

1 **AMENDMENTS TO PUBLIC UTILITIES TITLE**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 54, Public Utilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms and modifies definitions, including addressing entities that are not
- 13 included in the definition of "electrical corporation" or "public utility";
- 14 ▶ provides that a public utility is not required to furnish or provide bundled electric
- 15 service under certain circumstances;
- 16 ▶ provides procedures for certain customers to transfer service from a public utility to
- 17 a non-utility energy supplier;
- 18 ▶ addresses the applicability of certain provisions within the Public Utilities title; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides effective dates.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **17B-2a-406**, as last amended by Laws of Utah 2009, Chapter 384

27 **54-2-1**, as last amended by Laws of Utah 2010, Chapters 302 and 390



28 **54-3-8**, as last amended by Laws of Utah 2010, Chapter 390

29 **54-4-2**, as last amended by Laws of Utah 2010, Chapter 390

30 **54-15-108**, as enacted by Laws of Utah 2010, Chapter 302

31 **59-12-102 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapters

32 229, 234, 266, and 441

33 **59-12-102 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 229,

34 234, 266, and 441

35 ENACTS:

36 **54-3-1.1**, Utah Code Annotated 1953



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

39 Section 1. Section **17B-2a-406** is amended to read:

40 **17B-2a-406. Improvement districts providing electric service -- Public Service**

41 **Commission jurisdiction -- Exceptions.**

42 (1) As used in this section:

43 (a) "Commission" means the Public Service Commission of Utah established in

44 Section **54-1-1**.

45 (b) "Electric corporation" has the same meaning as "electrical corporation" defined in

46 Section **54-2-1**.

47 (c) "Electric improvement district" means an improvement district that provides

48 electric service as authorized under Subsection **17B-2a-403(1)(a)(iv)**.

49 (d) "Stranded asset" means an asset that:

50 (i) an electric corporation owns and operates;

51 (ii) is designed to serve an area that is:

52 (A) within the electric corporation's certificated service area before the area is removed

53 from the certificated service area by commission order as provided in Subsection

54 (3)(b)(i)(B)(II); and

55 (B) within the boundary of an electric improvement district; and

56 (iii) will not be useful to or used by the electric corporation after removal of the area

57 from the electric corporation's certificated service area.

58 (2) An electric improvement district is a public utility and subject to the jurisdiction of

59 the commission.

60 (3) (a) Except as provided in Subsection (3)(b), an electric improvement district:

61 (i) may include only an area where:

62 (A) no retail electricity has been provided to commercial, industrial, residential, and
63 other users of electricity from an investor-owned utility within any part of an area certificated
64 by the commission or an area adjacent to that area, municipal agency, or electric cooperative
65 within the five years immediately preceding September 1, 1985; and

66 (B) electric service is provided to at least one user of electricity within the electric
67 service district as of September 1, 1985; and

68 (ii) shall have filed an application for certification and received approval by the
69 commission by September 1, 1986.

70 (b) (i) An electric improvement district created after May 11, 2009 may provide
71 electric service within the boundary of the improvement district if:

72 (A) no part of the boundary of the electric improvement district is closer than 40 miles
73 to an existing service line of an electric corporation;

74 (B) (I) no part of the area within the boundary of the electric improvement district is
75 within the certificated service area of an electric corporation; or

76 (II) the area within the boundary of the electric improvement district that is also within
77 the certificated service area of an electric corporation is removed from the electric corporation's
78 certificated service area by commission order in a proceeding initiated by a petition filed by
79 and at the discretion of the electric corporation; and

80 (C) before January 1, 2010, the electric improvement district receives a certificate of
81 public convenience and necessity from the commission authorizing the electric improvement
82 district to provide electric service to the area within the boundary of the electric improvement
83 district.

84 (ii) An electric improvement district that provides electric service as provided in
85 Subsection (3)(b)(i) shall pay an electric corporation an amount equal to the fair market value
86 of each stranded asset of the electric corporation.

87 (4) Nothing in this part may be construed to give the commission jurisdiction over:

88 (a) an improvement district, other than an electric improvement district;

89 (b) a municipality; or

90 (c) an association of municipalities organized under Title 11, Chapter 13, Interlocal
91 Cooperation Act.

92 (5) Before an electric improvement district serves any customer, the electric
93 improvement district shall obtain a certificate of public convenience and necessity from the
94 commission.

95 (6) (a) Section 54-7-12 does not apply to rate changes of an electric improvement
96 district if:

97 (i) the district is organized for the purpose of distributing electricity to customers
98 within the boundary of the district on a not-for-profit basis;

99 (ii) the schedule of new rates or other change that results in new rates has been
100 approved by the board of trustees of the district;

101 (iii) prior to the implementation of any rate increases, the district first holds a public
102 meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior
103 to the meeting; and

104 (iv) the district has filed the schedule of new rates or other change with the
105 commission.

106 (b) The commission shall make the district's schedule of new rates or other change
107 available for public inspection.

108 Section 2. Section 54-2-1 is amended to read:

109 **54-2-1. Definitions.**

110 As used in this title:

111 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
112 energy or capacity or both that, due to the purchase of electric energy or capacity or both from
113 small power production or cogeneration facilities, the electrical corporation would not have to
114 generate itself or purchase from another electrical corporation.

115 (2) "Bundled electric service" means electricity, and the necessary transmission and
116 distribution services, that a public utility provides as a package.

117 [~~2~~] (3) "Cogeneration facility":

118 (a) means a facility that produces:

119 (i) electric energy; and

120 (ii) steam or forms of useful energy, including heat, that are used for industrial,

121 commercial, heating, or cooling purposes; and

122 (b) is a qualifying cogeneration facility under federal law.

123 ~~[(3)]~~ (4) "Commission" means the Public Service Commission of Utah.

124 ~~[(4)]~~ (5) "Commissioner" means a member of the commission.

125 ~~[(5)]~~ (6) (a) "Corporation" includes an association and a joint stock company having
126 any powers or privileges not possessed by individuals or partnerships.

127 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
128 improvement districts, or other governmental units created or organized under any general or
129 special law of this state.

130 ~~[(6)]~~ (7) "Distribution electrical cooperative" includes an electrical corporation that:

131 (a) is a cooperative;

132 (b) conducts a business that includes the retail distribution of electricity the cooperative
133 purchases or generates for the cooperative's members; and

134 (c) is required to allocate or distribute savings in excess of additions to reserves and
135 surplus on the basis of patronage to the cooperative's:

136 (i) members; or

137 (ii) patrons.

138 ~~[(7)]~~ (8) (a) "Electrical corporation" includes every corporation, cooperative
139 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or
140 managing any electric plant, or in any way furnishing electric power for public service or to its
141 consumers or members for domestic, commercial, or industrial use, within this state~~[-except].~~

142 (b) "Electrical corporation" does not include:

143 (i) an independent energy producer ~~[producers, and except]~~ producer;

144 (ii) where electricity is generated on or distributed by the producer solely for the
145 producer's own use, or the use of the producer's tenants or affiliates, or for the use of members
146 of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership
147 Act, and not for sale to the public generally~~[-and except];~~

148 (iii) where the electricity ~~[generated]~~ is consumed by an owner, lessor, or interest
149 holder, or by an affiliate or tenant of an owner, lessor, or interest holder, ~~[who]~~ if that owner,
150 lessor, interest holder, affiliate, or tenant has provided at least \$25,000,000 in value, including
151 credit support, relating to the electric plant furnishing ~~[the]~~ electricity ~~[and whose consumption]~~

152 does not exceed its long-term entitlement in the plant under a long-term arrangement other than
153 a power purchase agreement, except a power purchase agreement with an electrical
154 corporation.] in this state; or

155 (iv) a non-utility energy supplier that sells or provides electricity to an eligible
156 customer that has transferred the eligible customer's service to the non-utility energy supplier in
157 accordance with Section 54-3-1.1.

158 [~~(8)~~] (9) "Electric plant" includes all real estate, fixtures, and personal property owned,
159 controlled, operated, or managed in connection with or to facilitate the production, generation,
160 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
161 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
162 conductors used or to be used for the transmission of electricity for light, heat, or power.

163 (10) "Eligible customer" includes a corporation, cooperative association, or person, or
164 an affiliate, lessee, receiver, or trustee of a corporation, cooperative association, or person, if
165 that corporation, cooperative association, person, affiliate, lessee, receiver, or trustee owns,
166 controls, operates, or manages, in whole or in part, an electric generation plant that:

167 (a) has a capacity of greater than 60 megawatts; and

168 (b) provides service to the producer for the producer's own use or the use of a tenant or
169 affiliate of the producer.

170 [~~(9)~~] (11) "Gas corporation" includes every corporation and person, their lessees,
171 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
172 service within this state or for the selling or furnishing of natural gas to any consumer or
173 consumers within the state for domestic, commercial, or industrial use, except in the situation
174 that:

175 (a) gas is made or produced on, and distributed by the maker or producer through,
176 private property:

177 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
178 tenants; and

179 (ii) not for sale to others;

180 (b) gas is compressed on private property solely for the owner's own use or the use of
181 the owner's employees as a motor vehicle fuel; or

182 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely

183 for sale as a motor vehicle fuel.

184 ~~[(10)]~~ (12) "Gas plant" includes all real estate, fixtures, and personal property owned,
185 controlled, operated, or managed in connection with or to facilitate the production, generation,
186 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

187 ~~[(11)]~~ (13) "Heat corporation" includes every corporation and person, their lessees,
188 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
189 service within this state.

190 ~~[(12)]~~ (14) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
191 and personal property controlled, operated, or managed in connection with or to facilitate the
192 production, generation, transmission, delivery, or furnishing of artificial heat.

193 (b) "Heating plant" does not include either small power production facilities or
194 cogeneration facilities.

195 ~~[(13)]~~ (15) "Independent energy producer" means every electrical corporation, person,
196 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
197 control, or manage an independent power production or cogeneration facility.

198 ~~[(14)]~~ (16) "Independent power production facility" means a facility that:

199 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
200 waste, a renewable resource, a geothermal resource, or any combination of the preceding
201 sources; or

202 (b) is a qualifying power production facility.

203 (17) "Non-utility energy supplier" means a person who:

204 (a) has received market-based rate authority from the Federal Energy Regulatory
205 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
206 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

207 (b) owns, leases, operates, or manages an electric generation plant that:

208 (i) has a capacity of greater than 60 megawatts; and

209 (ii) is hosted by an industrial facility that consumes the output of the electric plant, in
210 whole or in part, for the industrial facility's use or the use of a tenant or affiliate of the
211 industrial facility.

212 ~~[(15)]~~ (18) "Private telecommunications system" includes all facilities for the
213 transmission of signs, signals, writing, images, sounds, messages, data, or other information of

214 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
215 facilities, that are owned, controlled, operated, or managed by a corporation or person,
216 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
217 corporation or person and not for the shared use with or resale to any other corporation or
218 person on a regular basis.

219 ~~[(16)]~~ (19) (a) "Public utility" includes every railroad corporation, gas corporation,
220 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
221 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
222 corporation, and independent energy producer not described in Subsection ~~[(16)]~~ (19)(d),
223 where the service is performed for, or the commodity delivered to, the public generally, or in
224 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
225 furnished to any member or consumers within the state for domestic, commercial, or industrial
226 use.

227 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
228 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
229 or independent energy producer not described in Subsection ~~[(16)]~~ (19)(d), performs a service
230 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
231 jurisdiction and regulation of the commission and this title.

232 (ii) If a gas corporation, independent energy producer not described in Subsection
233 ~~[(16)]~~ (19)(d), or electrical corporation sells or furnishes gas or electricity to any member or
234 consumers within the state, for domestic, commercial, or industrial use, for which any
235 compensation or payment is received, it is considered to be a public utility, subject to the
236 jurisdiction and regulation of the commission and this title.

237 (c) Any corporation or person not engaged in business exclusively as a public utility as
238 defined in this section is governed by this title in respect only to the public utility owned,
239 controlled, operated, or managed by the corporation or person, and not in respect to any other
240 business or pursuit.

241 (d) An independent energy producer is exempt from the jurisdiction and regulations of
242 the commission with respect to an independent power production facility if it meets the
243 requirements of Subsection ~~[(16)]~~ (19)(d)(i), (ii), (iii), or (iv), or any combination of these:

244 (i) the commodity or service is produced or delivered, or both, by an independent

245 energy producer solely for ~~[the uses exempted in Subsection (7)]~~ a use described in Subsections
246 (8)(b)(ii) through (iv) or for the use of state-owned facilities;

247 (ii) the commodity or service is sold by an independent energy producer solely to an
248 electrical corporation or other wholesale purchaser;

249 (iii) (A) the commodity or service produced or delivered by the independent energy
250 producer is delivered to an entity that controls, is controlled by, or affiliated with the
251 independent energy producer or to a user located on real property managed or controlled by the
252 independent energy producer; and

253 (B) the real property on which the service or commodity is used is contiguous to real
254 property ~~[which]~~ that is owned or controlled by the independent energy producer~~[- Parcels of~~
255 ~~real property]~~ or is separated [solely] only by a public [roads or easements for public roads
256 ~~shall be considered as contiguous for purposes of this Subsection (16)]~~ road or an easement for
257 a public road; or

258 (iv) the independent energy producer:

259 (A) supplies energy for direct consumption by a customer that is:

260 (I) a county, municipality, city, town, other political subdivision, local district, special
261 service district, state institution of higher education, school district, charter school, or any
262 entity within the state system of public education; or

263 (II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)
264 operated for religious, charitable, or educational purposes that is exempt from federal income
265 tax and able to demonstrate its tax-exempt status;

266 (B) supplies energy to the customer through use of a customer generation system, as
267 defined in Section 54-15-102, for use on the real property where the customer generation
268 system is located;

269 (C) supplies energy using a customer generation system designed to supply the lesser
270 of:

271 (I) no more than 90% of the average annual consumption of electricity by the customer
272 at that site, based on an annualized billing period; or

273 (II) the maximum size allowable under net metering provisions, defined in Section
274 54-15-102;

275 (D) notifies the customer before installing the customer generation system of:

276 (I) all costs the customer is required to pay for the customer generation system,
277 including any interconnection costs; and

278 (II) the potential for future changes in amounts paid by the customer for energy
279 received from the public utility and the possibility of changes to the customer fees or charges to
280 the customer associated with net metering and generation;

281 (E) enters into and performs in accordance with an interconnection agreement with a
282 public utility providing retail electric service where the real property on which the customer
283 generation system is located, with the rates, terms, and conditions of the retail service and
284 interconnection agreement subject to approval by the governing authority of the public utility,
285 as defined in Subsection 54-15-102(8); and

286 (F) installs the relevant customer generation system by December 31, 2015.

287 (e) Any person or corporation defined as an electrical corporation or public utility
288 under this section may continue to serve its existing customers subject to any order or future
289 determination of the commission in reference to the right to serve those customers.

290 (f) (i) "Public utility" does not include any person that is otherwise considered a public
291 utility under this Subsection [~~(16)~~] (19) solely because of that person's ownership of an interest
292 in an electric plant, cogeneration facility, or small power production facility in this state if all of
293 the following conditions are met:

294 (A) the ownership interest in the electric plant, cogeneration facility, or small power
295 production facility is leased to:

296 (I) a public utility, and that lease has been approved by the commission;

297 (II) a person or government entity that is exempt from commission regulation as a
298 public utility; or

299 (III) a combination of Subsections [~~(16)~~] (19)(f)(i)(A)(I) and (II);

300 (B) the lessor of the ownership interest identified in Subsection [~~(16)~~] (19)(f)(i)(A) is:

301 (I) primarily engaged in a business other than the business of a public utility; or

302 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
303 another person engaged in a business other than the business of a public utility; and

304 (C) the rent reserved under the lease does not include any amount based on or
305 determined by revenues or income of the lessee.

306 (ii) Any person that is exempt from classification as a public utility under Subsection

307 ~~[(16)]~~ (19)(f)(i) shall continue to be so exempt from classification following termination of the
308 lessee's right to possession or use of the electric plant for so long as the former lessor does not
309 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
310 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
311 period of 90 days following termination, or for a longer period that is ordered by the
312 commission. This period may not exceed one year. A change in rates that would otherwise
313 require commission approval may not be effective during the 90-day or extended period
314 without commission approval.

315 (g) "Public utility" does not include any person that provides financing for, but has no
316 ownership interest in an electric plant, small power production facility, or cogeneration facility.
317 In the event of a foreclosure in which an ownership interest in an electric plant, small power
318 production facility, or cogeneration facility is transferred to a third-party financier of an electric
319 plant, small power production facility, or cogeneration facility, then that third-party financier is
320 exempt from classification as a public utility for 90 days following the foreclosure, or for a
321 longer period that is ordered by the commission. This period may not exceed one year.

322 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel
323 does not cause the distributor or transporter to be a "public utility," unless the commission,
324 after notice and a public hearing, determines by rule that it is in the public interest to regulate
325 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
326 vehicle fuel may not cause the seller to be a "public utility."

327 (ii) In determining whether it is in the public interest to regulate the distributors or
328 transporters, the commission shall consider, among other things, the impact of the regulation
329 on the availability and price of natural gas for use as a motor fuel.

330 (i) "Public utility" does not include any corporation, cooperative association, or person,
331 their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or managing an
332 electric plant or in any way furnishing electricity if the electricity is consumed by an owner,
333 lessor, or interest holder, or by an affiliate or tenant of ~~an~~ the owner, lessor, or interest holder,
334 ~~who~~ that has provided at least \$25,000,000 in value, including credit support, relating to the
335 electric plant furnishing ~~the~~ electricity ~~[and whose consumption does not exceed its long-term~~
336 ~~entitlement in the plant under a long-term arrangement other than a power purchase agreement,~~
337 ~~except a power purchase agreement with an electrical corporation]~~ in this state.

338 (j) "Public utility" does not include a non-utility energy supplier that sells or provides
339 electricity to an eligible customer that has transferred the eligible customer's service to the
340 non-utility energy supplier in accordance with Section 54-3-1.1.

341 ~~(17)~~ (20) "Purchasing utility" means any electrical corporation that is required to
342 purchase electricity from small power production or cogeneration facilities pursuant to the
343 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

344 ~~(18)~~ (21) "Qualifying power producer" means a corporation, cooperative association,
345 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
346 person, who owns, controls, operates, or manages any qualifying power production facility or
347 cogeneration facility.

348 ~~(19)~~ (22) "Qualifying power production facility" means a facility that:

349 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,
350 waste, a renewable resource, a geothermal resource, or any combination of the preceding
351 sources;

352 (b) has a power production capacity that, together with any other facilities located at
353 the same site, is no greater than 80 megawatts; and

354 (c) is a qualifying small power production facility under federal law.

355 ~~(20)~~ (23) "Railroad" includes every commercial, interurban, and other railway, other
356 than a street railway, and each branch or extension of a railway, by any power operated,
357 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
358 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
359 other real estate, fixtures, and personal property of every kind used in connection with a
360 railway owned, controlled, operated, or managed for public service in the transportation of
361 persons or property.

362 ~~(21)~~ (24) "Railroad corporation" includes every corporation and person, their lessees,
363 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
364 service within this state.

365 ~~(22)~~ (25) (a) "Sewerage corporation" includes every corporation and person, their
366 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
367 system for public service within this state.

368 (b) "Sewerage corporation" does not include private sewerage companies engaged in

369 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
370 districts, improvement districts, or other governmental units created or organized under any
371 general or special law of this state.

372 [~~(23)~~] (26) "Telegraph corporation" includes every corporation and person, their
373 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
374 for public service within this state.

375 [~~(24)~~] (27) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
376 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
377 controlled, operated, or managed in connection with or to facilitate communication by
378 telegraph, whether that communication be had with or without the use of transmission wires.

379 [~~(25)~~] (28) (a) "Telephone corporation" means any corporation or person, and their
380 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
381 manages, or resells a public telecommunications service as defined in Section [54-8b-2](#).

382 (b) "Telephone corporation" does not mean a corporation, partnership, or firm
383 providing:

384 (i) intrastate telephone service offered by a provider of cellular, personal
385 communication systems (PCS), or other commercial mobile radio service as defined in 47
386 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
387 Commission;

388 (ii) Internet service; or

389 (iii) resold intrastate toll service.

390 [~~(26)~~] (29) "Telephone line" includes all conduits, ducts, poles, wires, cables,
391 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
392 controlled, operated, or managed in connection with or to facilitate communication by
393 telephone whether that communication is had with or without the use of transmission wires.

394 [~~(27)~~] (30) "Transportation of persons" includes every service in connection with or
395 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
396 carriage, and delivery of that person and that person's baggage.

397 [~~(28)~~] (31) "Transportation of property" includes every service in connection with or
398 incidental to the transportation of property, including in particular its receipt, delivery,
399 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and

400 hauling, and the transmission of credit by express companies.

401 ~~[(29)]~~ (32) "Water corporation" includes every corporation and person, their lessees,
402 trustees, and receivers, owning, controlling, operating, or managing any water system for
403 public service within this state. It does not include private irrigation companies engaged in
404 distributing water only to their stockholders, or towns, cities, counties, water conservancy
405 districts, improvement districts, or other governmental units created or organized under any
406 general or special law of this state.

407 ~~[(30)]~~ (33) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
408 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
409 and personal property owned, controlled, operated, or managed in connection with or to
410 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
411 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
412 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

413 (b) "Water system" does not include private irrigation companies engaged in
414 distributing water only to their stockholders.

415 ~~[(31)]~~ (34) "Wholesale electrical cooperative" includes every electrical corporation that
416 is:

417 (a) in the business of the wholesale distribution of electricity it has purchased or
418 generated to its members and the public; and

419 (b) required to distribute or allocate savings in excess of additions to reserves and
420 surplus to members or patrons on the basis of patronage.

421 Section 3. Section **54-3-1.1** is enacted to read:

422 **54-3-1.1. Bundled electric service -- Public utility duties -- Procedure to transfer**
423 **service to a non-utility energy supplier.**

424 (1) Notwithstanding Section 54-3-1 and except as provided in Subsection (2), a public
425 utility is not required to furnish or provide bundled electric service to an eligible customer if
426 the eligible customer transfers service to a non-utility energy supplier in accordance with this
427 section.

428 (2) A public utility that is not required to furnish or provide bundled electric service to
429 an eligible customer under Subsection (1) shall continue to provide transmission or distribution
430 service to the eligible customer:

431 (a) as necessary to facilitate the eligible customer to receive service from a non-utility
432 energy supplier; and

433 (b) in accordance with the tariffs, contracts, or both approved by the federal or state
434 agency that has jurisdiction over the transmission or distribution service.

435 (3) An eligible customer may initiate the transfer of service to a non-utility energy
436 supplier by:

437 (a) providing written notice to the public utility that furnishes or provides bundled
438 electric service to the eligible customer:

439 (i) stating the eligible customer's intent to receive service from a non-utility energy
440 supplier; and

441 (ii) at least 180 days before the date the eligible customer intends to transfer service to
442 the non-utility energy supplier; and

443 (b) filing a written application with the public utility's transmission provider, in
444 accordance with the approved tariffs or contracts of the public utility's transmission provider,
445 for:

446 (i) the transfer or assignment of the rights to transmission or distribution service
447 described in Subsection (7); or

448 (ii) service otherwise necessary to facilitate the eligible customer to receive service
449 from the non-utility energy supplier.

450 (4) (a) No later than 14 days after the date a public utility receives the notice described
451 in Subsection (3)(a) from an eligible customer, the public utility shall provide to the eligible
452 customer an agreement for the public utility to perform a study on the costs of metering,
453 communication, and other facilities or equipment necessary for the eligible customer to receive
454 service from a non-utility energy supplier.

455 (b) The agreement described in Subsection (4)(a) shall include:

456 (i) a statement of the estimated cost of performing the study; and

457 (ii) a provision requiring the eligible customer to reimburse the public utility for the
458 actual, reasonable cost of performing the study.

459 (c) An eligible customer may, no later than 14 days after the date the eligible customer
460 receives the agreement described in Subsection (4)(a):

461 (i) execute the agreement;

- 462 (ii) return the agreement to the public utility; and
463 (iii) pay the public utility the estimated cost of performing the study.
464 (d) If an eligible customer fails to take an action described in Subsection (4)(c), the
465 notice described in Subsection (3)(a) is considered to be withdrawn.
466 (5) Unless the notice described in Subsection (3)(a) is considered to be withdrawn
467 under Subsection (4)(d), no later than 60 days after the date a public utility receives the notice
468 described in Subsection (3)(a) from an eligible customer, the public utility shall provide to the
469 eligible customer:
470 (a) the results of the study described in Subsection (4);
471 (b) a statement of the estimated costs of the metering, communication, and other
472 facilities or equipment necessary for the eligible customer to receive service from the
473 non-utility energy supplier; and
474 (c) an estimated date by which the public utility can complete the installation of the
475 metering, communication, and other facilities or equipment necessary for the eligible customer
476 to receive service from the non-utility energy supplier.
477 (6) (a) No later than 14 days after the date an eligible customer receives the results of
478 the study described in Subsection (4):
479 (i) if the estimated cost the eligible customer pays in accordance with Subsection (4)(c)
480 exceeds the actual, reasonable cost of performing the study, the public utility shall refund the
481 excess to the eligible customer; or
482 (ii) if the estimated cost the eligible customer pays in accordance with Subsection
483 (4)(c) is less than the actual, reasonable cost of performing the study, the eligible customer
484 shall pay to the public utility the difference between the estimated cost and the actual,
485 reasonable cost of performing the study.
486 (b) (i) The notice described in Subsection (3)(a) is considered to be withdrawn if the
487 eligible customer notifies the public utility in writing within 14 days after the date the eligible
488 customer receives the results of the study described in Subsection (4) that the notice is
489 withdrawn.
490 (ii) A customer is not relieved of the duty to pay the actual, reasonable cost of the study
491 described in Subsection (4) if the customer provides the notice to withdraw described in
492 Subsection (6)(b)(i).

493 (7) Unless the notice described in Subsection (3)(a) is considered to be withdrawn
494 under Subsection (4)(d) or (6)(b)(i), no later than 180 days after the date a public utility
495 receives the notice described in Subsection (3)(a) from an eligible customer, the public utility
496 shall transfer and assign to the eligible customer or the eligible customer's designee the rights
497 to transmission or distribution service as necessary to facilitate the eligible customer to receive
498 service from a non-utility energy supplier.

499 (8) A public utility and an eligible customer may agree in writing to waive a time
500 period described in Subsection (4), (5), (6), or (7) as necessary to facilitate the eligible
501 customer to receive service from a non-utility energy supplier.

502 (9) An eligible customer may elect to have one of the following install the facilities and
503 equipment necessary for the eligible customer to receive service from a non-utility energy
504 supplier:

505 (a) the public utility;

506 (b) the non-utility energy supplier; or

507 (c) a third party contractor.

508 (10) An eligible customer may commence service from a non-utility energy supplier if:

509 (a) the eligible customer meets the requirements of Subsection (3);

510 (b) the eligible customer enters into any necessary agreements for:

511 (i) the public utility to provide transmission or distribution service; and

512 (ii) the non-utility energy supplier to provide service;

513 (c) the installation described in Subsection (9) is completed; and

514 (d) the notice described in Subsection (3)(a) is not considered to be withdrawn under
515 Subsection (4)(d) or (6)(b)(i).

516 Section 4. Section **54-3-8** is amended to read:

517 **54-3-8. Preferences forbidden -- Power of commission to determine facts --**

518 **Applicability of section.**

519 (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility
520 may not:

521 (a) as to rates, charges, service, facilities or in any other respect, make or grant any
522 preference or advantage to any person, or subject any person to any prejudice or disadvantage;
523 and

524 (b) establish or maintain any unreasonable difference as to rates, charges, service or
525 facilities, or in any other respect, either as between localities or as between classes of service.

526 (2) The commission shall have power to determine any question of fact arising under
527 this section.

528 (3) This section does not apply to, and the commission may not enforce this chapter
529 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility,
530 or contract of [~~a public utility or electrical corporation furnishing electricity,~~] an entity
531 described in Subsection 54-2-1(8)(b)(iii) or (iv), (17), or (19)(i) or (j), or if the electricity is
532 consumed by an owner, lessor, or interest holder or by an affiliate or tenant of an owner, lessor,
533 or interest holder, [who] if that owner, lessor, interest holder, affiliate, or tenant has provided at
534 least \$25,000,000 in value, including credit support, relating to [the] an electric plant
535 [furnishing the electricity and whose consumption does not exceed its long-term entitlement in
536 the plant under a long-term arrangement other than a power purchase agreement, except a
537 power purchase agreement with an electrical corporation] in this state.

538 Section 5. Section 54-4-2 is amended to read:

539 **54-4-2. Investigations -- Hearings and notice -- Findings -- Applicability of**
540 **chapter.**

541 (1) (a) [~~Whenever the commission believes that in order]~~ The commission may
542 conduct an investigation if the commission determines an investigation:

543 (i) is necessary to secure [~~a~~] compliance with [~~the provisions of~~] this title or with [~~the~~
544 ~~orders]~~ an order of the commission[, ~~or that it will be otherwise in the interest of the public, an~~
545 ~~investigation];~~

546 (ii) is in the public interest; or

547 (iii) should be made of any act or omission to act, or of anything accomplished or
548 proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule,
549 regulation, service, or facility of any public utility[, ~~it shall investigate the same upon its own~~
550 motion, and may fix].

551 (b) If the commission conducts an investigation under Subsection (1)(a), the
552 commission may:

553 (i) establish a time and place for a hearing [~~thereof with~~];

554 (ii) provide notice to the public utility concerning [~~which such investigation shall be~~

555 ~~made, and upon such hearing shall make such~~ the investigation; and

556 (iii) make findings and orders [as shall be] that are just and reasonable with respect to
557 [any such matter] the investigation.

558 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
559 toll, rental, rule, service, facility, or contract of ~~[a public utility or electrical corporation~~
560 ~~furnishing electricity,]~~ an entity described in Subsection 54-2-1(8)(b)(iii) or (iv), (17), or (19)(i)
561 or (j), or if the electricity is consumed by an owner, lessor, or interest holder or by an affiliate
562 or tenant of an owner, lessor, or interest holder, [who] if that owner, lessor, interest holder,
563 affiliate, or tenant has provided at least \$25,000,000 in value, including credit support, relating
564 to [the] an electric plant [furnishing the electricity and whose consumption does not exceed its
565 long-term entitlement in the plant under a long-term arrangement other than a power purchase
566 agreement, except a power purchase agreement with an electrical corporation] in this state.

567 Section 6. Section **54-15-108** is amended to read:

568 **54-15-108. Damages and fines for connecting a customer generation system to**
569 **more than one customer.**

570 If an independent energy producer defined in ~~[Subsection 54-2-1(13)]~~ Section 54-2-1
571 that is supplying energy to a customer [under] as described in Subsection
572 54-2-1[(16)](19)(d)(iv) violates the limitations set forth in Subsection
573 54-2-1[(16)](19)(d)(iv)(B), the commission may:

574 (1) award damages to an electrical corporation for actual and consequential damages to
575 the electrical corporation; and

576 (2) assess a fine against the independent energy producer or person responsible for the
577 violation.

578 Section 7. Section **59-12-102 (Superseded 07/01/14)** is amended to read:

579 **59-12-102 (Superseded 07/01/14). Definitions.**

580 As used in this chapter:

581 (1) "800 service" means a telecommunications service that:

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

583 (b) is typically marketed:

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

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

- 586 (iii) under the name 866 toll-free calling;
- 587 (iv) under the name 877 toll-free calling;
- 588 (v) under the name 888 toll-free calling; or
- 589 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
- 590 Federal Communications Commission.
- 591 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 592 (i) a subscriber purchases;
- 593 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 594 the subscriber's:
- 595 (A) prerecorded announcement; or
- 596 (B) live service; and
- 597 (iii) is typically marketed:
- 598 (A) under the name 900 service; or
- 599 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 600 Communications Commission.
- 601 (b) "900 service" does not include a charge for:
- 602 (i) a collection service a seller of a telecommunications service provides to a
- 603 subscriber; or
- 604 (ii) the following a subscriber sells to the subscriber's customer:
- 605 (A) a product; or
- 606 (B) a service.
- 607 (3) (a) "Admission or user fees" includes season passes.
- 608 (b) "Admission or user fees" does not include annual membership dues to private
- 609 organizations.
- 610 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 611 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 612 Agreement after November 12, 2002.
- 613 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 614 (a) listed under Subsection (6); and
- 615 (b) that are imposed within a local taxing jurisdiction.
- 616 (6) "Agreement sales and use tax" means a tax imposed under:

- 617 (a) Subsection 59-12-103(2)(a)(i)(A);
- 618 (b) Subsection 59-12-103(2)(b)(i);
- 619 (c) Subsection 59-12-103(2)(c)(i);
- 620 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 621 (e) Section 59-12-204;
- 622 (f) Section 59-12-401;
- 623 (g) Section 59-12-402;
- 624 (h) Section 59-12-703;
- 625 (i) Section 59-12-802;
- 626 (j) Section 59-12-804;
- 627 (k) Section 59-12-1102;
- 628 (l) Section 59-12-1302;
- 629 (m) Section 59-12-1402;
- 630 (n) Section 59-12-1802;
- 631 (o) Section 59-12-2003;
- 632 (p) Section 59-12-2103;
- 633 (q) Section 59-12-2213;
- 634 (r) Section 59-12-2214;
- 635 (s) Section 59-12-2215;
- 636 (t) Section 59-12-2216;
- 637 (u) Section 59-12-2217; or
- 638 (v) Section 59-12-2218.
- 639 (7) "Aircraft" is as defined in Section 72-10-102.
- 640 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 641 (a) except for:
- 642 (i) an airline as defined in Section 59-2-102; or
- 643 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 644 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 645 state, of an airline; and
- 646 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 647 whether the business entity performs the following in this state:

- 648 (i) check, diagnose, overhaul, and repair:
- 649 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 650 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 651 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 652 engine;
- 653 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 654 aircraft:
- 655 (A) an inspection;
- 656 (B) a repair, including a structural repair or modification;
- 657 (C) changing landing gear; and
- 658 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 659 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 660 completely apply new paint to the fixed wing turbine powered aircraft; and
- 661 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 662 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 663 authority that certifies the fixed wing turbine powered aircraft.
- 664 (9) "Alcoholic beverage" means a beverage that:
- 665 (a) is suitable for human consumption; and
- 666 (b) contains 0.5% or more alcohol by volume.
- 667 (10) "Alternative energy" means:
- 668 (a) biomass energy;
- 669 (b) geothermal energy;
- 670 (c) hydroelectric energy;
- 671 (d) solar energy;
- 672 (e) wind energy; or
- 673 (f) energy that is derived from:
- 674 (i) coal-to-liquids;
- 675 (ii) nuclear fuel;
- 676 (iii) oil-impregnated diatomaceous earth;
- 677 (iv) oil sands;
- 678 (v) oil shale; or

679 (vi) petroleum coke.

680 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
681 facility" means a facility that:

682 (i) uses alternative energy to produce electricity; and

683 (ii) has a production capacity of two megawatts or greater.

684 (b) A facility is an alternative energy electricity production facility regardless of
685 whether the facility is:

686 (i) connected to an electric grid; or

687 (ii) located on the premises of an electricity consumer.

688 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
689 provision of telecommunications service.

690 (b) "Ancillary service" includes:

691 (i) a conference bridging service;

692 (ii) a detailed communications billing service;

693 (iii) directory assistance;

694 (iv) a vertical service; or

695 (v) a voice mail service.

696 (13) "Area agency on aging" is as defined in Section [62A-3-101](#).

697 (14) "Assisted amusement device" means an amusement device, skill device, or ride
698 device that is started and stopped by an individual:

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

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

703 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
704 washing of tangible personal property if the cleaning or washing labor is primarily performed
705 by an individual:

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

708 (b) at the direction of the seller of the cleaning or washing of the tangible personal
709 property.

710 (16) "Authorized carrier" means:
711 (a) in the case of vehicles operated over public highways, the holder of credentials
712 indicating that the vehicle is or will be operated pursuant to both the International Registration
713 Plan and the International Fuel Tax Agreement;

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

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

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

- 720 (i) material from a plant or tree; or
- 721 (ii) other organic matter that is available on a renewable basis, including:
 - 722 (A) slash and brush from forests and woodlands;
 - 723 (B) animal waste;
 - 724 (C) methane produced:
 - 725 (I) at landfills; or
 - 726 (II) as a byproduct of the treatment of wastewater residuals;
 - 727 (D) aquatic plants; and
 - 728 (E) agricultural products.

- 729 (b) "Biomass energy" does not include:
 - 730 (i) black liquor;
 - 731 (ii) treated woods; or
 - 732 (iii) biomass from municipal solid waste other than methane produced:
 - 733 (A) at landfills; or
 - 734 (B) as a byproduct of the treatment of wastewater residuals.

735 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
736 property, products, or services if the tangible personal property, products, or services are:

- 737 (i) distinct and identifiable; and
 - 738 (ii) sold for one nonitemized price.
- 739 (b) "Bundled transaction" does not include:
 - 740 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on

741 the basis of the selection by the purchaser of the items of tangible personal property included in
742 the transaction;

743 (ii) the sale of real property;

744 (iii) the sale of services to real property;

745 (iv) the retail sale of tangible personal property and a service if:

746 (A) the tangible personal property:

747 (I) is essential to the use of the service; and

748 (II) is provided exclusively in connection with the service; and

749 (B) the service is the true object of the transaction;

750 (v) the retail sale of two services if:

751 (A) one service is provided that is essential to the use or receipt of a second service;

752 (B) the first service is provided exclusively in connection with the second service; and

753 (C) the second service is the true object of the transaction;

754 (vi) a transaction that includes tangible personal property or a product subject to

755 taxation under this chapter and tangible personal property or a product that is not subject to

756 taxation under this chapter if the:

757 (A) seller's purchase price of the tangible personal property or product subject to

758 taxation under this chapter is de minimis; or

759 (B) seller's sales price of the tangible personal property or product subject to taxation

760 under this chapter is de minimis; and

761 (vii) the retail sale of tangible personal property that is not subject to taxation under

762 this chapter and tangible personal property that is subject to taxation under this chapter if:

763 (A) that retail sale includes:

764 (I) food and food ingredients;

765 (II) a drug;

766 (III) durable medical equipment;

767 (IV) mobility enhancing equipment;

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

769 (VI) a prosthetic device; or

770 (VII) a medical supply; and

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

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

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

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

778 (A) packaging that:

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

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

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

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

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

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

795 (A) a binding sales document; or

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

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

799 (A) a bill of sale;

800 (B) a contract;

801 (C) an invoice;

802 (D) a lease agreement;

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

804 (F) a price list;

805 (G) a rate card;

806 (H) a receipt; or

807 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

831 (i) on a transaction; and

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

833 (b) determines the amount of agreement sales and use tax to remit to a state that is a

834 member of the agreement; and

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

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

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

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

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

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

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

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

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

849 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
850 fuels that does not constitute industrial use under Subsection (55) or residential use under
851 Subsection (105).

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

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

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

860 (25) "Component part" includes:

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

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

863 (c) fuel used for providing temperature control of orchards and commercial
864 greenhouses doing a majority of their business in wholesale sales, and for providing power for

- 865 off-highway type farm machinery; and
- 866 (d) feed, seeds, and seedlings.
- 867 (26) "Computer" means an electronic device that:
- 868 (a) accepts information:
- 869 [(a)] (i) in digital form; or
- 870 (ii) in a form similar to digital form; and
- 871 (b) manipulates that information for a result based on a sequence of instructions.
- 872 (27) "Computer software" means a set of coded instructions designed to cause:
- 873 (a) a computer to perform a task; or
- 874 (b) automatic data processing equipment to perform a task.
- 875 (28) "Computer software maintenance contract" means a contract that obligates a seller
- 876 of computer software to provide a customer with:
- 877 (a) future updates or upgrades to computer software;
- 878 (b) support services with respect to computer software; or
- 879 (c) a combination of Subsections (28)(a) and (b).
- 880 (29) (a) "Conference bridging service" means an ancillary service that links two or
- 881 more participants of an audio conference call or video conference call.
- 882 (b) "Conference bridging service" may include providing a telephone number as part of
- 883 the ancillary service described in Subsection (29)(a).
- 884 (c) "Conference bridging service" does not include a telecommunications service used
- 885 to reach the ancillary service described in Subsection (29)(a).
- 886 (30) "Construction materials" means any tangible personal property that will be
- 887 converted into real property.
- 888 (31) "Delivered electronically" means delivered to a purchaser by means other than
- 889 tangible storage media.
- 890 (32) (a) "Delivery charge" means a charge:
- 891 (i) by a seller of:
- 892 (A) tangible personal property;
- 893 (B) a product transferred electronically; or
- 894 (C) services; and
- 895 (ii) for preparation and delivery of the tangible personal property, product transferred

896 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
897 purchaser.

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

899 (i) transportation;

900 (ii) shipping;

901 (iii) postage;

902 (iv) handling;

903 (v) crating; or

904 (vi) packing.

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

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

908 (a) is intended to supplement the diet;

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

910 (i) a vitamin;

911 (ii) a mineral;

912 (iii) an herb or other botanical;

913 (iv) an amino acid;

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

916 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
917 described in Subsections (34)(b)(i) through (v);

918 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

919 (A) tablet form;

920 (B) capsule form;

921 (C) powder form;

922 (D) softgel form;

923 (E) gelcap form; or

924 (F) liquid form; or

925 (ii) if the product is not intended for ingestion in a form described in Subsections
926 (34)(c)(i)(A) through (F), is not represented:

- 927 (A) as conventional food; and
- 928 (B) for use as a sole item of:
 - 929 (I) a meal; or
 - 930 (II) the diet; and
- 931 (d) is required to be labeled as a dietary supplement:
 - 932 (i) identifiable by the "Supplemental Facts" box found on the label; and
 - 933 (ii) as required by 21 C.F.R. Sec. 101.36.
- 934 (35) (a) "Digital audio work" means a work that results from the fixation of a series of
- 935 musical, spoken, or other sounds.
- 936 (b) "Digital audio work" includes a ringtone.
- 937 (36) "Digital audio-visual work" means a series of related images which, when shown
- 938 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 939 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
- 940 sense as a book.
- 941 (38) (a) "Direct mail" means printed material delivered or distributed by United States
- 942 mail or other delivery service:
 - 943 (i) to:
 - 944 (A) a mass audience; or
 - 945 (B) addressees on a mailing list provided:
 - 946 (I) by a purchaser of the mailing list; or
 - 947 (II) at the discretion of the purchaser of the mailing list; and
 - 948 (ii) if the cost of the printed material is not billed directly to the recipients.
- 949 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 950 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 951 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 952 single address.
- 953 (39) "Directory assistance" means an ancillary service of providing:
 - 954 (a) address information; or
 - 955 (b) telephone number information.
- 956 (40) (a) "Disposable home medical equipment or supplies" means medical equipment
- 957 or supplies that:

- 958 (i) cannot withstand repeated use; and
- 959 (ii) are purchased by, for, or on behalf of a person other than:
 - 960 (A) a health care facility as defined in Section 26-21-2;
 - 961 (B) a health care provider as defined in Section 78B-3-403;
 - 962 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or
 - 963 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).
- 964 (b) "Disposable home medical equipment or supplies" does not include:
 - 965 (i) a drug;
 - 966 (ii) durable medical equipment;
 - 967 (iii) a hearing aid;
 - 968 (iv) a hearing aid accessory;
 - 969 (v) mobility enhancing equipment; or
 - 970 (vi) tangible personal property used to correct impaired vision, including:
 - 971 (A) eyeglasses; or
 - 972 (B) contact lenses.
 - 973 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 - 974 commission may by rule define what constitutes medical equipment or supplies.
 - 975 (41) (a) "Drug" means a compound, substance, or preparation, or a component of a
 - 976 compound, substance, or preparation that is:
 - 977 (i) recognized in:
 - 978 (A) the official United States Pharmacopoeia;
 - 979 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 980 (C) the official National Formulary; or
 - 981 (D) a supplement to a publication listed in Subsections (41)(a)(i)(A) through (C);
 - 982 (ii) intended for use in the:
 - 983 (A) diagnosis of disease;
 - 984 (B) cure of disease;
 - 985 (C) mitigation of disease;
 - 986 (D) treatment of disease; or
 - 987 (E) prevention of disease; or
 - 988 (iii) intended to affect:

- 989 (A) the structure of the body; or
- 990 (B) any function of the body.
- 991 (b) "Drug" does not include:
- 992 (i) food and food ingredients;
- 993 (ii) a dietary supplement;
- 994 (iii) an alcoholic beverage; or
- 995 (iv) a prosthetic device.
- 996 (42) (a) "Durable medical equipment" means equipment that:
- 997 (i) can withstand repeated use;
- 998 (ii) is primarily and customarily used to serve a medical purpose;
- 999 (iii) generally is not useful to a person in the absence of illness or injury; and
- 1000 (iv) is not worn in or on the body.
- 1001 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 1002 equipment described in Subsection (42)(a).
- 1003 (c) Notwithstanding Subsection (42)(a), "durable medical equipment" does not include
- 1004 mobility enhancing equipment.
- 1005 (43) "Electronic" means:
- 1006 (a) relating to technology; and
- 1007 (b) having:
- 1008 (i) electrical capabilities;
- 1009 (ii) digital capabilities;
- 1010 (iii) magnetic capabilities;
- 1011 (iv) wireless capabilities;
- 1012 (v) optical capabilities;
- 1013 (vi) electromagnetic capabilities; or
- 1014 (vii) capabilities similar to Subsections (43)(b)(i) through (vi).
- 1015 (44) "Electronic financial payment service" means an establishment:
- 1016 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
- 1017 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
- 1018 federal Executive Office of the President, Office of Management and Budget; and
- 1019 (b) that performs electronic financial payment services.

- 1020 (45) "Employee" is as defined in Section 59-10-401.
- 1021 (46) "Fixed guideway" means a public transit facility that uses and occupies:
- 1022 (a) rail for the use of public transit; or
- 1023 (b) a separate right-of-way for the use of public transit.
- 1024 (47) "Fixed wing turbine powered aircraft" means an aircraft that:
- 1025 (a) is powered by turbine engines;
- 1026 (b) operates on jet fuel; and
- 1027 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 1028 (48) "Fixed wireless service" means a telecommunications service that provides radio
- 1029 communication between fixed points.
- 1030 (49) (a) "Food and food ingredients" means substances:
- 1031 (i) regardless of whether the substances are in:
- 1032 (A) liquid form;
- 1033 (B) concentrated form;
- 1034 (C) solid form;
- 1035 (D) frozen form;
- 1036 (E) dried form; or
- 1037 (F) dehydrated form; and
- 1038 (ii) that are:
- 1039 (A) sold for:
- 1040 (I) ingestion by humans; or
- 1041 (II) chewing by humans; and
- 1042 (B) consumed for the substance's:
- 1043 (I) taste; or
- 1044 (II) nutritional value.
- 1045 (b) "Food and food ingredients" includes an item described in Subsection (90)(b)(iii).
- 1046 (c) "Food and food ingredients" does not include:
- 1047 (i) an alcoholic beverage;
- 1048 (ii) tobacco; or
- 1049 (iii) prepared food.
- 1050 (50) (a) "Fundraising sales" means sales:

- 1051 (i) (A) made by a school; or
- 1052 (B) made by a school student;
- 1053 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 1054 materials, or provide transportation; and
- 1055 (iii) that are part of an officially sanctioned school activity.
- 1056 (b) For purposes of Subsection (50)(a)(iii), "officially sanctioned school activity"
- 1057 means a school activity:
 - 1058 (i) that is conducted in accordance with a formal policy adopted by the school or school
 - 1059 district governing the authorization and supervision of fundraising activities;
 - 1060 (ii) that does not directly or indirectly compensate an individual teacher or other
 - 1061 educational personnel by direct payment, commissions, or payment in kind; and
 - 1062 (iii) the net or gross revenues from which are deposited in a dedicated account
 - 1063 controlled by the school or school district.
- 1064 (51) "Geothermal energy" means energy contained in heat that continuously flows
- 1065 outward from the earth that is used as the sole source of energy to produce electricity.
- 1066 (52) "Governing board of the agreement" means the governing board of the agreement
- 1067 that is:
 - 1068 (a) authorized to administer the agreement; and
 - 1069 (b) established in accordance with the agreement.
- 1070 (53) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
 - 1071 (i) the executive branch of the state, including all departments, institutions, boards,
 - 1072 divisions, bureaus, offices, commissions, and committees;
 - 1073 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
 - 1074 Office of the Court Administrator, and similar administrative units in the judicial branch;
 - 1075 (iii) the legislative branch of the state, including the House of Representatives, the
 - 1076 Senate, the Legislative Printing Office, the Office of Legislative Research and General
 - 1077 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
 - 1078 Analyst;
 - 1079 (iv) the National Guard;
 - 1080 (v) an independent entity as defined in Section 63E-1-102; or
 - 1081 (vi) a political subdivision as defined in Section 17B-1-102.

1082 (b) "Governmental entity" does not include the state systems of public and higher
1083 education, including:

1084 (i) a college campus of the Utah College of Applied Technology;

1085 (ii) a school;

1086 (iii) the State Board of Education;

1087 (iv) the State Board of Regents; or

1088 (v) an institution of higher education.

1089 (54) "Hydroelectric energy" means water used as the sole source of energy to produce
1090 electricity.

1091 (55) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
1092 other fuels:

1093 (a) in mining or extraction of minerals;

1094 (b) in agricultural operations to produce an agricultural product up to the time of
1095 harvest or placing the agricultural product into a storage facility, including:

1096 (i) commercial greenhouses;

1097 (ii) irrigation pumps;

1098 (iii) farm machinery;

1099 (iv) implements of husbandry as defined in Section [41-1a-102](#) that are not registered
1100 under Title 41, Chapter 1a, Part 2, Registration; and

1101 (v) other farming activities;

1102 (c) in manufacturing tangible personal property at an establishment described in SIC
1103 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
1104 Executive Office of the President, Office of Management and Budget;

1105 (d) by a scrap recycler if:

1106 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1107 one or more of the following items into prepared grades of processed materials for use in new
1108 products:

1109 (A) iron;

1110 (B) steel;

1111 (C) nonferrous metal;

1112 (D) paper;

- 1113 (E) glass;
- 1114 (F) plastic;
- 1115 (G) textile; or
- 1116 (H) rubber; and
- 1117 (ii) the new products under Subsection (55)(d)(i) would otherwise be made with
- 1118 nonrecycled materials; or
- 1119 (e) in producing a form of energy or steam described in Subsection 54-2-1~~[(2)]~~(3)(a) by
- 1120 a cogeneration facility as defined in Section 54-2-1.
- 1121 (56) (a) Except as provided in Subsection (56)(b), "installation charge" means a charge
- 1122 for installing:
- 1123 (i) tangible personal property; or
- 1124 (ii) a product transferred electronically.
- 1125 (b) "Installation charge" does not include a charge for:
- 1126 (i) repairs or renovations of:
- 1127 (A) tangible personal property; or
- 1128 (B) a product transferred electronically; or
- 1129 (ii) attaching tangible personal property or a product transferred electronically:
- 1130 (A) to other tangible personal property; and
- 1131 (B) as part of a manufacturing or fabrication process.
- 1132 (57) "Institution of higher education" means an institution of higher education listed in
- 1133 Section 53B-2-101.
- 1134 (58) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 1135 personal property or a product transferred electronically for:
- 1136 (i) (A) a fixed term; or
- 1137 (B) an indeterminate term; and
- 1138 (ii) consideration.
- 1139 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 1140 amount of consideration may be increased or decreased by reference to the amount realized
- 1141 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 1142 Code.
- 1143 (c) "Lease" or "rental" does not include:

1144 (i) a transfer of possession or control of property under a security agreement or
1145 deferred payment plan that requires the transfer of title upon completion of the required
1146 payments;

1147 (ii) a transfer of possession or control of property under an agreement that requires the
1148 transfer of title:

1149 (A) upon completion of required payments; and

1150 (B) if the payment of an option price does not exceed the greater of:

1151 (I) \$100; or

1152 (II) 1% of the total required payments; or

1153 (iii) providing tangible personal property along with an operator for a fixed period of
1154 time or an indeterminate period of time if the operator is necessary for equipment to perform as
1155 designed.

1156 (d) For purposes of Subsection (58)(c)(iii), an operator is necessary for equipment to
1157 perform as designed if the operator's duties exceed the:

1158 (i) set-up of tangible personal property;

1159 (ii) maintenance of tangible personal property; or

1160 (iii) inspection of tangible personal property.

1161 (59) "Life science establishment" means an establishment in this state that is classified
1162 under the following NAICS codes of the 2007 North American Industry Classification System
1163 of the federal Executive Office of the President, Office of Management and Budget:

1164 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

1165 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
1166 Manufacturing; or

1167 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

1168 (60) "Life science research and development facility" means a facility owned, leased,
1169 or rented by a life science establishment if research and development is performed in 51% or
1170 more of the total area of the facility.

1171 (61) "Load and leave" means delivery to a purchaser by use of a tangible storage media
1172 if the tangible storage media is not physically transferred to the purchaser.

1173 (62) "Local taxing jurisdiction" means a:

1174 (a) county that is authorized to impose an agreement sales and use tax;

- 1175 (b) city that is authorized to impose an agreement sales and use tax; or
- 1176 (c) town that is authorized to impose an agreement sales and use tax.
- 1177 (63) "Manufactured home" is as defined in Section [15A-1-302](#).
- 1178 (64) For purposes of Section [59-12-104](#), "manufacturing facility" means:
- 1179 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 1180 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 1181 Management and Budget;
- 1182 (b) a scrap recycler if:
- 1183 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1184 one or more of the following items into prepared grades of processed materials for use in new
- 1185 products:
- 1186 (A) iron;
- 1187 (B) steel;
- 1188 (C) nonferrous metal;
- 1189 (D) paper;
- 1190 (E) glass;
- 1191 (F) plastic;
- 1192 (G) textile; or
- 1193 (H) rubber; and
- 1194 (ii) the new products under Subsection (64)(b)(i) would otherwise be made with
- 1195 nonrecycled materials; or
- 1196 (c) a cogeneration facility as defined in Section [54-2-1](#).
- 1197 (65) "Member of the immediate family of the producer" means a person who is related
- 1198 to a producer described in Subsection [59-12-104\(20\)\(a\)](#) as a:
- 1199 (a) child or stepchild, regardless of whether the child or stepchild is:
- 1200 (i) an adopted child or adopted stepchild; or
- 1201 (ii) a foster child or foster stepchild;
- 1202 (b) grandchild or stepgrandchild;
- 1203 (c) grandparent or stepgrandparent;
- 1204 (d) nephew or stepnephew;
- 1205 (e) niece or stepniece;

- 1206 (f) parent or stepparent;
- 1207 (g) sibling or stepsibling;
- 1208 (h) spouse;
- 1209 (i) person who is the spouse of a person described in Subsections (65)(a) through (g);

1210 or

- 1211 (j) person similar to a person described in Subsections (65)(a) through (i) as
- 1212 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 1213 Administrative Rulemaking Act.

1214 (66) "Mobile home" is as defined in Section [15A-1-302](#).

1215 (67) "Mobile telecommunications service" is as defined in the Mobile

1216 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1217 (68) (a) "Mobile wireless service" means a telecommunications service, regardless of

1218 the technology used, if:

- 1219 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 1220 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 1221 (iii) the origination point described in Subsection (68)(a)(i) and the termination point
- 1222 described in Subsection (68)(a)(ii) are not fixed.

1223 (b) "Mobile wireless service" includes a telecommunications service that is provided

1224 by a commercial mobile radio service provider.

1225 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1226 commission may by rule define "commercial mobile radio service provider."

1227 (69) (a) Except as provided in Subsection (69)(c), "mobility enhancing equipment"

1228 means equipment that is:

1229 (i) primarily and customarily used to provide or increase the ability to move from one

1230 place to another;

1231 (ii) appropriate for use in a:

1232 (A) home; or

1233 (B) motor vehicle; and

1234 (iii) not generally used by persons with normal mobility.

1235 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of

1236 the equipment described in Subsection (69)(a).

- 1237 (c) "Mobility enhancing equipment" does not include:
- 1238 (i) a motor vehicle;
- 1239 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 1240 vehicle manufacturer;
- 1241 (iii) durable medical equipment; or
- 1242 (iv) a prosthetic device.
- 1243 (70) "Model 1 seller" means a seller registered under the agreement that has selected a
- 1244 certified service provider as the seller's agent to perform all of the seller's sales and use tax
- 1245 functions for agreement sales and use taxes other than the seller's obligation under Section
- 1246 [59-12-124](#) to remit a tax on the seller's own purchases.
- 1247 (71) "Model 2 seller" means a seller registered under the agreement that:
- 1248 (a) except as provided in Subsection (71)(b), has selected a certified automated system
- 1249 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 1250 (b) retains responsibility for remitting all of the sales tax:
- 1251 (i) collected by the seller; and
- 1252 (ii) to the appropriate local taxing jurisdiction.
- 1253 (72) (a) Subject to Subsection (72)(b), "model 3 seller" means a seller registered under
- 1254 the agreement that has:
- 1255 (i) sales in at least five states that are members of the agreement;
- 1256 (ii) total annual sales revenues of at least \$500,000,000;
- 1257 (iii) a proprietary system that calculates the amount of tax:
- 1258 (A) for an agreement sales and use tax; and
- 1259 (B) due to each local taxing jurisdiction; and
- 1260 (iv) entered into a performance agreement with the governing board of the agreement.
- 1261 (b) For purposes of Subsection (72)(a), "model 3 seller" includes an affiliated group of
- 1262 sellers using the same proprietary system.
- 1263 (73) "Model 4 seller" means a seller that is registered under the agreement and is not a
- 1264 model 1 seller, model 2 seller, or model 3 seller.
- 1265 (74) "Modular home" means a modular unit as defined in Section [15A-1-302](#).
- 1266 (75) "Motor vehicle" is as defined in Section [41-1a-102](#).
- 1267 (76) "Oil sands" means impregnated bituminous sands that:

1268 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
1269 other hydrocarbons, or otherwise treated;

1270 (b) yield mixtures of liquid hydrocarbon; and

1271 (c) require further processing other than mechanical blending before becoming finished
1272 petroleum products.

1273 (77) "Oil shale" means a group of fine black to dark brown shales containing kerogen
1274 material that yields petroleum upon heating and distillation.

1275 (78) "Optional computer software maintenance contract" means a computer software
1276 maintenance contract that a customer is not obligated to purchase as a condition to the retail
1277 sale of computer software.

1278 (79) (a) "Other fuels" means products that burn independently to produce heat or
1279 energy.

1280 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
1281 personal property.

1282 (80) (a) "Paging service" means a telecommunications service that provides
1283 transmission of a coded radio signal for the purpose of activating a specific pager.

1284 (b) For purposes of Subsection (80)(a), the transmission of a coded radio signal
1285 includes a transmission by message or sound.

1286 (81) "Pawnbroker" is as defined in Section [13-32a-102](#).

1287 (82) "Pawn transaction" is as defined in Section [13-32a-102](#).

1288 (83) (a) "Permanently attached to real property" means that for tangible personal
1289 property attached to real property:

1290 (i) the attachment of the tangible personal property to the real property:

1291 (A) is essential to the use of the tangible personal property; and

1292 (B) suggests that the tangible personal property will remain attached to the real
1293 property in the same place over the useful life of the tangible personal property; or

1294 (ii) if the tangible personal property is detached from the real property, the detachment
1295 would:

1296 (A) cause substantial damage to the tangible personal property; or

1297 (B) require substantial alteration or repair of the real property to which the tangible
1298 personal property is attached.

- 1299 (b) "Permanently attached to real property" includes:
- 1300 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 1301 (A) essential to the operation of the tangible personal property; and
- 1302 (B) attached only to facilitate the operation of the tangible personal property;
- 1303 (ii) a temporary detachment of tangible personal property from real property for a
- 1304 repair or renovation if the repair or renovation is performed where the tangible personal
- 1305 property and real property are located; or
- 1306 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
- 1307 Subsection (83)(c)(iii) or (iv).
- 1308 (c) "Permanently attached to real property" does not include:
- 1309 (i) the attachment of portable or movable tangible personal property to real property if
- 1310 that portable or movable tangible personal property is attached to real property only for:
- 1311 (A) convenience;
- 1312 (B) stability; or
- 1313 (C) for an obvious temporary purpose;
- 1314 (ii) the detachment of tangible personal property from real property except for the
- 1315 detachment described in Subsection (83)(b)(ii);
- 1316 (iii) an attachment of the following tangible personal property to real property if the
- 1317 attachment to real property is only through a line that supplies water, electricity, gas,
- 1318 telecommunications, cable, or supplies a similar item as determined by the commission by rule
- 1319 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 1320 (A) a computer;
- 1321 (B) a telephone;
- 1322 (C) a television; or
- 1323 (D) tangible personal property similar to Subsections (83)(c)(iii)(A) through (C) as
- 1324 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 1325 Administrative Rulemaking Act; or
- 1326 (iv) an item listed in Subsection (123)(c).
- 1327 (84) "Person" includes any individual, firm, partnership, joint venture, association,
- 1328 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
- 1329 municipality, district, or other local governmental entity of the state, or any group or

1330 combination acting as a unit.

1331 (85) "Place of primary use":

1332 (a) for telecommunications service other than mobile telecommunications service,
1333 means the street address representative of where the customer's use of the telecommunications
1334 service primarily occurs, which shall be:

1335 (i) the residential street address of the customer; or

1336 (ii) the primary business street address of the customer; or

1337 (b) for mobile telecommunications service, is as defined in the Mobile

1338 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1339 (86) (a) "Postpaid calling service" means a telecommunications service a person
1340 obtains by making a payment on a call-by-call basis:

1341 (i) through the use of a:

1342 (A) bank card;

1343 (B) credit card;

1344 (C) debit card; or

1345 (D) travel card; or

1346 (ii) by a charge made to a telephone number that is not associated with the origination
1347 or termination of the telecommunications service.

1348 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1349 service, that would be a prepaid wireless calling service if the service were exclusively a
1350 telecommunications service.

1351 (87) "Postproduction" means an activity related to the finishing or duplication of a
1352 medium described in Subsection [59-12-104\(54\)\(a\)](#).

1353 (88) "Prepaid calling service" means a telecommunications service:

1354 (a) that allows a purchaser access to telecommunications service that is exclusively
1355 telecommunications service;

1356 (b) that:

1357 (i) is paid for in advance; and

1358 (ii) enables the origination of a call using an:

1359 (A) access number; or

1360 (B) authorization code;

- 1361 (c) that is dialed:
- 1362 (i) manually; or
- 1363 (ii) electronically; and
- 1364 (d) sold in predetermined units or dollars that decline:
- 1365 (i) by a known amount; and
- 1366 (ii) with use.
- 1367 (89) "Prepaid wireless calling service" means a telecommunications service:
- 1368 (a) that provides the right to utilize:
- 1369 (i) mobile wireless service; and
- 1370 (ii) other service that is not a telecommunications service, including:
- 1371 (A) the download of a product transferred electronically;
- 1372 (B) a content service; or
- 1373 (C) an ancillary service;
- 1374 (b) that:
- 1375 (i) is paid for in advance; and
- 1376 (ii) enables the origination of a call using an:
- 1377 (A) access number; or
- 1378 (B) authorization code;
- 1379 (c) that is dialed:
- 1380 (i) manually; or
- 1381 (ii) electronically; and
- 1382 (d) sold in predetermined units or dollars that decline:
- 1383 (i) by a known amount; and
- 1384 (ii) with use.
- 1385 (90) (a) "Prepared food" means:
- 1386 (i) food:
- 1387 (A) sold in a heated state; or
- 1388 (B) heated by a seller;
- 1389 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1390 item; or
- 1391 (iii) except as provided in Subsection (90)(c), food sold with an eating utensil provided

1392 by the seller, including a:

1393 (A) plate;

1394 (B) knife;

1395 (C) fork;

1396 (D) spoon;

1397 (E) glass;

1398 (F) cup;

1399 (G) napkin; or

1400 (H) straw.

1401 (b) "Prepared food" does not include:

1402 (i) food that a seller only:

1403 (A) cuts;

1404 (B) repackages; or

1405 (C) pasteurizes; or

1406 (ii) (A) the following:

1407 (I) raw egg;

1408 (II) raw fish;

1409 (III) raw meat;

1410 (IV) raw poultry; or

1411 (V) a food containing an item described in Subsections (90)(b)(ii)(A)(I) through (IV);

1412 and

1413 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the

1414 Food and Drug Administration's Food Code that a consumer cook the items described in

1415 Subsection (90)(b)(ii)(A) to prevent food borne illness; or

1416 (iii) the following if sold without eating utensils provided by the seller:

1417 (A) food and food ingredients sold by a seller if the seller's proper primary

1418 classification under the 2002 North American Industry Classification System of the federal

1419 Executive Office of the President, Office of Management and Budget, is manufacturing in

1420 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

1421 Manufacturing;

1422 (B) food and food ingredients sold in an unheated state:

- 1423 (I) by weight or volume; and
- 1424 (II) as a single item; or
- 1425 (C) a bakery item, including:
 - 1426 (I) a bagel;
 - 1427 (II) a bar;
 - 1428 (III) a biscuit;
 - 1429 (IV) bread;
 - 1430 (V) a bun;
 - 1431 (VI) a cake;
 - 1432 (VII) a cookie;
 - 1433 (VIII) a croissant;
 - 1434 (IX) a danish;
 - 1435 (X) a donut;
 - 1436 (XI) a muffin;
 - 1437 (XII) a pastry;
 - 1438 (XIII) a pie;
 - 1439 (XIV) a roll;
 - 1440 (XV) a tart;
 - 1441 (XVI) a torte; or
 - 1442 (XVII) a tortilla.
- 1443 (c) An eating utensil provided by the seller does not include the following used to
- 1444 transport the food:
 - 1445 (i) a container; or
 - 1446 (ii) packaging.
- 1447 (91) "Prescription" means an order, formula, or recipe that is issued:
 - 1448 (a) (i) orally;
 - 1449 (ii) in writing;
 - 1450 (iii) electronically; or
 - 1451 (iv) by any other manner of transmission; and
 - 1452 (b) by a licensed practitioner authorized by the laws of a state.
- 1453 (92) (a) Except as provided in Subsection (92)(b)(ii) or (iii), "pewritten computer

1454 software" means computer software that is not designed and developed:

1455 (i) by the author or other creator of the computer software; and

1456 (ii) to the specifications of a specific purchaser.

1457 (b) "Prewritten computer software" includes:

1458 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1459 software is not designed and developed:

1460 (A) by the author or other creator of the computer software; and

1461 (B) to the specifications of a specific purchaser;

1462 (ii) computer software designed and developed by the author or other creator of the
1463 computer software to the specifications of a specific purchaser if the computer software is sold
1464 to a person other than the purchaser; or

1465 (iii) except as provided in Subsection (92)(c), prewritten computer software or a
1466 prewritten portion of prewritten computer software:

1467 (A) that is modified or enhanced to any degree; and

1468 (B) if the modification or enhancement described in Subsection (92)(b)(iii)(A) is
1469 designed and developed to the specifications of a specific purchaser.

1470 (c) "Prewritten computer software" does not include a modification or enhancement
1471 described in Subsection (92)(b)(iii) if the charges for the modification or enhancement are:

1472 (i) reasonable; and

1473 (ii) separately stated on the invoice or other statement of price provided to the
1474 purchaser.

1475 (93) (a) "Private communication service" means a telecommunications service:

1476 (i) that entitles a customer to exclusive or priority use of one or more communications
1477 channels between or among termination points; and

1478 (ii) regardless of the manner in which the one or more communications channels are
1479 connected.

1480 (b) "Private communications service" includes the following provided in connection
1481 with the use of one or more communications channels:

1482 (i) an extension line;

1483 (ii) a station;

1484 (iii) switching capacity; or

1485 (iv) another associated service that is provided in connection with the use of one or
1486 more communications channels as defined in Section 59-12-215.

1487 (94) (a) Except as provided in Subsection (94)(b), "product transferred electronically"
1488 means a product transferred electronically that would be subject to a tax under this chapter if
1489 that product was transferred in a manner other than electronically.

1490 (b) "Product transferred electronically" does not include:

- 1491 (i) an ancillary service;
- 1492 (ii) computer software; or
- 1493 (iii) a telecommunications service.

1494 (95) (a) "Prosthetic device" means a device that is worn on or in the body to:

- 1495 (i) artificially replace a missing portion of the body;
- 1496 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1497 (iii) support a weak or deformed portion of the body.

1498 (b) "Prosthetic device" includes:

- 1499 (i) parts used in the repairs or renovation of a prosthetic device;
- 1500 (ii) replacement parts for a prosthetic device;
- 1501 (iii) a dental prosthesis; or
- 1502 (iv) a hearing aid.

1503 (c) "Prosthetic device" does not include:

- 1504 (i) corrective eyeglasses; or
- 1505 (ii) contact lenses.

1506 (96) (a) "Protective equipment" means an item:

- 1507 (i) for human wear; and
- 1508 (ii) that is:
 - 1509 (A) designed as protection:
 - 1510 (I) to the wearer against injury or disease; or
 - 1511 (II) against damage or injury of other persons or property; and
 - 1512 (B) not suitable for general use.

1513 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1514 commission shall make rules:

- 1515 (i) listing the items that constitute "protective equipment"; and

1516 (ii) that are consistent with the list of items that constitute "protective equipment"
1517 under the agreement.

1518 (97) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
1519 printed matter, other than a photocopy:

1520 (i) regardless of:

1521 (A) characteristics;

1522 (B) copyright;

1523 (C) form;

1524 (D) format;

1525 (E) method of reproduction; or

1526 (F) source; and

1527 (ii) made available in printed or electronic format.

1528 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1529 commission may by rule define the term "photocopy."

1530 (98) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1531 (i) valued in money; and

1532 (ii) for which tangible personal property, a product transferred electronically, or
1533 services are:

1534 (A) sold;

1535 (B) leased; or

1536 (C) rented.

1537 (b) "Purchase price" and "sales price" include:

1538 (i) the seller's cost of the tangible personal property, a product transferred
1539 electronically, or services sold;

1540 (ii) expenses of the seller, including:

1541 (A) the cost of materials used;

1542 (B) a labor cost;

1543 (C) a service cost;

1544 (D) interest;

1545 (E) a loss;

1546 (F) the cost of transportation to the seller; or

- 1547 (G) a tax imposed on the seller;
- 1548 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1549 (iv) consideration a seller receives from a person other than the purchaser if:
- 1550 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 1551 and
- 1552 (II) the consideration described in Subsection (98)(b)(iv)(A)(I) is directly related to a
- 1553 price reduction or discount on the sale;
- 1554 (B) the seller has an obligation to pass the price reduction or discount through to the
- 1555 purchaser;
- 1556 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 1557 the seller at the time of the sale to the purchaser; and
- 1558 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 1559 seller to claim a price reduction or discount; and
- 1560 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 1561 coupon, or other documentation with the understanding that the person other than the seller
- 1562 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1563 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 1564 organization allowed a price reduction or discount, except that a preferred customer card that is
- 1565 available to any patron of a seller does not constitute membership in a group or organization
- 1566 allowed a price reduction or discount; or
- 1567 (III) the price reduction or discount is identified as a third party price reduction or
- 1568 discount on the:
- 1569 (Aa) invoice the purchaser receives; or
- 1570 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1571 (c) "Purchase price" and "sales price" do not include:
- 1572 (i) a discount:
- 1573 (A) in a form including:
- 1574 (I) cash;
- 1575 (II) term; or
- 1576 (III) coupon;
- 1577 (B) that is allowed by a seller;

- 1578 (C) taken by a purchaser on a sale; and
- 1579 (D) that is not reimbursed by a third party; or
- 1580 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 1581 provided to the purchaser:
 - 1582 (A) the following from credit extended on the sale of tangible personal property or
 - 1583 services:
 - 1584 (I) a carrying charge;
 - 1585 (II) a financing charge; or
 - 1586 (III) an interest charge;
 - 1587 (B) a delivery charge;
 - 1588 (C) an installation charge;
 - 1589 (D) a manufacturer rebate on a motor vehicle; or
 - 1590 (E) a tax or fee legally imposed directly on the consumer.
- 1591 (99) "Purchaser" means a person to whom:
 - 1592 (a) a sale of tangible personal property is made;
 - 1593 (b) a product is transferred electronically; or
 - 1594 (c) a service is furnished.
- 1595 (100) "Regularly rented" means:
 - 1596 (a) rented to a guest for value three or more times during a calendar year; or
 - 1597 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 1598 value.
- 1599 (101) "Rental" is as defined in Subsection (58).
- 1600 (102) (a) Except as provided in Subsection (102)(b), "repairs or renovations of tangible
- 1601 personal property" means:
 - 1602 (i) a repair or renovation of tangible personal property that is not permanently attached
 - 1603 to real property; or
 - 1604 (ii) attaching tangible personal property or a product transferred electronically to other
 - 1605 tangible personal property or detaching tangible personal property or a product transferred
 - 1606 electronically from other tangible personal property if:
 - 1607 (A) the other tangible personal property to which the tangible personal property or
 - 1608 product transferred electronically is attached or from which the tangible personal property or

1609 product transferred electronically is detached is not permanently attached to real property; and

1610 (B) the attachment of tangible personal property or a product transferred electronically

1611 to other tangible personal property or detachment of tangible personal property or a product

1612 transferred electronically from other tangible personal property is made in conjunction with a

1613 repair or replacement of tangible personal property or a product transferred electronically.

1614 (b) "Repairs or renovations of tangible personal property" does not include:

1615 (i) attaching prewritten computer software to other tangible personal property if the

1616 other tangible personal property to which the prewritten computer software is attached is not

1617 permanently attached to real property; or

1618 (ii) detaching prewritten computer software from other tangible personal property if the

1619 other tangible personal property from which the prewritten computer software is detached is

1620 not permanently attached to real property.

1621 (103) "Research and development" means the process of inquiry or experimentation

1622 aimed at the discovery of facts, devices, technologies, or applications and the process of

1623 preparing those devices, technologies, or applications for marketing.

1624 (104) (a) "Residential telecommunications services" means a telecommunications

1625 service or an ancillary service that is provided to an individual for personal use:

1626 (i) at a residential address; or

1627 (ii) at an institution, including a nursing home or a school, if the telecommunications

1628 service or ancillary service is provided to and paid for by the individual residing at the

1629 institution rather than the institution.

1630 (b) For purposes of Subsection (104)(a)(i), a residential address includes an:

1631 (i) apartment; or

1632 (ii) other individual dwelling unit.

1633 (105) "Residential use" means the use in or around a home, apartment building,

1634 sleeping quarters, and similar facilities or accommodations.

1635 (106) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other

1636 than:

1637 (a) resale;

1638 (b) sublease; or

1639 (c) subrent.

1640 (107) (a) "Retailer" means any person engaged in a regularly organized business in
1641 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1642 who is selling to the user or consumer and not for resale.

1643 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1644 engaged in the business of selling to users or consumers within the state.

1645 (108) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1646 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1647 Subsection 59-12-103(1), for consideration.

1648 (b) "Sale" includes:

1649 (i) installment and credit sales;

1650 (ii) any closed transaction constituting a sale;

1651 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1652 chapter;

1653 (iv) any transaction if the possession of property is transferred but the seller retains the
1654 title as security for the payment of the price; and

1655 (v) any transaction under which right to possession, operation, or use of any article of
1656 tangible personal property is granted under a lease or contract and the transfer of possession
1657 would be taxable if an outright sale were made.

1658 (109) "Sale at retail" is as defined in Subsection (106).

1659 (110) "Sale-leaseback transaction" means a transaction by which title to tangible
1660 personal property or a product transferred electronically that is subject to a tax under this
1661 chapter is transferred:

1662 (a) by a purchaser-lessee;

1663 (b) to a lessor;

1664 (c) for consideration; and

1665 (d) if:

1666 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1667 of the tangible personal property or product transferred electronically;

1668 (ii) the sale of the tangible personal property or product transferred electronically to the
1669 lessor is intended as a form of financing:

1670 (A) for the tangible personal property or product transferred electronically; and

1671 (B) to the purchaser-lessee; and
1672 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1673 is required to:
1674 (A) capitalize the tangible personal property or product transferred electronically for
1675 financial reporting purposes; and
1676 (B) account for the lease payments as payments made under a financing arrangement.
1677 (111) "Sales price" is as defined in Subsection (98).
1678 (112) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1679 amounts charged by a school:
1680 (i) sales that are directly related to the school's educational functions or activities
1681 including:
1682 (A) the sale of:
1683 (I) textbooks;
1684 (II) textbook fees;
1685 (III) laboratory fees;
1686 (IV) laboratory supplies; or
1687 (V) safety equipment;
1688 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1689 that:
1690 (I) a student is specifically required to wear as a condition of participation in a
1691 school-related event or school-related activity; and
1692 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1693 place of ordinary clothing;
1694 (C) sales of the following if the net or gross revenues generated by the sales are
1695 deposited into a school district fund or school fund dedicated to school meals:
1696 (I) food and food ingredients; or
1697 (II) prepared food; or
1698 (D) transportation charges for official school activities; or
1699 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1700 event or school-related activity.
1701 (b) "Sales relating to schools" does not include:

- 1702 (i) bookstore sales of items that are not educational materials or supplies;
- 1703 (ii) except as provided in Subsection (112)(a)(i)(B):
- 1704 (A) clothing;
- 1705 (B) clothing accessories or equipment;
- 1706 (C) protective equipment; or
- 1707 (D) sports or recreational equipment; or
- 1708 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1709 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1710 (A) other than a:
- 1711 (I) school;
- 1712 (II) nonprofit organization authorized by a school board or a governing body of a
- 1713 private school to organize and direct a competitive secondary school activity; or
- 1714 (III) nonprofit association authorized by a school board or a governing body of a
- 1715 private school to organize and direct a competitive secondary school activity; and
- 1716 (B) that is required to collect sales and use taxes under this chapter.
- 1717 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1718 commission may make rules defining the term "passed through."
- 1719 (113) For purposes of this section and Section [59-12-104](#), "school":
- 1720 (a) means:
- 1721 (i) an elementary school or a secondary school that:
- 1722 (A) is a:
- 1723 (I) public school; or
- 1724 (II) private school; and
- 1725 (B) provides instruction for one or more grades kindergarten through 12; or
- 1726 (ii) a public school district; and
- 1727 (b) includes the Electronic High School as defined in Section [53A-15-1002](#).
- 1728 (114) "Seller" means a person that makes a sale, lease, or rental of:
- 1729 (a) tangible personal property;
- 1730 (b) a product transferred electronically; or
- 1731 (c) a service.
- 1732 (115) (a) "Semiconductor fabricating, processing, research, or development materials"

1733 means tangible personal property or a product transferred electronically if the tangible personal
1734 property or product transferred electronically is:

1735 (i) used primarily in the process of:

1736 (A) (I) manufacturing a semiconductor;

1737 (II) fabricating a semiconductor; or

1738 (III) research or development of a:

1739 (Aa) semiconductor; or

1740 (Bb) semiconductor manufacturing process; or

1741 (B) maintaining an environment suitable for a semiconductor; or

1742 (ii) consumed primarily in the process of:

1743 (A) (I) manufacturing a semiconductor;

1744 (II) fabricating a semiconductor; or

1745 (III) research or development of a:

1746 (Aa) semiconductor; or

1747 (Bb) semiconductor manufacturing process; or

1748 (B) maintaining an environment suitable for a semiconductor.

1749 (b) "Semiconductor fabricating, processing, research, or development materials"

1750 includes:

1751 (i) parts used in the repairs or renovations of tangible personal property or a product
1752 transferred electronically described in Subsection (115)(a); or

1753 (ii) a chemical, catalyst, or other material used to:

1754 (A) produce or induce in a semiconductor a:

1755 (I) chemical change; or

1756 (II) physical change;

1757 (B) remove impurities from a semiconductor; or

1758 (C) improve the marketable condition of a semiconductor.

1759 (116) "Senior citizen center" means a facility having the primary purpose of providing
1760 services to the aged as defined in Section [62A-3-101](#).

1761 (117) (a) Subject to Subsections (117)(b) and (c), "short-term lodging consumable"
1762 means tangible personal property that:

1763 (i) a business that provides accommodations and services described in Subsection

1764 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
1765 to a purchaser;

1766 (ii) is intended to be consumed by the purchaser; and

1767 (iii) is:

1768 (A) included in the purchase price of the accommodations and services; and

1769 (B) not separately stated on an invoice, bill of sale, or other similar document provided
1770 to the purchaser.

1771 (b) "Short-term lodging consumable" includes:

1772 (i) a beverage;

1773 (ii) a brush or comb;

1774 (iii) a cosmetic;

1775 (iv) a hair care product;

1776 (v) lotion;

1777 (vi) a magazine;

1778 (vii) makeup;

1779 (viii) a meal;

1780 (ix) mouthwash;

1781 (x) nail polish remover;

1782 (xi) a newspaper;

1783 (xii) a notepad;

1784 (xiii) a pen;

1785 (xiv) a pencil;

1786 (xv) a razor;

1787 (xvi) saline solution;

1788 (xvii) a sewing kit;

1789 (xviii) shaving cream;

1790 (xix) a shoe shine kit;

1791 (xx) a shower cap;

1792 (xxi) a snack item;

1793 (xxii) soap;

1794 (xxiii) toilet paper;

- 1795 (xxiv) a toothbrush;
- 1796 (xxv) toothpaste; or
- 1797 (xxvi) an item similar to Subsections (117)(b)(i) through (xxv) as the commission may
- 1798 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1799 Rulemaking Act.
- 1800 (c) "Short-term lodging consumable" does not include:
- 1801 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 1802 property to be reused; or
- 1803 (ii) a product transferred electronically.
- 1804 (118) "Simplified electronic return" means the electronic return:
- 1805 (a) described in Section 318(C) of the agreement; and
- 1806 (b) approved by the governing board of the agreement.
- 1807 (119) "Solar energy" means the sun used as the sole source of energy for producing
- 1808 electricity.
- 1809 (120) (a) "Sports or recreational equipment" means an item:
- 1810 (i) designed for human use; and
- 1811 (ii) that is:
- 1812 (A) worn in conjunction with:
- 1813 (I) an athletic activity; or
- 1814 (II) a recreational activity; and
- 1815 (B) not suitable for general use.
- 1816 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1817 commission shall make rules:
- 1818 (i) listing the items that constitute "sports or recreational equipment"; and
- 1819 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1820 equipment" under the agreement.
- 1821 (121) "State" means the state of Utah, its departments, and agencies.
- 1822 (122) "Storage" means any keeping or retention of tangible personal property or any
- 1823 other taxable transaction under Subsection [59-12-103\(1\)](#), in this state for any purpose except
- 1824 sale in the regular course of business.
- 1825 (123) (a) Except as provided in Subsection (123)(d) or (e), "tangible personal property"

1826 means personal property that:

1827 (i) may be:

1828 (A) seen;

1829 (B) weighed;

1830 (C) measured;

1831 (D) felt; or

1832 (E) touched; or

1833 (ii) is in any manner perceptible to the senses.

1834 (b) "Tangible personal property" includes:

1835 (i) electricity;

1836 (ii) water;

1837 (iii) gas;

1838 (iv) steam; or

1839 (v) prewritten computer software, regardless of the manner in which the prewritten

1840 computer software is transferred.

1841 (c) "Tangible personal property" includes the following regardless of whether the item

1842 is attached to real property:

1843 (i) a dishwasher;

1844 (ii) a dryer;

1845 (iii) a freezer;

1846 (iv) a microwave;

1847 (v) a refrigerator;

1848 (vi) a stove;

1849 (vii) a washer; or

1850 (viii) an item similar to Subsections (123)(c)(i) through (vii) as determined by the

1851 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

1852 Rulemaking Act.

1853 (d) "Tangible personal property" does not include a product that is transferred

1854 electronically.

1855 (e) "Tangible personal property" does not include the following if attached to real

1856 property, regardless of whether the attachment to real property is only through a line that

1857 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1858 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1859 Rulemaking Act:

- 1860 (i) a hot water heater;
- 1861 (ii) a water filtration system; or
- 1862 (iii) a water softener system.

1863 (124) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1864 software" means an item listed in Subsection (124)(b) if that item is purchased or leased
1865 primarily to enable or facilitate one or more of the following to function:

- 1866 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1867 (ii) telecommunications transmission equipment, machinery, or software.

1868 (b) The following apply to Subsection (124)(a):

- 1869 (i) a pole;
- 1870 (ii) software;
- 1871 (iii) a supplementary power supply;
- 1872 (iv) temperature or environmental equipment or machinery;
- 1873 (v) test equipment;
- 1874 (vi) a tower; or

1875 (vii) equipment, machinery, or software that functions similarly to an item listed in
1876 Subsections (124)(b)(i) through (vi) as determined by the commission by rule made in
1877 accordance with Subsection (124)(c).

1878 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1879 commission may by rule define what constitutes equipment, machinery, or software that
1880 functions similarly to an item listed in Subsections (124)(b)(i) through (vi).

1881 (125) "Telecommunications equipment, machinery, or software required for 911
1882 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1883 Sec. 20.18.

1884 (126) "Telecommunications maintenance or repair equipment, machinery, or software"
1885 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1886 one or more of the following, regardless of whether the equipment, machinery, or software is
1887 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1888 following:

1889 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1890 (b) telecommunications switching or routing equipment, machinery, or software; or

1891 (c) telecommunications transmission equipment, machinery, or software.

1892 (127) (a) "Telecommunications service" means the electronic conveyance, routing, or
1893 transmission of audio, data, video, voice, or any other information or signal to a point, or
1894 among or between points.

1895 (b) "Telecommunications service" includes:

1896 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1897 processing application is used to act:

1898 (A) on the code, form, or protocol of the content;

1899 (B) for the purpose of electronic conveyance, routing, or transmission; and

1900 (C) regardless of whether the service:

1901 (I) is referred to as voice over Internet protocol service; or

1902 (II) is classified by the Federal Communications Commission as enhanced or value
1903 added;

1904 (ii) an 800 service;

1905 (iii) a 900 service;

1906 (iv) a fixed wireless service;

1907 (v) a mobile wireless service;

1908 (vi) a postpaid calling service;

1909 (vii) a prepaid calling service;

1910 (viii) a prepaid wireless calling service; or

1911 (ix) a private communications service.

1912 (c) "Telecommunications service" does not include:

1913 (i) advertising, including directory advertising;

1914 (ii) an ancillary service;

1915 (iii) a billing and collection service provided to a third party;

1916 (iv) a data processing and information service if:

1917 (A) the data processing and information service allows data to be:

1918 (I) (Aa) acquired;

- 1919 (Bb) generated;
- 1920 (Cc) processed;
- 1921 (Dd) retrieved; or
- 1922 (Ee) stored; and
- 1923 (II) delivered by an electronic transmission to a purchaser; and
- 1924 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1925 or information;
- 1926 (v) installation or maintenance of the following on a customer's premises:
- 1927 (A) equipment; or
- 1928 (B) wiring;
- 1929 (vi) Internet access service;
- 1930 (vii) a paging service;
- 1931 (viii) a product transferred electronically, including:
- 1932 (A) music;
- 1933 (B) reading material;
- 1934 (C) a ring tone;
- 1935 (D) software; or
- 1936 (E) video;
- 1937 (ix) a radio and television audio and video programming service:
- 1938 (A) regardless of the medium; and
- 1939 (B) including:
- 1940 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1941 programming service by a programming service provider;
- 1942 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1943 (III) audio and video programming services delivered by a commercial mobile radio
- 1944 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1945 (x) a value-added nonvoice data service; or
- 1946 (xi) tangible personal property.
- 1947 (128) (a) "Telecommunications service provider" means a person that:
- 1948 (i) owns, controls, operates, or manages a telecommunications service; and
- 1949 (ii) engages in an activity described in Subsection (128)(a)(i) for the shared use with or

1950 resale to any person of the telecommunications service.

1951 (b) A person described in Subsection (128)(a) is a telecommunications service provider
1952 whether or not the Public Service Commission of Utah regulates:

1953 (i) that person; or

1954 (ii) the telecommunications service that the person owns, controls, operates, or
1955 manages.

1956 (129) (a) "Telecommunications switching or routing equipment, machinery, or
1957 software" means an item listed in Subsection (129)(b) if that item is purchased or leased
1958 primarily for switching or routing:

1959 (i) an ancillary service;

1960 (ii) data communications;

1961 (iii) voice communications; or

1962 (iv) telecommunications service.

1963 (b) The following apply to Subsection (129)(a):

1964 (i) a bridge;

1965 (ii) a computer;

1966 (iii) a cross connect;

1967 (iv) a modem;

1968 (v) a multiplexer;

1969 (vi) plug in circuitry;

1970 (vii) a router;

1971 (viii) software;

1972 (ix) a switch; or

1973 (x) equipment, machinery, or software that functions similarly to an item listed in
1974 Subsections (129)(b)(i) through (ix) as determined by the commission by rule made in
1975 accordance with Subsection (129)(c).

1976 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1977 commission may by rule define what constitutes equipment, machinery, or software that
1978 functions similarly to an item listed in Subsections (129)(b)(i) through (ix).

1979 (130) (a) "Telecommunications transmission equipment, machinery, or software"
1980 means an item listed in Subsection (130)(b) if that item is purchased or leased primarily for

- 1981 sending, receiving, or transporting:
- 1982 (i) an ancillary service;
 - 1983 (ii) data communications;
 - 1984 (iii) voice communications; or
 - 1985 (iv) telecommunications service.
- 1986 (b) The following apply to Subsection (130)(a):
- 1987 (i) an amplifier;
 - 1988 (ii) a cable;
 - 1989 (iii) a closure;
 - 1990 (iv) a conduit;
 - 1991 (v) a controller;
 - 1992 (vi) a duplexer;
 - 1993 (vii) a filter;
 - 1994 (viii) an input device;
 - 1995 (ix) an input/output device;
 - 1996 (x) an insulator;
 - 1997 (xi) microwave machinery or equipment;
 - 1998 (xii) an oscillator;
 - 1999 (xiii) an output device;
 - 2000 (xiv) a pedestal;
 - 2001 (xv) a power converter;
 - 2002 (xvi) a power supply;
 - 2003 (xvii) a radio channel;
 - 2004 (xviii) a radio receiver;
 - 2005 (xix) a radio transmitter;
 - 2006 (xx) a repeater;
 - 2007 (xxi) software;
 - 2008 (xxii) a terminal;
 - 2009 (xxiii) a timing unit;
 - 2010 (xxiv) a transformer;
 - 2011 (xxv) a wire; or

2012 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
2013 Subsections (130)(b)(i) through (xxv) as determined by the commission by rule made in
2014 accordance with Subsection (130)(c).

2015 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2016 commission may by rule define what constitutes equipment, machinery, or software that
2017 functions similarly to an item listed in Subsections (130)(b)(i) through (xxv).

2018 (131) (a) "Textbook for a higher education course" means a textbook or other printed
2019 material that is required for a course:

2020 (i) offered by an institution of higher education; and

2021 (ii) that the purchaser of the textbook or other printed material attends or will attend.

2022 (b) "Textbook for a higher education course" includes a textbook in electronic format.

2023 (132) "Tobacco" means:

2024 (a) a cigarette;

2025 (b) a cigar;

2026 (c) chewing tobacco;

2027 (d) pipe tobacco; or

2028 (e) any other item that contains tobacco.

2029 (133) "Unassisted amusement device" means an amusement device, skill device, or
2030 ride device that is started and stopped by the purchaser or renter of the right to use or operate
2031 the amusement device, skill device, or ride device.

2032 (134) (a) "Use" means the exercise of any right or power over tangible personal
2033 property, a product transferred electronically, or a service under Subsection [59-12-103\(1\)](#),
2034 incident to the ownership or the leasing of that tangible personal property, product transferred
2035 electronically, or service.

2036 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
2037 property, a product transferred electronically, or a service in the regular course of business and
2038 held for resale.

2039 (135) "Value-added nonvoice data service" means a service:

2040 (a) that otherwise meets the definition of a telecommunications service except that a
2041 computer processing application is used to act primarily for a purpose other than conveyance,
2042 routing, or transmission; and

2043 (b) with respect to which a computer processing application is used to act on data or
2044 information:

- 2045 (i) code;
- 2046 (ii) content;
- 2047 (iii) form; or
- 2048 (iv) protocol.

2049 (136) (a) Subject to Subsection (136)(b), "vehicle" means the following that are
2050 required to be titled, registered, or titled and registered:

- 2051 (i) an aircraft as defined in Section 72-10-102;
- 2052 (ii) a vehicle as defined in Section 41-1a-102;
- 2053 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 2054 (iv) a vessel as defined in Section 41-1a-102.

2055 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 2056 (i) a vehicle described in Subsection (136)(a); or
- 2057 (ii) (A) a locomotive;
- 2058 (B) a freight car;
- 2059 (C) railroad work equipment; or
- 2060 (D) other railroad rolling stock.

2061 (137) "Vehicle dealer" means a person engaged in the business of buying, selling, or
2062 exchanging a vehicle as defined in Subsection (136).

2063 (138) (a) "Vertical service" means an ancillary service that:

- 2064 (i) is offered in connection with one or more telecommunications services; and
- 2065 (ii) offers an advanced calling feature that allows a customer to:
 - 2066 (A) identify a caller; and
 - 2067 (B) manage multiple calls and call connections.

2068 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
2069 conference bridging service.

2070 (139) (a) "Voice mail service" means an ancillary service that enables a customer to
2071 receive, send, or store a recorded message.

2072 (b) "Voice mail service" does not include a vertical service that a customer is required
2073 to have in order to utilize a voice mail service.

2074 (140) (a) Except as provided in Subsection (140)(b), "waste energy facility" means a
2075 facility that generates electricity:

2076 (i) using as the primary source of energy waste materials that would be placed in a
2077 landfill or refuse pit if it were not used to generate electricity, including:

2078 (A) tires;

2079 (B) waste coal;

2080 (C) oil shale; or

2081 (D) municipal solid waste; and

2082 (ii) in amounts greater than actually required for the operation of the facility.

2083 (b) "Waste energy facility" does not include a facility that incinerates:

2084 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

2085 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

2086 (141) "Watercraft" means a vessel as defined in Section 73-18-2.

2087 (142) "Wind energy" means wind used as the sole source of energy to produce
2088 electricity.

2089 (143) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
2090 location by the United States Postal Service.

2091 Section 8. Section 59-12-102 (Effective 07/01/14) is amended to read:

2092 **59-12-102 (Effective 07/01/14). Definitions.**

2093 As used in this chapter:

2094 (1) "800 service" means a telecommunications service that:

2095 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

2096 (b) is typically marketed:

2097 (i) under the name 800 toll-free calling;

2098 (ii) under the name 855 toll-free calling;

2099 (iii) under the name 866 toll-free calling;

2100 (iv) under the name 877 toll-free calling;

2101 (v) under the name 888 toll-free calling; or

2102 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
2103 Federal Communications Commission.

2104 (2) (a) "900 service" means an inbound toll telecommunications service that:

- 2105 (i) a subscriber purchases;
- 2106 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 2107 the subscriber's:
- 2108 (A) prerecorded announcement; or
- 2109 (B) live service; and
- 2110 (iii) is typically marketed:
- 2111 (A) under the name 900 service; or
- 2112 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 2113 Communications Commission.
- 2114 (b) "900 service" does not include a charge for:
- 2115 (i) a collection service a seller of a telecommunications service provides to a
- 2116 subscriber; or
- 2117 (ii) the following a subscriber sells to the subscriber's customer:
- 2118 (A) a product; or
- 2119 (B) a service.
- 2120 (3) (a) "Admission or user fees" includes season passes.
- 2121 (b) "Admission or user fees" does not include annual membership dues to private
- 2122 organizations.
- 2123 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 2124 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 2125 Agreement after November 12, 2002.
- 2126 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 2127 (a) listed under Subsection (6); and
- 2128 (b) that are imposed within a local taxing jurisdiction.
- 2129 (6) "Agreement sales and use tax" means a tax imposed under:
- 2130 (a) Subsection 59-12-103(2)(a)(i)(A);
- 2131 (b) Subsection 59-12-103(2)(b)(i);
- 2132 (c) Subsection 59-12-103(2)(c)(i);
- 2133 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 2134 (e) Section 59-12-204;
- 2135 (f) Section 59-12-401;

- 2136 (g) Section 59-12-402;
- 2137 (h) Section 59-12-703;
- 2138 (i) Section 59-12-802;
- 2139 (j) Section 59-12-804;
- 2140 (k) Section 59-12-1102;
- 2141 (l) Section 59-12-1302;
- 2142 (m) Section 59-12-1402;
- 2143 (n) Section 59-12-1802;
- 2144 (o) Section 59-12-2003;
- 2145 (p) Section 59-12-2103;
- 2146 (q) Section 59-12-2213;
- 2147 (r) Section 59-12-2214;
- 2148 (s) Section 59-12-2215;
- 2149 (t) Section 59-12-2216;
- 2150 (u) Section 59-12-2217; or
- 2151 (v) Section 59-12-2218.
- 2152 (7) "Aircraft" is as defined in Section 72-10-102.
- 2153 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 2154 (a) except for:
- 2155 (i) an airline as defined in Section 59-2-102; or
- 2156 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 2157 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 2158 state, of an airline; and
- 2159 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 2160 whether the business entity performs the following in this state:
- 2161 (i) check, diagnose, overhaul, and repair:
- 2162 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 2163 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 2164 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 2165 engine;
- 2166 (iii) perform at least the following maintenance on a fixed wing turbine powered

- 2167 aircraft:
- 2168 (A) an inspection;
- 2169 (B) a repair, including a structural repair or modification;
- 2170 (C) changing landing gear; and
- 2171 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 2172 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 2173 completely apply new paint to the fixed wing turbine powered aircraft; and
- 2174 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 2175 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 2176 authority that certifies the fixed wing turbine powered aircraft.
- 2177 (9) "Alcoholic beverage" means a beverage that:
- 2178 (a) is suitable for human consumption; and
- 2179 (b) contains .5% or more alcohol by volume.
- 2180 (10) "Alternative energy" means:
- 2181 (a) biomass energy;
- 2182 (b) geothermal energy;
- 2183 (c) hydroelectric energy;
- 2184 (d) solar energy;
- 2185 (e) wind energy; or
- 2186 (f) energy that is derived from:
- 2187 (i) coal-to-liquids;
- 2188 (ii) nuclear fuel;
- 2189 (iii) oil-impregnated diatomaceous earth;
- 2190 (iv) oil sands;
- 2191 (v) oil shale; or
- 2192 (vi) petroleum coke.
- 2193 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
- 2194 facility" means a facility that:
- 2195 (i) uses alternative energy to produce electricity; and
- 2196 (ii) has a production capacity of two megawatts or greater.
- 2197 (b) A facility is an alternative energy electricity production facility regardless of

2198 whether the facility is:

- 2199 (i) connected to an electric grid; or
- 2200 (ii) located on the premises of an electricity consumer.

2201 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
2202 provision of telecommunications service.

2203 (b) "Ancillary service" includes:

- 2204 (i) a conference bridging service;
- 2205 (ii) a detailed communications billing service;
- 2206 (iii) directory assistance;
- 2207 (iv) a vertical service; or
- 2208 (v) a voice mail service.

2209 (13) "Area agency on aging" is as defined in Section [62A-3-101](#).

2210 (14) "Assisted amusement device" means an amusement device, skill device, or ride
2211 device that is started and stopped by an individual:

2212 (a) who is not the purchaser or renter of the right to use or operate the amusement
2213 device, skill device, or ride device; and

2214 (b) at the direction of the seller of the right to use the amusement device, skill device,
2215 or ride device.

2216 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
2217 washing of tangible personal property if the cleaning or washing labor is primarily performed
2218 by an individual:

2219 (a) who is not the purchaser of the cleaning or washing of the tangible personal
2220 property; and

2221 (b) at the direction of the seller of the cleaning or washing of the tangible personal
2222 property.

2223 (16) "Authorized carrier" means:

2224 (a) in the case of vehicles operated over public highways, the holder of credentials
2225 indicating that the vehicle is or will be operated pursuant to both the International Registration
2226 Plan and the International Fuel Tax Agreement;

2227 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
2228 certificate or air carrier's operating certificate; or

2229 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
2230 stock, the holder of a certificate issued by the United States Surface Transportation Board.

2231 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the
2232 following that is used as the primary source of energy to produce fuel or electricity:

2233 (i) material from a plant or tree; or

2234 (ii) other organic matter that is available on a renewable basis, including:

2235 (A) slash and brush from forests and woodlands;

2236 (B) animal waste;

2237 (C) methane produced:

2238 (I) at landfills; or

2239 (II) as a byproduct of the treatment of wastewater residuals;

2240 (D) aquatic plants; and

2241 (E) agricultural products.

2242 (b) "Biomass energy" does not include:

2243 (i) black liquor;

2244 (ii) treated woods; or

2245 (iii) biomass from municipal solid waste other than methane produced:

2246 (A) at landfills; or

2247 (B) as a byproduct of the treatment of wastewater residuals.

2248 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
2249 property, products, or services if the tangible personal property, products, or services are:

2250 (i) distinct and identifiable; and

2251 (ii) sold for one nonitemized price.

2252 (b) "Bundled transaction" does not include:

2253 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on

2254 the basis of the selection by the purchaser of the items of tangible personal property included in
2255 the transaction;

2256 (ii) the sale of real property;

2257 (iii) the sale of services to real property;

2258 (iv) the retail sale of tangible personal property and a service if:

2259 (A) the tangible personal property:

- 2260 (I) is essential to the use of the service; and
- 2261 (II) is provided exclusively in connection with the service; and
- 2262 (B) the service is the true object of the transaction;
- 2263 (v) the retail sale of two services if:
- 2264 (A) one service is provided that is essential to the use or receipt of a second service;
- 2265 (B) the first service is provided exclusively in connection with the second service; and
- 2266 (C) the second service is the true object of the transaction;
- 2267 (vi) a transaction that includes tangible personal property or a product subject to
- 2268 taxation under this chapter and tangible personal property or a product that is not subject to
- 2269 taxation under this chapter if the:
- 2270 (A) seller's purchase price of the tangible personal property or product subject to
- 2271 taxation under this chapter is de minimis; or
- 2272 (B) seller's sales price of the tangible personal property or product subject to taxation
- 2273 under this chapter is de minimis; and
- 2274 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 2275 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 2276 (A) that retail sale includes:
- 2277 (I) food and food ingredients;
- 2278 (II) a drug;
- 2279 (III) durable medical equipment;
- 2280 (IV) mobility enhancing equipment;
- 2281 (V) an over-the-counter drug;
- 2282 (VI) a prosthetic device; or
- 2283 (VII) a medical supply; and
- 2284 (B) subject to Subsection (18)(f):
- 2285 (I) the seller's purchase price of the tangible personal property subject to taxation under
- 2286 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
- 2287 (II) the seller's sales price of the tangible personal property subject to taxation under
- 2288 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 2289 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
- 2290 service that is distinct and identifiable does not include:

- 2291 (A) packaging that:
- 2292 (I) accompanies the sale of the tangible personal property, product, or service; and
- 2293 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
- 2294 service;
- 2295 (B) tangible personal property, a product, or a service provided free of charge with the
- 2296 purchase of another item of tangible personal property, a product, or a service; or
- 2297 (C) an item of tangible personal property, a product, or a service included in the
- 2298 definition of "purchase price."
- 2299 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
- 2300 product, or a service is provided free of charge with the purchase of another item of tangible
- 2301 personal property, a product, or a service if the sales price of the purchased item of tangible
- 2302 personal property, product, or service does not vary depending on the inclusion of the tangible
- 2303 personal property, product, or service provided free of charge.
- 2304 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
- 2305 does not include a price that is separately identified by tangible personal property, product, or
- 2306 service on the following, regardless of whether the following is in paper format or electronic
- 2307 format:
- 2308 (A) a binding sales document; or
- 2309 (B) another supporting sales-related document that is available to a purchaser.
- 2310 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
- 2311 supporting sales-related document that is available to a purchaser includes:
- 2312 (A) a bill of sale;
- 2313 (B) a contract;
- 2314 (C) an invoice;
- 2315 (D) a lease agreement;
- 2316 (E) a periodic notice of rates and services;
- 2317 (F) a price list;
- 2318 (G) a rate card;
- 2319 (H) a receipt; or
- 2320 (I) a service agreement.
- 2321 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal

2322 property or a product subject to taxation under this chapter is de minimis if:

2323 (A) the seller's purchase price of the tangible personal property or product is 10% or
2324 less of the seller's total purchase price of the bundled transaction; or

2325 (B) the seller's sales price of the tangible personal property or product is 10% or less of
2326 the seller's total sales price of the bundled transaction.

2327 (ii) For purposes of Subsection (18)(b)(vi), a seller:

2328 (A) shall use the seller's purchase price or the seller's sales price to determine if the
2329 purchase price or sales price of the tangible personal property or product subject to taxation
2330 under this chapter is de minimis; and

2331 (B) may not use a combination of the seller's purchase price and the seller's sales price
2332 to determine if the purchase price or sales price of the tangible personal property or product
2333 subject to taxation under this chapter is de minimis.

2334 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
2335 contract to determine if the sales price of tangible personal property or a product is de minimis.

2336 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
2337 the seller's purchase price and the seller's sales price to determine if tangible personal property
2338 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
2339 price of that retail sale.

2340 (19) "Certified automated system" means software certified by the governing board of
2341 the agreement that:

2342 (a) calculates the agreement sales and use tax imposed within a local taxing
2343 jurisdiction:

2344 (i) on a transaction; and

2345 (ii) in the states that are members of the agreement;

2346 (b) determines the amount of agreement sales and use tax to remit to a state that is a
2347 member of the agreement; and

2348 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

2349 (20) "Certified service provider" means an agent certified:

2350 (a) by the governing board of the agreement; and

2351 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
2352 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's

2353 own purchases.

2354 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
2355 suitable for general use.

2356 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2357 commission shall make rules:

2358 (i) listing the items that constitute "clothing"; and

2359 (ii) that are consistent with the list of items that constitute "clothing" under the
2360 agreement.

2361 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

2362 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
2363 fuels that does not constitute industrial use under Subsection (55) or residential use under
2364 Subsection (105).

2365 (24) (a) "Common carrier" means a person engaged in or transacting the business of
2366 transporting passengers, freight, merchandise, or other property for hire within this state.

2367 (b) (i) "Common carrier" does not include a person who, at the time the person is
2368 traveling to or from that person's place of employment, transports a passenger to or from the
2369 passenger's place of employment.

2370 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,
2371 Utah Administrative Rulemaking Act, the commission may make rules defining what
2372 constitutes a person's place of employment.

2373 (25) "Component part" includes:

2374 (a) poultry, dairy, and other livestock feed, and their components;

2375 (b) baling ties and twine used in the baling of hay and straw;

2376 (c) fuel used for providing temperature control of orchards and commercial
2377 greenhouses doing a majority of their business in wholesale sales, and for providing power for
2378 off-highway type farm machinery; and

2379 (d) feed, seeds, and seedlings.

2380 (26) "Computer" means an electronic device that:

2381 (a) accepts information:

2382 ~~(a)~~ (i) in digital form; or

2383 (ii) in a form similar to digital form; and

2384 (b) manipulates that information for a result based on a sequence of instructions.

2385 (27) "Computer software" means a set of coded instructions designed to cause:

2386 (a) a computer to perform a task; or

2387 (b) automatic data processing equipment to perform a task.

2388 (28) "Computer software maintenance contract" means a contract that obligates a seller
2389 of computer software to provide a customer with:

2390 (a) future updates or upgrades to computer software;

2391 (b) support services with respect to computer software; or

2392 (c) a combination of Subsections (28)(a) and (b).

2393 (29) (a) "Conference bridging service" means an ancillary service that links two or
2394 more participants of an audio conference call or video conference call.

2395 (b) "Conference bridging service" may include providing a telephone number as part of
2396 the ancillary service described in Subsection (29)(a).

2397 (c) "Conference bridging service" does not include a telecommunications service used
2398 to reach the ancillary service described in Subsection (29)(a).

2399 (30) "Construction materials" means any tangible personal property that will be
2400 converted into real property.

2401 (31) "Delivered electronically" means delivered to a purchaser by means other than
2402 tangible storage media.

2403 (32) (a) "Delivery charge" means a charge:

2404 (i) by a seller of:

2405 (A) tangible personal property;

2406 (B) a product transferred electronically; or

2407 (C) services; and

2408 (ii) for preparation and delivery of the tangible personal property, product transferred
2409 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
2410 purchaser.

2411 (b) "Delivery charge" includes a charge for the following:

2412 (i) transportation;

2413 (ii) shipping;

2414 (iii) postage;

- 2415 (iv) handling;
- 2416 (v) crating; or
- 2417 (vi) packing.
- 2418 (33) "Detailed telecommunications billing service" means an ancillary service of
- 2419 separately stating information pertaining to individual calls on a customer's billing statement.
- 2420 (34) "Dietary supplement" means a product, other than tobacco, that:
- 2421 (a) is intended to supplement the diet;
- 2422 (b) contains one or more of the following dietary ingredients:
- 2423 (i) a vitamin;
- 2424 (ii) a mineral;
- 2425 (iii) an herb or other botanical;
- 2426 (iv) an amino acid;
- 2427 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 2428 dietary intake; or
- 2429 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 2430 described in Subsections (34)(b)(i) through (v);
- 2431 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- 2432 (A) tablet form;
- 2433 (B) capsule form;
- 2434 (C) powder form;
- 2435 (D) softgel form;
- 2436 (E) gelcap form; or
- 2437 (F) liquid form; or
- 2438 (ii) if the product is not intended for ingestion in a form described in Subsections
- 2439 (34)(c)(i)(A) through (F), is not represented:
- 2440 (A) as conventional food; and
- 2441 (B) for use as a sole item of:
- 2442 (I) a meal; or
- 2443 (II) the diet; and
- 2444 (d) is required to be labeled as a dietary supplement:
- 2445 (i) identifiable by the "Supplemental Facts" box found on the label; and

2446 (ii) as required by 21 C.F.R. Sec. 101.36.

2447 (35) (a) "Digital audio work" means a work that results from the fixation of a series of
2448 musical, spoken, or other sounds.

2449 (b) "Digital audio work" includes a ringtone.

2450 (36) "Digital audio-visual work" means a series of related images which, when shown
2451 in succession, imparts an impression of motion, together with accompanying sounds, if any.

2452 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
2453 sense as a book.

2454 (38) (a) "Direct mail" means printed material delivered or distributed by United States
2455 mail or other delivery service:

2456 (i) to:

2457 (A) a mass audience; or

2458 (B) addressees on a mailing list provided:

2459 (I) by a purchaser of the mailing list; or

2460 (II) at the discretion of the purchaser of the mailing list; and

2461 (ii) if the cost of the printed material is not billed directly to the recipients.

2462 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
2463 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

2464 (c) "Direct mail" does not include multiple items of printed material delivered to a
2465 single address.

2466 (39) "Directory assistance" means an ancillary service of providing:

2467 (a) address information; or

2468 (b) telephone number information.

2469 (40) (a) "Disposable home medical equipment or supplies" means medical equipment
2470 or supplies that:

2471 (i) cannot withstand repeated use; and

2472 (ii) are purchased by, for, or on behalf of a person other than:

2473 (A) a health care facility as defined in Section [26-21-2](#);

2474 (B) a health care provider as defined in Section [78B-3-403](#);

2475 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or

2476 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).

- 2477 (b) "Disposable home medical equipment or supplies" does not include:
- 2478 (i) a drug;
- 2479 (ii) durable medical equipment;
- 2480 (iii) a hearing aid;
- 2481 (iv) a hearing aid accessory;
- 2482 (v) mobility enhancing equipment; or
- 2483 (vi) tangible personal property used to correct impaired vision, including:
- 2484 (A) eyeglasses; or
- 2485 (B) contact lenses.
- 2486 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2487 commission may by rule define what constitutes medical equipment or supplies.
- 2488 (41) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 2489 compound, substance, or preparation that is:
- 2490 (i) recognized in:
- 2491 (A) the official United States Pharmacopoeia;
- 2492 (B) the official Homeopathic Pharmacopoeia of the United States;
- 2493 (C) the official National Formulary; or
- 2494 (D) a supplement to a publication listed in Subsections (41)(a)(i)(A) through (C);
- 2495 (ii) intended for use in the:
- 2496 (A) diagnosis of disease;
- 2497 (B) cure of disease;
- 2498 (C) mitigation of disease;
- 2499 (D) treatment of disease; or
- 2500 (E) prevention of disease; or
- 2501 (iii) intended to affect:
- 2502 (A) the structure of the body; or
- 2503 (B) any function of the body.
- 2504 (b) "Drug" does not include:
- 2505 (i) food and food ingredients;
- 2506 (ii) a dietary supplement;
- 2507 (iii) an alcoholic beverage; or

- 2508 (iv) a prosthetic device.
- 2509 (42) (a) Except as provided in Subsection (42)(c), "durable medical equipment" means
- 2510 equipment that:
 - 2511 (i) can withstand repeated use;
 - 2512 (ii) is primarily and customarily used to serve a medical purpose;
 - 2513 (iii) generally is not useful to a person in the absence of illness or injury; and
 - 2514 (iv) is not worn in or on the body.
- 2515 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 2516 equipment described in Subsection (42)(a).
- 2517 (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 2518 (43) "Electronic" means:
 - 2519 (a) relating to technology; and
 - 2520 (b) having:
 - 2521 (i) electrical capabilities;
 - 2522 (ii) digital capabilities;
 - 2523 (iii) magnetic capabilities;
 - 2524 (iv) wireless capabilities;
 - 2525 (v) optical capabilities;
 - 2526 (vi) electromagnetic capabilities; or
 - 2527 (vii) capabilities similar to Subsections (43)(b)(i) through (vi).
- 2528 (44) "Electronic financial payment service" means an establishment:
 - 2529 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
 - 2530 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
 - 2531 federal Executive Office of the President, Office of Management and Budget; and
 - 2532 (b) that performs electronic financial payment services.
- 2533 (45) "Employee" is as defined in Section [59-10-401](#).
- 2534 (46) "Fixed guideway" means a public transit facility that uses and occupies:
 - 2535 (a) rail for the use of public transit; or
 - 2536 (b) a separate right-of-way for the use of public transit.
- 2537 (47) "Fixed wing turbine powered aircraft" means an aircraft that:
 - 2538 (a) is powered by turbine engines;

- 2539 (b) operates on jet fuel; and
- 2540 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 2541 (48) "Fixed wireless service" means a telecommunications service that provides radio
- 2542 communication between fixed points.
- 2543 (49) (a) "Food and food ingredients" means substances:
- 2544 (i) regardless of whether the substances are in:
- 2545 (A) liquid form;
- 2546 (B) concentrated form;
- 2547 (C) solid form;
- 2548 (D) frozen form;
- 2549 (E) dried form; or
- 2550 (F) dehydrated form; and
- 2551 (ii) that are:
- 2552 (A) sold for:
- 2553 (I) ingestion by humans; or
- 2554 (II) chewing by humans; and
- 2555 (B) consumed for the substance's:
- 2556 (I) taste; or
- 2557 (II) nutritional value.
- 2558 (b) "Food and food ingredients" includes an item described in Subsection (90)(b)(iii).
- 2559 (c) "Food and food ingredients" does not include:
- 2560 (i) an alcoholic beverage;
- 2561 (ii) tobacco; or
- 2562 (iii) prepared food.
- 2563 (50) (a) "Fundraising sales" means sales:
- 2564 (i) (A) made by a school; or
- 2565 (B) made by a school student;
- 2566 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 2567 materials, or provide transportation; and
- 2568 (iii) that are part of an officially sanctioned school activity.
- 2569 (b) For purposes of Subsection (50)(a)(iii), "officially sanctioned school activity"

2570 means a school activity:

2571 (i) that is conducted in accordance with a formal policy adopted by the school or school
2572 district governing the authorization and supervision of fundraising activities;

2573 (ii) that does not directly or indirectly compensate an individual teacher or other
2574 educational personnel by direct payment, commissions, or payment in kind; and

2575 (iii) the net or gross revenues from which are deposited in a dedicated account
2576 controlled by the school or school district.

2577 (51) "Geothermal energy" means energy contained in heat that continuously flows
2578 outward from the earth that is used as the sole source of energy to produce electricity.

2579 (52) "Governing board of the agreement" means the governing board of the agreement
2580 that is:

2581 (a) authorized to administer the agreement; and

2582 (b) established in accordance with the agreement.

2583 (53) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

2584 (i) the executive branch of the state, including all departments, institutions, boards,
2585 divisions, bureaus, offices, commissions, and committees;

2586 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
2587 Office of the Court Administrator, and similar administrative units in the judicial branch;

2588 (iii) the legislative branch of the state, including the House of Representatives, the
2589 Senate, the Legislative Printing Office, the Office of Legislative Research and General
2590 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
2591 Analyst;

2592 (iv) the National Guard;

2593 (v) an independent entity as defined in Section 63E-1-102; or

2594 (vi) a political subdivision as defined in Section 17B-1-102.

2595 (b) "Governmental entity" does not include the state systems of public and higher
2596 education, including:

2597 (i) a college campus of the Utah College of Applied Technology;

2598 (ii) a school;

2599 (iii) the State Board of Education;

2600 (iv) the State Board of Regents; or

- 2601 (v) an institution of higher education.
- 2602 (54) "Hydroelectric energy" means water used as the sole source of energy to produce
- 2603 electricity.
- 2604 (55) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 2605 other fuels:
- 2606 (a) in mining or extraction of minerals;
- 2607 (b) in agricultural operations to produce an agricultural product up to the time of
- 2608 harvest or placing the agricultural product into a storage facility, including:
- 2609 (i) commercial greenhouses;
- 2610 (ii) irrigation pumps;
- 2611 (iii) farm machinery;
- 2612 (iv) implements of husbandry as defined in Section [41-1a-102](#) that are not registered
- 2613 under Title 41, Chapter 1a, Part 2, Registration; and
- 2614 (v) other farming activities;
- 2615 (c) in manufacturing tangible personal property at an establishment described in SIC
- 2616 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 2617 Executive Office of the President, Office of Management and Budget;
- 2618 (d) by a scrap recycler if:
- 2619 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 2620 one or more of the following items into prepared grades of processed materials for use in new
- 2621 products:
- 2622 (A) iron;
- 2623 (B) steel;
- 2624 (C) nonferrous metal;
- 2625 (D) paper;
- 2626 (E) glass;
- 2627 (F) plastic;
- 2628 (G) textile; or
- 2629 (H) rubber; and
- 2630 (ii) the new products under Subsection (55)(d)(i) would otherwise be made with
- 2631 nonrecycled materials; or

2632 (e) in producing a form of energy or steam described in Subsection 54-2-1[(2)](3)(a) by
2633 a cogeneration facility as defined in Section 54-2-1.

2634 (56) (a) Except as provided in Subsection (56)(b), "installation charge" means a charge
2635 for installing:

2636 (i) tangible personal property; or

2637 (ii) a product transferred electronically.

2638 (b) "Installation charge" does not include a charge for:

2639 (i) repairs or renovations of:

2640 (A) tangible personal property; or

2641 (B) a product transferred electronically; or

2642 (ii) attaching tangible personal property or a product transferred electronically:

2643 (A) to other tangible personal property; and

2644 (B) as part of a manufacturing or fabrication process.

2645 (57) "Institution of higher education" means an institution of higher education listed in
2646 Section 53B-2-101.

2647 (58) (a) "Lease" or "rental" means a transfer of possession or control of tangible
2648 personal property or a product transferred electronically for:

2649 (i) (A) a fixed term; or

2650 (B) an indeterminate term; and

2651 (ii) consideration.

2652 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
2653 amount of consideration may be increased or decreased by reference to the amount realized
2654 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
2655 Code.

2656 (c) "Lease" or "rental" does not include:

2657 (i) a transfer of possession or control of property under a security agreement or
2658 deferred payment plan that requires the transfer of title upon completion of the required
2659 payments;

2660 (ii) a transfer of possession or control of property under an agreement that requires the
2661 transfer of title:

2662 (A) upon completion of required payments; and

- 2663 (B) if the payment of an option price does not exceed the greater of:
2664 (I) \$100; or
2665 (II) 1% of the total required payments; or
2666 (iii) providing tangible personal property along with an operator for a fixed period of
2667 time or an indeterminate period of time if the operator is necessary for equipment to perform as
2668 designed.
- 2669 (d) For purposes of Subsection (58)(c)(iii), an operator is necessary for equipment to
2670 perform as designed if the operator's duties exceed the:
2671 (i) set-up of tangible personal property;
2672 (ii) maintenance of tangible personal property; or
2673 (iii) inspection of tangible personal property.
- 2674 (59) "Life science establishment" means an establishment in this state that is classified
2675 under the following NAICS codes of the 2007 North American Industry Classification System
2676 of the federal Executive Office of the President, Office of Management and Budget:
2677 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
2678 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
2679 Manufacturing; or
2680 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.
- 2681 (60) "Life science research and development facility" means a facility owned, leased,
2682 or rented by a life science establishment if research and development is performed in 51% or
2683 more of the total area of the facility.
- 2684 (61) "Load and leave" means delivery to a purchaser by use of a tangible storage media
2685 if the tangible storage media is not physically transferred to the purchaser.
- 2686 (62) "Local taxing jurisdiction" means a:
2687 (a) county that is authorized to impose an agreement sales and use tax;
2688 (b) city that is authorized to impose an agreement sales and use tax; or
2689 (c) town that is authorized to impose an agreement sales and use tax.
- 2690 (63) "Manufactured home" is as defined in Section [15A-1-302](#).
- 2691 (64) For purposes of Section [59-12-104](#), "manufacturing facility" means:
2692 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
2693 Industrial Classification Manual of the federal Executive Office of the President, Office of

- 2694 Management and Budget;
- 2695 (b) a scrap recycler if:
- 2696 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 2697 one or more of the following items into prepared grades of processed materials for use in new
- 2698 products:
- 2699 (A) iron;
- 2700 (B) steel;
- 2701 (C) nonferrous metal;
- 2702 (D) paper;
- 2703 (E) glass;
- 2704 (F) plastic;
- 2705 (G) textile; or
- 2706 (H) rubber; and
- 2707 (ii) the new products under Subsection (64)(b)(i) would otherwise be made with
- 2708 nonrecycled materials; or
- 2709 (c) a cogeneration facility as defined in Section [54-2-1](#).
- 2710 (65) "Member of the immediate family of the producer" means a person who is related
- 2711 to a producer described in Subsection [59-12-104\(20\)\(a\)](#) as a:
- 2712 (a) child or stepchild, regardless of whether the child or stepchild is:
- 2713 (i) an adopted child or adopted stepchild; or
- 2714 (ii) a foster child or foster stepchild;
- 2715 (b) grandchild or stepgrandchild;
- 2716 (c) grandparent or stepgrandparent;
- 2717 (d) nephew or stepnephew;
- 2718 (e) niece or stepniece;
- 2719 (f) parent or stepparent;
- 2720 (g) sibling or stepsibling;
- 2721 (h) spouse;
- 2722 (i) person who is the spouse of a person described in Subsections (65)(a) through (g);
- 2723 or
- 2724 (j) person similar to a person described in Subsections (65)(a) through (i) as

2725 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
2726 Administrative Rulemaking Act.

2727 (66) "Mobile home" is as defined in Section 15A-1-302.

2728 (67) "Mobile telecommunications service" is as defined in the Mobile
2729 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

2730 (68) (a) "Mobile wireless service" means a telecommunications service, regardless of
2731 the technology used, if:

2732 (i) the origination point of the conveyance, routing, or transmission is not fixed;

2733 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

2734 (iii) the origination point described in Subsection (68)(a)(i) and the termination point
2735 described in Subsection (68)(a)(ii) are not fixed.

2736 (b) "Mobile wireless service" includes a telecommunications service that is provided
2737 by a commercial mobile radio service provider.

2738 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2739 commission may by rule define "commercial mobile radio service provider."

2740 (69) (a) Except as provided in Subsection (69)(c), "mobility enhancing equipment"
2741 means equipment that is:

2742 (i) primarily and customarily used to provide or increase the ability to move from one
2743 place to another;

2744 (ii) appropriate for use in a:

2745 (A) home; or

2746 (B) motor vehicle; and

2747 (iii) not generally used by persons with normal mobility.

2748 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
2749 the equipment described in Subsection (69)(a).

2750 (c) "Mobility enhancing equipment" does not include:

2751 (i) a motor vehicle;

2752 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
2753 vehicle manufacturer;

2754 (iii) durable medical equipment; or

2755 (iv) a prosthetic device.

2756 (70) "Model 1 seller" means a seller registered under the agreement that has selected a
2757 certified service provider as the seller's agent to perform all of the seller's sales and use tax
2758 functions for agreement sales and use taxes other than the seller's obligation under Section
2759 [59-12-124](#) to remit a tax on the seller's own purchases.

2760 (71) "Model 2 seller" means a seller registered under the agreement that:

2761 (a) except as provided in Subsection (71)(b), has selected a certified automated system
2762 to perform the seller's sales tax functions for agreement sales and use taxes; and

2763 (b) retains responsibility for remitting all of the sales tax:

2764 (i) collected by the seller; and

2765 (ii) to the appropriate local taxing jurisdiction.

2766 (72) (a) Subject to Subsection (72)(b), "model 3 seller" means a seller registered under
2767 the agreement that has:

2768 (i) sales in at least five states that are members of the agreement;

2769 (ii) total annual sales revenues of at least \$500,000,000;

2770 (iii) a proprietary system that calculates the amount of tax:

2771 (A) for an agreement sales and use tax; and

2772 (B) due to each local taxing jurisdiction; and

2773 (iv) entered into a performance agreement with the governing board of the agreement.

2774 (b) For purposes of Subsection (72)(a), "model 3 seller" includes an affiliated group of
2775 sellers using the same proprietary system.

2776 (73) "Model 4 seller" means a seller that is registered under the agreement and is not a
2777 model 1 seller, model 2 seller, or model 3 seller.

2778 (74) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

2779 (75) "Motor vehicle" is as defined in Section [41-1a-102](#).

2780 (76) "Oil sands" means impregnated bituminous sands that:

2781 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
2782 other hydrocarbons, or otherwise treated;

2783 (b) yield mixtures of liquid hydrocarbon; and

2784 (c) require further processing other than mechanical blending before becoming finished
2785 petroleum products.

2786 (77) "Oil shale" means a group of fine black to dark brown shales containing kerogen

2787 material that yields petroleum upon heating and distillation.

2788 (78) "Optional computer software maintenance contract" means a computer software
2789 maintenance contract that a customer is not obligated to purchase as a condition to the retail
2790 sale of computer software.

2791 (79) (a) "Other fuels" means products that burn independently to produce heat or
2792 energy.

2793 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
2794 personal property.

2795 (80) (a) "Paging service" means a telecommunications service that provides
2796 transmission of a coded radio signal for the purpose of activating a specific pager.

2797 (b) For purposes of Subsection (80)(a), the transmission of a coded radio signal
2798 includes a transmission by message or sound.

2799 (81) "Pawnbroker" is as defined in Section [13-32a-102](#).

2800 (82) "Pawn transaction" is as defined in Section [13-32a-102](#).

2801 (83) (a) "Permanently attached to real property" means that for tangible personal
2802 property attached to real property:

2803 (i) the attachment of the tangible personal property to the real property:

2804 (A) is essential to the use of the tangible personal property; and

2805 (B) suggests that the tangible personal property will remain attached to the real
2806 property in the same place over the useful life of the tangible personal property; or

2807 (ii) if the tangible personal property is detached from the real property, the detachment
2808 would:

2809 (A) cause substantial damage to the tangible personal property; or

2810 (B) require substantial alteration or repair of the real property to which the tangible
2811 personal property is attached.

2812 (b) "Permanently attached to real property" includes:

2813 (i) the attachment of an accessory to the tangible personal property if the accessory is:

2814 (A) essential to the operation of the tangible personal property; and

2815 (B) attached only to facilitate the operation of the tangible personal property;

2816 (ii) a temporary detachment of tangible personal property from real property for a
2817 repair or renovation if the repair or renovation is performed where the tangible personal

2818 property and real property are located; or

2819 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
2820 Subsection (83)(c)(iii) or (iv).

2821 (c) "Permanently attached to real property" does not include:

2822 (i) the attachment of portable or movable tangible personal property to real property if
2823 that portable or movable tangible personal property is attached to real property only for:

2824 (A) convenience;

2825 (B) stability; or

2826 (C) for an obvious temporary purpose;

2827 (ii) the detachment of tangible personal property from real property except for the
2828 detachment described in Subsection (83)(b)(ii);

2829 (iii) an attachment of the following tangible personal property to real property if the
2830 attachment to real property is only through a line that supplies water, electricity, gas,
2831 telecommunications, cable, or supplies a similar item as determined by the commission by rule
2832 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2833 (A) a computer;

2834 (B) a telephone;

2835 (C) a television; or

2836 (D) tangible personal property similar to Subsections (83)(c)(iii)(A) through (C) as
2837 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
2838 Administrative Rulemaking Act; or

2839 (iv) an item listed in Subsection (123)(c).

2840 (84) "Person" includes any individual, firm, partnership, joint venture, association,
2841 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
2842 municipality, district, or other local governmental entity of the state, or any group or
2843 combination acting as a unit.

2844 (85) "Place of primary use":

2845 (a) for telecommunications service other than mobile telecommunications service,
2846 means the street address representative of where the customer's use of the telecommunications
2847 service primarily occurs, which shall be:

2848 (i) the residential street address of the customer; or

- 2849 (ii) the primary business street address of the customer; or
- 2850 (b) for mobile telecommunications service, is as defined in the Mobile
- 2851 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 2852 (86) (a) "Postpaid calling service" means a telecommunications service a person
- 2853 obtains by making a payment on a call-by-call basis:
- 2854 (i) through the use of a:
- 2855 (A) bank card;
- 2856 (B) credit card;
- 2857 (C) debit card; or
- 2858 (D) travel card; or
- 2859 (ii) by a charge made to a telephone number that is not associated with the origination
- 2860 or termination of the telecommunications service.
- 2861 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
- 2862 service, that would be a prepaid wireless calling service if the service were exclusively a
- 2863 telecommunications service.
- 2864 (87) "Postproduction" means an activity related to the finishing or duplication of a
- 2865 medium described in Subsection [59-12-104\(54\)\(a\)](#).
- 2866 (88) "Prepaid calling service" means a telecommunications service:
- 2867 (a) that allows a purchaser access to telecommunications service that is exclusively
- 2868 telecommunications service;
- 2869 (b) that:
- 2870 (i) is paid for in advance; and
- 2871 (ii) enables the origination of a call using an:
- 2872 (A) access number; or
- 2873 (B) authorization code;
- 2874 (c) that is dialed:
- 2875 (i) manually; or
- 2876 (ii) electronically; and
- 2877 (d) sold in predetermined units or dollars that decline:
- 2878 (i) by a known amount; and
- 2879 (ii) with use.

- 2880 (89) "Prepaid wireless calling service" means a telecommunications service:
- 2881 (a) that provides the right to utilize:
- 2882 (i) mobile wireless service; and
- 2883 (ii) other service that is not a telecommunications service, including:
- 2884 (A) the download of a product transferred electronically;
- 2885 (B) a content service; or
- 2886 (C) an ancillary service;
- 2887 (b) that:
- 2888 (i) is paid for in advance; and
- 2889 (ii) enables the origination of a call using an:
- 2890 (A) access number; or
- 2891 (B) authorization code;
- 2892 (c) that is dialed:
- 2893 (i) manually; or
- 2894 (ii) electronically; and
- 2895 (d) sold in predetermined units or dollars that decline:
- 2896 (i) by a known amount; and
- 2897 (ii) with use.
- 2898 (90) (a) "Prepared food" means:
- 2899 (i) food:
- 2900 (A) sold in a heated state; or
- 2901 (B) heated by a seller;
- 2902 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 2903 item; or
- 2904 (iii) except as provided in Subsection (90)(c), food sold with an eating utensil provided
- 2905 by the seller, including a:
- 2906 (A) plate;
- 2907 (B) knife;
- 2908 (C) fork;
- 2909 (D) spoon;
- 2910 (E) glass;

- 2911 (F) cup;
- 2912 (G) napkin; or
- 2913 (H) straw.
- 2914 (b) "Prepared food" does not include:
- 2915 (i) food that a seller only:
- 2916 (A) cuts;
- 2917 (B) repackages; or
- 2918 (C) pasteurizes; or
- 2919 (ii) (A) the following:
- 2920 (I) raw egg;
- 2921 (II) raw fish;
- 2922 (III) raw meat;
- 2923 (IV) raw poultry; or
- 2924 (V) a food containing an item described in Subsections (90)(b)(ii)(A)(I) through (IV);
- 2925 and
- 2926 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 2927 Food and Drug Administration's Food Code that a consumer cook the items described in
- 2928 Subsection (90)(b)(ii)(A) to prevent food borne illness; or
- 2929 (iii) the following if sold without eating utensils provided by the seller:
- 2930 (A) food and food ingredients sold by a seller if the seller's proper primary
- 2931 classification under the 2002 North American Industry Classification System of the federal
- 2932 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 2933 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 2934 Manufacturing;
- 2935 (B) food and food ingredients sold in an unheated state:
- 2936 (I) by weight or volume; and
- 2937 (II) as a single item; or
- 2938 (C) a bakery item, including:
- 2939 (I) a bagel;
- 2940 (II) a bar;
- 2941 (III) a biscuit;

- 2942 (IV) bread;
- 2943 (V) a bun;
- 2944 (VI) a cake;
- 2945 (VII) a cookie;
- 2946 (VIII) a croissant;
- 2947 (IX) a danish;
- 2948 (X) a donut;
- 2949 (XI) a muffin;
- 2950 (XII) a pastry;
- 2951 (XIII) a pie;
- 2952 (XIV) a roll;
- 2953 (XV) a tart;
- 2954 (XVI) a torte; or
- 2955 (XVII) a tortilla.
- 2956 (c) An eating utensil provided by the seller does not include the following used to
- 2957 transport the food:
 - 2958 (i) a container; or
 - 2959 (ii) packaging.
- 2960 (91) "Prescription" means an order, formula, or recipe that is issued:
 - 2961 (a) (i) orally;
 - 2962 (ii) in writing;
 - 2963 (iii) electronically; or
 - 2964 (iv) by any other manner of transmission; and
 - 2965 (b) by a licensed practitioner authorized by the laws of a state.
- 2966 (92) (a) Except as provided in Subsection (92)(b)(ii) or (iii), "prewritten computer
- 2967 software" means computer software that is not designed and developed:
 - 2968 (i) by the author or other creator of the computer software; and
 - 2969 (ii) to the specifications of a specific purchaser.
 - 2970 (b) "Prewritten computer software" includes:
 - 2971 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
 - 2972 software is not designed and developed:

- 2973 (A) by the author or other creator of the computer software; and
- 2974 (B) to the specifications of a specific purchaser;
- 2975 (ii) computer software designed and developed by the author or other creator of the
- 2976 computer software to the specifications of a specific purchaser if the computer software is sold
- 2977 to a person other than the purchaser; or
- 2978 (iii) except as provided in Subsection (92)(c), prewritten computer software or a
- 2979 prewritten portion of prewritten computer software:
- 2980 (A) that is modified or enhanced to any degree; and
- 2981 (B) if the modification or enhancement described in Subsection (92)(b)(iii)(A) is
- 2982 designed and developed to the specifications of a specific purchaser.
- 2983 (c) "Prewritten computer software" does not include a modification or enhancement
- 2984 described in Subsection (92)(b)(iii) if the charges for the modification or enhancement are:
- 2985 (i) reasonable; and
- 2986 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
- 2987 invoice or other statement of price provided to the purchaser at the time of sale or later, as
- 2988 demonstrated by:
- 2989 (A) the books and records the seller keeps at the time of the transaction in the regular
- 2990 course of business, including books and records the seller keeps at the time of the transaction in
- 2991 the regular course of business for nontax purposes;
- 2992 (B) a preponderance of the facts and circumstances at the time of the transaction; and
- 2993 (C) the understanding of all of the parties to the transaction.
- 2994 (93) (a) "Private communication service" means a telecommunications service:
- 2995 (i) that entitles a customer to exclusive or priority use of one or more communications
- 2996 channels between or among termination points; and
- 2997 (ii) regardless of the manner in which the one or more communications channels are
- 2998 connected.
- 2999 (b) "Private communications service" includes the following provided in connection
- 3000 with the use of one or more communications channels:
- 3001 (i) an extension line;
- 3002 (ii) a station;
- 3003 (iii) switching capacity; or

3004 (iv) another associated service that is provided in connection with the use of one or
3005 more communications channels as defined in Section 59-12-215.

3006 (94) (a) Except as provided in Subsection (94)(b), "product transferred electronically"
3007 means a product transferred electronically that would be subject to a tax under this chapter if
3008 that product was transferred in a manner other than electronically.

3009 (b) "Product transferred electronically" does not include:

- 3010 (i) an ancillary service;
- 3011 (ii) computer software; or
- 3012 (iii) a telecommunications service.

3013 (95) (a) "Prosthetic device" means a device that is worn on or in the body to:

- 3014 (i) artificially replace a missing portion of the body;
- 3015 (ii) prevent or correct a physical deformity or physical malfunction; or
- 3016 (iii) support a weak or deformed portion of the body.

3017 (b) "Prosthetic device" includes:

- 3018 (i) parts used in the repairs or renovation of a prosthetic device;
- 3019 (ii) replacement parts for a prosthetic device;
- 3020 (iii) a dental prosthesis; or
- 3021 (iv) a hearing aid.

3022 (c) "Prosthetic device" does not include:

- 3023 (i) corrective eyeglasses; or
- 3024 (ii) contact lenses.

3025 (96) (a) "Protective equipment" means an item:

- 3026 (i) for human wear; and
- 3027 (ii) that is:
 - 3028 (A) designed as protection:
 - 3029 (I) to the wearer against injury or disease; or
 - 3030 (II) against damage or injury of other persons or property; and
 - 3031 (B) not suitable for general use.

3032 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3033 commission shall make rules:

- 3034 (i) listing the items that constitute "protective equipment"; and

3035 (ii) that are consistent with the list of items that constitute "protective equipment"
3036 under the agreement.

3037 (97) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
3038 printed matter, other than a photocopy:

3039 (i) regardless of:

3040 (A) characteristics;

3041 (B) copyright;

3042 (C) form;

3043 (D) format;

3044 (E) method of reproduction; or

3045 (F) source; and

3046 (ii) made available in printed or electronic format.

3047 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3048 commission may by rule define the term "photocopy."

3049 (98) (a) "Purchase price" and "sales price" mean the total amount of consideration:

3050 (i) valued in money; and

3051 (ii) for which tangible personal property, a product transferred electronically, or
3052 services are:

3053 (A) sold;

3054 (B) leased; or

3055 (C) rented.

3056 (b) "Purchase price" and "sales price" include:

3057 (i) the seller's cost of the tangible personal property, a product transferred
3058 electronically, or services sold;

3059 (ii) expenses of the seller, including:

3060 (A) the cost of materials used;

3061 (B) a labor cost;

3062 (C) a service cost;

3063 (D) interest;

3064 (E) a loss;

3065 (F) the cost of transportation to the seller; or

- 3066 (G) a tax imposed on the seller;
- 3067 (iii) a charge by the seller for any service necessary to complete the sale; or
- 3068 (iv) consideration a seller receives from a person other than the purchaser if:
- 3069 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 3070 and
- 3071 (II) the consideration described in Subsection (98)(b)(iv)(A)(I) is directly related to a
- 3072 price reduction or discount on the sale;
- 3073 (B) the seller has an obligation to pass the price reduction or discount through to the
- 3074 purchaser;
- 3075 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 3076 the seller at the time of the sale to the purchaser; and
- 3077 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 3078 seller to claim a price reduction or discount; and
- 3079 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 3080 coupon, or other documentation with the understanding that the person other than the seller
- 3081 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 3082 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 3083 organization allowed a price reduction or discount, except that a preferred customer card that is
- 3084 available to any patron of a seller does not constitute membership in a group or organization
- 3085 allowed a price reduction or discount; or
- 3086 (III) the price reduction or discount is identified as a third party price reduction or
- 3087 discount on the:
- 3088 (Aa) invoice the purchaser receives; or
- 3089 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 3090 (c) "Purchase price" and "sales price" do not include:
- 3091 (i) a discount:
- 3092 (A) in a form including:
- 3093 (I) cash;
- 3094 (II) term; or
- 3095 (III) coupon;
- 3096 (B) that is allowed by a seller;

3097 (C) taken by a purchaser on a sale; and
3098 (D) that is not reimbursed by a third party; or
3099 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
3100 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
3101 sale or later, as demonstrated by the books and records the seller keeps at the time of the
3102 transaction in the regular course of business, including books and records the seller keeps at the
3103 time of the transaction in the regular course of business for nontax purposes, by a
3104 preponderance of the facts and circumstances at the time of the transaction, and by the
3105 understanding of all of the parties to the transaction:
3106 (A) the following from credit extended on the sale of tangible personal property or
3107 services:
3108 (I) a carrying charge;
3109 (II) a financing charge; or
3110 (III) an interest charge;
3111 (B) a delivery charge;
3112 (C) an installation charge;
3113 (D) a manufacturer rebate on a motor vehicle; or
3114 (E) a tax or fee legally imposed directly on the consumer.
3115 (99) "Purchaser" means a person to whom:
3116 (a) a sale of tangible personal property is made;
3117 (b) a product is transferred electronically; or
3118 (c) a service is furnished.
3119 (100) "Regularly rented" means:
3120 (a) rented to a guest for value three or more times during a calendar year; or
3121 (b) advertised or held out to the public as a place that is regularly rented to guests for
3122 value.
3123 (101) "Rental" is as defined in Subsection (58).
3124 (102) (a) Except as provided in Subsection (102)(b), "repairs or renovations of tangible
3125 personal property" means:
3126 (i) a repair or renovation of tangible personal property that is not permanently attached
3127 to real property; or

3128 (ii) attaching tangible personal property or a product transferred electronically to other
3129 tangible personal property or detaching tangible personal property or a product transferred
3130 electronically from other tangible personal property if:

3131 (A) the other tangible personal property to which the tangible personal property or
3132 product transferred electronically is attached or from which the tangible personal property or
3133 product transferred electronically is detached is not permanently attached to real property; and

3134 (B) the attachment of tangible personal property or a product transferred electronically
3135 to other tangible personal property or detachment of tangible personal property or a product
3136 transferred electronically from other tangible personal property is made in conjunction with a
3137 repair or replacement of tangible personal property or a product transferred electronically.

3138 (b) "Repairs or renovations of tangible personal property" does not include:

3139 (i) attaching prewritten computer software to other tangible personal property if the
3140 other tangible personal property to which the prewritten computer software is attached is not
3141 permanently attached to real property; or

3142 (ii) detaching prewritten computer software from other tangible personal property if the
3143 other tangible personal property from which the prewritten computer software is detached is
3144 not permanently attached to real property.

3145 (103) "Research and development" means the process of inquiry or experimentation
3146 aimed at the discovery of facts, devices, technologies, or applications and the process of
3147 preparing those devices, technologies, or applications for marketing.

3148 (104) (a) "Residential telecommunications services" means a telecommunications
3149 service or an ancillary service that is provided to an individual for personal use:

3150 (i) at a residential address; or

3151 (ii) at an institution, including a nursing home or a school, if the telecommunications
3152 service or ancillary service is provided to and paid for by the individual residing at the
3153 institution rather than the institution.

3154 (b) For purposes of Subsection (104)(a)(i), a residential address includes an:

3155 (i) apartment; or

3156 (ii) other individual dwelling unit.

3157 (105) "Residential use" means the use in or around a home, apartment building,
3158 sleeping quarters, and similar facilities or accommodations.

3159 (106) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
3160 than:

- 3161 (a) resale;
- 3162 (b) sublease; or
- 3163 (c) subrent.

3164 (107) (a) "Retailer" means any person engaged in a regularly organized business in
3165 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
3166 who is selling to the user or consumer and not for resale.

3167 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
3168 engaged in the business of selling to users or consumers within the state.

3169 (108) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
3170 otherwise, in any manner, of tangible personal property or any other taxable transaction under
3171 Subsection 59-12-103(1), for consideration.

3172 (b) "Sale" includes:

- 3173 (i) installment and credit sales;
- 3174 (ii) any closed transaction constituting a sale;
- 3175 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
3176 chapter;

3177 (iv) any transaction if the possession of property is transferred but the seller retains the
3178 title as security for the payment of the price; and

3179 (v) any transaction under which right to possession, operation, or use of any article of
3180 tangible personal property is granted under a lease or contract and the transfer of possession
3181 would be taxable if an outright sale were made.

3182 (109) "Sale at retail" is as defined in Subsection (106).

3183 (110) "Sale-leaseback transaction" means a transaction by which title to tangible
3184 personal property or a product transferred electronically that is subject to a tax under this
3185 chapter is transferred:

- 3186 (a) by a purchaser-lessee;
- 3187 (b) to a lessor;
- 3188 (c) for consideration; and
- 3189 (d) if:

3190 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
3191 of the tangible personal property or product transferred electronically;

3192 (ii) the sale of the tangible personal property or product transferred electronically to the
3193 lessor is intended as a form of financing:

3194 (A) for the tangible personal property or product transferred electronically; and

3195 (B) to the purchaser-lessee; and

3196 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
3197 is required to:

3198 (A) capitalize the tangible personal property or product transferred electronically for
3199 financial reporting purposes; and

3200 (B) account for the lease payments as payments made under a financing arrangement.

3201 (111) "Sales price" is as defined in Subsection (98).

3202 (112) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
3203 amounts charged by a school:

3204 (i) sales that are directly related to the school's educational functions or activities
3205 including:

3206 (A) the sale of:

3207 (I) textbooks;

3208 (II) textbook fees;

3209 (III) laboratory fees;

3210 (IV) laboratory supplies; or

3211 (V) safety equipment;

3212 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
3213 that:

3214 (I) a student is specifically required to wear as a condition of participation in a
3215 school-related event or school-related activity; and

3216 (II) is not readily adaptable to general or continued usage to the extent that it takes the
3217 place of ordinary clothing;

3218 (C) sales of the following if the net or gross revenues generated by the sales are
3219 deposited into a school district fund or school fund dedicated to school meals:

3220 (I) food and food ingredients; or

- 3221 (II) prepared food; or
- 3222 (D) transportation charges for official school activities; or
- 3223 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 3224 event or school-related activity.
- 3225 (b) "Sales relating to schools" does not include:
- 3226 (i) bookstore sales of items that are not educational materials or supplies;
- 3227 (ii) except as provided in Subsection (112)(a)(i)(B):
- 3228 (A) clothing;
- 3229 (B) clothing accessories or equipment;
- 3230 (C) protective equipment; or
- 3231 (D) sports or recreational equipment; or
- 3232 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 3233 event or school-related activity if the amounts paid or charged are passed through to a person:
- 3234 (A) other than a:
- 3235 (I) school;
- 3236 (II) nonprofit organization authorized by a school board or a governing body of a
- 3237 private school to organize and direct a competitive secondary school activity; or
- 3238 (III) nonprofit association authorized by a school board or a governing body of a
- 3239 private school to organize and direct a competitive secondary school activity; and
- 3240 (B) that is required to collect sales and use taxes under this chapter.
- 3241 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 3242 commission may make rules defining the term "passed through."
- 3243 (113) For purposes of this section and Section 59-12-104, "school":
- 3244 (a) means:
- 3245 (i) an elementary school or a secondary school that:
- 3246 (A) is a:
- 3247 (I) public school; or
- 3248 (II) private school; and
- 3249 (B) provides instruction for one or more grades kindergarten through 12; or
- 3250 (ii) a public school district; and
- 3251 (b) includes the Electronic High School as defined in Section 53A-15-1002.

- 3252 (114) "Seller" means a person that makes a sale, lease, or rental of:
- 3253 (a) tangible personal property;
- 3254 (b) a product transferred electronically; or
- 3255 (c) a service.
- 3256 (115) (a) "Semiconductor fabricating, processing, research, or development materials"
- 3257 means tangible personal property or a product transferred electronically if the tangible personal
- 3258 property or product transferred electronically is:
- 3259 (i) used primarily in the process of:
- 3260 (A) (I) manufacturing a semiconductor;
- 3261 (II) fabricating a semiconductor; or
- 3262 (III) research or development of a:
- 3263 (Aa) semiconductor; or
- 3264 (Bb) semiconductor manufacturing process; or
- 3265 (B) maintaining an environment suitable for a semiconductor; or
- 3266 (ii) consumed primarily in the process of:
- 3267 (A) (I) manufacturing a semiconductor;
- 3268 (II) fabricating a semiconductor; or
- 3269 (III) research or development of a:
- 3270 (Aa) semiconductor; or
- 3271 (Bb) semiconductor manufacturing process; or
- 3272 (B) maintaining an environment suitable for a semiconductor.
- 3273 (b) "Semiconductor fabricating, processing, research, or development materials"
- 3274 includes:
- 3275 (i) parts used in the repairs or renovations of tangible personal property or a product
- 3276 transferred electronically described in Subsection (115)(a); or
- 3277 (ii) a chemical, catalyst, or other material used to:
- 3278 (A) produce or induce in a semiconductor a:
- 3279 (I) chemical change; or
- 3280 (II) physical change;
- 3281 (B) remove impurities from a semiconductor; or
- 3282 (C) improve the marketable condition of a semiconductor.

3283 (116) "Senior citizen center" means a facility having the primary purpose of providing
3284 services to the aged as defined in Section 62A-3-101.

3285 (117) (a) Subject to Subsections (117)(b) and (c), "short-term lodging consumable"
3286 means tangible personal property that:

3287 (i) a business that provides accommodations and services described in Subsection
3288 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
3289 to a purchaser;

3290 (ii) is intended to be consumed by the purchaser; and

3291 (iii) is:

3292 (A) included in the purchase price of the accommodations and services; and

3293 (B) not separately stated on an invoice, bill of sale, or other similar document provided
3294 to the purchaser.

3295 (b) "Short-term lodging consumable" includes:

3296 (i) a beverage;

3297 (ii) a brush or comb;

3298 (iii) a cosmetic;

3299 (iv) a hair care product;

3300 (v) lotion;

3301 (vi) a magazine;

3302 (vii) makeup;

3303 (viii) a meal;

3304 (ix) mouthwash;

3305 (x) nail polish remover;

3306 (xi) a newspaper;

3307 (xii) a notepad;

3308 (xiii) a pen;

3309 (xiv) a pencil;

3310 (xv) a razor;

3311 (xvi) saline solution;

3312 (xvii) a sewing kit;

3313 (xviii) shaving cream;

- 3314 (xix) a shoe shine kit;
- 3315 (xx) a shower cap;
- 3316 (xxi) a snack item;
- 3317 (xxii) soap;
- 3318 (xxiii) toilet paper;
- 3319 (xxiv) a toothbrush;
- 3320 (xxv) toothpaste; or
- 3321 (xxvi) an item similar to Subsections (117)(b)(i) through (xxv) as the commission may
- 3322 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 3323 Rulemaking Act.
- 3324 (c) "Short-term lodging consumable" does not include:
- 3325 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 3326 property to be reused; or
- 3327 (ii) a product transferred electronically.
- 3328 (118) "Simplified electronic return" means the electronic return:
- 3329 (a) described in Section 318(C) of the agreement; and
- 3330 (b) approved by the governing board of the agreement.
- 3331 (119) "Solar energy" means the sun used as the sole source of energy for producing
- 3332 electricity.
- 3333 (120) (a) "Sports or recreational equipment" means an item:
- 3334 (i) designed for human use; and
- 3335 (ii) that is:
- 3336 (A) worn in conjunction with:
- 3337 (I) an athletic activity; or
- 3338 (II) a recreational activity; and
- 3339 (B) not suitable for general use.
- 3340 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 3341 commission shall make rules:
- 3342 (i) listing the items that constitute "sports or recreational equipment"; and
- 3343 (ii) that are consistent with the list of items that constitute "sports or recreational
- 3344 equipment" under the agreement.

3345 (121) "State" means the state of Utah, its departments, and agencies.

3346 (122) "Storage" means any keeping or retention of tangible personal property or any
3347 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
3348 sale in the regular course of business.

3349 (123) (a) Except as provided in Subsection (123)(d) or (e), "tangible personal property"
3350 means personal property that:

3351 (i) may be:

3352 (A) seen;

3353 (B) weighed;

3354 (C) measured;

3355 (D) felt; or

3356 (E) touched; or

3357 (ii) is in any manner perceptible to the senses.

3358 (b) "Tangible personal property" includes:

3359 (i) electricity;

3360 (ii) water;

3361 (iii) gas;

3362 (iv) steam; or

3363 (v) prewritten computer software, regardless of the manner in which the prewritten
3364 computer software is transferred.

3365 (c) "Tangible personal property" includes the following regardless of whether the item
3366 is attached to real property:

3367 (i) a dishwasher;

3368 (ii) a dryer;

3369 (iii) a freezer;

3370 (iv) a microwave;

3371 (v) a refrigerator;

3372 (vi) a stove;

3373 (vii) a washer; or

3374 (viii) an item similar to Subsections (123)(c)(i) through (vii) as determined by the
3375 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

3376 Rulemaking Act.

3377 (d) "Tangible personal property" does not include a product that is transferred
3378 electronically.

3379 (e) "Tangible personal property" does not include the following if attached to real
3380 property, regardless of whether the attachment to real property is only through a line that
3381 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
3382 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
3383 Rulemaking Act:

- 3384 (i) a hot water heater;
- 3385 (ii) a water filtration system; or
- 3386 (iii) a water softener system.

3387 (124) (a) "Telecommunications enabling or facilitating equipment, machinery, or
3388 software" means an item listed in Subsection (124)(b) if that item is purchased or leased
3389 primarily to enable or facilitate one or more of the following to function:

- 3390 (i) telecommunications switching or routing equipment, machinery, or software; or
- 3391 (ii) telecommunications transmission equipment, machinery, or software.

3392 (b) The following apply to Subsection (124)(a):

- 3393 (i) a pole;
- 3394 (ii) software;
- 3395 (iii) a supplementary power supply;
- 3396 (iv) temperature or environmental equipment or machinery;
- 3397 (v) test equipment;
- 3398 (vi) a tower; or
- 3399 (vii) equipment, machinery, or software that functions similarly to an item listed in

3400 Subsections (124)(b)(i) through (vi) as determined by the commission by rule made in
3401 accordance with Subsection (124)(c).

3402 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3403 commission may by rule define what constitutes equipment, machinery, or software that
3404 functions similarly to an item listed in Subsections (124)(b)(i) through (vi).

3405 (125) "Telecommunications equipment, machinery, or software required for 911
3406 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

3407 Sec. 20.18.

3408 (126) "Telecommunications maintenance or repair equipment, machinery, or software"
3409 means equipment, machinery, or software purchased or leased primarily to maintain or repair
3410 one or more of the following, regardless of whether the equipment, machinery, or software is
3411 purchased or leased as a spare part or as an upgrade or modification to one or more of the
3412 following:

3413 (a) telecommunications enabling or facilitating equipment, machinery, or software;

3414 (b) telecommunications switching or routing equipment, machinery, or software; or

3415 (c) telecommunications transmission equipment, machinery, or software.

3416 (127) (a) "Telecommunications service" means the electronic conveyance, routing, or
3417 transmission of audio, data, video, voice, or any other information or signal to a point, or
3418 among or between points.

3419 (b) "Telecommunications service" includes:

3420 (i) an electronic conveyance, routing, or transmission with respect to which a computer
3421 processing application is used to act:

3422 (A) on the code, form, or protocol of the content;

3423 (B) for the purpose of electronic conveyance, routing, or transmission; and

3424 (C) regardless of whether the service:

3425 (I) is referred to as voice over Internet protocol service; or

3426 (II) is classified by the Federal Communications Commission as enhanced or value
3427 added;

3428 (ii) an 800 service;

3429 (iii) a 900 service;

3430 (iv) a fixed wireless service;

3431 (v) a mobile wireless service;

3432 (vi) a postpaid calling service;

3433 (vii) a prepaid calling service;

3434 (viii) a prepaid wireless calling service; or

3435 (ix) a private communications service.

3436 (c) "Telecommunications service" does not include:

3437 (i) advertising, including directory advertising;

- 3438 (ii) an ancillary service;
- 3439 (iii) a billing and collection service provided to a third party;
- 3440 (iv) a data processing and information service if:
 - 3441 (A) the data processing and information service allows data to be:
 - 3442 (I) (Aa) acquired;
 - 3443 (Bb) generated;
 - 3444 (Cc) processed;
 - 3445 (Dd) retrieved; or
 - 3446 (Ee) stored; and
 - 3447 (II) delivered by an electronic transmission to a purchaser; and
- 3448 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 3449 or information;
- 3450 (v) installation or maintenance of the following on a customer's premises:
 - 3451 (A) equipment; or
 - 3452 (B) wiring;
- 3453 (vi) Internet access service;
- 3454 (vii) a paging service;
- 3455 (viii) a product transferred electronically, including:
 - 3456 (A) music;
 - 3457 (B) reading material;
 - 3458 (C) a ring tone;
 - 3459 (D) software; or
 - 3460 (E) video;
- 3461 (ix) a radio and television audio and video programming service:
 - 3462 (A) regardless of the medium; and
 - 3463 (B) including:
 - 3464 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 3465 programming service by a programming service provider;
 - 3466 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 3467 (III) audio and video programming services delivered by a commercial mobile radio
 - 3468 service provider as defined in 47 C.F.R. Sec. 20.3;

3469 (x) a value-added nonvoice data service; or

3470 (xi) tangible personal property.

3471 (128) (a) "Telecommunications service provider" means a person that:

3472 (i) owns, controls, operates, or manages a telecommunications service; and

3473 (ii) engages in an activity described in Subsection (128)(a)(i) for the shared use with or
3474 resale to any person of the telecommunications service.

3475 (b) A person described in Subsection (128)(a) is a telecommunications service provider
3476 whether or not the Public Service Commission of Utah regulates:

3477 (i) that person; or

3478 (ii) the telecommunications service that the person owns, controls, operates, or
3479 manages.

3480 (129) (a) "Telecommunications switching or routing equipment, machinery, or
3481 software" means an item listed in Subsection (129)(b) if that item is purchased or leased
3482 primarily for switching or routing:

3483 (i) an ancillary service;

3484 (ii) data communications;

3485 (iii) voice communications; or

3486 (iv) telecommunications service.

3487 (b) The following apply to Subsection (129)(a):

3488 (i) a bridge;

3489 (ii) a computer;

3490 (iii) a cross connect;

3491 (iv) a modem;

3492 (v) a multiplexer;

3493 (vi) plug in circuitry;

3494 (vii) a router;

3495 (viii) software;

3496 (ix) a switch; or

3497 (x) equipment, machinery, or software that functions similarly to an item listed in
3498 Subsections (129)(b)(i) through (ix) as determined by the commission by rule made in
3499 accordance with Subsection (129)(c).

3500 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3501 commission may by rule define what constitutes equipment, machinery, or software that
3502 functions similarly to an item listed in Subsections (129)(b)(i) through (ix).

3503 (130) (a) "Telecommunications transmission equipment, machinery, or software"
3504 means an item listed in Subsection (130)(b) if that item is purchased or leased primarily for
3505 sending, receiving, or transporting:

- 3506 (i) an ancillary service;
- 3507 (ii) data communications;
- 3508 (iii) voice communications; or
- 3509 (iv) telecommunications service.

3510 (b) The following apply to Subsection (130)(a):

- 3511 (i) an amplifier;
- 3512 (ii) a cable;
- 3513 (iii) a closure;
- 3514 (iv) a conduit;
- 3515 (v) a controller;
- 3516 (vi) a duplexer;
- 3517 (vii) a filter;
- 3518 (viii) an input device;
- 3519 (ix) an input/output device;
- 3520 (x) an insulator;
- 3521 (xi) microwave machinery or equipment;
- 3522 (xii) an oscillator;
- 3523 (xiii) an output device;
- 3524 (xiv) a pedestal;
- 3525 (xv) a power converter;
- 3526 (xvi) a power supply;
- 3527 (xvii) a radio channel;
- 3528 (xviii) a radio receiver;
- 3529 (xix) a radio transmitter;
- 3530 (xx) a repeater;

3531 (xxi) software;
3532 (xxii) a terminal;
3533 (xxiii) a timing unit;
3534 (xxiv) a transformer;
3535 (xxv) a wire; or
3536 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
3537 Subsections (130)(b)(i) through (xxv) as determined by the commission by rule made in
3538 accordance with Subsection (130)(c).

3539 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3540 commission may by rule define what constitutes equipment, machinery, or software that
3541 functions similarly to an item listed in Subsections (130)(b)(i) through (xxv).

3542 (131) (a) "Textbook for a higher education course" means a textbook or other printed
3543 material that is required for a course:

- 3544 (i) offered by an institution of higher education; and
 - 3545 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 3546 (b) "Textbook for a higher education course" includes a textbook in electronic format.

3547 (132) "Tobacco" means:

- 3548 (a) a cigarette;
- 3549 (b) a cigar;
- 3550 (c) chewing tobacco;
- 3551 (d) pipe tobacco; or
- 3552 (e) any other item that contains tobacco.

3553 (133) "Unassisted amusement device" means an amusement device, skill device, or
3554 ride device that is started and stopped by the purchaser or renter of the right to use or operate
3555 the amusement device, skill device, or ride device.

3556 (134) (a) "Use" means the exercise of any right or power over tangible personal
3557 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
3558 incident to the ownership or the leasing of that tangible personal property, product transferred
3559 electronically, or service.

3560 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
3561 property, a product transferred electronically, or a service in the regular course of business and

3562 held for resale.

3563 (135) "Value-added nonvoice data service" means a service:

3564 (a) that otherwise meets the definition of a telecommunications service except that a
3565 computer processing application is used to act primarily for a purpose other than conveyance,
3566 routing, or transmission; and

3567 (b) with respect to which a computer processing application is used to act on data or
3568 information:

3569 (i) code;

3570 (ii) content;

3571 (iii) form; or

3572 (iv) protocol.

3573 (136) (a) Subject to Subsection (136)(b), "vehicle" means the following that are
3574 required to be titled, registered, or titled and registered:

3575 (i) an aircraft as defined in Section 72-10-102;

3576 (ii) a vehicle as defined in Section 41-1a-102;

3577 (iii) an off-highway vehicle as defined in Section 41-22-2; or

3578 (iv) a vessel as defined in Section 41-1a-102.

3579 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

3580 (i) a vehicle described in Subsection (136)(a); or

3581 (ii) (A) a locomotive;

3582 (B) a freight car;

3583 (C) railroad work equipment; or

3584 (D) other railroad rolling stock.

3585 (137) "Vehicle dealer" means a person engaged in the business of buying, selling, or
3586 exchanging a vehicle as defined in Subsection (136).

3587 (138) (a) "Vertical service" means an ancillary service that:

3588 (i) is offered in connection with one or more telecommunications services; and

3589 (ii) offers an advanced calling feature that allows a customer to:

3590 (A) identify a caller; and

3591 (B) manage multiple calls and call connections.

3592 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

3593 conference bridging service.

3594 (139) (a) "Voice mail service" means an ancillary service that enables a customer to
3595 receive, send, or store a recorded message.

3596 (b) "Voice mail service" does not include a vertical service that a customer is required
3597 to have in order to utilize a voice mail service.

3598 (140) (a) Except as provided in Subsection (140)(b), "waste energy facility" means a
3599 facility that generates electricity:

3600 (i) using as the primary source of energy waste materials that would be placed in a
3601 landfill or refuse pit if it were not used to generate electricity, including:

3602 (A) tires;

3603 (B) waste coal;

3604 (C) oil shale; or

3605 (D) municipal solid waste; and

3606 (ii) in amounts greater than actually required for the operation of the facility.

3607 (b) "Waste energy facility" does not include a facility that incinerates:

3608 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

3609 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

3610 (141) "Watercraft" means a vessel as defined in Section [73-18-2](#).

3611 (142) "Wind energy" means wind used as the sole source of energy to produce
3612 electricity.

3613 (143) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
3614 location by the United States Postal Service.

3615 **Section 9. Effective dates.**

3616 (1) Except as provided in Subsection (2), this bill takes effect on May 13, 2014.

3617 (2) The actions affecting Section 59-12-102 (Effective 07/01/14) take effect on July 1,
3618 2014.