

MOBILE AND MANUFACTURED HOME AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Motor Vehicle Act and the Mortgage Lending and Servicing Act to address treatment of a mobile home or manufactured home as real property.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ repeals language in the Motor Vehicle Act regarding obtaining an affidavit of affixture and receipt of surrender of ownership documents;
- ▶ modifies references to affidavit of affixture and receipt of surrender of ownership documents;
- ▶ provides a process to convert a mobile home or manufactured home to an improvement to real property if the certificate of title has been lost or destroyed and a duplicate title cannot be obtained; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:



- 28 **41-1a-102**, as last amended by Laws of Utah 2011, Chapter 340
- 29 **41-1a-503**, as last amended by Laws of Utah 2006, Chapters 232 and 252
- 30 **41-1a-506**, as last amended by Laws of Utah 2009, Chapter 72
- 31 **41-1a-509**, as last amended by Laws of Utah 1992, Chapter 218 and renumbered and
- 32 amended by Laws of Utah 1992, Chapter 1
- 33 **41-1a-510**, as last amended by Laws of Utah 2010, Chapter 324
- 34 **41-1a-519**, as last amended by Laws of Utah 2006, Chapter 252
- 35 **41-1a-709**, as last amended by Laws of Utah 1993, Chapter 221
- 36 **59-12-102 (Superseded 07/01/14)**, as last amended by Laws of Utah 2012, Chapters
- 37 255, 312, 405, and 410
- 38 **59-12-102 (Effective 07/01/14)**, as last amended by Laws of Utah 2012, Chapters 255,
- 39 312, 405, 410, and 424
- 40 **70D-2-401**, as renumbered and amended by Laws of Utah 2009, Chapter 72

42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **41-1a-102** is amended to read:

44 **41-1a-102. Definitions.**

45 As used in this chapter:

46 (1) "Actual miles" means the actual distance a vehicle has traveled while in operation.

47 (2) "Actual weight" means the actual unladen weight of a vehicle or combination of
 48 vehicles as operated and certified to by a weighmaster.

49 ~~[(3) "Affidavit of Mobile Home Affixture" means the affidavit of affixture described in~~
 50 ~~Section 41-1a-503.]~~

51 ~~[(4)]~~ (3) "All-terrain type I vehicle" has the same meaning provided in Section 41-22-2.

52 ~~[(5)]~~ (4) "All-terrain type II vehicle" has the same meaning provided in Section
 53 41-22-2.

54 ~~[(6)]~~ (5) "Amateur radio operator" means any person licensed by the Federal
 55 Communications Commission to engage in private and experimental two-way radio operation
 56 on the amateur band radio frequencies.

57 ~~[(7)]~~ (6) "Branded title" means a title certificate that is labeled:

- 58 (a) rebuilt and restored to operation;

59 (b) flooded and restored to operation; or

60 (c) not restored to operation.

61 [~~(8)~~] (7) "Camper" means any structure designed, used, and maintained primarily to be
62 mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a
63 mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for
64 camping.

65 [~~(9)~~] (8) "Certificate of title" means a document issued by a jurisdiction to establish a
66 record of ownership between an identified owner and the described vehicle, vessel, or outboard
67 motor.

68 [~~(10)~~] (9) "Certified scale weigh ticket" means a weigh ticket that has been issued by a
69 weighmaster.

70 [~~(11)~~] (10) "Commercial vehicle" means a motor vehicle, trailer, or semitrailer used or
71 maintained for the transportation of persons or property that operates:

72 (a) as a carrier for hire, compensation, or profit; or

73 (b) as a carrier to transport the vehicle owner's goods or property in furtherance of the
74 owner's commercial enterprise.

75 [~~(12)~~] (11) "Commission" means the State Tax Commission.

76 [~~(13)~~] (12) "Dealer" means a person engaged or licensed to engage in the business of
77 buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright
78 or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an
79 established place of business for the sale, lease, trade, or display of vehicles, vessels, or
80 outboard motors.

81 [~~(14)~~] (13) "Division" means the Motor Vehicle Division of the commission, created in
82 Section 41-1a-106.

83 [~~(15)~~] (14) "Essential parts" means all integral and body parts of a vehicle of a type
84 required to be registered in this state, the removal, alteration, or substitution of which would
85 tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or
86 mode of operation.

87 [~~(16)~~] (15) "Farm tractor" means every motor vehicle designed and used primarily as a
88 farm implement for drawing plows, mowing machines, and other implements of husbandry.

89 [~~(17)~~] (16) (a) "Farm truck" means a truck used by the owner or operator of a farm

90 solely for his own use in the transportation of:

91 (i) farm products, including livestock and its products, poultry and its products,
92 floricultural and horticultural products;

93 (ii) farm supplies, including tile, fence, and every other thing or commodity used in
94 agricultural, floricultural, horticultural, livestock, and poultry production; and

95 (iii) livestock, poultry, and other animals and things used for breeding, feeding, or
96 other purposes connected with the operation of a farm.

97 (b) "Farm truck" does not include the operation of trucks by commercial processors of
98 agricultural products.

99 [~~(18)~~] (17) "Fleet" means one or more commercial vehicles.

100 [~~(19)~~] (18) "Foreign vehicle" means a vehicle of a type required to be registered,
101 brought into this state from another state, territory, or country other than in the ordinary course
102 of business by or through a manufacturer or dealer, and not registered in this state.

103 [~~(20)~~] (19) "Gross laden weight" means the actual weight of a vehicle or combination
104 of vehicles, equipped for operation, to which shall be added the maximum load to be carried.

105 [~~(21)~~] (20) "Highway" or "street" means the entire width between property lines of
106 every way or place of whatever nature when any part of it is open to the public, as a matter of
107 right, for purposes of vehicular traffic.

108 [~~(22)~~] (21) (a) "Identification number" means the identifying number assigned by the
109 manufacturer or by the division for the purpose of identifying the vehicle, vessel, or outboard
110 motor.

111 (b) "Identification number" includes a vehicle identification number, state assigned
112 identification number, hull identification number, and motor serial number.

113 [~~(23)~~] (22) "Implement of husbandry" means every vehicle designed or adapted and
114 used exclusively for an agricultural operation and only incidentally operated or moved upon the
115 highways.

116 [~~(24)~~] (23) (a) "In-state miles" means the total number of miles operated in this state
117 during the preceding year by fleet power units.

118 (b) If fleets are composed entirely of trailers or semitrailers, "in-state miles" means the
119 total number of miles that those vehicles were towed on Utah highways during the preceding
120 year.

121 ~~[(25)]~~ (24) "Interstate vehicle" means any commercial vehicle operated in more than
122 one state, province, territory, or possession of the United States or foreign country.

123 ~~[(26)]~~ (25) "Jurisdiction" means a state, district, province, political subdivision,
124 territory, or possession of the United States or any foreign country.

125 ~~[(27)]~~ (26) "Lienholder" means a person with a security interest in particular property.

126 ~~[(28)]~~ (27) "Manufactured home" means a transportable factory built housing unit
127 constructed on or after June 15, 1976, according to the Federal Home Construction and Safety
128 Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is
129 eight body feet or more in width or 40 body feet or more in length, or when erected on site, is
130 400 or more square feet, and which is built on a permanent chassis and designed to be used as a
131 dwelling with or without a permanent foundation when connected to the required utilities, and
132 includes the plumbing, heating, air-conditioning, and electrical systems.

133 ~~[(29)]~~ (28) "Manufacturer" means a person engaged in the business of constructing,
134 manufacturing, assembling, producing, or importing new or unused vehicles, vessels, or
135 outboard motors for the purpose of sale or trade.

136 ~~[(30)]~~ (29) "Mobile home" means a transportable factory built housing unit built prior
137 to June 15, 1976, in accordance with a state mobile home code which existed prior to the
138 Federal Manufactured Housing and Safety Standards Act (HUD Code).

139 ~~[(31)]~~ (30) "Motorboat" has the same meaning as provided in Section 73-18-2.

140 ~~[(32)]~~ (31) "Motorcycle" means a motor vehicle having a saddle for the use of the rider
141 and designed to travel on not more than three wheels in contact with the ground.

142 ~~[(33)]~~ (32) (a) "Motor vehicle" means a self-propelled vehicle intended primarily for
143 use and operation on the highways.

144 (b) "Motor vehicle" does not include an off-highway vehicle.

145 ~~[(34)]~~ (33) (a) "Nonresident" means a person who is not a resident of this state as
146 defined by Section 41-1a-202, and who does not engage in intrastate business within this state
147 and does not operate in that business any motor vehicle, trailer, or semitrailer within this state.

148 (b) A person who engages in intrastate business within this state and operates in that
149 business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in
150 interstate commerce, maintains any vehicle in this state as the home station of that vehicle is
151 considered a resident of this state, insofar as that vehicle is concerned in administering this

152 chapter.

153 ~~[(35)]~~ (34) "Odometer" means a device for measuring and recording the actual distance
154 a vehicle travels while in operation, but does not include any auxiliary odometer designed to be
155 periodically reset.

156 ~~[(36)]~~ (35) "Off-highway implement of husbandry" has the same meaning as provided
157 in Section 41-22-2.

158 ~~[(37)]~~ (36) "Off-highway vehicle" has the same meaning as provided in Section
159 41-22-2.

160 ~~[(38)]~~ (37) "Operate" means to drive or be in actual physical control of a vehicle or to
161 navigate a vessel.

162 ~~[(39)]~~ (38) "Outboard motor" means a detachable self-contained propulsion unit,
163 excluding fuel supply, used to propel a vessel.

164 ~~[(40)]~~ (39) (a) "Owner" means a person, other than a lienholder, holding title to a
165 vehicle, vessel, or outboard motor whether or not the vehicle, vessel, or outboard motor is
166 subject to a security interest.

167 (b) If a vehicle is the subject of an agreement for the conditional sale or installment
168 sale or mortgage of the vehicle with the right of purchase upon performance of the conditions
169 stated in the agreement and with an immediate right of possession vested in the conditional
170 vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the
171 conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this
172 chapter.

173 (c) If a vehicle is the subject of an agreement to lease, the lessor is considered the
174 owner until the lessee exercises his option to purchase the vehicle.

175 ~~[(41)]~~ (40) "Personalized license plate" means a license plate that has displayed on it a
176 combination of letters, numbers, or both as requested by the owner of the vehicle and assigned
177 to the vehicle by the division.

178 ~~[(42)]~~ (41) (a) "Pickup truck" means a two-axle motor vehicle with motive power
179 manufactured, remanufactured, or materially altered to provide an open cargo area.

180 (b) "Pickup truck" includes motor vehicles with the open cargo area covered with a
181 camper, camper shell, tarp, removable top, or similar structure.

182 ~~[(43)]~~ (42) "Pneumatic tire" means every tire in which compressed air is designed to

183 support the load.

184 [~~(44)~~] (43) "Preceding year" means a period of 12 consecutive months fixed by the
185 division that is within 16 months immediately preceding the commencement of the registration
186 or license year in which proportional registration is sought. The division in fixing the period
187 shall conform it to the terms, conditions, and requirements of any applicable agreement or
188 arrangement for the proportional registration of vehicles.

189 [~~(45)~~] (44) "Public garage" means every building or other place where vehicles or
190 vessels are kept and stored and where a charge is made for the storage and keeping of vehicles
191 and vessels.

192 (45) "Receipt of surrender of ownership documents" means the receipt of surrender of
193 ownership documents described in Section 41-1a-503.

194 (46) "Reconstructed vehicle" means every vehicle of a type required to be registered in
195 this state that is materially altered from its original construction by the removal, addition, or
196 substitution of essential parts, new or used.

197 (47) "Recreational vehicle" has the same meaning as provided in Section 13-14-102.

198 (48) "Registration" means a document issued by a jurisdiction that allows operation of
199 a vehicle or vessel on the highways or waters of this state for the time period for which the
200 registration is valid and that is evidence of compliance with the registration requirements of the
201 jurisdiction.

202 (49) (a) "Registration year" means a 12 consecutive month period commencing with
203 the completion of all applicable registration criteria.

204 (b) For administration of a multistate agreement for proportional registration the
205 division may prescribe a different 12-month period.

206 (50) "Repair or replacement" means the restoration of vehicles, vessels, or outboard
207 motors to a sound working condition by substituting any inoperative part of the vehicle, vessel,
208 or outboard motor, or by correcting the inoperative part.

209 (51) "Replica vehicle" means:

210 (a) a street rod that meets the requirements under Subsection 41-21-1(1)(a)(i)(B); or

211 (b) a custom vehicle that meets the requirements under Subsection

212 41-6a-1507(1)(a)(i)(B).

213 (52) "Road tractor" means every motor vehicle designed and used for drawing other

214 vehicles and constructed so it does not carry any load either independently or any part of the
215 weight of a vehicle or load that is drawn.

216 (53) "Sailboat" has the same meaning as provided in Section 73-18-2.

217 (54) "Security interest" means an interest that is reserved or created by a security
218 agreement to secure the payment or performance of an obligation and that is valid against third
219 parties.

220 (55) "Semitrailer" means every vehicle without motive power designed for carrying
221 persons or property and for being drawn by a motor vehicle and constructed so that some part
222 of its weight and its load rests or is carried by another vehicle.

223 (56) "Special group license plate" means a type of license plate designed for a
224 particular group of people or a license plate authorized and issued by the division in accordance
225 with Section 41-1a-418.

226 (57) (a) "Special interest vehicle" means a vehicle used for general transportation
227 purposes and that is:

228 (i) 20 years or older from the current year; or

229 (ii) a make or model of motor vehicle recognized by the division director as having
230 unique interest or historic value.

231 (b) In making his determination under Subsection (57)(a), the division director shall
232 give special consideration to:

233 (i) a make of motor vehicle that is no longer manufactured;

234 (ii) a make or model of motor vehicle produced in limited or token quantities;

235 (iii) a make or model of motor vehicle produced as an experimental vehicle or one
236 designed exclusively for educational purposes or museum display; or

237 (iv) a motor vehicle of any age or make that has not been substantially altered or
238 modified from original specifications of the manufacturer and because of its significance is
239 being collected, preserved, restored, maintained, or operated by a collector or hobbyist as a
240 leisure pursuit.

241 (58) (a) "Special mobile equipment" means every vehicle:

242 (i) not designed or used primarily for the transportation of persons or property;

243 (ii) not designed to operate in traffic; and

244 (iii) only incidentally operated or moved over the highways.

245 (b) "Special mobile equipment" includes:

246 (i) farm tractors;

247 (ii) off-road motorized construction or maintenance equipment including backhoes,
248 bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers; and

249 (iii) ditch-digging apparatus.

250 (c) "Special mobile equipment" does not include a commercial vehicle as defined
251 under Section 72-9-102.

252 (59) "Specially constructed vehicle" means every vehicle of a type required to be
253 registered in this state, not originally constructed under a distinctive name, make, model, or
254 type by a generally recognized manufacturer of vehicles, and not materially altered from its
255 original construction.

256 (60) "Title" means the right to or ownership of a vehicle, vessel, or outboard motor.

257 (61) (a) "Total fleet miles" means the total number of miles operated in all jurisdictions
258 during the preceding year by power units.

259 (b) If fleets are composed entirely of trailers or semitrailers, "total fleet miles" means
260 the number of miles that those vehicles were towed on the highways of all jurisdictions during
261 the preceding year.

262 (62) "Trailer" means a vehicle without motive power designed for carrying persons or
263 property and for being drawn by a motor vehicle and constructed so that no part of its weight
264 rests upon the towing vehicle.

265 (63) "Transferee" means a person to whom the ownership of property is conveyed by
266 sale, gift, or any other means except by the creation of a security interest.

267 (64) "Transferor" means a person who transfers his ownership in property by sale, gift,
268 or any other means except by creation of a security interest.

269 (65) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle
270 without motive power, designed as a temporary dwelling for travel, recreational, or vacation
271 use that does not require a special highway movement permit when drawn by a self-propelled
272 motor vehicle.

273 (66) "Truck tractor" means a motor vehicle designed and used primarily for drawing
274 other vehicles and not constructed to carry a load other than a part of the weight of the vehicle
275 and load that is drawn.

276 (67) "Vehicle" includes a motor vehicle, trailer, semitrailer, off-highway vehicle,
277 manufactured home, and mobile home.

278 (68) "Vessel" has the same meaning as provided in Section 73-18-2.

279 (69) "Vintage vehicle" has the same meaning as provided in Section 41-21-1.

280 (70) "Waters of this state" has the same meaning as provided in Section 73-18-2.

281 (71) "Weighmaster" means a person, association of persons, or corporation permitted
282 to weigh vehicles under this chapter.

283 Section 2. Section **41-1a-503** is amended to read:

284 **41-1a-503. Certificate of title or receipt of surrender of ownership documents**
285 **required -- Application by owner.**

286 (1) The owner of a manufactured home or mobile home shall apply to the division for a
287 certificate of title unless the manufactured home or mobile home is previously registered as real
288 property under Subsection 41-1a-506(1).

289 (2) (a) An owner of a manufactured home or mobile home previously issued a
290 certificate of title who attaches that manufactured home or mobile home to real property shall
291 apply for [~~an Affidavit of Mobile Home Affixture~~] a receipt of surrender of ownership
292 documents within 45 days of attaching to the real property.

293 (b) Upon application, the division shall issue [~~an Affidavit of Mobile Home Affixture~~]
294 a receipt of surrender of ownership documents in lieu of a certificate of title.

295 (c) However, manufactured homes and mobile homes are not exempt from the other
296 requirements of this part.

297 (3) (a) The owner of a manufactured home or mobile home previously issued [~~an~~
298 ~~Affidavit of Mobile Home Affixture~~] a receipt of surrender of ownership documents who
299 separates that manufactured home or mobile home from the real property shall apply for a
300 certificate of title within 45 days of the separation[~~, prior to~~] and before any transfer of
301 ownership of that manufactured home or mobile home.

302 (b) Upon application, the division shall issue a certificate of title in lieu of [~~an~~
303 ~~Affidavit of Mobile Home Affixture~~] a receipt of surrender of ownership documents.

304 Section 3. Section **41-1a-506** is amended to read:

305 **41-1a-506. Exceptions to title requirements for manufactured homes or mobile**
306 **homes.**

307 (1) A manufactured home or mobile home in this state is subject to the titling
308 provisions of this part except:

309 (a) a manufactured home or mobile home owned and operated by the federal
310 government; and

311 (b) a manufactured home or mobile home that has been converted to real property
312 under Section 70D-2-401 [if:].

313 [~~(i) (A) an Affidavit of Mobile Home Affixture is issued by the division for that home;~~
314 ~~and]~~

315 [~~(B) the home is permanently affixed to real property; or]~~

316 [~~(ii) (A) the home is permanently affixed to real property;~~]

317 [~~(B) the home is not registered with the division;]~~

318 [~~(C) the home is taxed as an improvement to real estate by the county assessor as~~
319 ~~permitted under Section 59-2-1503; and]~~

320 [~~(D) the manufacturer's identification number or numbers are included in the deed or~~
321 ~~loan document recorded with the county recorder.]~~

322 (2) A manufactured home or mobile home previously converted to real property but
323 that has been separated from the real property is subject to the titling provisions of this part
324 upon separation.

325 Section 4. Section **41-1a-509** is amended to read:

326 **41-1a-509. Manufacturer's certificate of origin or title.**

327 (1) If a vehicle other than an off-highway vehicle older than a 1988 model year, or a
328 vessel or outboard motor older than a 1985 model year has not been previously titled, the
329 application for certificate of title shall include the manufacturer's certificate of origin properly
330 endorsed for transfer.

331 (2) The manufacturer's certificate of origin shall show:

332 (a) the date of sale to the dealer or person first receiving it from the manufacturer;

333 (b) the name of the dealer or person;

334 (c) a description sufficient to identify the vehicle, vessel, or outboard motor; and

335 (d) a certification by the dealer that the vehicle, vessel, or outboard motor was new
336 when sold to the applicant.

337 (3) (a) If the vehicle, vessel, or outboard motor is from a state or foreign country that

338 does not issue or require certificates of title, the owner shall submit a bill of sale, sworn
339 statement of ownership, or any other evidence of ownership required by the division.

340 (b) The division may refuse to issue a certificate of title or [~~an affidavit of Mobile~~
341 ~~Home Affixture~~] receipt of surrender of ownership documents if the applicant fails to submit
342 the evidence of ownership required.

343 Section 5. Section **41-1a-510** is amended to read:

344 **41-1a-510. Sales tax payment required.**

345 (1) (a) Except as provided in Subsection (1)(b), the division before issuing a certificate
346 of title to a vehicle, vessel, or outboard motor shall require from every applicant:

347 (i) a receipt from the division showing that the sales tax has been paid to the state on
348 the sale of the vehicle, vessel, or outboard motor upon which application for certificate of title
349 has been made; or

350 (ii) a certificate from the division showing that no sales tax is due.

351 (b) If a licensed dealer has made a report of sale, no receipt or certificate is required.

352 (2) The division may also issue [~~an Affidavit of Mobile Home Affixture~~] a receipt of
353 surrender of ownership documents for a manufactured home or mobile home if the applicant
354 complies with Subsection (1).

355 Section 6. Section **41-1a-519** is amended to read:

356 **41-1a-519. Dealer requirements for certificate of title or affidavit of affixture and**
357 **receipt of surrender of title.**

358 (1) If a dealer delivers a new off-highway vehicle, vessel, or outboard motor to the
359 purchaser, the dealer shall apply for issuance of a certificate of title or [~~Affidavit of Mobile~~
360 ~~Home Affixture~~] receipt of surrender of ownership documents, as appropriate, in the
361 purchaser's name within 45 days of the date of sale.

362 (2) A dealer who purchases or takes in trade a used off-highway vehicle, vessel, or
363 outboard motor on which a certificate of title has previously been issued is not required to
364 apply for a certificate of title.

365 Section 7. Section **41-1a-709** is amended to read:

366 **41-1a-709. Dealer transfer of used off-highway vehicle, vessel, or outboard motor.**

367 Upon the resale or subsequent transfer by a dealer of a used off-highway vehicle, vessel,
368 or outboard motor, the dealer shall endorse the certificate of title and forward it, accompanied

369 by the transferee's application for a certificate of title, or if desired by the purchaser, and as
370 applicable, [~~an affidavit of Mobile Home Affixture~~] a receipt of surrender of ownership
371 documents, to the division.

372 Section 8. Section **59-12-102 (Superseded 07/01/14)** is amended to read:

373 **59-12-102 (Superseded 07/01/14). Definitions.**

374 As used in this chapter:

375 (1) "800 service" means a telecommunications service that:

376 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

377 (b) is typically marketed:

378 (i) under the name 800 toll-free calling;

379 (ii) under the name 855 toll-free calling;

380 (iii) under the name 866 toll-free calling;

381 (iv) under the name 877 toll-free calling;

382 (v) under the name 888 toll-free calling; or

383 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

384 Federal Communications Commission.

385 (2) (a) "900 service" means an inbound toll telecommunications service that:

386 (i) a subscriber purchases;

387 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
388 the subscriber's:

389 (A) prerecorded announcement; or

390 (B) live service; and

391 (iii) is typically marketed:

392 (A) under the name 900 service; or

393 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

394 Communications Commission.

395 (b) "900 service" does not include a charge for:

396 (i) a collection service a seller of a telecommunications service provides to a
397 subscriber; or

398 (ii) the following a subscriber sells to the subscriber's customer:

399 (A) a product; or

- 400 (B) a service.
- 401 (3) (a) "Admission or user fees" includes season passes.
- 402 (b) "Admission or user fees" does not include annual membership dues to private
- 403 organizations.
- 404 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 405 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 406 Agreement after November 12, 2002.
- 407 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 408 (a) listed under Subsection (6); and
- 409 (b) that are imposed within a local taxing jurisdiction.
- 410 (6) "Agreement sales and use tax" means a tax imposed under:
- 411 (a) Subsection 59-12-103(2)(a)(i)(A);
- 412 (b) Subsection 59-12-103(2)(b)(i);
- 413 (c) Subsection 59-12-103(2)(c)(i);
- 414 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 415 (e) Section 59-12-204;
- 416 (f) Section 59-12-401;
- 417 (g) Section 59-12-402;
- 418 (h) Section 59-12-703;
- 419 (i) Section 59-12-802;
- 420 (j) Section 59-12-804;
- 421 (k) Section 59-12-1102;
- 422 (l) Section 59-12-1302;
- 423 (m) Section 59-12-1402;
- 424 (n) Section 59-12-1802;
- 425 (o) Section 59-12-2003;
- 426 (p) Section 59-12-2103;
- 427 (q) Section 59-12-2213;
- 428 (r) Section 59-12-2214;
- 429 (s) Section 59-12-2215;
- 430 (t) Section 59-12-2216;

- 431 (u) Section 59-12-2217; or
- 432 (v) Section 59-12-2218.
- 433 (7) "Aircraft" is as defined in Section 72-10-102.
- 434 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 435 (a) except for:
- 436 (i) an airline as defined in Section 59-2-102; or
- 437 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 438 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 439 state, of an airline; and
- 440 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 441 whether the business entity performs the following in this state:
- 442 (i) check, diagnose, overhaul, and repair:
- 443 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 444 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 445 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 446 engine;
- 447 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 448 aircraft:
- 449 (A) an inspection;
- 450 (B) a repair, including a structural repair or modification;
- 451 (C) changing landing gear; and
- 452 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 453 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 454 completely apply new paint to the fixed wing turbine powered aircraft; and
- 455 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 456 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 457 authority that certifies the fixed wing turbine powered aircraft.
- 458 (9) "Alcoholic beverage" means a beverage that:
- 459 (a) is suitable for human consumption; and
- 460 (b) contains [~~.5%~~] 0.5% or more alcohol by volume.
- 461 (10) "Alternative energy" means:

- 462 (a) biomass energy;
- 463 (b) geothermal energy;
- 464 (c) hydroelectric energy;
- 465 (d) solar energy;
- 466 (e) wind energy; or
- 467 (f) energy that is derived from:
 - 468 (i) coal-to-liquids;
 - 469 (ii) nuclear fuel;
 - 470 (iii) oil-impregnated diatomaceous earth;
 - 471 (iv) oil sands;
 - 472 (v) oil shale; or
 - 473 (vi) petroleum coke.
- 474 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
- 475 facility" means a facility that:
 - 476 (i) uses alternative energy to produce electricity; and
 - 477 (ii) has a production capacity of [~~2~~] two megawatts or greater.
- 478 (b) A facility is an alternative energy electricity production facility regardless of
- 479 whether the facility is:
 - 480 (i) connected to an electric grid; or
 - 481 (ii) located on the premises of an electricity consumer.
- 482 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
- 483 provision of telecommunications service.
 - 484 (b) "Ancillary service" includes:
 - 485 (i) a conference bridging service;
 - 486 (ii) a detailed communications billing service;
 - 487 (iii) directory assistance;
 - 488 (iv) a vertical service; or
 - 489 (v) a voice mail service.
- 490 (13) "Area agency on aging" is as defined in Section 62A-3-101.
- 491 (14) "Assisted amusement device" means an amusement device, skill device, or ride
- 492 device that is started and stopped by an individual:

493 (a) who is not the purchaser or renter of the right to use or operate the amusement
494 device, skill device, or ride device; and

495 (b) at the direction of the seller of the right to use the amusement device, skill device,
496 or ride device.

497 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
498 washing of tangible personal property if the cleaning or washing labor is primarily performed
499 by an individual:

500 (a) who is not the purchaser of the cleaning or washing of the tangible personal
501 property; and

502 (b) at the direction of the seller of the cleaning or washing of the tangible personal
503 property.

504 (16) "Authorized carrier" means:

505 (a) in the case of vehicles operated over public highways, the holder of credentials
506 indicating that the vehicle is or will be operated pursuant to both the International Registration
507 Plan and the International Fuel Tax Agreement;

508 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
509 certificate or air carrier's operating certificate; or

510 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
511 stock, the holder of a certificate issued by the United States Surface Transportation Board.

512 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the
513 following that is used as the primary source of energy to produce fuel or electricity:

514 (i) material from a plant or tree; or

515 (ii) other organic matter that is available on a renewable basis, including:

516 (A) slash and brush from forests and woodlands;

517 (B) animal waste;

518 (C) methane produced:

519 (I) at landfills; or

520 (II) as a byproduct of the treatment of wastewater residuals;

521 (D) aquatic plants; and

522 (E) agricultural products.

523 (b) "Biomass energy" does not include:

- 524 (i) black liquor;
- 525 (ii) treated woods; or
- 526 (iii) biomass from municipal solid waste other than methane produced:
- 527 (A) at landfills; or
- 528 (B) as a byproduct of the treatment of wastewater residuals.
- 529 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 530 property, products, or services if the tangible personal property, products, or services are:
- 531 (i) distinct and identifiable; and
- 532 (ii) sold for one nonitemized price.
- 533 (b) "Bundled transaction" does not include:
- 534 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 535 the basis of the selection by the purchaser of the items of tangible personal property included in
- 536 the transaction;
- 537 (ii) the sale of real property;
- 538 (iii) the sale of services to real property;
- 539 (iv) the retail sale of tangible personal property and a service if:
- 540 (A) the tangible personal property:
- 541 (I) is essential to the use of the service; and
- 542 (II) is provided exclusively in connection with the service; and
- 543 (B) the service is the true object of the transaction;
- 544 (v) the retail sale of two services if:
- 545 (A) one service is provided that is essential to the use or receipt of a second service;
- 546 (B) the first service is provided exclusively in connection with the second service; and
- 547 (C) the second service is the true object of the transaction;
- 548 (vi) a transaction that includes tangible personal property or a product subject to
- 549 taxation under this chapter and tangible personal property or a product that is not subject to
- 550 taxation under this chapter if the:
- 551 (A) seller's purchase price of the tangible personal property or product subject to
- 552 taxation under this chapter is de minimis; or
- 553 (B) seller's sales price of the tangible personal property or product subject to taxation
- 554 under this chapter is de minimis; and

555 (vii) the retail sale of tangible personal property that is not subject to taxation under
556 this chapter and tangible personal property that is subject to taxation under this chapter if:

557 (A) that retail sale includes:

558 (I) food and food ingredients;

559 (II) a drug;

560 (III) durable medical equipment;

561 (IV) mobility enhancing equipment;

562 (V) an over-the-counter drug;

563 (VI) a prosthetic device; or

564 (VII) a medical supply; and

565 (B) subject to Subsection (18)(f):

566 (I) the seller's purchase price of the tangible personal property subject to taxation under
567 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

568 (II) the seller's sales price of the tangible personal property subject to taxation under
569 this chapter is 50% or less of the seller's total sales price of that retail sale.

570 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
571 service that is distinct and identifiable does not include:

572 (A) packaging that:

573 (I) accompanies the sale of the tangible personal property, product, or service; and

574 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
575 service;

576 (B) tangible personal property, a product, or a service provided free of charge with the
577 purchase of another item of tangible personal property, a product, or a service; or

578 (C) an item of tangible personal property, a product, or a service included in the
579 definition of "purchase price."

580 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
581 product, or a service is provided free of charge with the purchase of another item of tangible
582 personal property, a product, or a service if the sales price of the purchased item of tangible
583 personal property, product, or service does not vary depending on the inclusion of the tangible
584 personal property, product, or service provided free of charge.

585 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price

586 does not include a price that is separately identified by tangible personal property, product, or
587 service on the following, regardless of whether the following is in paper format or electronic
588 format:

589 (A) a binding sales document; or

590 (B) another supporting sales-related document that is available to a purchaser.

591 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
592 supporting sales-related document that is available to a purchaser includes:

593 (A) a bill of sale;

594 (B) a contract;

595 (C) an invoice;

596 (D) a lease agreement;

597 (E) a periodic notice of rates and services;

598 (F) a price list;

599 (G) a rate card;

600 (H) a receipt; or

601 (I) a service agreement.

602 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
603 property or a product subject to taxation under this chapter is de minimis if:

604 (A) the seller's purchase price of the tangible personal property or product is 10% or
605 less of the seller's total purchase price of the bundled transaction; or

606 (B) the seller's sales price of the tangible personal property or product is 10% or less of
607 the seller's total sales price of the bundled transaction.

608 (ii) For purposes of Subsection (18)(b)(vi), a seller:

609 (A) shall use the seller's purchase price or the seller's sales price to determine if the
610 purchase price or sales price of the tangible personal property or product subject to taxation
611 under this chapter is de minimis; and

612 (B) may not use a combination of the seller's purchase price and the seller's sales price
613 to determine if the purchase price or sales price of the tangible personal property or product
614 subject to taxation under this chapter is de minimis.

615 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
616 contract to determine if the sales price of tangible personal property or a product is de minimis.

617 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
618 the seller's purchase price and the seller's sales price to determine if tangible personal property
619 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
620 price of that retail sale.

621 (19) "Certified automated system" means software certified by the governing board of
622 the agreement that:

623 (a) calculates the agreement sales and use tax imposed within a local taxing
624 jurisdiction:

625 (i) on a transaction; and

626 (ii) in the states that are members of the agreement;

627 (b) determines the amount of agreement sales and use tax to remit to a state that is a
628 member of the agreement; and

629 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

630 (20) "Certified service provider" means an agent certified:

631 (a) by the governing board of the agreement; and

632 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
633 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
634 own purchases.

635 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
636 suitable for general use.

637 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
638 commission shall make rules:

639 (i) listing the items that constitute "clothing"; and

640 (ii) that are consistent with the list of items that constitute "clothing" under the
641 agreement.

642 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

643 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
644 fuels that does not constitute industrial use under Subsection (51) or residential use under
645 Subsection (101).

646 (24) (a) "Common carrier" means a person engaged in or transacting the business of
647 transporting passengers, freight, merchandise, or other property for hire within this state.

648 (b) (i) "Common carrier" does not include a person who, at the time the person is
649 traveling to or from that person's place of employment, transports a passenger to or from the
650 passenger's place of employment.

651 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,
652 Utah Administrative Rulemaking Act, the commission may make rules defining what
653 constitutes a person's place of employment.

654 (25) "Component part" includes:

655 (a) poultry, dairy, and other livestock feed, and their components;

656 (b) baling ties and twine used in the baling of hay and straw;

657 (c) fuel used for providing temperature control of orchards and commercial
658 greenhouses doing a majority of their business in wholesale sales, and for providing power for
659 off-highway type farm machinery; and

660 (d) feed, seeds, and seedlings.

661 (26) "Computer" means an electronic device that accepts information:

662 (a) (i) in digital form; or

663 (ii) in a form similar to digital form; and

664 (b) manipulates that information for a result based on a sequence of instructions.

665 (27) "Computer software" means a set of coded instructions designed to cause:

666 (a) a computer to perform a task; or

667 (b) automatic data processing equipment to perform a task.

668 (28) "Computer software maintenance contract" means a contract that obligates a seller
669 of computer software to provide a customer with:

670 (a) future updates or upgrades to computer software;

671 (b) support services with respect to computer software; or

672 (c) a combination of Subsections (28)(a) and (b).

673 (29) (a) "Conference bridging service" means an ancillary service that links two or
674 more participants of an audio conference call or video conference call.

675 (b) "Conference bridging service" may include providing a telephone number as part of
676 the ancillary service described in Subsection (29)(a).

677 (c) "Conference bridging service" does not include a telecommunications service used
678 to reach the ancillary service described in Subsection (29)(a).

679 (30) "Construction materials" means any tangible personal property that will be
680 converted into real property.

681 (31) "Delivered electronically" means delivered to a purchaser by means other than
682 tangible storage media.

683 (32) (a) "Delivery charge" means a charge:

684 (i) by a seller of:

685 (A) tangible personal property;

686 (B) a product transferred electronically; or

687 (C) services; and

688 (ii) for preparation and delivery of the tangible personal property, product transferred
689 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
690 purchaser.

691 (b) "Delivery charge" includes a charge for the following:

692 (i) transportation;

693 (ii) shipping;

694 (iii) postage;

695 (iv) handling;

696 (v) crating; or

697 (vi) packing.

698 (33) "Detailed telecommunications billing service" means an ancillary service of
699 separately stating information pertaining to individual calls on a customer's billing statement.

700 (34) "Dietary supplement" means a product, other than tobacco, that:

701 (a) is intended to supplement the diet;

702 (b) contains one or more of the following dietary ingredients:

703 (i) a vitamin;

704 (ii) a mineral;

705 (iii) an herb or other botanical;

706 (iv) an amino acid;

707 (v) a dietary substance for use by humans to supplement the diet by increasing the total
708 dietary intake; or

709 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

710 described in Subsections (34)(b)(i) through (v);
711 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
712 (A) tablet form;
713 (B) capsule form;
714 (C) powder form;
715 (D) softgel form;
716 (E) gelcap form; or
717 (F) liquid form; or
718 (ii) notwithstanding Subsection (34)(c)(i), if the product is not intended for ingestion in
719 a form described in Subsections (34)(c)(i)(A) through (F), is not represented:
720 (A) as conventional food; and
721 (B) for use as a sole item of:
722 (I) a meal; or
723 (II) the diet; and
724 (d) is required to be labeled as a dietary supplement:
725 (i) identifiable by the "Supplemental Facts" box found on the label; and
726 (ii) as required by 21 C.F.R. Sec. 101.36.
727 (35) (a) "Direct mail" means printed material delivered or distributed by United States
728 mail or other delivery service:
729 (i) to:
730 (A) a mass audience; or
731 (B) addressees on a mailing list provided:
732 (I) by a purchaser of the mailing list; or
733 (II) at the discretion of the purchaser of the mailing list; and
734 (ii) if the cost of the printed material is not billed directly to the recipients.
735 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
736 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
737 (c) "Direct mail" does not include multiple items of printed material delivered to a
738 single address.
739 (36) "Directory assistance" means an ancillary service of providing:
740 (a) address information; or

- 741 (b) telephone number information.
- 742 (37) (a) "Disposable home medical equipment or supplies" means medical equipment
- 743 or supplies that:
 - 744 (i) cannot withstand repeated use; and
 - 745 (ii) are purchased by, for, or on behalf of a person other than:
 - 746 (A) a health care facility as defined in Section 26-21-2;
 - 747 (B) a health care provider as defined in Section 78B-3-403;
 - 748 (C) an office of a health care provider described in Subsection (37)(a)(ii)(B); or
 - 749 (D) a person similar to a person described in Subsections (37)(a)(ii)(A) through (C).
- 750 (b) "Disposable home medical equipment or supplies" does not include:
 - 751 (i) a drug;
 - 752 (ii) durable medical equipment;
 - 753 (iii) a hearing aid;
 - 754 (iv) a hearing aid accessory;
 - 755 (v) mobility enhancing equipment; or
 - 756 (vi) tangible personal property used to correct impaired vision, including:
 - 757 (A) eyeglasses; or
 - 758 (B) contact lenses.
- 759 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 760 commission may by rule define what constitutes medical equipment or supplies.
- 761 (38) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 762 compound, substance, or preparation that is:
 - 763 (i) recognized in:
 - 764 (A) the official United States Pharmacopoeia;
 - 765 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 766 (C) the official National Formulary; or
 - 767 (D) a supplement to a publication listed in Subsections (38)(a)(i)(A) through (C);
 - 768 (ii) intended for use in the:
 - 769 (A) diagnosis of disease;
 - 770 (B) cure of disease;
 - 771 (C) mitigation of disease;

- 772 (D) treatment of disease; or
- 773 (E) prevention of disease; or
- 774 (iii) intended to affect:
- 775 (A) the structure of the body; or
- 776 (B) any function of the body.
- 777 (b) "Drug" does not include:
- 778 (i) food and food ingredients;
- 779 (ii) a dietary supplement;
- 780 (iii) an alcoholic beverage; or
- 781 (iv) a prosthetic device.
- 782 (39) (a) Except as provided in Subsection (39)(c), "durable medical equipment" means
- 783 equipment that:
- 784 (i) can withstand repeated use;
- 785 (ii) is primarily and customarily used to serve a medical purpose;
- 786 (iii) generally is not useful to a person in the absence of illness or injury; and
- 787 (iv) is not worn in or on the body.
- 788 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 789 equipment described in Subsection (39)(a).
- 790 (c) Notwithstanding Subsection (39)(a), "durable medical equipment" does not include
- 791 mobility enhancing equipment.
- 792 (40) "Electronic" means:
- 793 (a) relating to technology; and
- 794 (b) having:
- 795 (i) electrical capabilities;
- 796 (ii) digital capabilities;
- 797 (iii) magnetic capabilities;
- 798 (iv) wireless capabilities;
- 799 (v) optical capabilities;
- 800 (vi) electromagnetic capabilities; or
- 801 (vii) capabilities similar to Subsections (40)(b)(i) through (vi).
- 802 (41) "Employee" is as defined in Section 59-10-401.

- 803 (42) "Fixed guideway" means a public transit facility that uses and occupies:
804 (a) rail for the use of public transit; or
805 (b) a separate right-of-way for the use of public transit.
- 806 (43) "Fixed wing turbine powered aircraft" means an aircraft that:
807 (a) is powered by turbine engines;
808 (b) operates on jet fuel; and
809 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 810 (44) "Fixed wireless service" means a telecommunications service that provides radio
811 communication between fixed points.
- 812 (45) (a) "Food and food ingredients" means substances:
813 (i) regardless of whether the substances are in:
814 (A) liquid form;
815 (B) concentrated form;
816 (C) solid form;
817 (D) frozen form;
818 (E) dried form; or
819 (F) dehydrated form; and
820 (ii) that are:
821 (A) sold for:
822 (I) ingestion by humans; or
823 (II) chewing by humans; and
824 (B) consumed for the substance's:
825 (I) taste; or
826 (II) nutritional value.
- 827 (b) "Food and food ingredients" includes an item described in Subsection (86)(b)(iii).
828 (c) "Food and food ingredients" does not include:
829 (i) an alcoholic beverage;
830 (ii) tobacco; or
831 (iii) prepared food.
- 832 (46) (a) "Fundraising sales" means sales:
833 (i) (A) made by a school; or

- 834 (B) made by a school student;
- 835 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 836 materials, or provide transportation; and
- 837 (iii) that are part of an officially sanctioned school activity.
- 838 (b) For purposes of Subsection (46)(a)(iii), "officially sanctioned school activity"
- 839 means a school activity:
 - 840 (i) that is conducted in accordance with a formal policy adopted by the school or school
 - 841 district governing the authorization and supervision of fundraising activities;
 - 842 (ii) that does not directly or indirectly compensate an individual teacher or other
 - 843 educational personnel by direct payment, commissions, or payment in kind; and
 - 844 (iii) the net or gross revenues from which are deposited in a dedicated account
 - 845 controlled by the school or school district.
- 846 (47) "Geothermal energy" means energy contained in heat that continuously flows
- 847 outward from the earth that is used as the sole source of energy to produce electricity.
- 848 (48) "Governing board of the agreement" means the governing board of the agreement
- 849 that is:
 - 850 (a) authorized to administer the agreement; and
 - 851 (b) established in accordance with the agreement.
- 852 (49) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
 - 853 (i) the executive branch of the state, including all departments, institutions, boards,
 - 854 divisions, bureaus, offices, commissions, and committees;
 - 855 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
 - 856 Office of the Court Administrator, and similar administrative units in the judicial branch;
 - 857 (iii) the legislative branch of the state, including the House of Representatives, the
 - 858 Senate, the Legislative Printing Office, the Office of Legislative Research and General
 - 859 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
 - 860 Analyst;
 - 861 (iv) the National Guard;
 - 862 (v) an independent entity as defined in Section 63E-1-102; or
 - 863 (vi) a political subdivision as defined in Section 17B-1-102.
- 864 (b) "Governmental entity" does not include the state systems of public and higher

865 education, including:

866 (i) a college campus of the Utah College of Applied Technology;

867 (ii) a school;

868 (iii) the State Board of Education;

869 (iv) the State Board of Regents; or

870 (v) an institution of higher education.

871 (50) "Hydroelectric energy" means water used as the sole source of energy to produce
872 electricity.

873 (51) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
874 other fuels:

875 (a) in mining or extraction of minerals;

876 (b) in agricultural operations to produce an agricultural product up to the time of
877 harvest or placing the agricultural product into a storage facility, including:

878 (i) commercial greenhouses;

879 (ii) irrigation pumps;

880 (iii) farm machinery;

881 (iv) implements of husbandry as defined in [~~Subsection~~ Section 41-1a-102~~(23)~~] that
882 are not registered under Title 41, Chapter 1a, Part 2, Registration; and

883 (v) other farming activities;

884 (c) in manufacturing tangible personal property at an establishment described in SIC
885 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
886 Executive Office of the President, Office of Management and Budget;

887 (d) by a scrap recycler if:

888 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
889 one or more of the following items into prepared grades of processed materials for use in new
890 products:

891 (A) iron;

892 (B) steel;

893 (C) nonferrous metal;

894 (D) paper;

895 (E) glass;

896 (F) plastic;
897 (G) textile; or
898 (H) rubber; and
899 (ii) the new products under Subsection (51)(d)(i) would otherwise be made with
900 nonrecycled materials; or

901 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
902 cogeneration facility as defined in Section 54-2-1.

903 (52) (a) Except as provided in Subsection (52)(b), "installation charge" means a charge
904 for installing:

- 905 (i) tangible personal property; or
- 906 (ii) a product transferred electronically.
- 907 (b) "Installation charge" does not include a charge for:
 - 908 (i) repairs or renovations of:
 - 909 (A) tangible personal property; or
 - 910 (B) a product transferred electronically; or
 - 911 (ii) attaching tangible personal property or a product transferred electronically:
 - 912 (A) to other tangible personal property; and
 - 913 (B) as part of a manufacturing or fabrication process.

914 (53) "Institution of higher education" means an institution of higher education listed in
915 Section 53B-2-101.

916 (54) (a) "Lease" or "rental" means a transfer of possession or control of tangible
917 personal property or a product transferred electronically for:

- 918 (i) (A) a fixed term; or
- 919 (B) an indeterminate term; and
- 920 (ii) consideration.
- 921 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
922 amount of consideration may be increased or decreased by reference to the amount realized
923 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
924 Code.

925 (c) "Lease" or "rental" does not include:
926 (i) a transfer of possession or control of property under a security agreement or

927 deferred payment plan that requires the transfer of title upon completion of the required
928 payments;

929 (ii) a transfer of possession or control of property under an agreement that requires the
930 transfer of title:

931 (A) upon completion of required payments; and

932 (B) if the payment of an option price does not exceed the greater of:

933 (I) \$100; or

934 (II) 1% of the total required payments; or

935 (iii) providing tangible personal property along with an operator for a fixed period of
936 time or an indeterminate period of time if the operator is necessary for equipment to perform as
937 designed.

938 (d) For purposes of Subsection (54)(c)(iii), an operator is necessary for equipment to
939 perform as designed if the operator's duties exceed the:

940 (i) set-up of tangible personal property;

941 (ii) maintenance of tangible personal property; or

942 (iii) inspection of tangible personal property.

943 (55) "Life science establishment" means an establishment in this state that is classified
944 under the following NAICS codes of the 2007 North American Industry Classification System
945 of the federal Executive Office of the President, Office of Management and Budget:

946 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

947 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
948 Manufacturing; or

949 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

950 (56) "Life science research and development facility" means a facility owned, leased,
951 or rented by a life science establishment if research and development is performed in 51% or
952 more of the total area of the facility.

953 (57) "Load and leave" means delivery to a purchaser by use of a tangible storage media
954 if the tangible storage media is not physically transferred to the purchaser.

955 (58) "Local taxing jurisdiction" means a:

956 (a) county that is authorized to impose an agreement sales and use tax;

957 (b) city that is authorized to impose an agreement sales and use tax; or

- 958 (c) town that is authorized to impose an agreement sales and use tax.
- 959 (59) "Manufactured home" is as defined in Section 15A-1-302.
- 960 (60) For purposes of Section 59-12-104, "manufacturing facility" means:
- 961 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 962 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 963 Management and Budget;
- 964 (b) a scrap recycler if:
- 965 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 966 one or more of the following items into prepared grades of processed materials for use in new
- 967 products:
- 968 (A) iron;
- 969 (B) steel;
- 970 (C) nonferrous metal;
- 971 (D) paper;
- 972 (E) glass;
- 973 (F) plastic;
- 974 (G) textile; or
- 975 (H) rubber; and
- 976 (ii) the new products under Subsection (60)(b)(i) would otherwise be made with
- 977 nonrecycled materials; or
- 978 (c) a cogeneration facility as defined in Section 54-2-1.
- 979 (61) "Member of the immediate family of the producer" means a person who is related
- 980 to a producer described in Subsection 59-12-104(20)(a) as a:
- 981 (a) child or stepchild, regardless of whether the child or stepchild is:
- 982 (i) an adopted child or adopted stepchild; or
- 983 (ii) a foster child or foster stepchild;
- 984 (b) grandchild or stepgrandchild;
- 985 (c) grandparent or stepgrandparent;
- 986 (d) nephew or stepnephew;
- 987 (e) niece or stepniece;
- 988 (f) parent or stepparent;

989 (g) sibling or stepsibling;

990 (h) spouse;

991 (i) person who is the spouse of a person described in Subsections (61)(a) through (g);

992 or

993 (j) person similar to a person described in Subsections (61)(a) through (i) as

994 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

995 Administrative Rulemaking Act.

996 (62) "Mobile home" is as defined in Section 15A-1-302.

997 (63) "Mobile telecommunications service" is as defined in the Mobile

998 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

999 (64) (a) "Mobile wireless service" means a telecommunications service, regardless of
1000 the technology used, if:

1001 (i) the origination point of the conveyance, routing, or transmission is not fixed;

1002 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

1003 (iii) the origination point described in Subsection (64)(a)(i) and the termination point
1004 described in Subsection (64)(a)(ii) are not fixed.

1005 (b) "Mobile wireless service" includes a telecommunications service that is provided
1006 by a commercial mobile radio service provider.

1007 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1008 commission may by rule define "commercial mobile radio service provider."

1009 (65) (a) Except as provided in Subsection (65)(c), "mobility enhancing equipment"
1010 means equipment that is:

1011 (i) primarily and customarily used to provide or increase the ability to move from one
1012 place to another;

1013 (ii) appropriate for use in a:

1014 (A) home; or

1015 (B) motor vehicle; and

1016 (iii) not generally used by persons with normal mobility.

1017 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
1018 the equipment described in Subsection (65)(a).

1019 (c) Notwithstanding Subsection (65)(a), "mobility enhancing equipment" does not

1020 include:

1021 (i) a motor vehicle;

1022 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
1023 vehicle manufacturer;

1024 (iii) durable medical equipment; or

1025 (iv) a prosthetic device.

1026 (66) "Model 1 seller" means a seller registered under the agreement that has selected a
1027 certified service provider as the seller's agent to perform all of the seller's sales and use tax
1028 functions for agreement sales and use taxes other than the seller's obligation under Section
1029 59-12-124 to remit a tax on the seller's own purchases.

1030 (67) "Model 2 seller" means a seller registered under the agreement that:

1031 (a) except as provided in Subsection (67)(b), has selected a certified automated system
1032 to perform the seller's sales tax functions for agreement sales and use taxes; and

1033 (b) notwithstanding Subsection (67)(a), retains responsibility for remitting all of the
1034 sales tax:

1035 (i) collected by the seller; and

1036 (ii) to the appropriate local taxing jurisdiction.

1037 (68) (a) Subject to Subsection (68)(b), "model 3 seller" means a seller registered under
1038 the agreement that has:

1039 (i) sales in at least five states that are members of the agreement;

1040 (ii) total annual sales revenues of at least \$500,000,000;

1041 (iii) a proprietary system that calculates the amount of tax:

1042 (A) for an agreement sales and use tax; and

1043 (B) due to each local taxing jurisdiction; and

1044 (iv) entered into a performance agreement with the governing board of the agreement.

1045 (b) For purposes of Subsection (68)(a), "model 3 seller" includes an affiliated group of
1046 sellers using the same proprietary system.

1047 (69) "Model 4 seller" means a seller that is registered under the agreement and is not a
1048 model 1 seller, model 2 seller, or model 3 seller.

1049 (70) "Modular home" means a modular unit as defined in Section 15A-1-302.

1050 (71) "Motor vehicle" is as defined in Section 41-1a-102.

- 1051 (72) "Oil sands" means impregnated bituminous sands that:
- 1052 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
- 1053 other hydrocarbons, or otherwise treated;
- 1054 (b) yield mixtures of liquid hydrocarbon; and
- 1055 (c) require further processing other than mechanical blending before becoming finished
- 1056 petroleum products.
- 1057 (73) "Oil shale" means a group of fine black to dark brown shales containing kerogen
- 1058 material that yields petroleum upon heating and distillation.
- 1059 (74) "Optional computer software maintenance contract" means a computer software
- 1060 maintenance contract that a customer is not obligated to purchase as a condition to the retail
- 1061 sale of computer software.
- 1062 (75) (a) "Other fuels" means products that burn independently to produce heat or
- 1063 energy.
- 1064 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 1065 personal property.
- 1066 (76) (a) "Paging service" means a telecommunications service that provides
- 1067 transmission of a coded radio signal for the purpose of activating a specific pager.
- 1068 (b) For purposes of Subsection (76)(a), the transmission of a coded radio signal
- 1069 includes a transmission by message or sound.
- 1070 (77) "Pawnbroker" is as defined in Section 13-32a-102.
- 1071 (78) "Pawn transaction" is as defined in Section 13-32a-102.
- 1072 (79) (a) "Permanently attached to real property" means that for tangible personal
- 1073 property attached to real property:
- 1074 (i) the attachment of the tangible personal property to the real property:
- 1075 (A) is essential to the use of the tangible personal property; and
- 1076 (B) suggests that the tangible personal property will remain attached to the real
- 1077 property in the same place over the useful life of the tangible personal property; or
- 1078 (ii) if the tangible personal property is detached from the real property, the detachment
- 1079 would:
- 1080 (A) cause substantial damage to the tangible personal property; or
- 1081 (B) require substantial alteration or repair of the real property to which the tangible

1082 personal property is attached.

1083 (b) "Permanently attached to real property" includes:

1084 (i) the attachment of an accessory to the tangible personal property if the accessory is:

1085 (A) essential to the operation of the tangible personal property; and

1086 (B) attached only to facilitate the operation of the tangible personal property;

1087 (ii) a temporary detachment of tangible personal property from real property for a

1088 repair or renovation if the repair or renovation is performed where the tangible personal

1089 property and real property are located; or

1090 (iii) property attached to oil, gas, or water pipelines, except for the property listed in

1091 Subsection (79)(c)(iii) or (iv).

1092 (c) "Permanently attached to real property" does not include:

1093 (i) the attachment of portable or movable tangible personal property to real property if

1094 that portable or movable tangible personal property is attached to real property only for:

1095 (A) convenience;

1096 (B) stability; or

1097 (C) for an obvious temporary purpose;

1098 (ii) the detachment of tangible personal property from real property except for the

1099 detachment described in Subsection (79)(b)(ii);

1100 (iii) an attachment of the following tangible personal property to real property if the

1101 attachment to real property is only through a line that supplies water, electricity, gas,

1102 telecommunications, cable, or supplies a similar item as determined by the commission by rule

1103 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1104 (A) a computer;

1105 (B) a telephone;

1106 (C) a television; or

1107 (D) tangible personal property similar to Subsections (79)(c)(iii)(A) through (C) as

1108 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

1109 Administrative Rulemaking Act; or

1110 (iv) an item listed in Subsection [~~(117)~~] (118)(c).

1111 (80) "Person" includes any individual, firm, partnership, joint venture, association,

1112 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

1113 municipality, district, or other local governmental entity of the state, or any group or
1114 combination acting as a unit.

1115 (81) "Place of primary use":

1116 (a) for telecommunications service other than mobile telecommunications service,
1117 means the street address representative of where the customer's use of the telecommunications
1118 service primarily occurs, which shall be:

1119 (i) the residential street address of the customer; or

1120 (ii) the primary business street address of the customer; or

1121 (b) for mobile telecommunications service, is as defined in the Mobile
1122 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1123 (82) (a) "Postpaid calling service" means a telecommunications service a person
1124 obtains by making a payment on a call-by-call basis:

1125 (i) through the use of a:

1126 (A) bank card;

1127 (B) credit card;

1128 (C) debit card; or

1129 (D) travel card; or

1130 (ii) by a charge made to a telephone number that is not associated with the origination
1131 or termination of the telecommunications service.

1132 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1133 service, that would be a prepaid wireless calling service if the service were exclusively a
1134 telecommunications service.

1135 (83) "Postproduction" means an activity related to the finishing or duplication of a
1136 medium described in Subsection 59-12-104(54)(a).

1137 (84) "Prepaid calling service" means a telecommunications service:

1138 (a) that allows a purchaser access to telecommunications service that is exclusively
1139 telecommunications service;

1140 (b) that:

1141 (i) is paid for in advance; and

1142 (ii) enables the origination of a call using an:

1143 (A) access number; or

- 1144 (B) authorization code;
- 1145 (c) that is dialed:
- 1146 (i) manually; or
- 1147 (ii) electronically; and
- 1148 (d) sold in predetermined units or dollars that decline:
- 1149 (i) by a known amount; and
- 1150 (ii) with use.
- 1151 (85) "Prepaid wireless calling service" means a telecommunications service:
- 1152 (a) that provides the right to utilize:
- 1153 (i) mobile wireless service; and
- 1154 (ii) other service that is not a telecommunications service, including:
- 1155 (A) the download of a product transferred electronically;
- 1156 (B) a content service; or
- 1157 (C) an ancillary service;
- 1158 (b) that:
- 1159 (i) is paid for in advance; and
- 1160 (ii) enables the origination of a call using an:
- 1161 (A) access number; or
- 1162 (B) authorization code;
- 1163 (c) that is dialed:
- 1164 (i) manually; or
- 1165 (ii) electronically; and
- 1166 (d) sold in predetermined units or dollars that decline:
- 1167 (i) by a known amount; and
- 1168 (ii) with use.
- 1169 (86) (a) "Prepared food" means:
- 1170 (i) food:
- 1171 (A) sold in a heated state; or
- 1172 (B) heated by a seller;
- 1173 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1174 item; or

1175 (iii) except as provided in Subsection (86)(c), food sold with an eating utensil provided
1176 by the seller, including a:

- 1177 (A) plate;
- 1178 (B) knife;
- 1179 (C) fork;
- 1180 (D) spoon;
- 1181 (E) glass;
- 1182 (F) cup;
- 1183 (G) napkin; or
- 1184 (H) straw.

1185 (b) "Prepared food" does not include:

1186 (i) food that a seller only:

- 1187 (A) cuts;
- 1188 (B) repackages; or
- 1189 (C) pasteurizes; or

1190 (ii) (A) the following:

- 1191 (I) raw egg;
- 1192 (II) raw fish;
- 1193 (III) raw meat;
- 1194 (IV) raw poultry; or
- 1195 (V) a food containing an item described in Subsections (86)(b)(ii)(A)(I) through (IV);

1196 and

1197 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
1198 Food and Drug Administration's Food Code that a consumer cook the items described in
1199 Subsection (86)(b)(ii)(A) to prevent food borne illness; or

1200 (iii) the following if sold without eating utensils provided by the seller:

1201 (A) food and food ingredients sold by a seller if the seller's proper primary
1202 classification under the 2002 North American Industry Classification System of the federal
1203 Executive Office of the President, Office of Management and Budget, is manufacturing in
1204 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
1205 Manufacturing;

- 1206 (B) food and food ingredients sold in an unheated state:
- 1207 (I) by weight or volume; and
- 1208 (II) as a single item; or
- 1209 (C) a bakery item, including:
- 1210 (I) a bagel;
- 1211 (II) a bar;
- 1212 (III) a biscuit;
- 1213 (IV) bread;
- 1214 (V) a bun;
- 1215 (VI) a cake;
- 1216 (VII) a cookie;
- 1217 (VIII) a croissant;
- 1218 (IX) a danish;
- 1219 (X) a donut;
- 1220 (XI) a muffin;
- 1221 (XII) a pastry;
- 1222 (XIII) a pie;
- 1223 (XIV) a roll;
- 1224 (XV) a tart;
- 1225 (XVI) a torte; or
- 1226 (XVII) a tortilla.
- 1227 (c) Notwithstanding Subsection (86)(a)(iii), an eating utensil provided by the seller
- 1228 does not include the following used to transport the food:
- 1229 (i) a container; or
- 1230 (ii) packaging.
- 1231 (87) "Prescription" means an order, formula, or recipe that is issued:
- 1232 (a) (i) orally;
- 1233 (ii) in writing;
- 1234 (iii) electronically; or
- 1235 (iv) by any other manner of transmission; and
- 1236 (b) by a licensed practitioner authorized by the laws of a state.

- 1237 (88) (a) Except as provided in Subsection (88)(b)(ii) or (iii), "prewritten computer
1238 software" means computer software that is not designed and developed:
1239 (i) by the author or other creator of the computer software; and
1240 (ii) to the specifications of a specific purchaser.
1241 (b) "Prewritten computer software" includes:
1242 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1243 software is not designed and developed:
1244 (A) by the author or other creator of the computer software; and
1245 (B) to the specifications of a specific purchaser;
1246 (ii) notwithstanding Subsection (88)(a), computer software designed and developed by
1247 the author or other creator of the computer software to the specifications of a specific purchaser
1248 if the computer software is sold to a person other than the purchaser; or
1249 (iii) notwithstanding Subsection (88)(a) and except as provided in Subsection (88)(c),
1250 prewritten computer software or a prewritten portion of prewritten computer software:
1251 (A) that is modified or enhanced to any degree; and
1252 (B) if the modification or enhancement described in Subsection (88)(b)(iii)(A) is
1253 designed and developed to the specifications of a specific purchaser.
1254 (c) Notwithstanding Subsection (88)(b)(iii), "prewritten computer software" does not
1255 include a modification or enhancement described in Subsection (88)(b)(iii) if the charges for
1256 the modification or enhancement are:
1257 (i) reasonable; and
1258 (ii) separately stated on the invoice or other statement of price provided to the
1259 purchaser.
1260 (89) (a) "Private communication service" means a telecommunications service:
1261 (i) that entitles a customer to exclusive or priority use of one or more communications
1262 channels between or among termination points; and
1263 (ii) regardless of the manner in which the one or more communications channels are
1264 connected.
1265 (b) "Private communications service" includes the following provided in connection
1266 with the use of one or more communications channels:
1267 (i) an extension line;

- 1268 (ii) a station;
- 1269 (iii) switching capacity; or
- 1270 (iv) another associated service that is provided in connection with the use of one or
- 1271 more communications channels as defined in Section 59-12-215.
- 1272 (90) (a) Except as provided in Subsection (90)(b), "product transferred electronically"
- 1273 means a product transferred electronically that would be subject to a tax under this chapter if
- 1274 that product was transferred in a manner other than electronically.
- 1275 (b) "Product transferred electronically" does not include:
- 1276 (i) an ancillary service;
- 1277 (ii) computer software; or
- 1278 (iii) a telecommunications service.
- 1279 (91) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 1280 (i) artificially replace a missing portion of the body;
- 1281 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1282 (iii) support a weak or deformed portion of the body.
- 1283 (b) "Prosthetic device" includes:
- 1284 (i) parts used in the repairs or renovation of a prosthetic device;
- 1285 (ii) replacement parts for a prosthetic device;
- 1286 (iii) a dental prosthesis; or
- 1287 (iv) a hearing aid.
- 1288 (c) "Prosthetic device" does not include:
- 1289 (i) corrective eyeglasses; or
- 1290 (ii) contact lenses.
- 1291 (92) (a) "Protective equipment" means an item:
- 1292 (i) for human wear; and
- 1293 (ii) that is:
- 1294 (A) designed as protection:
- 1295 (I) to the wearer against injury or disease; or
- 1296 (II) against damage or injury of other persons or property; and
- 1297 (B) not suitable for general use.
- 1298 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1299 commission shall make rules:

1300 (i) listing the items that constitute "protective equipment"; and

1301 (ii) that are consistent with the list of items that constitute "protective equipment"

1302 under the agreement.

1303 (93) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
1304 printed matter, other than a photocopy:

1305 (i) regardless of:

1306 (A) characteristics;

1307 (B) copyright;

1308 (C) form;

1309 (D) format;

1310 (E) method of reproduction; or

1311 (F) source; and

1312 (ii) made available in printed or electronic format.

1313 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1314 commission may by rule define the term "photocopy."

1315 (94) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1316 (i) valued in money; and

1317 (ii) for which tangible personal property, a product transferred electronically, or
1318 services are:

1319 (A) sold;

1320 (B) leased; or

1321 (C) rented.

1322 (b) "Purchase price" and "sales price" include:

1323 (i) the seller's cost of the tangible personal property, a product transferred
1324 electronically, or services sold;

1325 (ii) expenses of the seller, including:

1326 (A) the cost of materials used;

1327 (B) a labor cost;

1328 (C) a service cost;

1329 (D) interest;

- 1330 (E) a loss;
- 1331 (F) the cost of transportation to the seller; or
- 1332 (G) a tax imposed on the seller;
- 1333 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1334 (iv) consideration a seller receives from a person other than the purchaser if:
 - 1335 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 1336 and
 - 1337 (II) the consideration described in Subsection (94)(b)(iv)(A)(I) is directly related to a
 - 1338 price reduction or discount on the sale;
 - 1339 (B) the seller has an obligation to pass the price reduction or discount through to the
 - 1340 purchaser;
 - 1341 (C) the amount of the consideration attributable to the sale is fixed and determinable by
 - 1342 the seller at the time of the sale to the purchaser; and
 - 1343 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
 - 1344 seller to claim a price reduction or discount; and
 - 1345 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
 - 1346 coupon, or other documentation with the understanding that the person other than the seller
 - 1347 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
 - 1348 (II) the purchaser identifies that purchaser to the seller as a member of a group or
 - 1349 organization allowed a price reduction or discount, except that a preferred customer card that is
 - 1350 available to any patron of a seller does not constitute membership in a group or organization
 - 1351 allowed a price reduction or discount; or
 - 1352 (III) the price reduction or discount is identified as a third party price reduction or
 - 1353 discount on the:
 - 1354 (Aa) invoice the purchaser receives; or
 - 1355 (Bb) certificate, coupon, or other documentation the purchaser presents.
 - 1356 (c) "Purchase price" and "sales price" do not include:
 - 1357 (i) a discount:
 - 1358 (A) in a form including:
 - 1359 (I) cash;
 - 1360 (II) term; or

- 1361 (III) coupon;
- 1362 (B) that is allowed by a seller;
- 1363 (C) taken by a purchaser on a sale; and
- 1364 (D) that is not reimbursed by a third party; or
- 1365 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 1366 provided to the purchaser:
 - 1367 (A) the following from credit extended on the sale of tangible personal property or
 - 1368 services:
 - 1369 (I) a carrying charge;
 - 1370 (II) a financing charge; or
 - 1371 (III) an interest charge;
 - 1372 (B) a delivery charge;
 - 1373 (C) an installation charge;
 - 1374 (D) a manufacturer rebate on a motor vehicle; or
 - 1375 (E) a tax or fee legally imposed directly on the consumer.
 - 1376 (95) "Purchaser" means a person to whom:
 - 1377 (a) a sale of tangible personal property is made;
 - 1378 (b) a product is transferred electronically; or
 - 1379 (c) a service is furnished.
 - 1380 (96) "Regularly rented" means:
 - 1381 (a) rented to a guest for value three or more times during a calendar year; or
 - 1382 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 1383 value.
 - 1384 (97) "Rental" is as defined in Subsection (54).
 - 1385 (98) (a) Except as provided in Subsection (98)(b), "repairs or renovations of tangible
 - 1386 personal property" means:
 - 1387 (i) a repair or renovation of tangible personal property that is not permanently attached
 - 1388 to real property; or
 - 1389 (ii) attaching tangible personal property or a product transferred electronically to other
 - 1390 tangible personal property or detaching tangible personal property or a product transferred
 - 1391 electronically from other tangible personal property if:

1392 (A) the other tangible personal property to which the tangible personal property or
1393 product transferred electronically is attached or from which the tangible personal property or
1394 product transferred electronically is detached is not permanently attached to real property; and

1395 (B) the attachment of tangible personal property or a product transferred electronically
1396 to other tangible personal property or detachment of tangible personal property or a product
1397 transferred electronically from other tangible personal property is made in conjunction with a
1398 repair or replacement of tangible personal property or a product transferred electronically.

1399 (b) "Repairs or renovations of tangible personal property" does not include:

1400 (i) attaching prewritten computer software to other tangible personal property if the
1401 other tangible personal property to which the prewritten computer software is attached is not
1402 permanently attached to real property; or

1403 (ii) detaching prewritten computer software from other tangible personal property if the
1404 other tangible personal property from which the prewritten computer software is detached is
1405 not permanently attached to real property.

1406 (99) "Research and development" means the process of inquiry or experimentation
1407 aimed at the discovery of facts, devices, technologies, or applications and the process of
1408 preparing those devices, technologies, or applications for marketing.

1409 (100) (a) "Residential telecommunications services" means a telecommunications
1410 service or an ancillary service that is provided to an individual for personal use:

1411 (i) at a residential address; or

1412 (ii) at an institution, including a nursing home or a school, if the telecommunications
1413 service or ancillary service is provided to and paid for by the individual residing at the
1414 institution rather than the institution.

1415 (b) For purposes of Subsection (100)(a)(i), a residential address includes an:

1416 (i) apartment; or

1417 (ii) other individual dwelling unit.

1418 (101) "Residential use" means the use in or around a home, apartment building,
1419 sleeping quarters, and similar facilities or accommodations.

1420 (102) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1421 than:

1422 (a) resale;

1423 (b) sublease; or

1424 (c) subrent.

1425 (103) (a) "Retailer" means any person engaged in a regularly organized business in
1426 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1427 who is selling to the user or consumer and not for resale.

1428 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1429 engaged in the business of selling to users or consumers within the state.

1430 (104) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1431 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1432 Subsection 59-12-103(1), for consideration.

1433 (b) "Sale" includes:

1434 (i) installment and credit sales;

1435 (ii) any closed transaction constituting a sale;

1436 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1437 chapter;

1438 (iv) any transaction if the possession of property is transferred but the seller retains the
1439 title as security for the payment of the price; and

1440 (v) any transaction under which right to possession, operation, or use of any article of
1441 tangible personal property is granted under a lease or contract and the transfer of possession
1442 would be taxable if an outright sale were made.

1443 (105) "Sale at retail" is as defined in Subsection (102).

1444 (106) "Sale-leaseback transaction" means a transaction by which title to tangible
1445 personal property or a product transferred electronically that is subject to a tax under this
1446 chapter is transferred:

1447 (a) by a purchaser-lessee;

1448 (b) to a lessor;

1449 (c) for consideration; and

1450 (d) if:

1451 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1452 of the tangible personal property or product transferred electronically;

1453 (ii) the sale of the tangible personal property or product transferred electronically to the

1454 lessor is intended as a form of financing:

1455 (A) for the tangible personal property or product transferred electronically; and

1456 (B) to the purchaser-lessee; and

1457 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1458 is required to:

1459 (A) capitalize the tangible personal property or product transferred electronically for

1460 financial reporting purposes; and

1461 (B) account for the lease payments as payments made under a financing arrangement.

1462 (107) "Sales price" is as defined in Subsection (94).

1463 (108) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

1464 amounts charged by a school:

1465 (i) sales that are directly related to the school's educational functions or activities

1466 including:

1467 (A) the sale of:

1468 (I) textbooks;

1469 (II) textbook fees;

1470 (III) laboratory fees;

1471 (IV) laboratory supplies; or

1472 (V) safety equipment;

1473 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1474 that:

1475 (I) a student is specifically required to wear as a condition of participation in a

1476 school-related event or school-related activity; and

1477 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1478 place of ordinary clothing;

1479 (C) sales of the following if the net or gross revenues generated by the sales are

1480 deposited into a school district fund or school fund dedicated to school meals:

1481 (I) food and food ingredients; or

1482 (II) prepared food; or

1483 (D) transportation charges for official school activities; or

1484 (ii) amounts paid to or amounts charged by a school for admission to a school-related

- 1485 event or school-related activity.
- 1486 (b) "Sales relating to schools" does not include:
- 1487 (i) bookstore sales of items that are not educational materials or supplies;
- 1488 (ii) except as provided in Subsection (108)(a)(i)(B):
- 1489 (A) clothing;
- 1490 (B) clothing accessories or equipment;
- 1491 (C) protective equipment; or
- 1492 (D) sports or recreational equipment; or
- 1493 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1494 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1495 (A) other than a:
- 1496 (I) school;
- 1497 (II) nonprofit organization authorized by a school board or a governing body of a
- 1498 private school to organize and direct a competitive secondary school activity; or
- 1499 (III) nonprofit association authorized by a school board or a governing body of a
- 1500 private school to organize and direct a competitive secondary school activity; and
- 1501 (B) that is required to collect sales and use taxes under this chapter.
- 1502 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1503 commission may make rules defining the term "passed through."
- 1504 (109) For purposes of this section and Section 59-12-104, "school":
- 1505 (a) means:
- 1506 (i) an elementary school or a secondary school that:
- 1507 (A) is a:
- 1508 (I) public school; or
- 1509 (II) private school; and
- 1510 (B) provides instruction for one or more grades kindergarten through 12; or
- 1511 (ii) a public school district; and
- 1512 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1513 (110) "Seller" means a person that makes a sale, lease, or rental of:
- 1514 (a) tangible personal property;
- 1515 (b) a product transferred electronically; or

- 1516 (c) a service.
- 1517 (111) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1518 means tangible personal property or a product transferred electronically if the tangible personal
- 1519 property or product transferred electronically is:
 - 1520 (i) used primarily in the process of:
 - 1521 (A) (I) manufacturing a semiconductor;
 - 1522 (II) fabricating a semiconductor; or
 - 1523 (III) research or development of a:
 - 1524 (Aa) semiconductor; or
 - 1525 (Bb) semiconductor manufacturing process; or
 - 1526 (B) maintaining an environment suitable for a semiconductor; or
 - 1527 (ii) consumed primarily in the process of:
 - 1528 (A) (I) manufacturing a semiconductor;
 - 1529 (II) fabricating a semiconductor; or
 - 1530 (III) research or development of a:
 - 1531 (Aa) semiconductor; or
 - 1532 (Bb) semiconductor manufacturing process; or
 - 1533 (B) maintaining an environment suitable for a semiconductor.
- 1534 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1535 includes:
 - 1536 (i) parts used in the repairs or renovations of tangible personal property or a product
 - 1537 transferred electronically described in Subsection (111)(a); or
 - 1538 (ii) a chemical, catalyst, or other material used to:
 - 1539 (A) produce or induce in a semiconductor a:
 - 1540 (I) chemical change; or
 - 1541 (II) physical change;
 - 1542 (B) remove impurities from a semiconductor; or
 - 1543 (C) improve the marketable condition of a semiconductor.
- 1544 (112) "Senior citizen center" means a facility having the primary purpose of providing
- 1545 services to the aged as defined in Section 62A-3-101.
- 1546 (113) "Simplified electronic return" means the electronic return:

- 1547 (a) described in Section 318(C) of the agreement; and
- 1548 (b) approved by the governing board of the agreement.
- 1549 (114) "Solar energy" means the sun used as the sole source of energy for producing
- 1550 electricity.
- 1551 (115) (a) "Sports or recreational equipment" means an item:
- 1552 (i) designed for human use; and
- 1553 (ii) that is:
- 1554 (A) worn in conjunction with:
- 1555 (I) an athletic activity; or
- 1556 (II) a recreational activity; and
- 1557 (B) not suitable for general use.
- 1558 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1559 commission shall make rules:
- 1560 (i) listing the items that constitute "sports or recreational equipment"; and
- 1561 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1562 equipment" under the agreement.
- 1563 (116) "State" means the state of Utah, its departments, and agencies.
- 1564 (117) "Storage" means any keeping or retention of tangible personal property or any
- 1565 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 1566 sale in the regular course of business.
- 1567 (118) (a) Except as provided in Subsection (118)(d) or (e), "tangible personal property"
- 1568 means personal property that:
- 1569 (i) may be:
- 1570 (A) seen;
- 1571 (B) weighed;
- 1572 (C) measured;
- 1573 (D) felt; or
- 1574 (E) touched; or
- 1575 (ii) is in any manner perceptible to the senses.
- 1576 (b) "Tangible personal property" includes:
- 1577 (i) electricity;

1578 (ii) water;
1579 (iii) gas;
1580 (iv) steam; or
1581 (v) prewritten computer software, regardless of the manner in which the prewritten
1582 computer software is transferred.

1583 (c) "Tangible personal property" includes the following regardless of whether the item
1584 is attached to real property:

- 1585 (i) a dishwasher;
- 1586 (ii) a dryer;
- 1587 (iii) a freezer;
- 1588 (iv) a microwave;
- 1589 (v) a refrigerator;
- 1590 (vi) a stove;
- 1591 (vii) a washer; or
- 1592 (viii) an item similar to Subsections (118)(c)(i) through (vii) as determined by the
1593 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1594 Rulemaking Act.

1595 (d) "Tangible personal property" does not include a product that is transferred
1596 electronically.

1597 (e) "Tangible personal property" does not include the following if attached to real
1598 property, regardless of whether the attachment to real property is only through a line that
1599 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1600 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1601 Rulemaking Act:

- 1602 (i) a hot water heater;
- 1603 (ii) a water filtration system; or
- 1604 (iii) a water softener system.

1605 (119) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1606 software" means an item listed in Subsection (119)(b) if that item is purchased or leased
1607 primarily to enable or facilitate one or more of the following to function:

- 1608 (i) telecommunications switching or routing equipment, machinery, or software; or

1609 (ii) telecommunications transmission equipment, machinery, or software.

1610 (b) The following apply to Subsection (119)(a):

1611 (i) a pole;

1612 (ii) software;

1613 (iii) a supplementary power supply;

1614 (iv) temperature or environmental equipment or machinery;

1615 (v) test equipment;

1616 (vi) a tower; or

1617 (vii) equipment, machinery, or software that functions similarly to an item listed in

1618 Subsections (119)(b)(i) through (vi) as determined by the commission by rule made in

1619 accordance with Subsection (119)(c).

1620 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1621 commission may by rule define what constitutes equipment, machinery, or software that

1622 functions similarly to an item listed in Subsections (119)(b)(i) through (vi).

1623 (120) "Telecommunications equipment, machinery, or software required for 911

1624 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1625 Sec. 20.18.

1626 (121) "Telecommunications maintenance or repair equipment, machinery, or software"

1627 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1628 one or more of the following, regardless of whether the equipment, machinery, or software is

1629 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1630 following:

1631 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1632 (b) telecommunications switching or routing equipment, machinery, or software; or

1633 (c) telecommunications transmission equipment, machinery, or software.

1634 (122) (a) "Telecommunications service" means the electronic conveyance, routing, or

1635 transmission of audio, data, video, voice, or any other information or signal to a point, or

1636 among or between points.

1637 (b) "Telecommunications service" includes:

1638 (i) an electronic conveyance, routing, or transmission with respect to which a computer

1639 processing application is used to act:

- 1640 (A) on the code, form, or protocol of the content;
- 1641 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1642 (C) regardless of whether the service:
- 1643 (I) is referred to as voice over Internet protocol service; or
- 1644 (II) is classified by the Federal Communications Commission as enhanced or value
- 1645 added;
- 1646 (ii) an 800 service;
- 1647 (iii) a 900 service;
- 1648 (iv) a fixed wireless service;
- 1649 (v) a mobile wireless service;
- 1650 (vi) a postpaid calling service;
- 1651 (vii) a prepaid calling service;
- 1652 (viii) a prepaid wireless calling service; or
- 1653 (ix) a private communications service.
- 1654 (c) "Telecommunications service" does not include:
- 1655 (i) advertising, including directory advertising;
- 1656 (ii) an ancillary service;
- 1657 (iii) a billing and collection service provided to a third party;
- 1658 (iv) a data processing and information service if:
- 1659 (A) the data processing and information service allows data to be:
- 1660 (I) (Aa) acquired;
- 1661 (Bb) generated;
- 1662 (Cc) processed;
- 1663 (Dd) retrieved; or
- 1664 (Ee) stored; and
- 1665 (II) delivered by an electronic transmission to a purchaser; and
- 1666 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1667 or information;
- 1668 (v) installation or maintenance of the following on a customer's premises:
- 1669 (A) equipment; or
- 1670 (B) wiring;

- 1671 (vi) Internet access service;
- 1672 (vii) a paging service;
- 1673 (viii) a product transferred electronically, including:
 - 1674 (A) music;
 - 1675 (B) reading material;
 - 1676 (C) a ring tone;
 - 1677 (D) software; or
 - 1678 (E) video;
- 1679 (ix) a radio and television audio and video programming service:
 - 1680 (A) regardless of the medium; and
 - 1681 (B) including:
 - 1682 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1683 programming service by a programming service provider;
 - 1684 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1685 (III) audio and video programming services delivered by a commercial mobile radio
 - 1686 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1687 (x) a value-added nonvoice data service; or
 - 1688 (xi) tangible personal property.
 - 1689 (123) (a) "Telecommunications service provider" means a person that:
 - 1690 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1691 (ii) engages in an activity described in Subsection (123)(a)(i) for the shared use with or
 - 1692 resale to any person of the telecommunications service.
 - 1693 (b) A person described in Subsection (123)(a) is a telecommunications service provider
 - 1694 whether or not the Public Service Commission of Utah regulates:
 - 1695 (i) that person; or
 - 1696 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1697 manages.
 - 1698 (124) (a) "Telecommunications switching or routing equipment, machinery, or
 - 1699 software" means an item listed in Subsection (124)(b) if that item is purchased or leased
 - 1700 primarily for switching or routing:
 - 1701 (i) an ancillary service;

- 1702 (ii) data communications;
- 1703 (iii) voice communications; or
- 1704 (iv) telecommunications service.
- 1705 (b) The following apply to Subsection (124)(a):
- 1706 (i) a bridge;
- 1707 (ii) a computer;
- 1708 (iii) a cross connect;
- 1709 (iv) a modem;
- 1710 (v) a multiplexer;
- 1711 (vi) plug in circuitry;
- 1712 (vii) a router;
- 1713 (viii) software;
- 1714 (ix) a switch; or
- 1715 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1716 Subsections (124)(b)(i) through (ix) as determined by the commission by rule made in
- 1717 accordance with Subsection (124)(c).
- 1718 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1719 commission may by rule define what constitutes equipment, machinery, or software that
- 1720 functions similarly to an item listed in Subsections (124)(b)(i) through (ix).
- 1721 (125) (a) "Telecommunications transmission equipment, machinery, or software"
- 1722 means an item listed in Subsection (125)(b) if that item is purchased or leased primarily for
- 1723 sending, receiving, or transporting:
- 1724 (i) an ancillary service;
- 1725 (ii) data communications;
- 1726 (iii) voice communications; or
- 1727 (iv) telecommunications service.
- 1728 (b) The following apply to Subsection (125)(a):
- 1729 (i) an amplifier;
- 1730 (ii) a cable;
- 1731 (iii) a closure;
- 1732 (iv) a conduit;

- 1733 (v) a controller;
- 1734 (vi) a duplexer;
- 1735 (vii) a filter;
- 1736 (viii) an input device;
- 1737 (ix) an input/output device;
- 1738 (x) an insulator;
- 1739 (xi) microwave machinery or equipment;
- 1740 (xii) an oscillator;
- 1741 (xiii) an output device;
- 1742 (xiv) a pedestal;
- 1743 (xv) a power converter;
- 1744 (xvi) a power supply;
- 1745 (xvii) a radio channel;
- 1746 (xviii) a radio receiver;
- 1747 (xix) a radio transmitter;
- 1748 (xx) a repeater;
- 1749 (xxi) software;
- 1750 (xxii) a terminal;
- 1751 (xxiii) a timing unit;
- 1752 (xxiv) a transformer;
- 1753 (xxv) a wire; or
- 1754 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1755 Subsections (125)(b)(i) through (xxv) as determined by the commission by rule made in
- 1756 accordance with Subsection (125)(c).

1757 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1758 commission may by rule define what constitutes equipment, machinery, or software that
1759 functions similarly to an item listed in Subsections (125)(b)(i) through (xxv).

1760 (126) (a) "Textbook for a higher education course" means a textbook or other printed
1761 material that is required for a course:

- 1762 (i) offered by an institution of higher education; and
- 1763 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1764 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1765 (127) "Tobacco" means:

1766 (a) a cigarette;

1767 (b) a cigar;

1768 (c) chewing tobacco;

1769 (d) pipe tobacco; or

1770 (e) any other item that contains tobacco.

1771 (128) "Unassisted amusement device" means an amusement device, skill device, or
1772 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1773 the amusement device, skill device, or ride device.

1774 (129) (a) "Use" means the exercise of any right or power over tangible personal
1775 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1776 incident to the ownership or the leasing of that tangible personal property, product transferred
1777 electronically, or service.

1778 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1779 property, a product transferred electronically, or a service in the regular course of business and
1780 held for resale.

1781 (130) "Value-added nonvoice data service" means a service:

1782 (a) that otherwise meets the definition of a telecommunications service except that a
1783 computer processing application is used to act primarily for a purpose other than conveyance,
1784 routing, or transmission; and

1785 (b) with respect to which a computer processing application is used to act on data or
1786 information:

1787 (i) code;

1788 (ii) content;

1789 (iii) form; or

1790 (iv) protocol.

1791 (131) (a) Subject to Subsection (131)(b), "vehicle" means the following that are
1792 required to be titled, registered, or titled and registered:

1793 (i) an aircraft as defined in Section 72-10-102;

1794 (ii) a vehicle as defined in Section 41-1a-102;

- 1795 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1796 (iv) a vessel as defined in Section 41-1a-102.
- 1797 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1798 (i) a vehicle described in Subsection (131)(a); or
- 1799 (ii) (A) a locomotive;
- 1800 (B) a freight car;
- 1801 (C) railroad work equipment; or
- 1802 (D) other railroad rolling stock.
- 1803 (132) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1804 exchanging a vehicle as defined in Subsection (131).
- 1805 (133) (a) "Vertical service" means an ancillary service that:
- 1806 (i) is offered in connection with one or more telecommunications services; and
- 1807 (ii) offers an advanced calling feature that allows a customer to:
- 1808 (A) identify a caller; and
- 1809 (B) manage multiple calls and call connections.
- 1810 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1811 conference bridging service.
- 1812 (134) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1813 receive, send, or store a recorded message.
- 1814 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1815 to have in order to utilize a voice mail service.
- 1816 (135) (a) Except as provided in Subsection (135)(b), "waste energy facility" means a
- 1817 facility that generates electricity:
- 1818 (i) using as the primary source of energy waste materials that would be placed in a
- 1819 landfill or refuse pit if it were not used to generate electricity, including:
- 1820 (A) tires;
- 1821 (B) waste coal;
- 1822 (C) oil shale; or
- 1823 (D) municipal solid waste; and
- 1824 (ii) in amounts greater than actually required for the operation of the facility.
- 1825 (b) "Waste energy facility" does not include a facility that incinerates:

- 1826 (i) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1827 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1828 (136) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1829 (137) "Wind energy" means wind used as the sole source of energy to produce
- 1830 electricity.
- 1831 (138) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1832 location by the United States Postal Service.
- 1833 Section 9. Section **59-12-102 (Effective 07/01/14)** is amended to read:
- 1834 **59-12-102 (Effective 07/01/14). Definitions.**
- 1835 As used in this chapter:
- 1836 (1) "800 service" means a telecommunications service that:
- 1837 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
- 1838 (b) is typically marketed:
- 1839 (i) under the name 800 toll-free calling;
- 1840 (ii) under the name 855 toll-free calling;
- 1841 (iii) under the name 866 toll-free calling;
- 1842 (iv) under the name 877 toll-free calling;
- 1843 (v) under the name 888 toll-free calling; or
- 1844 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
- 1845 Federal Communications Commission.
- 1846 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 1847 (i) a subscriber purchases;
- 1848 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 1849 the subscriber's:
- 1850 (A) prerecorded announcement; or
- 1851 (B) live service; and
- 1852 (iii) is typically marketed:
- 1853 (A) under the name 900 service; or
- 1854 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 1855 Communications Commission.
- 1856 (b) "900 service" does not include a charge for:

- 1857 (i) a collection service a seller of a telecommunications service provides to a
1858 subscriber; or
- 1859 (ii) the following a subscriber sells to the subscriber's customer:
- 1860 (A) a product; or
- 1861 (B) a service.
- 1862 (3) (a) "Admission or user fees" includes season passes.
- 1863 (b) "Admission or user fees" does not include annual membership dues to private
1864 organizations.
- 1865 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
1866 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
1867 Agreement after November 12, 2002.
- 1868 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 1869 (a) listed under Subsection (6); and
- 1870 (b) that are imposed within a local taxing jurisdiction.
- 1871 (6) "Agreement sales and use tax" means a tax imposed under:
- 1872 (a) Subsection 59-12-103(2)(a)(i)(A);
- 1873 (b) Subsection 59-12-103(2)(b)(i);
- 1874 (c) Subsection 59-12-103(2)(c)(i);
- 1875 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 1876 (e) Section 59-12-204;
- 1877 (f) Section 59-12-401;
- 1878 (g) Section 59-12-402;
- 1879 (h) Section 59-12-703;
- 1880 (i) Section 59-12-802;
- 1881 (j) Section 59-12-804;
- 1882 (k) Section 59-12-1102;
- 1883 (l) Section 59-12-1302;
- 1884 (m) Section 59-12-1402;
- 1885 (n) Section 59-12-1802;
- 1886 (o) Section 59-12-2003;
- 1887 (p) Section 59-12-2103;

- 1888 (q) Section 59-12-2213;
- 1889 (r) Section 59-12-2214;
- 1890 (s) Section 59-12-2215;
- 1891 (t) Section 59-12-2216;
- 1892 (u) Section 59-12-2217; or
- 1893 (v) Section 59-12-2218.
- 1894 (7) "Aircraft" is as defined in Section 72-10-102.
- 1895 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 1896 (a) except for:
- 1897 (i) an airline as defined in Section 59-2-102; or
- 1898 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 1899 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 1900 state, of an airline; and
- 1901 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 1902 whether the business entity performs the following in this state:
- 1903 (i) check, diagnose, overhaul, and repair:
- 1904 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 1905 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 1906 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 1907 engine;
- 1908 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 1909 aircraft:
- 1910 (A) an inspection;
- 1911 (B) a repair, including a structural repair or modification;
- 1912 (C) changing landing gear; and
- 1913 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 1914 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 1915 completely apply new paint to the fixed wing turbine powered aircraft; and
- 1916 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 1917 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 1918 authority that certifies the fixed wing turbine powered aircraft.

- 1919 (9) "Alcoholic beverage" means a beverage that:
- 1920 (a) is suitable for human consumption; and
- 1921 (b) contains .5% or more alcohol by volume.
- 1922 (10) "Alternative energy" means:
- 1923 (a) biomass energy;
- 1924 (b) geothermal energy;
- 1925 (c) hydroelectric energy;
- 1926 (d) solar energy;
- 1927 (e) wind energy; or
- 1928 (f) energy that is derived from:
- 1929 (i) coal-to-liquids;
- 1930 (ii) nuclear fuel;
- 1931 (iii) oil-impregnated diatomaceous earth;
- 1932 (iv) oil sands;
- 1933 (v) oil shale; or
- 1934 (vi) petroleum coke.
- 1935 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
- 1936 facility" means a facility that:
- 1937 (i) uses alternative energy to produce electricity; and
- 1938 (ii) has a production capacity of [2] two megawatts or greater.
- 1939 (b) A facility is an alternative energy electricity production facility regardless of
- 1940 whether the facility is:
- 1941 (i) connected to an electric grid; or
- 1942 (ii) located on the premises of an electricity consumer.
- 1943 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
- 1944 provision of telecommunications service.
- 1945 (b) "Ancillary service" includes:
- 1946 (i) a conference bridging service;
- 1947 (ii) a detailed communications billing service;
- 1948 (iii) directory assistance;
- 1949 (iv) a vertical service; or

- 1950 (v) a voice mail service.
- 1951 (13) "Area agency on aging" is as defined in Section 62A-3-101.
- 1952 (14) "Assisted amusement device" means an amusement device, skill device, or ride
1953 device that is started and stopped by an individual:
- 1954 (a) who is not the purchaser or renter of the right to use or operate the amusement
1955 device, skill device, or ride device; and
- 1956 (b) at the direction of the seller of the right to use the amusement device, skill device,
1957 or ride device.
- 1958 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
1959 washing of tangible personal property if the cleaning or washing labor is primarily performed
1960 by an individual:
- 1961 (a) who is not the purchaser of the cleaning or washing of the tangible personal
1962 property; and
- 1963 (b) at the direction of the seller of the cleaning or washing of the tangible personal
1964 property.
- 1965 (16) "Authorized carrier" means:
- 1966 (a) in the case of vehicles operated over public highways, the holder of credentials
1967 indicating that the vehicle is or will be operated pursuant to both the International Registration
1968 Plan and the International Fuel Tax Agreement;
- 1969 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
1970 certificate or air carrier's operating certificate; or
- 1971 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
1972 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 1973 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the
1974 following that is used as the primary source of energy to produce fuel or electricity:
- 1975 (i) material from a plant or tree; or
- 1976 (ii) other organic matter that is available on a renewable basis, including:
- 1977 (A) slash and brush from forests and woodlands;
- 1978 (B) animal waste;
- 1979 (C) methane produced:
- 1980 (I) at landfills; or

- 1981 (II) as a byproduct of the treatment of wastewater residuals;
- 1982 (D) aquatic plants; and
- 1983 (E) agricultural products.
- 1984 (b) "Biomass energy" does not include:
- 1985 (i) black liquor;
- 1986 (ii) treated woods; or
- 1987 (iii) biomass from municipal solid waste other than methane produced:
- 1988 (A) at landfills; or
- 1989 (B) as a byproduct of the treatment of wastewater residuals.
- 1990 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 1991 property, products, or services if the tangible personal property, products, or services are:
- 1992 (i) distinct and identifiable; and
- 1993 (ii) sold for one nonitemized price.
- 1994 (b) "Bundled transaction" does not include:
- 1995 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 1996 the basis of the selection by the purchaser of the items of tangible personal property included in
- 1997 the transaction;
- 1998 (ii) the sale of real property;
- 1999 (iii) the sale of services to real property;
- 2000 (iv) the retail sale of tangible personal property and a service if:
- 2001 (A) the tangible personal property:
- 2002 (I) is essential to the use of the service; and
- 2003 (II) is provided exclusively in connection with the service; and
- 2004 (B) the service is the true object of the transaction;
- 2005 (v) the retail sale of two services if:
- 2006 (A) one service is provided that is essential to the use or receipt of a second service;
- 2007 (B) the first service is provided exclusively in connection with the second service; and
- 2008 (C) the second service is the true object of the transaction;
- 2009 (vi) a transaction that includes tangible personal property or a product subject to
- 2010 taxation under this chapter and tangible personal property or a product that is not subject to
- 2011 taxation under this chapter if the:

2012 (A) seller's purchase price of the tangible personal property or product subject to
2013 taxation under this chapter is de minimis; or

2014 (B) seller's sales price of the tangible personal property or product subject to taxation
2015 under this chapter is de minimis; and

2016 (vii) the retail sale of tangible personal property that is not subject to taxation under
2017 this chapter and tangible personal property that is subject to taxation under this chapter if:

2018 (A) that retail sale includes:

2019 (I) food and food ingredients;

2020 (II) a drug;

2021 (III) durable medical equipment;

2022 (IV) mobility enhancing equipment;

2023 (V) an over-the-counter drug;

2024 (VI) a prosthetic device; or

2025 (VII) a medical supply; and

2026 (B) subject to Subsection (18)(f):

2027 (I) the seller's purchase price of the tangible personal property subject to taxation under
2028 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

2029 (II) the seller's sales price of the tangible personal property subject to taxation under
2030 this chapter is 50% or less of the seller's total sales price of that retail sale.

2031 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
2032 service that is distinct and identifiable does not include:

2033 (A) packaging that:

2034 (I) accompanies the sale of the tangible personal property, product, or service; and

2035 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
2036 service;

2037 (B) tangible personal property, a product, or a service provided free of charge with the
2038 purchase of another item of tangible personal property, a product, or a service; or

2039 (C) an item of tangible personal property, a product, or a service included in the
2040 definition of "purchase price."

2041 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
2042 product, or a service is provided free of charge with the purchase of another item of tangible

2043 personal property, a product, or a service if the sales price of the purchased item of tangible
2044 personal property, product, or service does not vary depending on the inclusion of the tangible
2045 personal property, product, or service provided free of charge.

2046 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
2047 does not include a price that is separately identified by tangible personal property, product, or
2048 service on the following, regardless of whether the following is in paper format or electronic
2049 format:

2050 (A) a binding sales document; or

2051 (B) another supporting sales-related document that is available to a purchaser.

2052 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
2053 supporting sales-related document that is available to a purchaser includes:

2054 (A) a bill of sale;

2055 (B) a contract;

2056 (C) an invoice;

2057 (D) a lease agreement;

2058 (E) a periodic notice of rates and services;

2059 (F) a price list;

2060 (G) a rate card;

2061 (H) a receipt; or

2062 (I) a service agreement.

2063 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
2064 property or a product subject to taxation under this chapter is de minimis if:

2065 (A) the seller's purchase price of the tangible personal property or product is 10% or
2066 less of the seller's total purchase price of the bundled transaction; or

2067 (B) the seller's sales price of the tangible personal property or product is 10% or less of
2068 the seller's total sales price of the bundled transaction.

2069 (ii) For purposes of Subsection (18)(b)(vi), a seller:

2070 (A) shall use the seller's purchase price or the seller's sales price to determine if the
2071 purchase price or sales price of the tangible personal property or product subject to taxation
2072 under this chapter is de minimis; and

2073 (B) may not use a combination of the seller's purchase price and the seller's sales price

2074 to determine if the purchase price or sales price of the tangible personal property or product
2075 subject to taxation under this chapter is de minimis.

2076 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
2077 contract to determine if the sales price of tangible personal property or a product is de minimis.

2078 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
2079 the seller's purchase price and the seller's sales price to determine if tangible personal property
2080 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
2081 price of that retail sale.

2082 (19) "Certified automated system" means software certified by the governing board of
2083 the agreement that:

2084 (a) calculates the agreement sales and use tax imposed within a local taxing
2085 jurisdiction:

2086 (i) on a transaction; and

2087 (ii) in the states that are members of the agreement;

2088 (b) determines the amount of agreement sales and use tax to remit to a state that is a
2089 member of the agreement; and

2090 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

2091 (20) "Certified service provider" means an agent certified:

2092 (a) by the governing board of the agreement; and

2093 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
2094 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
2095 own purchases.

2096 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
2097 suitable for general use.

2098 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2099 commission shall make rules:

2100 (i) listing the items that constitute "clothing"; and

2101 (ii) that are consistent with the list of items that constitute "clothing" under the
2102 agreement.

2103 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

2104 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other

2105 fuels that does not constitute industrial use under Subsection (51) or residential use under
2106 Subsection (101).

2107 (24) (a) "Common carrier" means a person engaged in or transacting the business of
2108 transporting passengers, freight, merchandise, or other property for hire within this state.

2109 (b) (i) "Common carrier" does not include a person who, at the time the person is
2110 traveling to or from that person's place of employment, transports a passenger to or from the
2111 passenger's place of employment.

2112 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,
2113 Utah Administrative Rulemaking Act, the commission may make rules defining what
2114 constitutes a person's place of employment.

2115 (25) "Component part" includes:

2116 (a) poultry, dairy, and other livestock feed, and their components;

2117 (b) baling ties and twine used in the baling of hay and straw;

2118 (c) fuel used for providing temperature control of orchards and commercial
2119 greenhouses doing a majority of their business in wholesale sales, and for providing power for
2120 off-highway type farm machinery; and

2121 (d) feed, seeds, and seedlings.

2122 (26) "Computer" means an electronic device that accepts information:

2123 (a) (i) in digital form; or

2124 (ii) in a form similar to digital form; and

2125 (b) manipulates that information for a result based on a sequence of instructions.

2126 (27) "Computer software" means a set of coded instructions designed to cause:

2127 (a) a computer to perform a task; or

2128 (b) automatic data processing equipment to perform a task.

2129 (28) "Computer software maintenance contract" means a contract that obligates a seller
2130 of computer software to provide a customer with:

2131 (a) future updates or upgrades to computer software;

2132 (b) support services with respect to computer software; or

2133 (c) a combination of Subsections (28)(a) and (b).

2134 (29) (a) "Conference bridging service" means an ancillary service that links two or
2135 more participants of an audio conference call or video conference call.

2136 (b) "Conference bridging service" may include providing a telephone number as part of
2137 the ancillary service described in Subsection (29)(a).

2138 (c) "Conference bridging service" does not include a telecommunications service used
2139 to reach the ancillary service described in Subsection (29)(a).

2140 (30) "Construction materials" means any tangible personal property that will be
2141 converted into real property.

2142 (31) "Delivered electronically" means delivered to a purchaser by means other than
2143 tangible storage media.

2144 (32) (a) "Delivery charge" means a charge:

2145 (i) by a seller of:

2146 (A) tangible personal property;

2147 (B) a product transferred electronically; or

2148 (C) services; and

2149 (ii) for preparation and delivery of the tangible personal property, product transferred
2150 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
2151 purchaser.

2152 (b) "Delivery charge" includes a charge for the following:

2153 (i) transportation;

2154 (ii) shipping;

2155 (iii) postage;

2156 (iv) handling;

2157 (v) crating; or

2158 (vi) packing.

2159 (33) "Detailed telecommunications billing service" means an ancillary service of
2160 separately stating information pertaining to individual calls on a customer's billing statement.

2161 (34) "Dietary supplement" means a product, other than tobacco, that:

2162 (a) is intended to supplement the diet;

2163 (b) contains one or more of the following dietary ingredients:

2164 (i) a vitamin;

2165 (ii) a mineral;

2166 (iii) an herb or other botanical;

- 2167 (iv) an amino acid;
- 2168 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 2169 dietary intake; or
- 2170 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 2171 described in Subsections (34)(b)(i) through (v);
- 2172 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- 2173 (A) tablet form;
- 2174 (B) capsule form;
- 2175 (C) powder form;
- 2176 (D) softgel form;
- 2177 (E) gelcap form; or
- 2178 (F) liquid form; or
- 2179 (ii) notwithstanding Subsection (34)(c)(i), if the product is not intended for ingestion in
- 2180 a form described in Subsections (34)(c)(i)(A) through (F), is not represented:
- 2181 (A) as conventional food; and
- 2182 (B) for use as a sole item of:
- 2183 (I) a meal; or
- 2184 (II) the diet; and
- 2185 (d) is required to be labeled as a dietary supplement:
- 2186 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 2187 (ii) as required by 21 C.F.R. Sec. 101.36.
- 2188 (35) (a) "Direct mail" means printed material delivered or distributed by United States
- 2189 mail or other delivery service:
- 2190 (i) to:
- 2191 (A) a mass audience; or
- 2192 (B) addressees on a mailing list provided:
- 2193 (I) by a purchaser of the mailing list; or
- 2194 (II) at the discretion of the purchaser of the mailing list; and
- 2195 (ii) if the cost of the printed material is not billed directly to the recipients.
- 2196 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 2197 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

2198 (c) "Direct mail" does not include multiple items of printed material delivered to a
2199 single address.

2200 (36) "Directory assistance" means an ancillary service of providing:

2201 (a) address information; or

2202 (b) telephone number information.

2203 (37) (a) "Disposable home medical equipment or supplies" means medical equipment
2204 or supplies that:

2205 (i) cannot withstand repeated use; and

2206 (ii) are purchased by, for, or on behalf of a person other than:

2207 (A) a health care facility as defined in Section 26-21-2;

2208 (B) a health care provider as defined in Section 78B-3-403;

2209 (C) an office of a health care provider described in Subsection (37)(a)(ii)(B); or

2210 (D) a person similar to a person described in Subsections (37)(a)(ii)(A) through (C).

2211 (b) "Disposable home medical equipment or supplies" does not include:

2212 (i) a drug;

2213 (ii) durable medical equipment;

2214 (iii) a hearing aid;

2215 (iv) a hearing aid accessory;

2216 (v) mobility enhancing equipment; or

2217 (vi) tangible personal property used to correct impaired vision, including:

2218 (A) eyeglasses; or

2219 (B) contact lenses.

2220 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2221 commission may by rule define what constitutes medical equipment or supplies.

2222 (38) (a) "Drug" means a compound, substance, or preparation, or a component of a
2223 compound, substance, or preparation that is:

2224 (i) recognized in:

2225 (A) the official United States Pharmacopoeia;

2226 (B) the official Homeopathic Pharmacopoeia of the United States;

2227 (C) the official National Formulary; or

2228 (D) a supplement to a publication listed in Subsections (38)(a)(i)(A) through (C);

- 2229 (ii) intended for use in the:
- 2230 (A) diagnosis of disease;
- 2231 (B) cure of disease;
- 2232 (C) mitigation of disease;
- 2233 (D) treatment of disease; or
- 2234 (E) prevention of disease; or
- 2235 (iii) intended to affect:
- 2236 (A) the structure of the body; or
- 2237 (B) any function of the body.
- 2238 (b) "Drug" does not include:
- 2239 (i) food and food ingredients;
- 2240 (ii) a dietary supplement;
- 2241 (iii) an alcoholic beverage; or
- 2242 (iv) a prosthetic device.
- 2243 (39) (a) Except as provided in Subsection (39)(c), "durable medical equipment" means
- 2244 equipment that:
- 2245 (i) can withstand repeated use;
- 2246 (ii) is primarily and customarily used to serve a medical purpose;
- 2247 (iii) generally is not useful to a person in the absence of illness or injury; and
- 2248 (iv) is not worn in or on the body.
- 2249 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 2250 equipment described in Subsection (39)(a).
- 2251 (c) Notwithstanding Subsection (39)(a), "durable medical equipment" does not include
- 2252 mobility enhancing equipment.
- 2253 (40) "Electronic" means:
- 2254 (a) relating to technology; and
- 2255 (b) having:
- 2256 (i) electrical capabilities;
- 2257 (ii) digital capabilities;
- 2258 (iii) magnetic capabilities;
- 2259 (iv) wireless capabilities;

- 2260 (v) optical capabilities;
- 2261 (vi) electromagnetic capabilities; or
- 2262 (vii) capabilities similar to Subsections (40)(b)(i) through (vi).
- 2263 (41) "Employee" is as defined in Section 59-10-401.
- 2264 (42) "Fixed guideway" means a public transit facility that uses and occupies:
 - 2265 (a) rail for the use of public transit; or
 - 2266 (b) a separate right-of-way for the use of public transit.
- 2267 (43) "Fixed wing turbine powered aircraft" means an aircraft that:
 - 2268 (a) is powered by turbine engines;
 - 2269 (b) operates on jet fuel; and
 - 2270 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 2271 (44) "Fixed wireless service" means a telecommunications service that provides radio
- 2272 communication between fixed points.
- 2273 (45) (a) "Food and food ingredients" means substances:
 - 2274 (i) regardless of whether the substances are in:
 - 2275 (A) liquid form;
 - 2276 (B) concentrated form;
 - 2277 (C) solid form;
 - 2278 (D) frozen form;
 - 2279 (E) dried form; or
 - 2280 (F) dehydrated form; and
 - 2281 (ii) that are:
 - 2282 (A) sold for:
 - 2283 (I) ingestion by humans; or
 - 2284 (II) chewing by humans; and
 - 2285 (B) consumed for the substance's:
 - 2286 (I) taste; or
 - 2287 (II) nutritional value.
 - 2288 (b) "Food and food ingredients" includes an item described in Subsection (86)(b)(iii).
 - 2289 (c) "Food and food ingredients" does not include:
 - 2290 (i) an alcoholic beverage;

2291 (ii) tobacco; or
2292 (iii) prepared food.
2293 (46) (a) "Fundraising sales" means sales:
2294 (i) (A) made by a school; or
2295 (B) made by a school student;
2296 (ii) that are for the purpose of raising funds for the school to purchase equipment,
2297 materials, or provide transportation; and
2298 (iii) that are part of an officially sanctioned school activity.
2299 (b) For purposes of Subsection (46)(a)(iii), "officially sanctioned school activity"
2300 means a school activity:
2301 (i) that is conducted in accordance with a formal policy adopted by the school or school
2302 district governing the authorization and supervision of fundraising activities;
2303 (ii) that does not directly or indirectly compensate an individual teacher or other
2304 educational personnel by direct payment, commissions, or payment in kind; and
2305 (iii) the net or gross revenues from which are deposited in a dedicated account
2306 controlled by the school or school district.
2307 (47) "Geothermal energy" means energy contained in heat that continuously flows
2308 outward from the earth that is used as the sole source of energy to produce electricity.
2309 (48) "Governing board of the agreement" means the governing board of the agreement
2310 that is:
2311 (a) authorized to administer the agreement; and
2312 (b) established in accordance with the agreement.
2313 (49) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
2314 (i) the executive branch of the state, including all departments, institutions, boards,
2315 divisions, bureaus, offices, commissions, and committees;
2316 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
2317 Office of the Court Administrator, and similar administrative units in the judicial branch;
2318 (iii) the legislative branch of the state, including the House of Representatives, the
2319 Senate, the Legislative Printing Office, the Office of Legislative Research and General
2320 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
2321 Analyst;

- 2322 (iv) the National Guard;
- 2323 (v) an independent entity as defined in Section 63E-1-102; or
- 2324 (vi) a political subdivision as defined in Section 17B-1-102.
- 2325 (b) "Governmental entity" does not include the state systems of public and higher
- 2326 education, including:
 - 2327 (i) a college campus of the Utah College of Applied Technology;
 - 2328 (ii) a school;
 - 2329 (iii) the State Board of Education;
 - 2330 (iv) the State Board of Regents; or
 - 2331 (v) an institution of higher education.
- 2332 (50) "Hydroelectric energy" means water used as the sole source of energy to produce
- 2333 electricity.
- 2334 (51) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 2335 other fuels:
 - 2336 (a) in mining or extraction of minerals;
 - 2337 (b) in agricultural operations to produce an agricultural product up to the time of
 - 2338 harvest or placing the agricultural product into a storage facility, including:
 - 2339 (i) commercial greenhouses;
 - 2340 (ii) irrigation pumps;
 - 2341 (iii) farm machinery;
 - 2342 (iv) implements of husbandry as defined in [~~Subsection~~] Section 41-1a-102[(23)] that
 - 2343 are not registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 2344 (v) other farming activities;
 - 2345 (c) in manufacturing tangible personal property at an establishment described in SIC
 - 2346 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
 - 2347 Executive Office of the President, Office of Management and Budget;
 - 2348 (d) by a scrap recycler if:
 - 2349 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 2350 one or more of the following items into prepared grades of processed materials for use in new
 - 2351 products:
 - 2352 (A) iron;

- 2353 (B) steel;
- 2354 (C) nonferrous metal;
- 2355 (D) paper;
- 2356 (E) glass;
- 2357 (F) plastic;
- 2358 (G) textile; or
- 2359 (H) rubber; and
- 2360 (ii) the new products under Subsection (51)(d)(i) would otherwise be made with
- 2361 nonrecycled materials; or
- 2362 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 2363 cogeneration facility as defined in Section 54-2-1.
- 2364 (52) (a) Except as provided in Subsection (52)(b), "installation charge" means a charge
- 2365 for installing:
 - 2366 (i) tangible personal property; or
 - 2367 (ii) a product transferred electronically.
- 2368 (b) "Installation charge" does not include a charge for:
 - 2369 (i) repairs or renovations of:
 - 2370 (A) tangible personal property; or
 - 2371 (B) a product transferred electronically; or
 - 2372 (ii) attaching tangible personal property or a product transferred electronically:
 - 2373 (A) to other tangible personal property; and
 - 2374 (B) as part of a manufacturing or fabrication process.
- 2375 (53) "Institution of higher education" means an institution of higher education listed in
- 2376 Section 53B-2-101.
- 2377 (54) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 2378 personal property or a product transferred electronically for:
 - 2379 (i) (A) a fixed term; or
 - 2380 (B) an indeterminate term; and
 - 2381 (ii) consideration.
- 2382 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 2383 amount of consideration may be increased or decreased by reference to the amount realized

2384 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
2385 Code.

2386 (c) "Lease" or "rental" does not include:

2387 (i) a transfer of possession or control of property under a security agreement or
2388 deferred payment plan that requires the transfer of title upon completion of the required
2389 payments;

2390 (ii) a transfer of possession or control of property under an agreement that requires the
2391 transfer of title:

2392 (A) upon completion of required payments; and

2393 (B) if the payment of an option price does not exceed the greater of:

2394 (I) \$100; or

2395 (II) 1% of the total required payments; or

2396 (iii) providing tangible personal property along with an operator for a fixed period of
2397 time or an indeterminate period of time if the operator is necessary for equipment to perform as
2398 designed.

2399 (d) For purposes of Subsection (54)(c)(iii), an operator is necessary for equipment to
2400 perform as designed if the operator's duties exceed the:

2401 (i) set-up of tangible personal property;

2402 (ii) maintenance of tangible personal property; or

2403 (iii) inspection of tangible personal property.

2404 (55) "Life science establishment" means an establishment in this state that is classified
2405 under the following NAICS codes of the 2007 North American Industry Classification System
2406 of the federal Executive Office of the President, Office of Management and Budget:

2407 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

2408 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
2409 Manufacturing; or

2410 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

2411 (56) "Life science research and development facility" means a facility owned, leased,
2412 or rented by a life science establishment if research and development is performed in 51% or
2413 more of the total area of the facility.

2414 (57) "Load and leave" means delivery to a purchaser by use of a tangible storage media

- 2415 if the tangible storage media is not physically transferred to the purchaser.
- 2416 (58) "Local taxing jurisdiction" means a:
- 2417 (a) county that is authorized to impose an agreement sales and use tax;
- 2418 (b) city that is authorized to impose an agreement sales and use tax; or
- 2419 (c) town that is authorized to impose an agreement sales and use tax.
- 2420 (59) "Manufactured home" is as defined in Section 15A-1-302.
- 2421 (60) For purposes of Section 59-12-104, "manufacturing facility" means:
- 2422 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 2423 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 2424 Management and Budget;
- 2425 (b) a scrap recycler if:
- 2426 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 2427 one or more of the following items into prepared grades of processed materials for use in new
- 2428 products:
- 2429 (A) iron;
- 2430 (B) steel;
- 2431 (C) nonferrous metal;
- 2432 (D) paper;
- 2433 (E) glass;
- 2434 (F) plastic;
- 2435 (G) textile; or
- 2436 (H) rubber; and
- 2437 (ii) the new products under Subsection (60)(b)(i) would otherwise be made with
- 2438 nonrecycled materials; or
- 2439 (c) a cogeneration facility as defined in Section 54-2-1.
- 2440 (61) "Member of the immediate family of the producer" means a person who is related
- 2441 to a producer described in Subsection 59-12-104(20)(a) as a:
- 2442 (a) child or stepchild, regardless of whether the child or stepchild is:
- 2443 (i) an adopted child or adopted stepchild; or
- 2444 (ii) a foster child or foster stepchild;
- 2445 (b) grandchild or stepgrandchild;

- 2446 (c) grandparent or stepgrandparent;
- 2447 (d) nephew or stepnephew;
- 2448 (e) niece or stepniece;
- 2449 (f) parent or stepparent;
- 2450 (g) sibling or stepsibling;
- 2451 (h) spouse;
- 2452 (i) person who is the spouse of a person described in Subsections (61)(a) through (g);

2453 or

2454 (j) person similar to a person described in Subsections (61)(a) through (i) as
2455 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
2456 Administrative Rulemaking Act.

2457 (62) "Mobile home" is as defined in Section 15A-1-302.

2458 (63) "Mobile telecommunications service" is as defined in the Mobile
2459 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

2460 (64) (a) "Mobile wireless service" means a telecommunications service, regardless of
2461 the technology used, if:

- 2462 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 2463 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 2464 (iii) the origination point described in Subsection (64)(a)(i) and the termination point
2465 described in Subsection (64)(a)(ii) are not fixed.

2466 (b) "Mobile wireless service" includes a telecommunications service that is provided
2467 by a commercial mobile radio service provider.

2468 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2469 commission may by rule define "commercial mobile radio service provider."

2470 (65) (a) Except as provided in Subsection (65)(c), "mobility enhancing equipment"
2471 means equipment that is:

- 2472 (i) primarily and customarily used to provide or increase the ability to move from one
2473 place to another;
- 2474 (ii) appropriate for use in a:
 - 2475 (A) home; or
 - 2476 (B) motor vehicle; and

- 2477 (iii) not generally used by persons with normal mobility.
- 2478 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
2479 the equipment described in Subsection (65)(a).
- 2480 (c) Notwithstanding Subsection (65)(a), "mobility enhancing equipment" does not
2481 include:
- 2482 (i) a motor vehicle;
- 2483 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
2484 vehicle manufacturer;
- 2485 (iii) durable medical equipment; or
- 2486 (iv) a prosthetic device.
- 2487 (66) "Model 1 seller" means a seller registered under the agreement that has selected a
2488 certified service provider as the seller's agent to perform all of the seller's sales and use tax
2489 functions for agreement sales and use taxes other than the seller's obligation under Section
2490 59-12-124 to remit a tax on the seller's own purchases.
- 2491 (67) "Model 2 seller" means a seller registered under the agreement that:
- 2492 (a) except as provided in Subsection (67)(b), has selected a certified automated system
2493 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 2494 (b) notwithstanding Subsection (67)(a), retains responsibility for remitting all of the
2495 sales tax:
- 2496 (i) collected by the seller; and
- 2497 (ii) to the appropriate local taxing jurisdiction.
- 2498 (68) (a) Subject to Subsection (68)(b), "model 3 seller" means a seller registered under
2499 the agreement that has:
- 2500 (i) sales in at least five states that are members of the agreement;
- 2501 (ii) total annual sales revenues of at least \$500,000,000;
- 2502 (iii) a proprietary system that calculates the amount of tax:
- 2503 (A) for an agreement sales and use tax; and
- 2504 (B) due to each local taxing jurisdiction; and
- 2505 (iv) entered into a performance agreement with the governing board of the agreement.
- 2506 (b) For purposes of Subsection (68)(a), "model 3 seller" includes an affiliated group of
2507 sellers using the same proprietary system.

2508 (69) "Model 4 seller" means a seller that is registered under the agreement and is not a
2509 model 1 seller, model 2 seller, or model 3 seller.

2510 (70) "Modular home" means a modular unit as defined in Section 15A-1-302.

2511 (71) "Motor vehicle" is as defined in Section 41-1a-102.

2512 (72) "Oil sands" means impregnated bituminous sands that:

2513 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
2514 other hydrocarbons, or otherwise treated;

2515 (b) yield mixtures of liquid hydrocarbon; and

2516 (c) require further processing other than mechanical blending before becoming finished
2517 petroleum products.

2518 (73) "Oil shale" means a group of fine black to dark brown shales containing kerogen
2519 material that yields petroleum upon heating and distillation.

2520 (74) "Optional computer software maintenance contract" means a computer software
2521 maintenance contract that a customer is not obligated to purchase as a condition to the retail
2522 sale of computer software.

2523 (75) (a) "Other fuels" means products that burn independently to produce heat or
2524 energy.

2525 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
2526 personal property.

2527 (76) (a) "Paging service" means a telecommunications service that provides
2528 transmission of a coded radio signal for the purpose of activating a specific pager.

2529 (b) For purposes of Subsection (76)(a), the transmission of a coded radio signal
2530 includes a transmission by message or sound.

2531 (77) "Pawnbroker" is as defined in Section 13-32a-102.

2532 (78) "Pawn transaction" is as defined in Section 13-32a-102.

2533 (79) (a) "Permanently attached to real property" means that for tangible personal
2534 property attached to real property:

2535 (i) the attachment of the tangible personal property to the real property:

2536 (A) is essential to the use of the tangible personal property; and

2537 (B) suggests that the tangible personal property will remain attached to the real
2538 property in the same place over the useful life of the tangible personal property; or

2539 (ii) if the tangible personal property is detached from the real property, the detachment
2540 would:

2541 (A) cause substantial damage to the tangible personal property; or

2542 (B) require substantial alteration or repair of the real property to which the tangible
2543 personal property is attached.

2544 (b) "Permanently attached to real property" includes:

2545 (i) the attachment of an accessory to the tangible personal property if the accessory is:

2546 (A) essential to the operation of the tangible personal property; and

2547 (B) attached only to facilitate the operation of the tangible personal property;

2548 (ii) a temporary detachment of tangible personal property from real property for a
2549 repair or renovation if the repair or renovation is performed where the tangible personal
2550 property and real property are located; or

2551 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
2552 Subsection (79)(c)(iii) or (iv).

2553 (c) "Permanently attached to real property" does not include:

2554 (i) the attachment of portable or movable tangible personal property to real property if
2555 that portable or movable tangible personal property is attached to real property only for:

2556 (A) convenience;

2557 (B) stability; or

2558 (C) for an obvious temporary purpose;

2559 (ii) the detachment of tangible personal property from real property except for the
2560 detachment described in Subsection (79)(b)(ii);

2561 (iii) an attachment of the following tangible personal property to real property if the
2562 attachment to real property is only through a line that supplies water, electricity, gas,
2563 telecommunications, cable, or supplies a similar item as determined by the commission by rule
2564 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2565 (A) a computer;

2566 (B) a telephone;

2567 (C) a television; or

2568 (D) tangible personal property similar to Subsections (79)(c)(iii)(A) through (C) as
2569 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

2570 Administrative Rulemaking Act; or
2571 (iv) an item listed in Subsection [~~(117)~~] (118)(c).
2572 (80) "Person" includes any individual, firm, partnership, joint venture, association,
2573 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
2574 municipality, district, or other local governmental entity of the state, or any group or
2575 combination acting as a unit.
2576 (81) "Place of primary use":
2577 (a) for telecommunications service other than mobile telecommunications service,
2578 means the street address representative of where the customer's use of the telecommunications
2579 service primarily occurs, which shall be:
2580 (i) the residential street address of the customer; or
2581 (ii) the primary business street address of the customer; or
2582 (b) for mobile telecommunications service, is as defined in the Mobile
2583 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
2584 (82) (a) "Postpaid calling service" means a telecommunications service a person
2585 obtains by making a payment on a call-by-call basis:
2586 (i) through the use of a:
2587 (A) bank card;
2588 (B) credit card;
2589 (C) debit card; or
2590 (D) travel card; or
2591 (ii) by a charge made to a telephone number that is not associated with the origination
2592 or termination of the telecommunications service.
2593 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
2594 service, that would be a prepaid wireless calling service if the service were exclusively a
2595 telecommunications service.
2596 (83) "Postproduction" means an activity related to the finishing or duplication of a
2597 medium described in Subsection 59-12-104(54)(a).
2598 (84) "Prepaid calling service" means a telecommunications service:
2599 (a) that allows a purchaser access to telecommunications service that is exclusively
2600 telecommunications service;

- 2601 (b) that:
- 2602 (i) is paid for in advance; and
- 2603 (ii) enables the origination of a call using an:
- 2604 (A) access number; or
- 2605 (B) authorization code;
- 2606 (c) that is dialed:
- 2607 (i) manually; or
- 2608 (ii) electronically; and
- 2609 (d) sold in predetermined units or dollars that decline:
- 2610 (i) by a known amount; and
- 2611 (ii) with use.
- 2612 (85) "Prepaid wireless calling service" means a telecommunications service:
- 2613 (a) that provides the right to utilize:
- 2614 (i) mobile wireless service; and
- 2615 (ii) other service that is not a telecommunications service, including:
- 2616 (A) the download of a product transferred electronically;
- 2617 (B) a content service; or
- 2618 (C) an ancillary service;
- 2619 (b) that:
- 2620 (i) is paid for in advance; and
- 2621 (ii) enables the origination of a call using an:
- 2622 (A) access number; or
- 2623 (B) authorization code;
- 2624 (c) that is dialed:
- 2625 (i) manually; or
- 2626 (ii) electronically; and
- 2627 (d) sold in predetermined units or dollars that decline:
- 2628 (i) by a known amount; and
- 2629 (ii) with use.
- 2630 (86) (a) "Prepared food" means:
- 2631 (i) food:

- 2632 (A) sold in a heated state; or
- 2633 (B) heated by a seller;
- 2634 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 2635 item; or
- 2636 (iii) except as provided in Subsection (86)(c), food sold with an eating utensil provided
- 2637 by the seller, including a:
 - 2638 (A) plate;
 - 2639 (B) knife;
 - 2640 (C) fork;
 - 2641 (D) spoon;
 - 2642 (E) glass;
 - 2643 (F) cup;
 - 2644 (G) napkin; or
 - 2645 (H) straw.
- 2646 (b) "Prepared food" does not include:
 - 2647 (i) food that a seller only:
 - 2648 (A) cuts;
 - 2649 (B) repackages; or
 - 2650 (C) pasteurizes; or
 - 2651 (ii) (A) the following:
 - 2652 (I) raw egg;
 - 2653 (II) raw fish;
 - 2654 (III) raw meat;
 - 2655 (IV) raw poultry; or
 - 2656 (V) a food containing an item described in Subsections (86)(b)(ii)(A)(I) through (IV);
 - 2657 and
 - 2658 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
 - 2659 Food and Drug Administration's Food Code that a consumer cook the items described in
 - 2660 Subsection (86)(b)(ii)(A) to prevent food borne illness; or
 - 2661 (iii) the following if sold without eating utensils provided by the seller:
 - 2662 (A) food and food ingredients sold by a seller if the seller's proper primary

2663 classification under the 2002 North American Industry Classification System of the federal
2664 Executive Office of the President, Office of Management and Budget, is manufacturing in
2665 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

2666 Manufacturing;

2667 (B) food and food ingredients sold in an unheated state:

2668 (I) by weight or volume; and

2669 (II) as a single item; or

2670 (C) a bakery item, including:

2671 (I) a bagel;

2672 (II) a bar;

2673 (III) a biscuit;

2674 (IV) bread;

2675 (V) a bun;

2676 (VI) a cake;

2677 (VII) a cookie;

2678 (VIII) a croissant;

2679 (IX) a danish;

2680 (X) a donut;

2681 (XI) a muffin;

2682 (XII) a pastry;

2683 (XIII) a pie;

2684 (XIV) a roll;

2685 (XV) a tart;

2686 (XVI) a torte; or

2687 (XVII) a tortilla.

2688 (c) Notwithstanding Subsection (86)(a)(iii), an eating utensil provided by the seller
2689 does not include the following used to transport the food:

2690 (i) a container; or

2691 (ii) packaging.

2692 (87) "Prescription" means an order, formula, or recipe that is issued:

2693 (a) (i) orally;

2694 (ii) in writing;
2695 (iii) electronically; or
2696 (iv) by any other manner of transmission; and
2697 (b) by a licensed practitioner authorized by the laws of a state.
2698 (88) (a) Except as provided in Subsection (88)(b)(ii) or (iii), "prewritten computer
2699 software" means computer software that is not designed and developed:
2700 (i) by the author or other creator of the computer software; and
2701 (ii) to the specifications of a specific purchaser.
2702 (b) "Prewritten computer software" includes:
2703 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
2704 software is not designed and developed:
2705 (A) by the author or other creator of the computer software; and
2706 (B) to the specifications of a specific purchaser;
2707 (ii) notwithstanding Subsection (88)(a), computer software designed and developed by
2708 the author or other creator of the computer software to the specifications of a specific purchaser
2709 if the computer software is sold to a person other than the purchaser; or
2710 (iii) notwithstanding Subsection (88)(a) and except as provided in Subsection (88)(c),
2711 prewritten computer software or a prewritten portion of prewritten computer software:
2712 (A) that is modified or enhanced to any degree; and
2713 (B) if the modification or enhancement described in Subsection (88)(b)(iii)(A) is
2714 designed and developed to the specifications of a specific purchaser.
2715 (c) Notwithstanding Subsection (88)(b)(iii), "prewritten computer software" does not
2716 include a modification or enhancement described in Subsection (88)(b)(iii) if the charges for
2717 the modification or enhancement are:
2718 (i) reasonable; and
2719 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
2720 invoice or other statement of price provided to the purchaser at the time of sale or later, as
2721 demonstrated by:
2722 (A) the books and records the seller keeps at the time of the transaction in the regular
2723 course of business, including books and records the seller keeps at the time of the transaction in
2724 the regular course of business for nontax purposes;

2725 (B) a preponderance of the facts and circumstances at the time of the transaction; and
2726 (C) the understanding of all of the parties to the transaction.

2727 (89) (a) "Private communication service" means a telecommunications service:

2728 (i) that entitles a customer to exclusive or priority use of one or more communications
2729 channels between or among termination points; and

2730 (ii) regardless of the manner in which the one or more communications channels are
2731 connected.

2732 (b) "Private communications service" includes the following provided in connection
2733 with the use of one or more communications channels:

2734 (i) an extension line;

2735 (ii) a station;

2736 (iii) switching capacity; or

2737 (iv) another associated service that is provided in connection with the use of one or
2738 more communications channels as defined in Section 59-12-215.

2739 (90) (a) Except as provided in Subsection (90)(b), "product transferred electronically"
2740 means a product transferred electronically that would be subject to a tax under this chapter if
2741 that product was transferred in a manner other than electronically.

2742 (b) "Product transferred electronically" does not include:

2743 (i) an ancillary service;

2744 (ii) computer software; or

2745 (iii) a telecommunications service.

2746 (91) (a) "Prosthetic device" means a device that is worn on or in the body to:

2747 (i) artificially replace a missing portion of the body;

2748 (ii) prevent or correct a physical deformity or physical malfunction; or

2749 (iii) support a weak or deformed portion of the body.

2750 (b) "Prosthetic device" includes:

2751 (i) parts used in the repairs or renovation of a prosthetic device;

2752 (ii) replacement parts for a prosthetic device;

2753 (iii) a dental prosthesis; or

2754 (iv) a hearing aid.

2755 (c) "Prosthetic device" does not include:

- 2756 (i) corrective eyeglasses; or
- 2757 (ii) contact lenses.
- 2758 (92) (a) "Protective equipment" means an item:
- 2759 (i) for human wear; and
- 2760 (ii) that is:
- 2761 (A) designed as protection:
- 2762 (I) to the wearer against injury or disease; or
- 2763 (II) against damage or injury of other persons or property; and
- 2764 (B) not suitable for general use.
- 2765 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2766 commission shall make rules:
- 2767 (i) listing the items that constitute "protective equipment"; and
- 2768 (ii) that are consistent with the list of items that constitute "protective equipment"
- 2769 under the agreement.
- 2770 (93) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 2771 printed matter, other than a photocopy:
- 2772 (i) regardless of:
- 2773 (A) characteristics;
- 2774 (B) copyright;
- 2775 (C) form;
- 2776 (D) format;
- 2777 (E) method of reproduction; or
- 2778 (F) source; and
- 2779 (ii) made available in printed or electronic format.
- 2780 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2781 commission may by rule define the term "photocopy."
- 2782 (94) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 2783 (i) valued in money; and
- 2784 (ii) for which tangible personal property, a product transferred electronically, or
- 2785 services are:
- 2786 (A) sold;

- 2787 (B) leased; or
- 2788 (C) rented.
- 2789 (b) "Purchase price" and "sales price" include:
- 2790 (i) the seller's cost of the tangible personal property, a product transferred
- 2791 electronically, or services sold;
- 2792 (ii) expenses of the seller, including:
- 2793 (A) the cost of materials used;
- 2794 (B) a labor cost;
- 2795 (C) a service cost;
- 2796 (D) interest;
- 2797 (E) a loss;
- 2798 (F) the cost of transportation to the seller; or
- 2799 (G) a tax imposed on the seller;
- 2800 (iii) a charge by the seller for any service necessary to complete the sale; or
- 2801 (iv) consideration a seller receives from a person other than the purchaser if:
- 2802 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 2803 and
- 2804 (II) the consideration described in Subsection (94)(b)(iv)(A)(I) is directly related to a
- 2805 price reduction or discount on the sale;
- 2806 (B) the seller has an obligation to pass the price reduction or discount through to the
- 2807 purchaser;
- 2808 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 2809 the seller at the time of the sale to the purchaser; and
- 2810 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 2811 seller to claim a price reduction or discount; and
- 2812 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 2813 coupon, or other documentation with the understanding that the person other than the seller
- 2814 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 2815 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 2816 organization allowed a price reduction or discount, except that a preferred customer card that is
- 2817 available to any patron of a seller does not constitute membership in a group or organization

2818 allowed a price reduction or discount; or
2819 (III) the price reduction or discount is identified as a third party price reduction or
2820 discount on the:
2821 (Aa) invoice the purchaser receives; or
2822 (Bb) certificate, coupon, or other documentation the purchaser presents.
2823 (c) "Purchase price" and "sales price" do not include:
2824 (i) a discount:
2825 (A) in a form including:
2826 (I) cash;
2827 (II) term; or
2828 (III) coupon;
2829 (B) that is allowed by a seller;
2830 (C) taken by a purchaser on a sale; and
2831 (D) that is not reimbursed by a third party; or
2832 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
2833 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
2834 sale or later, as demonstrated by the books and records the seller keeps at the time of the
2835 transaction in the regular course of business, including books and records the seller keeps at the
2836 time of the transaction in the regular course of business for nontax purposes, by a
2837 preponderance of the facts and circumstances at the time of the transaction, and by the
2838 understanding of all of the parties to the transaction:
2839 (A) the following from credit extended on the sale of tangible personal property or
2840 services:
2841 (I) a carrying charge;
2842 (II) a financing charge; or
2843 (III) an interest charge;
2844 (B) a delivery charge;
2845 (C) an installation charge;
2846 (D) a manufacturer rebate on a motor vehicle; or
2847 (E) a tax or fee legally imposed directly on the consumer.
2848 (95) "Purchaser" means a person to whom:

2849 (a) a sale of tangible personal property is made;

2850 (b) a product is transferred electronically; or

2851 (c) a service is furnished.

2852 (96) "Regularly rented" means:

2853 (a) rented to a guest for value three or more times during a calendar year; or

2854 (b) advertised or held out to the public as a place that is regularly rented to guests for
2855 value.

2856 (97) "Rental" is as defined in Subsection (54).

2857 (98) (a) Except as provided in Subsection (98)(b), "repairs or renovations of tangible
2858 personal property" means:

2859 (i) a repair or renovation of tangible personal property that is not permanently attached
2860 to real property; or

2861 (ii) attaching tangible personal property or a product transferred electronically to other
2862 tangible personal property or detaching tangible personal property or a product transferred
2863 electronically from other tangible personal property if:

2864 (A) the other tangible personal property to which the tangible personal property or
2865 product transferred electronically is attached or from which the tangible personal property or
2866 product transferred electronically is detached is not permanently attached to real property; and

2867 (B) the attachment of tangible personal property or a product transferred electronically
2868 to other tangible personal property or detachment of tangible personal property or a product
2869 transferred electronically from other tangible personal property is made in conjunction with a
2870 repair or replacement of tangible personal property or a product transferred electronically.

2871 (b) "Repairs or renovations of tangible personal property" does not include:

2872 (i) attaching prewritten computer software to other tangible personal property if the
2873 other tangible personal property to which the prewritten computer software is attached is not
2874 permanently attached to real property; or

2875 (ii) detaching prewritten computer software from other tangible personal property if the
2876 other tangible personal property from which the prewritten computer software is detached is
2877 not permanently attached to real property.

2878 (99) "Research and development" means the process of inquiry or experimentation
2879 aimed at the discovery of facts, devices, technologies, or applications and the process of

2880 preparing those devices, technologies, or applications for marketing.

2881 (100) (a) "Residential telecommunications services" means a telecommunications
2882 service or an ancillary service that is provided to an individual for personal use:

2883 (i) at a residential address; or

2884 (ii) at an institution, including a nursing home or a school, if the telecommunications
2885 service or ancillary service is provided to and paid for by the individual residing at the
2886 institution rather than the institution.

2887 (b) For purposes of Subsection (100)(a)(i), a residential address includes an:

2888 (i) apartment; or

2889 (ii) other individual dwelling unit.

2890 (101) "Residential use" means the use in or around a home, apartment building,
2891 sleeping quarters, and similar facilities or accommodations.

2892 (102) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
2893 than:

2894 (a) resale;

2895 (b) sublease; or

2896 (c) subrent.

2897 (103) (a) "Retailer" means any person engaged in a regularly organized business in
2898 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
2899 who is selling to the user or consumer and not for resale.

2900 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
2901 engaged in the business of selling to users or consumers within the state.

2902 (104) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
2903 otherwise, in any manner, of tangible personal property or any other taxable transaction under
2904 Subsection 59-12-103(1), for consideration.

2905 (b) "Sale" includes:

2906 (i) installment and credit sales;

2907 (ii) any closed transaction constituting a sale;

2908 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
2909 chapter;

2910 (iv) any transaction if the possession of property is transferred but the seller retains the

2911 title as security for the payment of the price; and
2912 (v) any transaction under which right to possession, operation, or use of any article of
2913 tangible personal property is granted under a lease or contract and the transfer of possession
2914 would be taxable if an outright sale were made.

2915 (105) "Sale at retail" is as defined in Subsection (102).

2916 (106) "Sale-leaseback transaction" means a transaction by which title to tangible
2917 personal property or a product transferred electronically that is subject to a tax under this
2918 chapter is transferred:

2919 (a) by a purchaser-lessee;

2920 (b) to a lessor;

2921 (c) for consideration; and

2922 (d) if:

2923 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
2924 of the tangible personal property or product transferred electronically;

2925 (ii) the sale of the tangible personal property or product transferred electronically to the
2926 lessor is intended as a form of financing:

2927 (A) for the tangible personal property or product transferred electronically; and

2928 (B) to the purchaser-lessee; and

2929 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
2930 is required to:

2931 (A) capitalize the tangible personal property or product transferred electronically for
2932 financial reporting purposes; and

2933 (B) account for the lease payments as payments made under a financing arrangement.

2934 (107) "Sales price" is as defined in Subsection (94).

2935 (108) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
2936 amounts charged by a school:

2937 (i) sales that are directly related to the school's educational functions or activities
2938 including:

2939 (A) the sale of:

2940 (I) textbooks;

2941 (II) textbook fees;

2942 (III) laboratory fees;
2943 (IV) laboratory supplies; or
2944 (V) safety equipment;
2945 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
2946 that:
2947 (I) a student is specifically required to wear as a condition of participation in a
2948 school-related event or school-related activity; and
2949 (II) is not readily adaptable to general or continued usage to the extent that it takes the
2950 place of ordinary clothing;
2951 (C) sales of the following if the net or gross revenues generated by the sales are
2952 deposited into a school district fund or school fund dedicated to school meals:
2953 (I) food and food ingredients; or
2954 (II) prepared food; or
2955 (D) transportation charges for official school activities; or
2956 (ii) amounts paid to or amounts charged by a school for admission to a school-related
2957 event or school-related activity.
2958 (b) "Sales relating to schools" does not include:
2959 (i) bookstore sales of items that are not educational materials or supplies;
2960 (ii) except as provided in Subsection (108)(a)(i)(B):
2961 (A) clothing;
2962 (B) clothing accessories or equipment;
2963 (C) protective equipment; or
2964 (D) sports or recreational equipment; or
2965 (iii) amounts paid to or amounts charged by a school for admission to a school-related
2966 event or school-related activity if the amounts paid or charged are passed through to a person:
2967 (A) other than a:
2968 (I) school;
2969 (II) nonprofit organization authorized by a school board or a governing body of a
2970 private school to organize and direct a competitive secondary school activity; or
2971 (III) nonprofit association authorized by a school board or a governing body of a
2972 private school to organize and direct a competitive secondary school activity; and

- 2973 (B) that is required to collect sales and use taxes under this chapter.
- 2974 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2975 commission may make rules defining the term "passed through."
- 2976 (109) For purposes of this section and Section 59-12-104, "school":
- 2977 (a) means:
- 2978 (i) an elementary school or a secondary school that:
- 2979 (A) is a:
- 2980 (I) public school; or
- 2981 (II) private school; and
- 2982 (B) provides instruction for one or more grades kindergarten through 12; or
- 2983 (ii) a public school district; and
- 2984 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 2985 (110) "Seller" means a person that makes a sale, lease, or rental of:
- 2986 (a) tangible personal property;
- 2987 (b) a product transferred electronically; or
- 2988 (c) a service.
- 2989 (111) (a) "Semiconductor fabricating, processing, research, or development materials"
- 2990 means tangible personal property or a product transferred electronically if the tangible personal
- 2991 property or product transferred electronically is:
- 2992 (i) used primarily in the process of:
- 2993 (A) (I) manufacturing a semiconductor;
- 2994 (II) fabricating a semiconductor; or
- 2995 (III) research or development of a:
- 2996 (Aa) semiconductor; or
- 2997 (Bb) semiconductor manufacturing process; or
- 2998 (B) maintaining an environment suitable for a semiconductor; or
- 2999 (ii) consumed primarily in the process of:
- 3000 (A) (I) manufacturing a semiconductor;
- 3001 (II) fabricating a semiconductor; or
- 3002 (III) research or development of a:
- 3003 (Aa) semiconductor; or

- 3004 (Bb) semiconductor manufacturing process; or
- 3005 (B) maintaining an environment suitable for a semiconductor.
- 3006 (b) "Semiconductor fabricating, processing, research, or development materials"
- 3007 includes:
- 3008 (i) parts used in the repairs or renovations of tangible personal property or a product
- 3009 transferred electronically described in Subsection (111)(a); or
- 3010 (ii) a chemical, catalyst, or other material used to:
- 3011 (A) produce or induce in a semiconductor a:
- 3012 (I) chemical change; or
- 3013 (II) physical change;
- 3014 (B) remove impurities from a semiconductor; or
- 3015 (C) improve the marketable condition of a semiconductor.
- 3016 (112) "Senior citizen center" means a facility having the primary purpose of providing
- 3017 services to the aged as defined in Section 62A-3-101.
- 3018 (113) "Simplified electronic return" means the electronic return:
- 3019 (a) described in Section 318(C) of the agreement; and
- 3020 (b) approved by the governing board of the agreement.
- 3021 (114) "Solar energy" means the sun used as the sole source of energy for producing
- 3022 electricity.
- 3023 (115) (a) "Sports or recreational equipment" means an item:
- 3024 (i) designed for human use; and
- 3025 (ii) that is:
- 3026 (A) worn in conjunction with:
- 3027 (I) an athletic activity; or
- 3028 (II) a recreational activity; and
- 3029 (B) not suitable for general use.
- 3030 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 3031 commission shall make rules:
- 3032 (i) listing the items that constitute "sports or recreational equipment"; and
- 3033 (ii) that are consistent with the list of items that constitute "sports or recreational
- 3034 equipment" under the agreement.

3035 (116) "State" means the state of Utah, its departments, and agencies.

3036 (117) "Storage" means any keeping or retention of tangible personal property or any
3037 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
3038 sale in the regular course of business.

3039 (118) (a) Except as provided in Subsection (118)(d) or (e), "tangible personal property"
3040 means personal property that:

3041 (i) may be:

3042 (A) seen;

3043 (B) weighed;

3044 (C) measured;

3045 (D) felt; or

3046 (E) touched; or

3047 (ii) is in any manner perceptible to the senses.

3048 (b) "Tangible personal property" includes:

3049 (i) electricity;

3050 (ii) water;

3051 (iii) gas;

3052 (iv) steam; or

3053 (v) prewritten computer software, regardless of the manner in which the prewritten
3054 computer software is transferred.

3055 (c) "Tangible personal property" includes the following regardless of whether the item
3056 is attached to real property:

3057 (i) a dishwasher;

3058 (ii) a dryer;

3059 (iii) a freezer;

3060 (iv) a microwave;

3061 (v) a refrigerator;

3062 (vi) a stove;

3063 (vii) a washer; or

3064 (viii) an item similar to Subsections (118)(c)(i) through (vii) as determined by the
3065 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

3066 Rulemaking Act.

3067 (d) "Tangible personal property" does not include a product that is transferred
3068 electronically.

3069 (e) "Tangible personal property" does not include the following if attached to real
3070 property, regardless of whether the attachment to real property is only through a line that
3071 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
3072 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
3073 Rulemaking Act:

- 3074 (i) a hot water heater;
- 3075 (ii) a water filtration system; or
- 3076 (iii) a water softener system.

3077 (119) (a) "Telecommunications enabling or facilitating equipment, machinery, or
3078 software" means an item listed in Subsection (119)(b) if that item is purchased or leased
3079 primarily to enable or facilitate one or more of the following to function:

- 3080 (i) telecommunications switching or routing equipment, machinery, or software; or
- 3081 (ii) telecommunications transmission equipment, machinery, or software.

3082 (b) The following apply to Subsection (119)(a):

- 3083 (i) a pole;
- 3084 (ii) software;
- 3085 (iii) a supplementary power supply;
- 3086 (iv) temperature or environmental equipment or machinery;
- 3087 (v) test equipment;
- 3088 (vi) a tower; or
- 3089 (vii) equipment, machinery, or software that functions similarly to an item listed in
3090 Subsections (119)(b)(i) through (vi) as determined by the commission by rule made in
3091 accordance with Subsection (119)(c).

3092 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3093 commission may by rule define what constitutes equipment, machinery, or software that
3094 functions similarly to an item listed in Subsections (119)(b)(i) through (vi).

3095 (120) "Telecommunications equipment, machinery, or software required for 911
3096 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

3097 Sec. 20.18.

3098 (121) "Telecommunications maintenance or repair equipment, machinery, or software"
3099 means equipment, machinery, or software purchased or leased primarily to maintain or repair
3100 one or more of the following, regardless of whether the equipment, machinery, or software is
3101 purchased or leased as a spare part or as an upgrade or modification to one or more of the
3102 following:

- 3103 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 3104 (b) telecommunications switching or routing equipment, machinery, or software; or
- 3105 (c) telecommunications transmission equipment, machinery, or software.

3106 (122) (a) "Telecommunications service" means the electronic conveyance, routing, or
3107 transmission of audio, data, video, voice, or any other information or signal to a point, or
3108 among or between points.

3109 (b) "Telecommunications service" includes:

3110 (i) an electronic conveyance, routing, or transmission with respect to which a computer
3111 processing application is used to act:

3112 (A) on the code, form, or protocol of the content;

3113 (B) for the purpose of electronic conveyance, routing, or transmission; and

3114 (C) regardless of whether the service:

3115 (I) is referred to as voice over Internet protocol service; or

3116 (II) is classified by the Federal Communications Commission as enhanced or value
3117 added;

3118 (ii) an 800 service;

3119 (iii) a 900 service;

3120 (iv) a fixed wireless service;

3121 (v) a mobile wireless service;

3122 (vi) a postpaid calling service;

3123 (vii) a prepaid calling service;

3124 (viii) a prepaid wireless calling service; or

3125 (ix) a private communications service.

3126 (c) "Telecommunications service" does not include:

3127 (i) advertising, including directory advertising;

- 3128 (ii) an ancillary service;
- 3129 (iii) a billing and collection service provided to a third party;
- 3130 (iv) a data processing and information service if:
- 3131 (A) the data processing and information service allows data to be:
- 3132 (I) (Aa) acquired;
- 3133 (Bb) generated;
- 3134 (Cc) processed;
- 3135 (Dd) retrieved; or
- 3136 (Ee) stored; and
- 3137 (II) delivered by an electronic transmission to a purchaser; and
- 3138 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 3139 or information;
- 3140 (v) installation or maintenance of the following on a customer's premises:
- 3141 (A) equipment; or
- 3142 (B) wiring;
- 3143 (vi) Internet access service;
- 3144 (vii) a paging service;
- 3145 (viii) a product transferred electronically, including:
- 3146 (A) music;
- 3147 (B) reading material;
- 3148 (C) a ring tone;
- 3149 (D) software; or
- 3150 (E) video;
- 3151 (ix) a radio and television audio and video programming service:
- 3152 (A) regardless of the medium; and
- 3153 (B) including:
- 3154 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 3155 programming service by a programming service provider;
- 3156 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 3157 (III) audio and video programming services delivered by a commercial mobile radio
- 3158 service provider as defined in 47 C.F.R. Sec. 20.3;

3159 (x) a value-added nonvoice data service; or
3160 (xi) tangible personal property.
3161 (123) (a) "Telecommunications service provider" means a person that:
3162 (i) owns, controls, operates, or manages a telecommunications service; and
3163 (ii) engages in an activity described in Subsection (123)(a)(i) for the shared use with or
3164 resale to any person of the telecommunications service.
3165 (b) A person described in Subsection (123)(a) is a telecommunications service provider
3166 whether or not the Public Service Commission of Utah regulates:
3167 (i) that person; or
3168 (ii) the telecommunications service that the person owns, controls, operates, or
3169 manages.
3170 (124) (a) "Telecommunications switching or routing equipment, machinery, or
3171 software" means an item listed in Subsection (124)(b) if that item is purchased or leased
3172 primarily for switching or routing:
3173 (i) an ancillary service;
3174 (ii) data communications;
3175 (iii) voice communications; or
3176 (iv) telecommunications service.
3177 (b) The following apply to Subsection (124)(a):
3178 (i) a bridge;
3179 (ii) a computer;
3180 (iii) a cross connect;
3181 (iv) a modem;
3182 (v) a multiplexer;
3183 (vi) plug in circuitry;
3184 (vii) a router;
3185 (viii) software;
3186 (ix) a switch; or
3187 (x) equipment, machinery, or software that functions similarly to an item listed in
3188 Subsections (124)(b)(i) through (ix) as determined by the commission by rule made in
3189 accordance with Subsection (124)(c).

3190 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3191 commission may by rule define what constitutes equipment, machinery, or software that
3192 functions similarly to an item listed in Subsections (124)(b)(i) through (ix).

3193 (125) (a) "Telecommunications transmission equipment, machinery, or software"
3194 means an item listed in Subsection (125)(b) if that item is purchased or leased primarily for
3195 sending, receiving, or transporting:

- 3196 (i) an ancillary service;
- 3197 (ii) data communications;
- 3198 (iii) voice communications; or
- 3199 (iv) telecommunications service.

3200 (b) The following apply to Subsection (125)(a):

- 3201 (i) an amplifier;
- 3202 (ii) a cable;
- 3203 (iii) a closure;
- 3204 (iv) a conduit;
- 3205 (v) a controller;
- 3206 (vi) a duplexer;
- 3207 (vii) a filter;
- 3208 (viii) an input device;
- 3209 (ix) an input/output device;
- 3210 (x) an insulator;
- 3211 (xi) microwave machinery or equipment;
- 3212 (xii) an oscillator;
- 3213 (xiii) an output device;
- 3214 (xiv) a pedestal;
- 3215 (xv) a power converter;
- 3216 (xvi) a power supply;
- 3217 (xvii) a radio channel;
- 3218 (xviii) a radio receiver;
- 3219 (xix) a radio transmitter;
- 3220 (xx) a repeater;

3221 (xxi) software;
3222 (xxii) a terminal;
3223 (xxiii) a timing unit;
3224 (xxiv) a transformer;
3225 (xxv) a wire; or
3226 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
3227 Subsections (125)(b)(i) through (xxv) as determined by the commission by rule made in
3228 accordance with Subsection (125)(c).

3229 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3230 commission may by rule define what constitutes equipment, machinery, or software that
3231 functions similarly to an item listed in Subsections (125)(b)(i) through (xxv).

3232 (126) (a) "Textbook for a higher education course" means a textbook or other printed
3233 material that is required for a course:

3234 (i) offered by an institution of higher education; and
3235 (ii) that the purchaser of the textbook or other printed material attends or will attend.

3236 (b) "Textbook for a higher education course" includes a textbook in electronic format.

3237 (127) "Tobacco" means:

3238 (a) a cigarette;
3239 (b) a cigar;
3240 (c) chewing tobacco;
3241 (d) pipe tobacco; or
3242 (e) any other item that contains tobacco.

3243 (128) "Unassisted amusement device" means an amusement device, skill device, or
3244 ride device that is started and stopped by the purchaser or renter of the right to use or operate
3245 the amusement device, skill device, or ride device.

3246 (129) (a) "Use" means the exercise of any right or power over tangible personal
3247 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
3248 incident to the ownership or the leasing of that tangible personal property, product transferred
3249 electronically, or service.

3250 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
3251 property, a product transferred electronically, or a service in the regular course of business and

3252 held for resale.

3253 (130) "Value-added nonvoice data service" means a service:

3254 (a) that otherwise meets the definition of a telecommunications service except that a
3255 computer processing application is used to act primarily for a purpose other than conveyance,
3256 routing, or transmission; and

3257 (b) with respect to which a computer processing application is used to act on data or
3258 information:

3259 (i) code;

3260 (ii) content;

3261 (iii) form; or

3262 (iv) protocol.

3263 (131) (a) Subject to Subsection (131)(b), "vehicle" means the following that are
3264 required to be titled, registered, or titled and registered:

3265 (i) an aircraft as defined in Section 72-10-102;

3266 (ii) a vehicle as defined in Section 41-1a-102;

3267 (iii) an off-highway vehicle as defined in Section 41-22-2; or

3268 (iv) a vessel as defined in Section 41-1a-102.

3269 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

3270 (i) a vehicle described in Subsection (131)(a); or

3271 (ii) (A) a locomotive;

3272 (B) a freight car;

3273 (C) railroad work equipment; or

3274 (D) other railroad rolling stock.

3275 (132) "Vehicle dealer" means a person engaged in the business of buying, selling, or
3276 exchanging a vehicle as defined in Subsection (131).

3277 (133) (a) "Vertical service" means an ancillary service that:

3278 (i) is offered in connection with one or more telecommunications services; and

3279 (ii) offers an advanced calling feature that allows a customer to:

3280 (A) identify a caller; and

3281 (B) manage multiple calls and call connections.

3282 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

3283 conference bridging service.

3284 (134) (a) "Voice mail service" means an ancillary service that enables a customer to
3285 receive, send, or store a recorded message.

3286 (b) "Voice mail service" does not include a vertical service that a customer is required
3287 to have in order to utilize a voice mail service.

3288 (135) (a) Except as provided in Subsection (135)(b), "waste energy facility" means a
3289 facility that generates electricity:

3290 (i) using as the primary source of energy waste materials that would be placed in a
3291 landfill or refuse pit if it were not used to generate electricity, including:

3292 (A) tires;

3293 (B) waste coal;

3294 (C) oil shale; or

3295 (D) municipal solid waste; and

3296 (ii) in amounts greater than actually required for the operation of the facility.

3297 (b) "Waste energy facility" does not include a facility that incinerates:

3298 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

3299 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

3300 (136) "Watercraft" means a vessel as defined in Section 73-18-2.

3301 (137) "Wind energy" means wind used as the sole source of energy to produce
3302 electricity.

3303 (138) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
3304 location by the United States Postal Service.

3305 Section 10. Section **70D-2-401** is amended to read:

3306 **70D-2-401. Qualification of manufactured home or mobile home as improvement**
3307 **to real property -- Requirements -- Removal from property.**

3308 (1) Except as provided in this section, for purposes of this chapter, a manufactured
3309 home or mobile home is considered personal property.

3310 (2) [~~Notwithstanding Subsection (1), for~~] For purposes of this chapter, if the
3311 requirements of this section are met, a manufactured home or mobile home is:

3312 (a) considered to be an improvement to real property; and

3313 (b) considered as real property.

3314 (3) A manufactured home or mobile home is considered to be an improvement to real
3315 property if:

3316 (a) the manufactured home or mobile home is permanently affixed to real property;

3317 (b) the person seeking to have the manufactured home or mobile home considered to
3318 be an improvement to real property:

3319 (i) owns the manufactured home or mobile home;

3320 (ii) (A) owns the real property to which the manufactured home or mobile home is
3321 permanently affixed; or

3322 (B) leases the real property to which the manufactured home or mobile home is
3323 permanently affixed and the real property is financed in accordance with Subsection (4); and

3324 (iii) meets the requirements of:

3325 (A) Subsections (5) and (6); or

3326 (B) Subsection (8); and

3327 (c) (i) in accordance with Subsection (7), the following are recorded by the county
3328 recorder:

3329 [(†)] (A) the affidavit of affixture described in Subsection (7); and

3330 [(†)] (B) the receipt of surrender of ownership documents described in Subsection
3331 (7)[-]; or

3332 (ii) the affidavit of affixture described in Subsection (8) is recorded by the county
3333 recorder in accordance with Subsection (8).

3334 (4) For purposes of Subsection (3)(b)(ii)(B), a manufactured home or mobile home
3335 shall be financed in accordance with the guidelines established by:

3336 (a) the Federal Home Loan Mortgage Corporation;

3337 (b) the Federal National Mortgage Association;

3338 (c) the United States Department of Agriculture; or

3339 (d) another entity that requires as part of the entity's financing program restrictions:

3340 (i) on:

3341 (A) ownership; and

3342 (B) actions affecting title and possession; and

3343 (ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions
3344 imposed by one or more of the entities described in Subsections (4)(a) through (c).

3345 (5) (a) An owner of a manufactured home or mobile home seeking to have the
3346 manufactured home or mobile home considered to be an improvement to real property and
3347 considered real property shall complete an affidavit of affixture.

3348 (b) An affidavit of affixture described in Subsection (5)(a) shall contain:

3349 (i) the vehicle identification numbers of the manufactured home or mobile home;

3350 (ii) the legal description of the real property to which the manufactured home or mobile
3351 home is permanently affixed;

3352 (iii) a statement certified by the assessor of the county in which the manufactured home
3353 or mobile home is located that the owner of the manufactured home or mobile home:

3354 (A) is not required to pay personal property tax in this state on the manufactured home
3355 or mobile home; or

3356 (B) if the manufactured home or mobile home is subject to personal property tax in this
3357 state, has paid all current and prior year personal property taxes assessed on the manufactured
3358 home or mobile home;

3359 (iv) a description of any security interests in the manufactured home or mobile home;
3360 and

3361 (v) a receipt of surrender of ownership documents issued by the Motor Vehicle
3362 Division of the State Tax Commission in accordance with Subsection (6).

3363 (6) (a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt
3364 of surrender of ownership documents under Subsection (5)(b)(v) if an owner described in
3365 Subsection (5) surrenders to the Motor Vehicle Division the:

3366 (i) manufacturer's original certificate of origin; or

3367 (ii) title to the manufactured home or mobile home.

3368 (b) After issuing the receipt of surrender of ownership documents in Subsection (6)(a),
3369 the Motor Vehicle Division shall maintain a permanent record of:

3370 (i) the receipt of surrender of ownership documents; and

3371 (ii) the certificate or title described in Subsection (6)(a)(ii).

3372 (7) (a) An owner shall present to the county recorder:

3373 (i) the affidavit of affixture described in Subsection (5); and

3374 (ii) the receipt of surrender of ownership documents described in Subsection (6).

3375 (b) A county recorder who receives [~~an affidavit of affixture and receipt of surrender~~]

3376 the documents described in Subsection (7)(a) shall record the [~~receipt of surrender and affidavit~~
3377 ~~of affixture~~] documents.

3378 (c) An owner of property described in Subsection (5) shall provide a copy of the
3379 recorded affidavit of affixture to:

3380 (i) the Motor Vehicle Division of the State Tax Commission; and

3381 (ii) the assessor of the county in which the manufactured home or mobile home is
3382 located.

3383 (8) (a) If an owner cannot comply with Subsections (5), (6), and (7) because the
3384 certificate of title for the manufactured home or mobile home is lost or destroyed and a
3385 duplicate title cannot be obtained, the owner of the manufactured home or mobile home
3386 seeking to have the manufactured home or mobile home considered to be an improvement to
3387 real property and considered real property shall complete an affidavit of affixture meeting the
3388 requirements of Subsection (8)(b).

3389 (b) An affidavit of affixture described in Subsection (8)(a) shall contain the following
3390 from the owner:

3391 (i) the vehicle identification number of the manufactured home or mobile home;

3392 (ii) the legal description of the real property to which the manufactured home or mobile
3393 home is permanently affixed;

3394 (iii) a statement that the manufactured home or mobile home is permanently affixed to
3395 the real property;

3396 (iv) a statement that the manufactured home or mobile home is not registered with nor
3397 being assessed a fee in lieu of taxes by the Motor Vehicle Division of the State Tax
3398 Commission;

3399 (v) a statement that the manufactured home or mobile home is being taxed as an
3400 improvement to real estate by the county assessor as permitted under Section 59-2-1503;

3401 (vi) a statement that the certificate of title described in Subsection (6)(a)(ii) has been
3402 lost or destroyed and the owner is unable to secure a duplicate title; and

3403 (vii) a statement that the manufacturer's identification number or numbers are included
3404 in the deed or loan document recorded with the county recorder.

3405 (c) The affidavit of affixture described in Subsection (8)(b) may be substantially in the
3406 following form:

3407 "AFFIDAVIT OF AFFIXTURE

3408 I,[Affiant's Name], being first duly sworn, do hereby depose and say:

3409 1. I am a resident of [County], State of [State], and I have personal knowledge of the facts
3410 contained in this affidavit and I am making this affidavit to comply with Utah Code Ann.

3411 Section 70D-2-401.

3412 2. I own a fee simple interest in the following described property ("Real Property") located at
3413 [City or Town], [County], State of Utah, more particularly described as:

3414 [legal description].

3415 3. I own a [manufactured home or mobile home] ("the Home") described by the manufacturer's
3416 identification number(s): [VIN or other manufacturer's identifying number].

3417 4. The Home is permanently affixed to the Real Property.

3418 5. The Home is not registered with the Utah Motor Vehicles Division.

3419 6. The Home is taxed as an improvement to real estate by the [County] County Assessor as
3420 permitted under Utah Code Ann. Section 59-2-1503.

3421 7. The Certificate of Title for the Home has been lost or destroyed and I am unable to secure a
3422 duplicate title.

3423 8. The manufacturer's identification number(s) are included in the deed that is being recorded
3424 concurrently with this affidavit.

3425 DATED this _____ day of _____, 20__.

3426 _____

3427 The foregoing instrument was acknowledged before me this _____ day of _____,
3428 20__ , by _____.

3429 _____

3430 Notary Public

3431 My Commission Expires:

3432 Residing at: _____

3433 _____"

3434 (d) A county recorder who receives an affidavit of affixture described in Subsection
3435 (8)(b) shall record the affidavit of affixture.

3436 [~~(8)~~ (9) A lien on the manufactured home or mobile home that is considered to be an
3437 improvement to real property shall be perfected in the manner provided for the perfection of a

3438 lien on real property.

3439 ~~[(9)]~~ (10) If a manufactured home or mobile home owner separates the manufactured
3440 home or mobile home from the real property, the owner may acquire a new title by submitting
3441 to the Motor Vehicle Division of the State Tax Commission:

3442 (a) a recorded affidavit that the manufactured home or mobile home is removed from
3443 the real property; and

3444 (b) an application for a new title.

3445 ~~[(10)]~~ (11) The determination of whether a manufactured home or mobile home is
3446 considered real property or personal property under this section may not be considered in
3447 determining whether the manufactured home or mobile home is real property or personal
3448 property for purposes of taxation under Title 59, Chapter 2, Property Tax Act.

3449 Section 11. **Effective date.**

3450 This bill takes effect on May 14, 2013, except the amendments to Section 59-12-102
3451 (Effective 07/01/14) take effect July 1, 2014.

Legislative Review Note
as of 1-14-13 6:45 AM

Office of Legislative Research and General Counsel