, the board 508  
of county commissioners. 509

(W) "Territory of the transit authority" means all of the 510  
area included within the territorial boundaries of a transit 511  
authority as they from time to time exist. Such territorial 512  
boundaries must at all times include all the area of a single 513  
county or all the area of the most populous county that is a 514  
part of such transit authority. County population shall be 515  
measured by the most recent census taken by the United States 516

census bureau.	517
(X) "Providing a service" means providing or furnishing anything described in division (B) (3) of this section for consideration.	518 519 520
(Y) (1) (a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.	521 522 523 524
(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.	525 526 527 528 529 530
(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:	531 532 533
(i) Examining or acquiring data stored in or accessible to the computer equipment;	534 535
(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.	536 537 538
For transactions occurring on or after the effective date of the amendment of this section by H.B. 157 of the 127th general assembly, December 21, 2007, "electronic information services" does not include electronic publishing <del>as defined in division (LLL) of this section.</del>	539 540 541 542 543
(d) <u>"Electronic publishing" and "electronic publishing</u>	544

services" means providing access to one or more of the following 545  
primarily for business customers, including the federal 546  
government or a state government or a political subdivision 547  
thereof, to conduct research: news; business, financial, legal, 548  
consumer, or credit materials; editorials, columns, reader 549  
commentary, or features; photos or images; archival or research 550  
material; legal notices, identity verification, or public 551  
records; scientific, educational, instructional, technical, 552  
professional, trade, or other literary materials; or other 553  
similar information which has been gathered and made available 554  
by the provider to the consumer in an electronic format. 555  
Providing electronic publishing or electronic publishing 556  
services includes the functions necessary for the acquisition, 557  
formatting, editing, storage, and dissemination of data or 558  
information that is the subject of a sale. 559

(e) "Automatic data processing, computer services, 560  
electronic publishing services, or electronic information 561  
services" shall not include personal ~~or~~ and professional 562  
services. 563

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 564  
section, "personal and professional services" means all services 565  
other than automatic data processing, computer services, 566  
electronic publishing services, or electronic information 567  
services, including but not limited to: 568

(a) Accounting and legal services such as advice on tax 569  
matters, asset management, budgetary matters, quality control, 570  
information security, and auditing and any other situation where 571  
the service provider receives data or information and studies, 572  
alters, analyzes, interprets, or adjusts such material; 573

(b) Analyzing business policies and procedures; 574

(c) Identifying management information needs;	575
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	576 577 578
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	579 580 581 582 583
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	584 585 586
(g) Testing of business procedures;	587
(h) Training personnel in business procedure applications;	588
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	589 590 591 592 593 594 595
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	596 597
(k) Providing digital advertising services.	598
The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing <del>or</del> <u>computer services, electronic publishing services, or electronic information services.</u>	599 600 601 602

(Z) "Highway transportation for hire" means the 603  
transportation of personal property belonging to others for 604  
consideration by any of the following: 605

(1) The holder of a permit or certificate issued by this 606  
state or the United States authorizing the holder to engage in 607  
transportation of personal property belonging to others for 608  
consideration over or on highways, roadways, streets, or any 609  
similar public thoroughfare; 610

(2) A person who engages in the transportation of personal 611  
property belonging to others for consideration over or on 612  
highways, roadways, streets, or any similar public thoroughfare 613  
but who could not have engaged in such transportation on 614  
December 11, 1985, unless the person was the holder of a permit 615  
or certificate of the types described in division (Z)(1) of this 616  
section; 617

(3) A person who leases a motor vehicle to and operates it 618  
for a person described by division (Z)(1) or (2) of this 619  
section. 620

(AA) (1) "Telecommunications service" means the electronic 621  
transmission, conveyance, or routing of voice, data, audio, 622  
video, or any other information or signals to a point, or 623  
between or among points. "Telecommunications service" includes 624  
such transmission, conveyance, or routing in which computer 625  
processing applications are used to act on the form, code, or 626  
protocol of the content for purposes of transmission, 627  
conveyance, or routing without regard to whether the service is 628  
referred to as voice-over internet protocol service or is 629  
classified by the federal communications commission as enhanced 630  
or value-added. "Telecommunications service" does not include 631  
any of the following: 632

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information;	633 634 635 636 637
(b) Installation or maintenance of wiring or equipment on a customer's premises;	638 639
(c) Tangible personal property;	640
(d) Advertising, including directory advertising;	641
(e) Billing and collection services provided to third parties;	642 643
(f) Internet access service;	644
(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;	645 646 647 648 649 650 651 652
(h) Ancillary service;	653
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	654 655
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this	656 657 658 659 660

division: 661

(a) "Conference bridging service" means an ancillary 662  
service that links two or more participants of an audio or video 663  
conference call, including providing a telephone number. 664  
"Conference bridging service" does not include 665  
telecommunications services used to reach the conference bridge. 666

(b) "Detailed telecommunications billing service" means an 667  
ancillary service of separately stating information pertaining 668  
to individual calls on a customer's billing statement. 669

(c) "Directory assistance" means an ancillary service of 670  
providing telephone number or address information. 671

(d) "Vertical service" means an ancillary service that is 672  
offered in connection with one or more telecommunications 673  
services, which offers advanced calling features that allow 674  
customers to identify callers and manage multiple calls and call 675  
connections, including conference bridging service. 676

(e) "Voice mail service" means an ancillary service that 677  
enables the customer to store, send, or receive recorded 678  
messages. "Voice mail service" does not include any vertical 679  
services that the customer may be required to have in order to 680  
utilize the voice mail service. 681

(3) "900 service" means an inbound toll telecommunications 682  
service purchased by a subscriber that allows the subscriber's 683  
customers to call in to the subscriber's prerecorded 684  
announcement or live service, and which is typically marketed 685  
under the name "900 service" and any subsequent numbers 686  
designated by the federal communications commission. "900 687  
service" does not include the charge for collection services 688  
provided by the seller of the telecommunications service to the 689



subscriber, or services or products sold by the subscriber to 690  
the subscriber's customer. 691

(4) "Prepaid calling service" means the right to access 692  
exclusively telecommunications services, which must be paid for 693  
in advance and which enables the origination of calls using an 694  
access number or authorization code, whether manually or 695  
electronically dialed, and that is sold in predetermined units 696  
or dollars of which the number declines with use in a known 697  
amount. 698

(5) "Prepaid wireless calling service" means a 699  
telecommunications service that provides the right to utilize 700  
mobile telecommunications service as well as other non- 701  
telecommunications services, including the download of digital 702  
products delivered electronically, and content and ancillary 703  
services, that must be paid for in advance and that is sold in 704  
predetermined units or dollars of which the number declines with 705  
use in a known amount. 706

(6) "Value-added non-voice data service" means a 707  
telecommunications service in which computer processing 708  
applications are used to act on the form, content, code, or 709  
protocol of the information or data primarily for a purpose 710  
other than transmission, conveyance, or routing. 711

(7) "Coin-operated telephone service" means a 712  
telecommunications service paid for by inserting money into a 713  
telephone accepting direct deposits of money to operate. 714

(8) "Customer" has the same meaning as in section 5739.034 715  
of the Revised Code. 716

(BB) "Laundry and dry cleaning services" means removing 717  
soil or dirt from towels, linens, articles of clothing, or other 718

fabric items that belong to others and supplying towels, linens, 719  
articles of clothing, or other fabric items. "Laundry and dry 720  
cleaning services" does not include the provision of self- 721  
service facilities for use by consumers to remove soil or dirt 722  
from towels, linens, articles of clothing, or other fabric 723  
items. 724

(CC) "Magazines distributed as controlled circulation 725  
publications" means magazines containing at least twenty-four 726  
pages, at least twenty-five per cent editorial content, issued 727  
at regular intervals four or more times a year, and circulated 728  
without charge to the recipient, provided that such magazines 729  
are not owned or controlled by individuals or business concerns 730  
which conduct such publications as an auxiliary to, and 731  
essentially for the advancement of the main business or calling 732  
of, those who own or control them. 733

(DD) "Landscaping and lawn care service" means the 734  
services of planting, seeding, sodding, removing, cutting, 735  
trimming, pruning, mulching, aerating, applying chemicals, 736  
watering, fertilizing, and providing similar services to 737  
establish, promote, or control the growth of trees, shrubs, 738  
flowers, grass, ground cover, and other flora, or otherwise 739  
maintaining a lawn or landscape grown or maintained by the owner 740  
for ornamentation or other nonagricultural purpose. However, 741  
"landscaping and lawn care service" does not include the 742  
providing of such services by a person who has less than five 743  
thousand dollars in sales of such services during the calendar 744  
year. 745

(EE) "Private investigation and security service" means 746  
the performance of any activity for which the provider of such 747  
service is required to be licensed pursuant to Chapter 4749. of 748

the Revised Code, or would be required to be so licensed in 749  
performing such services in this state, and also includes the 750  
services of conducting polygraph examinations and of monitoring 751  
or overseeing the activities on or in, or the condition of, the 752  
consumer's home, business, or other facility by means of 753  
electronic or similar monitoring devices. "Private investigation 754  
and security service" does not include special duty services 755  
provided by off-duty police officers, deputy sheriffs, and other 756  
peace officers regularly employed by the state or a political 757  
subdivision. 758

(FF) "Information services" means providing conversation, 759  
giving consultation or advice, playing or making a voice or 760  
other recording, making or keeping a record of the number of 761  
callers, and any other service provided to a consumer by means 762  
of a nine hundred telephone call, except when the nine hundred 763  
telephone call is the means by which the consumer makes a 764  
contribution to a recognized charity. 765

(GG) "Research and development" means designing, creating, 766  
or formulating new or enhanced products, equipment, or 767  
manufacturing processes, and also means conducting scientific or 768  
technological inquiry and experimentation in the physical 769  
sciences with the goal of increasing scientific knowledge which 770  
may reveal the bases for new or enhanced products, equipment, or 771  
manufacturing processes. 772

(HH) "Qualified research and development equipment" means 773  
capitalized tangible personal property, and leased personal 774  
property that would be capitalized if purchased, used by a 775  
person primarily to perform research and development. Tangible 776  
personal property primarily used in testing, as defined in 777  
division (A) (4) of section 5739.011 of the Revised Code, or used 778

for recording or storing test results, is not qualified research 779  
and development equipment unless such property is primarily used 780  
by the consumer in testing the product, equipment, or 781  
manufacturing process being created, designed, or formulated by 782  
the consumer in the research and development activity or in 783  
recording or storing such test results. 784

(II) "Building maintenance and janitorial service" means 785  
cleaning the interior or exterior of a building and any tangible 786  
personal property located therein or thereon, including any 787  
services incidental to such cleaning for which no separate 788  
charge is made. However, "building maintenance and janitorial 789  
service" does not include the providing of such service by a 790  
person who has less than five thousand dollars in sales of such 791  
service during the calendar year. As used in this division, 792  
"cleaning" does not include sanitation services necessary for an 793  
establishment described in 21 U.S.C. 608 to comply with rules 794  
and regulations adopted pursuant to that section. 795

(JJ) "Employment service" means providing or supplying 796  
personnel, on a temporary or long-term basis, to perform work or 797  
labor under the supervision or control of another, when the 798  
personnel so provided or supplied receive their wages, salary, 799  
or other compensation from the provider or supplier of the 800  
employment service or from a third party that provided or 801  
supplied the personnel to the provider or supplier. "Employment 802  
service" does not include: 803

(1) Acting as a contractor or subcontractor, where the 804  
personnel performing the work are not under the direct control 805  
of the purchaser. 806

(2) Medical and health care services. 807

(3) Supplying personnel to a purchaser pursuant to a 808  
contract of at least one year between the service provider and 809  
the purchaser that specifies that each employee covered under 810  
the contract is assigned to the purchaser on a permanent basis. 811

(4) Transactions between members of an affiliated group, 812  
as defined in division (B) (3) (e) of this section. 813

(5) Transactions where the personnel so provided or 814  
supplied by a provider or supplier to a purchaser of an 815  
employment service are then provided or supplied by that 816  
purchaser to a third party as an employment service, except 817  
"employment service" does include the transaction between that 818  
purchaser and the third party. 819

(KK) "Employment placement service" means locating or 820  
finding employment for a person or finding or locating an 821  
employee to fill an available position. 822

(LL) "Exterminating service" means eradicating or 823  
attempting to eradicate vermin infestations from a building or 824  
structure, or the area surrounding a building or structure, and 825  
includes activities to inspect, detect, or prevent vermin 826  
infestation of a building or structure. 827

(MM) "Physical fitness facility service" means all 828  
transactions by which a membership is granted, maintained, or 829  
renewed, including initiation fees, membership dues, renewal 830  
fees, monthly minimum fees, and other similar fees and dues, by 831  
a physical fitness facility such as an athletic club, health 832  
spa, or gymnasium, which entitles the member to use the facility 833  
for physical exercise. 834

(NN) "Recreation and sports club service" means all 835  
transactions by which a membership is granted, maintained, or 836

renewed, including initiation fees, membership dues, renewal 837  
fees, monthly minimum fees, and other similar fees and dues, by 838  
a recreation and sports club, which entitles the member to use 839  
the facilities of the organization. "Recreation and sports club" 840  
means an organization that has ownership of, or controls or 841  
leases on a continuing, long-term basis, the facilities used by 842  
its members and includes an aviation club, gun or shooting club, 843  
yacht club, card club, swimming club, tennis club, golf club, 844  
country club, riding club, amateur sports club, or similar 845  
organization. 846

(OO) "Livestock" means farm animals commonly raised for 847  
food, food production, or other agricultural purposes, 848  
including, but not limited to, cattle, sheep, goats, swine, 849  
poultry, and captive deer. "Livestock" does not include 850  
invertebrates, amphibians, reptiles, domestic pets, animals for 851  
use in laboratories or for exhibition, or other animals not 852  
commonly raised for food or food production. 853

(PP) "Livestock structure" means a building or structure 854  
used exclusively for the housing, raising, feeding, or 855  
sheltering of livestock, and includes feed storage or handling 856  
structures and structures for livestock waste handling. 857

(QQ) "Horticulture" means the growing, cultivation, and 858  
production of flowers, fruits, herbs, vegetables, sod, 859  
mushrooms, and nursery stock. As used in this division, "nursery 860  
stock" has the same meaning as in section 927.51 of the Revised 861  
Code. 862

(RR) "Horticulture structure" means a building or 863  
structure used exclusively for the commercial growing, raising, 864  
or overwintering of horticultural products, and includes the 865  
area used for stocking, storing, and packing horticultural 866

products when done in conjunction with the production of those 867  
products. 868

(SS) "Newspaper" means an unbound publication bearing a 869  
title or name that is regularly published, at least as 870  
frequently as biweekly, and distributed from a fixed place of 871  
business to the public in a specific geographic area, and that 872  
contains a substantial amount of news matter of international, 873  
national, or local events of interest to the general public. 874

(TT) "Professional racing team" means a person that 875  
employs at least twenty full-time employees for the purpose of 876  
conducting a motor vehicle racing business for profit. The 877  
person must conduct the business with the purpose of racing one 878  
or more motor racing vehicles in at least ten competitive 879  
professional racing events each year that comprise all or part 880  
of a motor racing series sanctioned by one or more motor racing 881  
sanctioning organizations. A "motor racing vehicle" means a 882  
vehicle for which the chassis, engine, and parts are designed 883  
exclusively for motor racing, and does not include a stock or 884  
production model vehicle that may be modified for use in racing. 885  
For the purposes of this division: 886

(1) A "competitive professional racing event" is a motor 887  
vehicle racing event sanctioned by one or more motor racing 888  
sanctioning organizations, at which aggregate cash prizes in 889  
excess of eight hundred thousand dollars are awarded to the 890  
competitors. 891

(2) "Full-time employee" means an individual who is 892  
employed for consideration for thirty-five or more hours a week, 893  
or who renders any other standard of service generally accepted 894  
by custom or specified by contract as full-time employment. 895

(UU) (1) "Lease" or "rental" means any transfer of the 896  
possession or control of tangible personal property for a fixed 897  
or indefinite term, for consideration. "Lease" or "rental" 898  
includes future options to purchase or extend, and agreements 899  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 900  
trailers where the amount of consideration may be increased or 901  
decreased by reference to the amount realized upon the sale or 902  
disposition of the property. "Lease" or "rental" does not 903  
include: 904

(a) A transfer of possession or control of tangible 905  
personal property under a security agreement or a deferred 906  
payment plan that requires the transfer of title upon completion 907  
of the required payments; 908

(b) A transfer of possession or control of tangible 909  
personal property under an agreement that requires the transfer 910  
of title upon completion of required payments and payment of an 911  
option price that does not exceed the greater of one hundred 912  
dollars or one per cent of the total required payments; 913

(c) Providing tangible personal property along with an 914  
operator for a fixed or indefinite period of time, if the 915  
operator is necessary for the property to perform as designed. 916  
For purposes of this division, the operator must do more than 917  
maintain, inspect, or set up the tangible personal property. 918

(2) "Lease" and "rental," as defined in division (UU) of 919  
this section, shall not apply to leases or rentals that exist 920  
before June 26, 2003. 921

(3) "Lease" and "rental" have the same meaning as in 922  
division (UU) (1) of this section regardless of whether a 923  
transaction is characterized as a lease or rental under 924



generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws. 925  
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(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. 928  
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(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 936  
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(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service. 938  
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(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software. 948  
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(ZZ) "Municipal gas utility" means a municipal corporation 954  
that owns or operates a system for the distribution of natural 955  
gas. 956

(AAA) "Computer" means an electronic device that accepts 957  
information in digital or similar form and manipulates it for a 958  
result based on a sequence of instructions. 959

(BBB) "Computer software" means a set of coded 960  
instructions designed to cause a computer or automatic data 961  
processing equipment to perform a task. 962

(CCC) "Delivered electronically" means delivery of 963  
computer software from the seller to the purchaser by means 964  
other than tangible storage media. 965

(DDD) "Prewritten computer software" means computer 966  
software, including prewritten upgrades, that is not designed 967  
and developed by the author or other creator to the 968  
specifications of a specific purchaser. The combining of two or 969  
more prewritten computer software programs or prewritten 970  
portions thereof does not cause the combination to be other than 971  
prewritten computer software. "Prewritten computer software" 972  
includes software designed and developed by the author or other 973  
creator to the specifications of a specific purchaser when it is 974  
sold to a person other than the purchaser. If a person modifies 975  
or enhances computer software of which the person is not the 976  
author or creator, the person shall be deemed to be the author 977  
or creator only of such person's modifications or enhancements. 978  
Prewritten computer software or a prewritten portion thereof 979  
that is modified or enhanced to any degree, where such 980  
modification or enhancement is designed and developed to the 981  
specifications of a specific purchaser, remains prewritten 982  
computer software; provided, however, that where there is a 983

reasonable, separately stated charge or an invoice or other 984  
statement of the price given to the purchaser for the 985  
modification or enhancement, the modification or enhancement 986  
shall not constitute prewritten computer software. 987

(EEE) (1) "Food" means substances, whether in liquid, 988  
concentrated, solid, frozen, dried, or dehydrated form, that are 989  
sold for ingestion or chewing by humans and are consumed for 990  
their taste or nutritional value. "Food" does not include 991  
alcoholic beverages, dietary supplements, soft drinks, or 992  
tobacco. 993

(2) As used in division (EEE) (1) of this section: 994

(a) "Alcoholic beverages" means beverages that are 995  
suitable for human consumption and contain one-half of one per 996  
cent or more of alcohol by volume. 997

(b) "Dietary supplements" means any product, other than 998  
tobacco, that is intended to supplement the diet and that is 999  
intended for ingestion in tablet, capsule, powder, softgel, 1000  
gelcap, or liquid form, or, if not intended for ingestion in 1001  
such a form, is not represented as conventional food for use as 1002  
a sole item of a meal or of the diet; that is required to be 1003  
labeled as a dietary supplement, identifiable by the "supplement 1004  
facts" box found on the label, as required by 21 C.F.R. 101.36; 1005  
and that contains one or more of the following dietary 1006  
ingredients: 1007

(i) A vitamin; 1008

(ii) A mineral; 1009

(iii) An herb or other botanical; 1010

(iv) An amino acid; 1011

(v) A dietary substance for use by humans to supplement 1012  
the diet by increasing the total dietary intake; 1013

(vi) A concentrate, metabolite, constituent, extract, or 1014  
combination of any ingredient described in divisions (EEE) (2) (b) 1015  
(i) to (v) of this section. 1016

(c) "Soft drinks" means nonalcoholic beverages that 1017  
contain natural or artificial sweeteners. "Soft drinks" does not 1018  
include beverages that contain milk or milk products, soy, rice, 1019  
or similar milk substitutes, or that contains greater than fifty 1020  
per cent vegetable or fruit juice by volume. 1021

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 1022  
tobacco, or any other item that contains tobacco. 1023

(FFF) "Drug" means a compound, substance, or preparation, 1024  
and any component of a compound, substance, or preparation, 1025  
other than food, dietary supplements, or alcoholic beverages 1026  
that is recognized in the official United States pharmacopoeia, 1027  
official homeopathic pharmacopoeia of the United States, or 1028  
official national formulary, and supplements to them; is 1029  
intended for use in the diagnosis, cure, mitigation, treatment, 1030  
or prevention of disease; or is intended to affect the structure 1031  
or any function of the body. 1032

(GGG) "Prescription" means an order, formula, or recipe 1033  
issued in any form of oral, written, electronic, or other means 1034  
of transmission by a duly licensed practitioner authorized by 1035  
the laws of this state to issue a prescription. 1036

(HHH) "Durable medical equipment" means equipment, 1037  
including repair and replacement parts for such equipment, that 1038  
can withstand repeated use, is primarily and customarily used to 1039  
serve a medical purpose, generally is not useful to a person in 1040

the absence of illness or injury, and is not worn in or on the 1041  
body. "Durable medical equipment" does not include mobility 1042  
enhancing equipment. 1043

(III) "Mobility enhancing equipment" means equipment, 1044  
including repair and replacement parts for such equipment, that 1045  
is primarily and customarily used to provide or increase the 1046  
ability to move from one place to another and is appropriate for 1047  
use either in a home or a motor vehicle, that is not generally 1048  
used by persons with normal mobility, and that does not include 1049  
any motor vehicle or equipment on a motor vehicle normally 1050  
provided by a motor vehicle manufacturer. "Mobility enhancing 1051  
equipment" does not include durable medical equipment. 1052

(JJJ) "Prosthetic device" means a replacement, corrective, 1053  
or supportive device, including repair and replacement parts for 1054  
the device, worn on or in the human body to artificially replace 1055  
a missing portion of the body, prevent or correct physical 1056  
deformity or malfunction, or support a weak or deformed portion 1057  
of the body. As used in this division, before July 1, 2019, 1058  
"prosthetic device" does not include corrective eyeglasses, 1059  
contact lenses, or dental prosthesis. On or after July 1, 2019, 1060  
"prosthetic device" does not include dental prosthesis but does 1061  
include corrective eyeglasses or contact lenses. 1062

(KKK) (1) "Fractional aircraft ownership program" means a 1063  
program in which persons within an affiliated group sell and 1064  
manage fractional ownership program aircraft, provided that at 1065  
least one hundred airworthy aircraft are operated in the program 1066  
and the program meets all of the following criteria: 1067

(a) Management services are provided by at least one 1068  
program manager within an affiliated group on behalf of the 1069  
fractional owners. 1070

(b) Each program aircraft is owned or possessed by at least one fractional owner. 1071  
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(c) Each fractional owner owns or possesses at least a one-sixteenth interest in at least one fixed-wing program aircraft. 1073  
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(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners. 1076  
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(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program. 1078  
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(2) As used in division (KKK) (1) of this section: 1081

(a) "Affiliated group" has the same meaning as in division (B) (3) (e) of this section. 1082  
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(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (KKK) (1) (e) of this section. 1084  
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(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK) (1) (d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program. 1088  
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(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (KKK) (1) (e) of this section, and 1095  
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offered by the program manager to the fractional owners, 1099  
including, at a minimum, the establishment and implementation of 1100  
safety guidelines; the coordination of the scheduling of the 1101  
program aircraft and crews; program aircraft maintenance; 1102  
program aircraft insurance; crew training for crews employed, 1103  
furnished, or contracted by the program manager or the 1104  
fractional owner; the satisfaction of record-keeping 1105  
requirements; and the development and use of an operations 1106  
manual and a maintenance manual for the fractional aircraft 1107  
ownership program. 1108

(e) "Program manager" means the person that offers 1109  
management services to fractional owners pursuant to a 1110  
management services agreement under division (KKK) (1) (e) of this 1111  
section. 1112

~~(LLL) "Electronic publishing" means providing access to 1113  
one or more of the following primarily for business customers, 1114  
including the federal government or a state government or a 1115  
political subdivision thereof, to conduct research: news; 1116  
business, financial, legal, consumer, or credit materials; 1117  
editorials, columns, reader commentary, or features; photos or 1118  
images; archival or research material; legal notices, identity 1119  
verification, or public records; scientific, educational, 1120  
instructional, technical, professional, trade, or other literary 1121  
materials; or other similar information which has been gathered 1122  
and made available by the provider to the consumer in an 1123  
electronic format. Providing electronic publishing includes the 1124  
functions necessary for the acquisition, formatting, editing, 1125  
storage, and dissemination of data or information that is the 1126  
subject of a sale. 1127~~

~~(MMM) "Medicaid health insuring corporation" means a 1128~~

health insuring corporation that holds a certificate of 1129  
authority under Chapter 1751. of the Revised Code and is under 1130  
contract with the department of medicaid pursuant to section 1131  
5167.10 of the Revised Code. 1132

~~(NNN)~~ (MMM) "Managed care premium" means any premium, 1133  
capitation, or other payment a medicaid health insuring 1134  
corporation receives for providing or arranging for the 1135  
provision of health care services to its members or enrollees 1136  
residing in this state. 1137

~~(OOO)~~ (NNN) "Captive deer" means deer and other cervidae 1138  
that have been legally acquired, or their offspring, that are 1139  
privately owned for agricultural or farming purposes. 1140

~~(PPP)~~ (OOO) "Gift card" means a document, card, 1141  
certificate, or other record, whether tangible or intangible, 1142  
that may be redeemed by a consumer for a dollar value when 1143  
making a purchase of tangible personal property or services. 1144

~~(OOO)~~ (PPP) "Specified digital product" means an 1145  
electronically transferred digital audiovisual work, digital 1146  
audio work, or digital book. 1147

As used in division ~~(OOO)~~ (PPP) of this section: 1148

(1) "Digital audiovisual work" means a series of related 1149  
images that, when shown in succession, impart an impression of 1150  
motion, together with accompanying sounds, if any. 1151

(2) "Digital audio work" means a work that results from 1152  
the fixation of a series of musical, spoken, or other sounds, 1153  
including digitized sound files that are downloaded onto a 1154  
device and that may be used to alert the customer with respect 1155  
to a communication. 1156



(3) "Digital book" means a work that is generally	1157
recognized in the ordinary and usual sense as a book.	1158
(4) "Electronically transferred" means obtained by the	1159
purchaser by means other than tangible storage media.	1160
<del>(RRR)</del> <u>(QQQ)</u> "Digital advertising services" means providing	1161
access, by means of telecommunications equipment, to computer	1162
equipment that is used to enter, upload, download, review,	1163
manipulate, store, add, or delete data for the purpose of	1164
electronically displaying, delivering, placing, or transferring	1165
promotional advertisements to potential customers about products	1166
or services or about industry or business brands.	1167
<b>Section 2.</b> That existing section 5739.01 of the Revised	1168
Code is hereby repealed.	1169
<b>Section 3.</b> The amendment by this act of section 5739.01 of	1170
the Revised Code applies on and after the first day of the first	1171
month that begins on or after the effective date of this act.	1172