

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 161

Senators Hottinger, Dolan

A BILL

To amend sections 4549.65 and 5739.01 and to enact 1
sections 4516.01, 4516.02, 4516.03, 4516.04, 2
4516.05, 4516.06, 4516.07, 4516.08, 4516.09, 3
4516.10, 4516.11, and 4516.12 of the Revised 4
Code to specify requirements related to peer-to- 5
peer car sharing in Ohio. 6

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

Section 1. That sections 4549.65 and 5739.01 be amended 7
and sections 4516.01, 4516.02, 4516.03, 4516.04, 4516.05, 8
4516.06, 4516.07, 4516.08, 4516.09, 4516.10, 4516.11, and 9
4516.12 of the Revised Code be enacted to read as follows: 10

Sec. 4516.01. (A) "Car sharing period" means the period of 11
time that commences with the car sharing delivery period or, if 12
there is no car sharing delivery period, with the car sharing 13
start time, in accordance with the peer-to-peer car sharing 14
program agreement, and ends with the car sharing termination 15
time. 16

(B) "Car sharing delivery period" means the period of time 17
in which a shared vehicle is being delivered to the location for 18
the shared vehicle driver to take possession of the shared 19

vehicle, in accordance with the peer-to-peer car sharing program 20
agreement. 21

(C) "Car sharing start time" means either the point in 22
time when the shared vehicle driver takes possession of the 23
shared vehicle or the point in time when the shared vehicle 24
driver was scheduled to take possession of the shared vehicle, 25
whichever occurs first. 26

(D) "Car sharing termination time" means the point in time 27
when the earliest of the following events occurs: 28

(1) The expiration time established in the peer-to-peer 29
car sharing program agreement for use of the shared vehicle, 30
provided that the shared vehicle is returned to the location 31
designated in the agreement by the expiration time; 32

(2) The shared vehicle is returned to an alternate 33
location, if the shared vehicle owner and the shared vehicle 34
driver agree on the alternate location, as communicated through 35
the peer-to-peer car sharing program; 36

(3) The shared vehicle owner or the owner's designee takes 37
possession of the shared vehicle. 38

(E) "Motor vehicle" has the same meaning as in section 39
4509.01 of the Revised Code. 40

(F) "Motor-vehicle liability policy" has the same meaning 41
as in section 4509.01 of the Revised Code. 42

(G) "Noncommerical motor vehicle" means a motor vehicle 43
that is designated by the manufacturer to carry a load of not 44
more than one ton, is used exclusively for purposes other than 45
engaging in business for profit, and is registered as a 46
passenger car under Chapter 4503. of the Revised Code or a 47

substantially similar law in another state. 48

(H) "Peer-to-peer car sharing" means the authorized use of 49
a motor vehicle by an individual other than the motor vehicle's 50
owner through a peer-to-peer car sharing program. 51

(I) "Peer-to-peer car sharing program" or "program" means 52
a person who operates a business platform that connects a shared 53
vehicle owner to a shared vehicle driver to enable the sharing 54
of vehicles for financial consideration. "Peer-to-peer car 55
sharing program" does not include a motor vehicle leasing dealer 56
as defined in section 4517.01 of the Revised Code or a motor 57
vehicle renting dealer as defined in section 4549.65 of the 58
Revised Code. 59

(J) "Peer-to-peer car sharing program agreement" or 60
"agreement" means an agreement established through the peer-to- 61
peer car sharing program that serves as a contract between the 62
peer-to-peer car sharing program, the shared vehicle owner, and 63
the shared vehicle driver and describes the specific terms and 64
conditions of the agreement, including the car sharing period 65
and the location or locations for transfer of possession. 66

(K) "Proof of financial responsibility" has the same 67
meaning as in section 4509.01 of the Revised Code. 68

(L) "Shared vehicle" means a noncommercial motor vehicle 69
that is enrolled in a peer-to-peer car sharing program. 70

(M) "Shared vehicle driver" means a person authorized by a 71
shared vehicle owner, in accordance with the terms and 72
conditions of a peer-to-peer car sharing program agreement, to 73
operate a shared vehicle during a car sharing period. 74

(N) "Shared vehicle owner" means a registered owner of a 75
shared vehicle or a person designated by the registered owner. 76

Sec. 4516.02. (A) A peer-to-peer car sharing program shall 77
collect all of the following information before entering into a 78
peer-to-peer car sharing program agreement including, but not 79
limited to: 80

(1) The name and address of the shared vehicle owner and 81
the shared vehicle driver; 82

(2) The driver's license number and state of issuance of 83
the shared vehicle driver; 84

(3) The name, address, driver's license number, and state 85
of issuance of any other person who will operate the shared 86
vehicle during the car sharing period; 87

(4) Information regarding whether the shared vehicle owner 88
and the shared vehicle driver have motor-vehicle liability 89
policy or other proof of financial responsibility and 90
information related to that policy or proof and any policy 91
limits; 92

(5) Whether the shared vehicle owner knows of any safety 93
recalls regarding the shared vehicle; 94

(6) Verification that the shared vehicle is registered in 95
accordance with the requirements established under Chapter 4503. 96
of the Revised Code or a substantially similar law in another 97
state. 98

(B) A peer-to-peer car sharing program shall not allow a 99
peer-to-peer car sharing program agreement through its platform 100
if the program knows that the person who will operate the shared 101
vehicle is not a party to the agreement or knows that such a 102
person does not have a valid driver's license. 103

(C) A peer-to-peer car sharing program shall not allow a 104

peer-to-peer car sharing agreement through its platform if the 105
shared vehicle that is the subject of the agreement is not 106
registered. 107

(D) A peer-to-peer car sharing program shall collect, 108
verify, and maintain records pertaining to the use of each 109
shared vehicle enrolled in the program, including records 110
pertaining to all of the following: 111

(1) The dates, times, and duration of time that the shared 112
vehicle is in use through the program; 113

(2) The dates, times, and duration of time that the shared 114
vehicle driver possesses the shared vehicle through the program; 115

(3) Any fees or other financial consideration paid by the 116
shared vehicle driver; 117

(4) Any revenues or other financial consideration received 118
by the shared vehicle owner; 119

(5) Any other information or data that is necessary to 120
establish the car sharing period, including the car sharing 121
delivery period, the car sharing start time, and the car sharing 122
termination time, for the shared vehicle. 123

(E) The program shall provide the records required by 124
division (D) of this section, upon request, to any shared 125
vehicle owner, shared vehicle driver, the shared vehicle owner's 126
insurer, the shared vehicle driver's insurer, or law enforcement 127
for purposes of facilitating the investigation of a claim, 128
incident, or accident. 129

(F) The program shall retain records required by division 130
(D) of this section regarding each car sharing period for not 131
less than three years after the car sharing period. 132

Sec. 4516.03. A peer-to-peer car sharing program shall 133
disclose all of the following to the shared vehicle owner and 134
the shared vehicle driver in the peer-to-peer car sharing 135
program agreement: 136

(A) Any right of the program to seek indemnification from 137
the shared vehicle owner or the shared vehicle driver for 138
economic loss sustained by the program resulting from a breach 139
of the terms and conditions of the agreement; 140

(B) That any motor-vehicle liability policy or other proof 141
of financial responsibility issued to the shared vehicle owner 142
for the shared vehicle or issued to the shared vehicle driver 143
does not provide a defense against or indemnification for any 144
claim asserted by the program; 145

(C) That the program's motor vehicle insurance coverage on 146
the shared vehicle owner, the shared vehicle driver, and the 147
shared vehicle is in effect only during the car sharing period 148
and that any use of the shared vehicle by the shared vehicle 149
driver after the car sharing termination time may not be covered 150
by either the program's insurance or any other motor-vehicle 151
liability policy or proof of financial responsibility; 152

(D) The daily rate, fees, and any insurance or protection 153
package costs that are charged to the shared vehicle owner or 154
the shared vehicle driver; 155

(E) That the shared vehicle owner's motor-vehicle 156
liability policy or other proof of financial responsibility may 157
not provide coverage for a shared vehicle during the car sharing 158
period or for any use outside of the policy's or proof's stated 159
terms and conditions; 160

(F) Any conditions under which a shared vehicle driver 161

must maintain a separate motor-vehicle liability policy or other 162
proof of financial responsibility with certain applicable 163
coverage limits in order to reserve and use a shared vehicle 164
under the agreement; 165

(G) Emergency contact information for roadside assistance 166
and other customer service inquiries. 167

Sec. 4516.04. A peer-to-peer car sharing program shall 168
have sole responsibility for any equipment, including a global 169
positioning system or other special equipment that is installed 170
in or on the shared vehicle to monitor or facilitate peer-to- 171
peer car sharing. The program shall agree to indemnify and hold 172
harmless the shared vehicle owner for any damage or theft of the 173
system or equipment during the car sharing period that is not 174
caused by the shared vehicle owner. The program may seek 175
indemnity from the shared vehicle driver for any loss or damage 176
to the system or equipment that occurs during the car sharing 177
period that is caused by the shared vehicle driver. 178

Sec. 4516.05. (A) When a motor vehicle owner registers as 179
a shared vehicle owner with a peer-to-peer car sharing program 180
and before the shared vehicle owner makes the shared vehicle 181
available for peer-to-peer car sharing, the program shall do all 182
of the following: 183

(1) Verify that the shared vehicle does not have any 184
outstanding safety recalls on the vehicle; 185

(2) Provide notice to the shared vehicle owner of the 186
owner's responsibilities under division (B) of this section. 187

(B) (1) If a shared vehicle owner receives actual notice of 188
a safety recall on the shared vehicle, the shared vehicle owner 189
shall not make the shared vehicle available through a peer-to- 190

peer car sharing program until the safety recall repair is made. 191

(2) If the shared vehicle owner receives actual notice of 192
a safety recall on the shared vehicle after the shared vehicle 193
is available through a peer-to-peer car sharing program but 194
while the shared vehicle is not currently possessed by a shared 195
vehicle driver, the shared vehicle owner shall remove the shared 196
vehicle from availability until the safety recall repair is 197
made. 198

(3) If the shared vehicle owner receives actual notice of 199
a safety recall on the shared vehicle while the vehicle is 200
possessed by a shared vehicle driver, the shared vehicle owner 201
shall notify the peer-to-peer car sharing program about the 202
safety recall, so that the car sharing period can be terminated 203
to allow the shared vehicle owner to address the safety recall 204
repair. 205

(C) The peer-to-peer car sharing program shall establish 206
commercially reasonable procedures to determine any safety 207
recalls that apply to a shared vehicle registered with the 208
program after the initial registration of the shared vehicle 209
with the program. 210

Sec. 4516.06. (A) Peer-to-peer car sharing and a peer-to- 211
peer car sharing program agreement are a consumer transaction 212
for purposes of sections 1345.01 to 1345.13 of the Revised Code. 213
The peer-to-peer car sharing program is the supplier and the 214
shared vehicle owner and the shared vehicle driver are the 215
consumers for purposes of those sections. 216

(B) Except as provided in division (C) of this section, 217
whoever violates sections 4516.02 to 4516.05 of the Revised Code 218
is subject to any applicable penalties under Chapter 1345. of 219

the Revised Code for such violation. 220

(C) A peer-to-peer car sharing program is not liable for a 221
violation under sections 1345.01 to 1345.13 of the Revised Code 222
when the alleged violation is the result of false, misleading, 223
or inaccurate information provided to the program by a shared 224
vehicle owner or a shared vehicle driver and the program relied 225
on that information in good faith. 226

Sec. 4516.07. (A) As used in this section, "public-use 227
airport" has the same meaning as in section 4563.30 of the 228
Revised Code. 229

(B) The operator of a public-use airport may adopt 230
reasonable standards, regulations, procedures, and fees that are 231
applicable to peer-to-peer car sharing programs. The operator 232
may enter into such agreements, including concession agreements, 233
with a peer-to-peer car sharing program. A peer-to-peer car 234
sharing program, shared vehicle owner, and shared vehicle driver 235
shall comply with any applicable standards, regulations, 236
procedures, fees, and agreements adopted by a public-use 237
airport, and shall pay any applicable fees in a timely manner. 238

Sec. 4516.08. It is not the intent of the general assembly 239
that any provision in Chapter 4516. of the Revised Code be 240
interpreted as either limiting or restricting an insurer's 241
ability to exclude insurance coverage from any insurance policy 242
or an insurer's ability to underwrite any insurance policy. 243

Sec. 4516.09. (A) Except as provided in division (B) of 244
this section, a peer-to-peer car sharing program shall assume 245
liability of a shared vehicle owner for any death, bodily 246
injury, or property damage to a third party or an uninsured or 247
underinsured motorist that is proximately caused by the 248

operation of the shared vehicle during the car sharing period in 249
an amount stated in the peer-to-peer car sharing program 250
agreement. The amount shall be not less than that specified in 251
division (A) (1) of section 4516.10 of the Revised Code. 252

(B) The assumption of liability under division (A) of this 253
section does not apply if either of the following occurs: 254

(1) The shared vehicle owner makes an intentional or 255
fraudulent material misrepresentation or omission to the program 256
regarding the shared vehicle owner's motor-vehicle liability 257
policy, other proof of financial responsibility, or the type or 258
condition of the shared vehicle before the car sharing period in 259
which the loss occurs; 260

(2) The shared vehicle owner and the shared vehicle driver 261
conspire to have the shared vehicle driver fail to return the 262
shared vehicle, in violation of the terms of the peer-to-peer 263
car sharing agreement. 264

Sec. 4516.10. (A) (1) A peer-to-peer car sharing program 265
shall ensure that, during each car sharing period, the shared 266
vehicle owner and the shared vehicle driver are each covered by 267
a motor-vehicle liability policy or other proof of financial 268
responsibility that recognizes their status as a shared vehicle 269
owner or shared vehicle driver and provides coverage for the 270
operation of the shared vehicle during the car sharing period. 271
Each policy or proof shall be maintained in the following 272
amounts: 273

(a) At least twenty-five thousand dollars because of 274
bodily injury to or death of one person in any one accident; 275

(b) At least fifty thousand dollars because of bodily 276
injury or death of two or more persons in any one accident; 277

<u>(c) At least twenty-five thousand dollars because of</u>	278
<u>injury to property of others in any one accident.</u>	279
<u>(2) The insurance required by division (A)(1) of this</u>	280
<u>section may be satisfied by any of the following or a</u>	281
<u>combination of any of the following:</u>	282
<u>(a) A motor-vehicle liability policy or other proof of</u>	283
<u>financial responsibility that is maintained by the shared</u>	284
<u>vehicle owner;</u>	285
<u>(b) A motor-vehicle liability policy or other proof of</u>	286
<u>financial responsibility that is maintained by the shared</u>	287
<u>vehicle driver;</u>	288
<u>(c) A motor-vehicle liability policy or other proof of</u>	289
<u>financial responsibility that is maintained by the peer-to-peer</u>	290
<u>car sharing program.</u>	291
<u>(3) (a) If the motor-vehicle liability policy or other</u>	292
<u>proof of financial responsibility maintained by a shared vehicle</u>	293
<u>owner or shared vehicle driver does not provide liability</u>	294
<u>coverage for peer-to-peer car sharing in the amounts required by</u>	295
<u>division (A)(1) of this section, the insurance maintained by the</u>	296
<u>peer-to-peer car sharing program shall provide the required</u>	297
<u>coverage, beginning with the first dollar of the claim and shall</u>	298
<u>have the duty to defend the claim.</u>	299
<u>(b) A motor-vehicle liability policy or other proof of</u>	300
<u>financial responsibility maintained by a peer-to-peer car</u>	301
<u>sharing program in accordance with this section shall not</u>	302
<u>require the shared vehicle owner's or shared vehicle driver's</u>	303
<u>insurer to first deny a claim before providing coverage.</u>	304
<u>(B) A motor-vehicle liability policy that meets the</u>	305
<u>requirements of this section satisfies the requirement for proof</u>	306

of financial responsibility for motor vehicles under Chapter 307
4509. of the Revised Code. 308

(C) (1) The peer-to-peer car sharing program shall examine 309
any motor-vehicle liability policy or other proof of financial 310
responsibility maintained by a shared vehicle owner or a shared 311
vehicle driver to determine whether that policy or proof 312
provides or excludes coverage for peer-to-peer car sharing prior 313
to entering into a peer-to-peer car sharing agreement with that 314
shared vehicle owner or shared vehicle driver. 315

(2) The peer-to-peer car sharing program may require 316
increased limits of insurance beyond what is required by 317
division (A) (1) of this section as a condition of participation 318
in the agreement. 319

Sec. 4516.11. (A) In addition to any liability assumed 320
when a peer-to-peer car sharing program is providing all of the 321
required coverage, the program shall assume liability for a 322
claim when all of the following apply: 323

(1) The program is providing at least part of the required 324
insurance coverage; 325

(2) A dispute exists as to who was operating the shared 326
vehicle at the time of the loss; 327

(3) The program either does not have available or cannot 328
promptly produce the records required by section 4516.02 of the 329
Revised Code. 330

(B) A peer-to-peer car sharing program may seek indemnity 331
from a shared vehicle owner if the shared vehicle owner is 332
determined to have been the operator of the shared vehicle at 333
the time of the loss. 334

(C) A peer-to-peer car sharing program shall maintain 335
insurance in an amount of at least one million dollars because 336
of bodily injury to or death of one or more persons or injury to 337
the property of others in any one accident in which the peer-to- 338
peer car sharing program may become liable under this chapter. 339

Sec. 4516.12. Nothing in this chapter does any of the 340
following: 341

(A) Limits the liability of the peer-to-peer car sharing 342
program for any act or omission of the program itself that 343
results in death, bodily injury, or property damage to any 344
person as a result of the use of a shared vehicle through the 345
program. 346

(B) Limits the ability of the program to, by contract, 347
seek indemnification from the shared vehicle owner or the shared 348
vehicle driver for economic loss sustained by the program 349
resulting from a breach of the terms and conditions of the peer- 350
to-peer car sharing agreement. 351

(C) Creates, implies, or otherwise grants insurance 352
coverage not found in any motor-vehicle liability policy or 353
other policy of insurance. 354

Sec. 4549.65. (A) As used in this section: 355

(1) "Motor vehicle leasing dealer" has the meaning set 356
forth in division (M) of section 4517.01 of the Revised Code. 357

(2) "Motor vehicle renting dealer" means any person 358
engaged in the business of regularly making available, offering 359
to make available, or arranging for another person to use a 360
motor vehicle pursuant to a bailment, rental agreement, or other 361
contractual arrangement for a period of less than thirty days 362
under which a charge is made for its use at a periodic rate and 363

the title to the motor vehicle is in a person other than the 364
user, but does not mean a manufacturer or its affiliate renting 365
to its employees or to dealers. 366

(B) A motor vehicle leasing dealer or a motor vehicle 367
renting dealer and its officers, employees, agents, and 368
representatives are not liable to a lessee or renter for damages 369
or injuries sustained as a result of the lessee's or renter's 370
being stopped, detained, arrested, or charged in connection with 371
a theft offense involving the leased or rented motor vehicle if 372
such dealer, its officers, employees, agents, or representatives 373
act in good faith upon a reasonable belief that the motor 374
vehicle was or is being converted or stolen or if both of the 375
following apply: 376

(1) The lessee or renter did not return the motor vehicle 377
at the time and place specified in the lease or rental contract; 378

(2) The lessee or renter failed to return the motor 379
vehicle within twenty-four hours after the dealer, or an 380
officer, employee, agent, or representative of the dealer has 381
served a written notice upon the lessee or renter, requesting 382
the return of the motor vehicle, at the lessee's or renter's 383
address set forth in the lease or rental contract. Service may 384
be by certified mail, return receipt requested, or by personal 385
or residence service. 386

(C) (1) A motor vehicle leasing dealer or a motor vehicle 387
renting dealer and any agreement between the dealer and the 388
lessee or renter are a consumer transaction for purposes of 389
sections 1345.01 to 1345.13 of the Revised Code. The dealer is 390
the supplier and the lessee or renter is the consumer for 391
purposes of those sections. 392

(2) Except as provided in division (C)(3) of this section, 393
whoever violates the terms of the agreement between the dealer 394
and the lessee or renter is subject to any applicable penalties 395
under Chapter 1345. of the Revised Code. 396

(3) A dealer is not liable for a violation under sections 397
1345.01 to 1345.13 of the Revised Code when the alleged 398
violation is the result of false, misleading, or inaccurate 399
information provided to the dealer by the lessee or renter and 400
the dealer relied on that information in good faith. 401

Sec. 5739.01. As used in this chapter: 402

(A) "Person" includes individuals, receivers, assignees, 403
trustees in bankruptcy, estates, firms, partnerships, 404
associations, joint-stock companies, joint ventures, clubs, 405
societies, corporations, the state and its political 406
subdivisions, and combinations of individuals of any form. 407

(B) "Sale" and "selling" include all of the following 408
transactions for a consideration in any manner, whether 409
absolutely or conditionally, whether for a price or rental, in 410
money or by exchange, and by any means whatsoever: 411

(1) All transactions by which title or possession, or 412
both, of tangible personal property, is or is to be transferred, 413
or a license to use or consume tangible personal property is or 414
is to be granted; 415

(2) All transactions by which lodging by a hotel is or is 416
to be furnished to transient guests; 417

(3) All transactions by which: 418

(a) An item of tangible personal property is or is to be 419
repaired, except property, the purchase of which would not be 420

subject to the tax imposed by section 5739.02 of the Revised Code; 421
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(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service; 423
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(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished; 430
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(d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided; 432
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(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with 436
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voting rights.	451
(f) Telecommunications service, including prepaid calling service, prepaid wireless calling service, or ancillary service, is or is to be provided, but not including coin-operated telephone service;	452 453 454 455
(g) Landscaping and lawn care service is or is to be provided;	456 457
(h) Private investigation and security service is or is to be provided;	458 459
(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;	460 461
(j) Building maintenance and janitorial service is or is to be provided;	462 463
(k) Employment service is or is to be provided;	464
(l) Employment placement service is or is to be provided;	465
(m) Exterminating service is or is to be provided;	466
(n) Physical fitness facility service is or is to be provided;	467 468
(o) Recreation and sports club service is or is to be provided;	469 470
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	471 472
(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services.	473 474 475 476 477

"Personal care service" does not include a service provided by 478
or on the order of a licensed physician or licensed 479
chiropractor, or the cutting, coloring, or styling of an 480
individual's hair. 481

(r) On and after August 1, 2003, the transportation of 482
persons by motor vehicle or aircraft is or is to be provided, 483
when the transportation is entirely within this state, except 484
for transportation provided by an ambulance service, by a 485
transit bus, as defined in section 5735.01 of the Revised Code, 486
and transportation provided by a citizen of the United States 487
holding a certificate of public convenience and necessity issued 488
under 49 U.S.C. 41102; 489

(s) On and after August 1, 2003, motor vehicle towing 490
service is or is to be provided. As used in this division, 491
"motor vehicle towing service" means the towing or conveyance of 492
a wrecked, disabled, or illegally parked motor vehicle. 493

(t) On and after August 1, 2003, snow removal service is 494
or is to be provided. As used in this division, "snow removal 495
service" means the removal of snow by any mechanized means, but 496
does not include the providing of such service by a person that 497
has less than five thousand dollars in sales of such service 498
during the calendar year. 499

(u) Electronic publishing service is or is to be provided 500
to a consumer for use in business, except that such transactions 501
occurring between members of an affiliated group, as defined in 502
division (B) (3) (e) of this section, are not sales. 503

(4) All transactions by which printed, imprinted, 504
overprinted, lithographic, multilithic, blueprinted, 505
photostatic, or other productions or reproductions of written or 506

graphic matter are or are to be furnished or transferred; 507

(5) The production or fabrication of tangible personal 508
property for a consideration for consumers who furnish either 509
directly or indirectly the materials used in the production of 510
fabrication work; and include the furnishing, preparing, or 511
serving for a consideration of any tangible personal property 512
consumed on the premises of the person furnishing, preparing, or 513
serving such tangible personal property. Except as provided in 514
section 5739.03 of the Revised Code, a construction contract 515
pursuant to which tangible personal property is or is to be 516
incorporated into a structure or improvement on and becoming a 517
part of real property is not a sale of such tangible personal 518
property. The construction contractor is the consumer of such 519
tangible personal property, provided that the sale and 520
installation of carpeting, the sale and installation of 521
agricultural land tile, the sale and erection or installation of 522
portable grain bins, or the provision of landscaping and lawn 523
care service and the transfer of property as part of such 524
service is never a construction contract. 525

As used in division (B) (5) of this section: 526

(a) "Agricultural land tile" means fired clay or concrete 527
tile, or flexible or rigid perforated plastic pipe or tubing, 528
incorporated or to be incorporated into a subsurface drainage 529
system appurtenant to land used or to be used primarily in 530
production by farming, agriculture, horticulture, or 531
floriculture. The term does not include such materials when they 532
are or are to be incorporated into a drainage system appurtenant 533
to a building or structure even if the building or structure is 534
used or to be used in such production. 535

(b) "Portable grain bin" means a structure that is used or 536

to be used by a person engaged in farming or agriculture to 537
shelter the person's grain and that is designed to be 538
disassembled without significant damage to its component parts. 539

(6) All transactions in which all of the shares of stock 540
of a closely held corporation are transferred, or an ownership 541
interest in a pass-through entity, as defined in section 5733.04 542
of the Revised Code, is transferred, if the corporation or pass- 543
through entity is not engaging in business and its entire assets 544
consist of boats, planes, motor vehicles, or other tangible 545
personal property operated primarily for the use and enjoyment 546
of the shareholders or owners; 547

(7) All transactions in which a warranty, maintenance or 548
service contract, or similar agreement by which the vendor of 549
the warranty, contract, or agreement agrees to repair or 550
maintain the tangible personal property of the consumer is or is 551
to be provided; 552

(8) The transfer of copyrighted motion picture films used 553
solely for advertising purposes, except that the transfer of 554
such films for exhibition purposes is not a sale; 555

(9) On and after August 1, 2003, all transactions by which 556
tangible personal property is or is to be stored, except such 557
property that the consumer of the storage holds for sale in the 558
regular course of business; 559

(10) All transactions in which "guaranteed auto 560
protection" is provided whereby a person promises to pay to the 561
consumer the difference between the amount the consumer receives 562
from motor vehicle insurance and the amount the consumer owes to 563
a person holding title to or a lien on the consumer's motor 564
vehicle in the event the consumer's motor vehicle suffers a 565

total loss under the terms of the motor vehicle insurance policy 566
or is stolen and not recovered, if the protection and its price 567
are included in the purchase or lease agreement; 568

(11) (a) Except as provided in division (B) (11) (b) of this 569
section, on and after October 1, 2009, all transactions by which 570
health care services are paid for, reimbursed, provided, 571
delivered, arranged for, or otherwise made available by a 572
medicaid health insuring corporation pursuant to the 573
corporation's contract with the state. 574

(b) If the centers for medicare and medicaid services of 575
the United States department of health and human services 576
determines that the taxation of transactions described in 577
division (B) (11) (a) of this section constitutes an impermissible 578
health care-related tax under the "Social Security Act," section 579
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 580
the medicaid director shall notify the tax commissioner of that 581
determination. Beginning with the first day of the month 582
following that notification, the transactions described in 583
division (B) (11) (a) of this section are not sales for the 584
purposes of this chapter or Chapter 5741. of the Revised Code. 585
The tax commissioner shall order that the collection of taxes 586
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 587
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 588
for transactions occurring on or after that date. 589

(12) All transactions by which a specified digital product 590
is provided for permanent use or less than permanent use, 591
regardless of whether continued payment is required. 592

Except as provided in this section, "sale" and "selling" 593
do not include transfers of interest in leased property where 594
the original lessee and the terms of the original lease 595

agreement remain unchanged, or professional, insurance, or 596
personal service transactions that involve the transfer of 597
tangible personal property as an inconsequential element, for 598
which no separate charges are made. 599

(C) "Vendor" means the person providing the service or by 600
whom the transfer effected or license given by a sale is or is 601
to be made or given and, for sales described in division (B)(3) 602
(i) of this section, the telecommunications service vendor that 603
provides the nine hundred telephone service; if two or more 604
persons are engaged in business at the same place of business 605
under a single trade name in which all collections on account of 606
sales by each are made, such persons shall constitute a single 607
vendor. 608

Physicians, dentists, hospitals, and veterinarians who are 609
engaged in selling tangible personal property as received from 610
others, such as eyeglasses, mouthwashes, dentifrices, or similar 611
articles, are vendors. Veterinarians who are engaged in 612
transferring to others for a consideration drugs, the dispensing 613
of which does not require an order of a licensed veterinarian or 614
physician under federal law, are vendors. 615

The operator of any technology platform that connects a 616
consumer with another person who is providing a service subject 617
to the tax levied under this chapter, including a transportation 618
network company or a peer-to-peer car sharing program operating 619
a technology platform for the purpose of providing 620
transportation network company services or peer-to-peer car 621
sharing program services, shall be considered to be the vendor 622
in such transaction, regardless of whether that other person is 623
an agent of the operator. 624

(D) (1) "Consumer" means the person for whom the service is 625

provided, to whom the transfer effected or license given by a 626
sale is or is to be made or given, to whom the service described 627
in division (B) (3) (f) or (i) of this section is charged, or to 628
whom the admission is granted. 629

(2) Physicians, dentists, hospitals, and blood banks 630
operated by nonprofit institutions and persons licensed to 631
practice veterinary medicine, surgery, and dentistry are 632
consumers of all tangible personal property and services 633
purchased by them in connection with the practice of medicine, 634
dentistry, the rendition of hospital or blood bank service, or 635
the practice of veterinary medicine, surgery, and dentistry. In 636
addition to being consumers of drugs administered by them or by 637
their assistants according to their direction, veterinarians 638
also are consumers of drugs that under federal law may be 639
dispensed only by or upon the order of a licensed veterinarian 640
or physician, when transferred by them to others for a 641
consideration to provide treatment to animals as directed by the 642
veterinarian. 643

(3) A person who performs a facility management, or 644
similar service contract for a contractee is a consumer of all 645
tangible personal property and services purchased for use in 646
connection with the performance of such contract, regardless of 647
whether title to any such property vests in the contractee. The 648
purchase of such property and services is not subject to the 649
exception for resale under division (E) of this section. 650

(4) (a) In the case of a person who purchases printed 651
matter for the purpose of distributing it or having it 652
distributed to the public or to a designated segment of the 653
public, free of charge, that person is the consumer of that 654
printed matter, and the purchase of that printed matter for that 655

purpose is a sale. 656

(b) In the case of a person who produces, rather than 657
purchases, printed matter for the purpose of distributing it or 658
having it distributed to the public or to a designated segment 659
of the public, free of charge, that person is the consumer of 660
all tangible personal property and services purchased for use or 661
consumption in the production of that printed matter. That 662
person is not entitled to claim exemption under division (B) (42) 663
(f) of section 5739.02 of the Revised Code for any material 664
incorporated into the printed matter or any equipment, supplies, 665
or services primarily used to produce the printed matter. 666

(c) The distribution of printed matter to the public or to 667
a designated segment of the public, free of charge, is not a 668
sale to the members of the public to whom the printed matter is 669
distributed or to any persons who purchase space in the printed 670
matter for advertising or other purposes. 671

(5) A person who makes sales of any of the services listed 672
in division (B) (3) of this section is the consumer of any 673
tangible personal property used in performing the service. The 674
purchase of that property is not subject to the resale exception 675
under division (E) of this section. 676

(6) A person who engages in highway transportation for 677
hire is the consumer of all packaging materials purchased by 678
that person and used in performing the service, except for 679
packaging materials sold by such person in a transaction 680
separate from the service. 681

(7) In the case of a transaction for health care services 682
under division (B) (11) of this section, a medicaid health 683
insuring corporation is the consumer of such services. The 684

purchase of such services by a medicaid health insuring 685
corporation is not subject to the exception for resale under 686
division (E) of this section or to the exemptions provided under 687
divisions (B) (12), (18), (19), and (22) of section 5739.02 of 688
the Revised Code. 689

(E) "Retail sale" and "sales at retail" include all sales, 690
except those in which the purpose of the consumer is to resell 691
the thing transferred or benefit of the service provided, by a 692
person engaging in business, in the form in which the same is, 693
or is to be, received by the person. 694

(F) "Business" includes any activity engaged in by any 695
person with the object of gain, benefit, or advantage, either 696
direct or indirect. "Business" does not include the activity of 697
a person in managing and investing the person's own funds. 698

(G) "Engaging in business" means commencing, conducting, 699
or continuing in business, and liquidating a business when the 700
liquidator thereof holds itself out to the public as conducting 701
such business. Making a casual sale is not engaging in business. 702

(H) (1) (a) "Price," except as provided in divisions (H) (2), 703
(3), and (4) of this section, means the total amount of 704
consideration, including cash, credit, property, and services, 705
for which tangible personal property or services are sold, 706
leased, or rented, valued in money, whether received in money or 707
otherwise, without any deduction for any of the following: 708

(i) The vendor's cost of the property sold; 709

(ii) The cost of materials used, labor or service costs, 710
interest, losses, all costs of transportation to the vendor, all 711
taxes imposed on the vendor, including the tax imposed under 712
Chapter 5751. of the Revised Code, and any other expense of the 713

vendor;	714
(iii) Charges by the vendor for any services necessary to complete the sale;	715 716
(iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.	717 718 719 720 721 722
(v) Installation charges;	723
(vi) Credit for any trade-in.	724
(b) "Price" includes consideration received by the vendor from a third party, if the vendor actually receives the consideration from a party other than the consumer, and the consideration is directly related to a price reduction or discount on the sale; the vendor has an obligation to pass the price reduction or discount through to the consumer; the amount of the consideration attributable to the sale is fixed and determinable by the vendor at the time of the sale of the item to the consumer; and one of the following criteria is met:	725 726 727 728 729 730 731 732 733
(i) The consumer presents a coupon, certificate, or other document to the vendor to claim a price reduction or discount where the coupon, certificate, or document is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any vendor to whom the coupon, certificate, or document is presented;	734 735 736 737 738 739
(ii) The consumer identifies the consumer's self to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is	740 741 742

available to any patron does not constitute membership in such a group or organization. 743
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(iii) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the consumer, or on a coupon, certificate, or other document presented by the consumer. 745
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(c) "Price" does not include any of the following: 749

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale; 750
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(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; 753
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(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated. 757
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(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state. 763
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(v) The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation 768
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from a third party to cover all or part of the gift card value. 772
For the purposes of this division, a gift card is not sold by a 773
vendor or purchased by a consumer if it is distributed pursuant 774
to an awards, loyalty, or promotional program. Past and present 775
purchases of tangible personal property or services by the 776
consumer shall not be treated as consideration exchanged for a 777
gift card. 778

(2) In the case of a sale of any new motor vehicle by a 779
new motor vehicle dealer, as defined in section 4517.01 of the 780
Revised Code, in which another motor vehicle is accepted by the 781
dealer as part of the consideration received, "price" has the 782
same meaning as in division (H) (1) of this section, reduced by 783
the credit afforded the consumer by the dealer for the motor 784
vehicle received in trade. 785

(3) In the case of a sale of any watercraft or outboard 786
motor by a watercraft dealer licensed in accordance with section 787
1547.543 of the Revised Code, in which another watercraft, 788
watercraft and trailer, or outboard motor is accepted by the 789
dealer as part of the consideration received, "price" has the 790
same meaning as in division (H) (1) of this section, reduced by 791
the credit afforded the consumer by the dealer for the 792
watercraft, watercraft and trailer, or outboard motor received 793
in trade. As used in this division, "watercraft" includes an 794
outdrive unit attached to the watercraft. 795

(4) In the case of transactions for health care services 796
under division (B) (11) of this section, "price" means the amount 797
of managed care premiums received each month by a medicaid 798
health insuring corporation. 799

(I) "Receipts" means the total amount of the prices of the 800
sales of vendors, provided that the dollar value of gift cards 801

distributed pursuant to an awards, loyalty, or promotional 802
program, and cash discounts allowed and taken on sales at the 803
time they are consummated are not included, minus any amount 804
deducted as a bad debt pursuant to section 5739.121 of the 805
Revised Code. "Receipts" does not include the sale price of 806
property returned or services rejected by consumers when the 807
full sale price and tax are refunded either in cash or by 808
credit. 809

(J) "Place of business" means any location at which a 810
person engages in business. 811

(K) "Premises" includes any real property or portion 812
thereof upon which any person engages in selling tangible 813
personal property at retail or making retail sales and also 814
includes any real property or portion thereof designated for, or 815
devoted to, use in conjunction with the business engaged in by 816
such person. 817

(L) "Casual sale" means a sale of an item of tangible 818
personal property that was obtained by the person making the 819
sale, through purchase or otherwise, for the person's own use 820
and was previously subject to any state's taxing jurisdiction on 821
its sale or use, and includes such items acquired for the 822
seller's use that are sold by an auctioneer employed directly by 823
the person for such purpose, provided the location of such sales 824
is not the auctioneer's permanent place of business. As used in 825
this division, "permanent place of business" includes any 826
location where such auctioneer has conducted more than two 827
auctions during the year. 828

(M) "Hotel" means every establishment kept, used, 829
maintained, advertised, or held out to the public to be a place 830
where sleeping accommodations are offered to guests, in which 831

five or more rooms are used for the accommodation of such 832
guests, whether the rooms are in one or several structures, 833
except as otherwise provided in division (G) of section 5739.09 834
of the Revised Code. 835

(N) "Transient guests" means persons occupying a room or 836
rooms for sleeping accommodations for less than thirty 837
consecutive days. 838

(O) "Making retail sales" means the effecting of 839
transactions wherein one party is obligated to pay the price and 840
the other party is obligated to provide a service or to transfer 841
title to or possession of the item sold. "Making retail sales" 842
does not include the preliminary acts of promoting or soliciting 843
the retail sales, other than the distribution of printed matter 844
which displays or describes and prices the item offered for 845
sale, nor does it include delivery of a predetermined quantity 846
of tangible personal property or transportation of property or 847
personnel to or from a place where a service is performed. 848

(P) "Used directly in the rendition of a public utility 849
service" means that property that is to be incorporated into and 850
will become a part of the consumer's production, transmission, 851
transportation, or distribution system and that retains its 852
classification as tangible personal property after such 853
incorporation; fuel or power used in the production, 854
transmission, transportation, or distribution system; and 855
tangible personal property used in the repair and maintenance of 856
the production, transmission, transportation, or distribution 857
system, including only such motor vehicles as are specially 858
designed and equipped for such use. Tangible personal property 859
and services used primarily in providing highway transportation 860
for hire are not used directly in the rendition of a public 861

utility service. In this definition, "public utility" includes a 862
citizen of the United States holding, and required to hold, a 863
certificate of public convenience and necessity issued under 49 864
U.S.C. 41102. 865

(Q) "Refining" means removing or separating a desirable 866
product from raw or contaminated materials by distillation or 867
physical, mechanical, or chemical processes. 868

(R) "Assembly" and "assembling" mean attaching or fitting 869
together parts to form a product, but do not include packaging a 870
product. 871

(S) "Manufacturing operation" means a process in which 872
materials are changed, converted, or transformed into a 873
different state or form from which they previously existed and 874
includes refining materials, assembling parts, and preparing raw 875
materials and parts by mixing, measuring, blending, or otherwise 876
committing such materials or parts to the manufacturing process. 877
"Manufacturing operation" does not include packaging. 878

(T) "Fiscal officer" means, with respect to a regional 879
transit authority, the secretary-treasurer thereof, and with 880
respect to a county that is a transit authority, the fiscal 881
officer of the county transit board if one is appointed pursuant 882
to section 306.03 of the Revised Code or the county auditor if 883
the board of county commissioners operates the county transit 884
system. 885

(U) "Transit authority" means a regional transit authority 886
created pursuant to section 306.31 of the Revised Code or a 887
county in which a county transit system is created pursuant to 888
section 306.01 of the Revised Code. For the purposes of this 889
chapter, a transit authority must extend to at least the entire 890

area of a single county. A transit authority that includes 891
territory in more than one county must include all the area of 892
the most populous county that is a part of such transit 893
authority. County population shall be measured by the most 894
recent census taken by the United States census bureau. 895

(V) "Legislative authority" means, with respect to a 896
regional transit authority, the board of trustees thereof, and 897
with respect to a county that is a transit authority, the board 898
of county commissioners. 899

(W) "Territory of the transit authority" means all of the 900
area included within the territorial boundaries of a transit 901
authority as they from time to time exist. Such territorial 902
boundaries must at all times include all the area of a single 903
county or all the area of the most populous county that is a 904
part of such transit authority. County population shall be 905
measured by the most recent census taken by the United States 906
census bureau. 907

(X) "Providing a service" means providing or furnishing 908
anything described in division (B) (3) of this section for 909
consideration. 910

(Y) (1) (a) "Automatic data processing" means processing of 911
others' data, including keypunching or similar data entry 912
services together with verification thereof, or providing access 913
to computer equipment for the purpose of processing data. 914

(b) "Computer services" means providing services 915
consisting of specifying computer hardware configurations and 916
evaluating technical processing characteristics, computer 917
programming, and training of computer programmers and operators, 918
provided in conjunction with and to support the sale, lease, or 919

operation of taxable computer equipment or systems.	920
(c) "Electronic information services" means providing	921
access to computer equipment by means of telecommunications	922
equipment for the purpose of either of the following:	923
(i) Examining or acquiring data stored in or accessible to	924
the computer equipment;	925
(ii) Placing data into the computer equipment to be	926
retrieved by designated recipients with access to the computer	927
equipment.	928
For transactions occurring on or after the effective date	929
of the amendment of this section by H.B. 157 of the 127th	930
general assembly, December 21, 2007, "electronic information	931
services" does not include electronic publishing as defined in	932
division (LLL) of this section.	933
(d) "Automatic data processing, computer services, or	934
electronic information services" shall not include personal or	935
professional services.	936
(2) As used in divisions (B) (3) (e) and (Y) (1) of this	937
section, "personal and professional services" means all services	938
other than automatic data processing, computer services, or	939
electronic information services, including but not limited to:	940
(a) Accounting and legal services such as advice on tax	941
matters, asset management, budgetary matters, quality control,	942
information security, and auditing and any other situation where	943
the service provider receives data or information and studies,	944
alters, analyzes, interprets, or adjusts such material;	945
(b) Analyzing business policies and procedures;	946
(c) Identifying management information needs;	947

(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means;

(k) Providing digital advertising services.

The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing or computer services.

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

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

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

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

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

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where

the consumer's primary purpose for the underlying transaction is	1006
the processed data or information;	1007
(b) Installation or maintenance of wiring or equipment on	1008
a customer's premises;	1009
(c) Tangible personal property;	1010
(d) Advertising, including directory advertising;	1011
(e) Billing and collection services provided to third	1012
parties;	1013
(f) Internet access service;	1014
(g) Radio and television audio and video programming	1015
services, regardless of the medium, including the furnishing of	1016
transmission, conveyance, and routing of such services by the	1017
programming service provider. Radio and television audio and	1018
video programming services include, but are not limited to,	1019
cable service, as defined in 47 U.S.C. 522(6), and audio and	1020
video programming services delivered by commercial mobile radio	1021
service providers, as defined in 47 C.F.R. 20.3;	1022
(h) Ancillary service;	1023
(i) Digital products delivered electronically, including	1024
software, music, video, reading materials, or ring tones.	1025
(2) "Ancillary service" means a service that is associated	1026
with or incidental to the provision of telecommunications	1027
service, including conference bridging service, detailed	1028
telecommunications billing service, directory assistance,	1029
vertical service, and voice mail service. As used in this	1030
division:	1031
(a) "Conference bridging service" means an ancillary	1032

service that links two or more participants of an audio or video conference call, including providing a telephone number. 1033
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"Conference bridging service" does not include 1035
telecommunications services used to reach the conference bridge. 1036

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. 1037
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(c) "Directory assistance" means an ancillary service of providing telephone number or address information. 1040
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(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service. 1042
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(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. 1047
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(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900 service" and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer. 1052
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(4) "Prepaid calling service" means the right to access 1062
exclusively telecommunications services, which must be paid for 1063
in advance and which enables the origination of calls using an 1064
access number or authorization code, whether manually or 1065
electronically dialed, and that is sold in predetermined units 1066
or dollars of which the number declines with use in a known 1067
amount. 1068

(5) "Prepaid wireless calling service" means a 1069
telecommunications service that provides the right to utilize 1070
mobile telecommunications service as well as other non- 1071
telecommunications services, including the download of digital 1072
products delivered electronically, and content and ancillary 1073
services, that must be paid for in advance and that is sold in 1074
predetermined units or dollars of which the number declines with 1075
use in a known amount. 1076

(6) "Value-added non-voice data service" means a 1077
telecommunications service in which computer processing 1078
applications are used to act on the form, content, code, or 1079
protocol of the information or data primarily for a purpose 1080
other than transmission, conveyance, or routing. 1081

(7) "Coin-operated telephone service" means a 1082
telecommunications service paid for by inserting money into a 1083
telephone accepting direct deposits of money to operate. 1084

(8) "Customer" has the same meaning as in section 5739.034 1085
of the Revised Code. 1086

(BB) "Laundry and dry cleaning services" means removing 1087
soil or dirt from towels, linens, articles of clothing, or other 1088
fabric items that belong to others and supplying towels, linens, 1089
articles of clothing, or other fabric items. "Laundry and dry 1090

cleaning services" does not include the provision of self- 1091
service facilities for use by consumers to remove soil or dirt 1092
from towels, linens, articles of clothing, or other fabric 1093
items. 1094

(CC) "Magazines distributed as controlled circulation 1095
publications" means magazines containing at least twenty-four 1096
pages, at least twenty-five per cent editorial content, issued 1097
at regular intervals four or more times a year, and circulated 1098
without charge to the recipient, provided that such magazines 1099
are not owned or controlled by individuals or business concerns 1100
which conduct such publications as an auxiliary to, and 1101
essentially for the advancement of the main business or calling 1102
of, those who own or control them. 1103

(DD) "Landscaping and lawn care service" means the 1104
services of planting, seeding, sodding, removing, cutting, 1105
trimming, pruning, mulching, aerating, applying chemicals, 1106
watering, fertilizing, and providing similar services to 1107
establish, promote, or control the growth of trees, shrubs, 1108
flowers, grass, ground cover, and other flora, or otherwise 1109
maintaining a lawn or landscape grown or maintained by the owner 1110
for ornamentation or other nonagricultural purpose. However, 1111
"landscaping and lawn care service" does not include the 1112
providing of such services by a person who has less than five 1113
thousand dollars in sales of such services during the calendar 1114
year. 1115

(EE) "Private investigation and security service" means 1116
the performance of any activity for which the provider of such 1117
service is required to be licensed pursuant to Chapter 4749. of 1118
the Revised Code, or would be required to be so licensed in 1119
performing such services in this state, and also includes the 1120

services of conducting polygraph examinations and of monitoring 1121
or overseeing the activities on or in, or the condition of, the 1122
consumer's home, business, or other facility by means of 1123
electronic or similar monitoring devices. "Private investigation 1124
and security service" does not include special duty services 1125
provided by off-duty police officers, deputy sheriffs, and other 1126
peace officers regularly employed by the state or a political 1127
subdivision. 1128

(FF) "Information services" means providing conversation, 1129
giving consultation or advice, playing or making a voice or 1130
other recording, making or keeping a record of the number of 1131
callers, and any other service provided to a consumer by means 1132
of a nine hundred telephone call, except when the nine hundred 1133
telephone call is the means by which the consumer makes a 1134
contribution to a recognized charity. 1135

(GG) "Research and development" means designing, creating, 1136
or formulating new or enhanced products, equipment, or 1137
manufacturing processes, and also means conducting scientific or 1138
technological inquiry and experimentation in the physical 1139
sciences with the goal of increasing scientific knowledge which 1140
may reveal the bases for new or enhanced products, equipment, or 1141
manufacturing processes. 1142

(HH) "Qualified research and development equipment" means 1143
capitalized tangible personal property, and leased personal 1144
property that would be capitalized if purchased, used by a 1145
person primarily to perform research and development. Tangible 1146
personal property primarily used in testing, as defined in 1147
division (A)(4) of section 5739.011 of the Revised Code, or used 1148
for recording or storing test results, is not qualified research 1149
and development equipment unless such property is primarily used 1150

by the consumer in testing the product, equipment, or 1151
manufacturing process being created, designed, or formulated by 1152
the consumer in the research and development activity or in 1153
recording or storing such test results. 1154

(II) "Building maintenance and janitorial service" means 1155
cleaning the interior or exterior of a building and any tangible 1156
personal property located therein or thereon, including any 1157
services incidental to such cleaning for which no separate 1158
charge is made. However, "building maintenance and janitorial 1159
service" does not include the providing of such service by a 1160
person who has less than five thousand dollars in sales of such 1161
service during the calendar year. As used in this division, 1162
"cleaning" does not include sanitation services necessary for an 1163
establishment described in 21 U.S.C. 608 to comply with rules 1164
and regulations adopted pursuant to that section. 1165

(JJ) "Employment service" means providing or supplying 1166
personnel, on a temporary or long-term basis, to perform work or 1167
labor under the supervision or control of another, when the 1168
personnel so provided or supplied receive their wages, salary, 1169
or other compensation from the provider or supplier of the 1170
employment service or from a third party that provided or 1171
supplied the personnel to the provider or supplier. "Employment 1172
service" does not include: 1173

(1) Acting as a contractor or subcontractor, where the 1174
personnel performing the work are not under the direct control 1175
of the purchaser. 1176

(2) Medical and health care services. 1177

(3) Supplying personnel to a purchaser pursuant to a 1178
contract of at least one year between the service provider and 1179

the purchaser that specifies that each employee covered under 1180
the contract is assigned to the purchaser on a permanent basis. 1181

(4) Transactions between members of an affiliated group, 1182
as defined in division (B)(3)(e) of this section. 1183

(5) Transactions where the personnel so provided or 1184
supplied by a provider or supplier to a purchaser of an 1185
employment service are then provided or supplied by that 1186
purchaser to a third party as an employment service, except 1187
"employment service" does include the transaction between that 1188
purchaser and the third party. 1189

(KK) "Employment placement service" means locating or 1190
finding employment for a person or finding or locating an 1191
employee to fill an available position. 1192

(LL) "Exterminating service" means eradicating or 1193
attempting to eradicate vermin infestations from a building or 1194
structure, or the area surrounding a building or structure, and 1195
includes activities to inspect, detect, or prevent vermin 1196
infestation of a building or structure. 1197

(MM) "Physical fitness facility service" means all 1198
transactions by which a membership is granted, maintained, or 1199
renewed, including initiation fees, membership dues, renewal 1200
fees, monthly minimum fees, and other similar fees and dues, by 1201
a physical fitness facility such as an athletic club, health 1202
spa, or gymnasium, which entitles the member to use the facility 1203
for physical exercise. 1204

(NN) "Recreation and sports club service" means all 1205
transactions by which a membership is granted, maintained, or 1206
renewed, including initiation fees, membership dues, renewal 1207
fees, monthly minimum fees, and other similar fees and dues, by 1208

a recreation and sports club, which entitles the member to use 1209
the facilities of the organization. "Recreation and sports club" 1210
means an organization that has ownership of, or controls or 1211
leases on a continuing, long-term basis, the facilities used by 1212
its members and includes an aviation club, gun or shooting club, 1213
yacht club, card club, swimming club, tennis club, golf club, 1214
country club, riding club, amateur sports club, or similar 1215
organization. 1216

(OO) "Livestock" means farm animals commonly raised for 1217
food, food production, or other agricultural purposes, 1218
including, but not limited to, cattle, sheep, goats, swine, 1219
poultry, and captive deer. "Livestock" does not include 1220
invertebrates, amphibians, reptiles, domestic pets, animals for 1221
use in laboratories or for exhibition, or other animals not 1222
commonly raised for food or food production. 1223

(PP) "Livestock structure" means a building or structure 1224
used exclusively for the housing, raising, feeding, or 1225
sheltering of livestock, and includes feed storage or handling 1226
structures and structures for livestock waste handling. 1227

(QQ) "Horticulture" means the growing, cultivation, and 1228
production of flowers, fruits, herbs, vegetables, sod, 1229
mushrooms, and nursery stock. As used in this division, "nursery 1230
stock" has the same meaning as in section 927.51 of the Revised 1231
Code. 1232

(RR) "Horticulture structure" means a building or 1233
structure used exclusively for the commercial growing, raising, 1234
or overwintering of horticultural products, and includes the 1235
area used for stocking, storing, and packing horticultural 1236
products when done in conjunction with the production of those 1237
products. 1238

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

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

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

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

(UU) (1) "Lease" or "rental" means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. "Lease" or "rental"

includes future options to purchase or extend, and agreements 1269
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 1270
trailers where the amount of consideration may be increased or 1271
decreased by reference to the amount realized upon the sale or 1272
disposition of the property. "Lease" or "rental" does not 1273
include: 1274

(a) A transfer of possession or control of tangible 1275
personal property under a security agreement or a deferred 1276
payment plan that requires the transfer of title upon completion 1277
of the required payments; 1278

(b) A transfer of possession or control of tangible 1279
personal property under an agreement that requires the transfer 1280
of title upon completion of required payments and payment of an 1281
option price that does not exceed the greater of one hundred 1282
dollars or one per cent of the total required payments; 1283

(c) Providing tangible personal property along with an 1284
operator for a fixed or indefinite period of time, if the 1285
operator is necessary for the property to perform as designed. 1286
For purposes of this division, the operator must do more than 1287
maintain, inspect, or set up the tangible personal property. 1288

(2) "Lease" and "rental," as defined in division (UU) of 1289
this section, shall not apply to leases or rentals that exist 1290
before June 26, 2003. 1291

(3) "Lease" and "rental" have the same meaning as in 1292
division (UU) (1) of this section regardless of whether a 1293
transaction is characterized as a lease or rental under 1294
generally accepted accounting principles, the Internal Revenue 1295
Code, Title XIII of the Revised Code, or other federal, state, 1296
or local laws. 1297

(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.

(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code.

(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service.

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

(ZZ) "Municipal gas utility" means a municipal corporation that owns or operates a system for the distribution of natural gas.

(AAA) "Computer" means an electronic device that accepts 1327
information in digital or similar form and manipulates it for a 1328
result based on a sequence of instructions. 1329

(BBB) "Computer software" means a set of coded 1330
instructions designed to cause a computer or automatic data 1331
processing equipment to perform a task. 1332

(CCC) "Delivered electronically" means delivery of 1333
computer software from the seller to the purchaser by means 1334
other than tangible storage media. 1335

(DDD) "Prewritten computer software" means computer 1336
software, including prewritten upgrades, that is not designed 1337
and developed by the author or other creator to the 1338
specifications of a specific purchaser. The combining of two or 1339
more prewritten computer software programs or prewritten 1340
portions thereof does not cause the combination to be other than 1341
prewritten computer software. "Prewritten computer software" 1342
includes software designed and developed by the author or other 1343
creator to the specifications of a specific purchaser when it is 1344
sold to a person other than the purchaser. If a person modifies 1345
or enhances computer software of which the person is not the 1346
author or creator, the person shall be deemed to be the author 1347
or creator only of such person's modifications or enhancements. 1348
Prewritten computer software or a prewritten portion thereof 1349
that is modified or enhanced to any degree, where such 1350
modification or enhancement is designed and developed to the 1351
specifications of a specific purchaser, remains prewritten 1352
computer software; provided, however, that where there is a 1353
reasonable, separately stated charge or an invoice or other 1354
statement of the price given to the purchaser for the 1355
modification or enhancement, the modification or enhancement 1356

shall not constitute prewritten computer software. 1357

(EEE) (1) "Food" means substances, whether in liquid, 1358
concentrated, solid, frozen, dried, or dehydrated form, that are 1359
sold for ingestion or chewing by humans and are consumed for 1360
their taste or nutritional value. "Food" does not include 1361
alcoholic beverages, dietary supplements, soft drinks, or 1362
tobacco. 1363

(2) As used in division (EEE) (1) of this section: 1364

(a) "Alcoholic beverages" means beverages that are 1365
suitable for human consumption and contain one-half of one per 1366
cent or more of alcohol by volume. 1367

(b) "Dietary supplements" means any product, other than 1368
tobacco, that is intended to supplement the diet and that is 1369
intended for ingestion in tablet, capsule, powder, softgel, 1370
gelcap, or liquid form, or, if not intended for ingestion in 1371
such a form, is not represented as conventional food for use as 1372
a sole item of a meal or of the diet; that is required to be 1373
labeled as a dietary supplement, identifiable by the "supplement 1374
facts" box found on the label, as required by 21 C.F.R. 101.36; 1375
and that contains one or more of the following dietary 1376
ingredients: 1377

(i) A vitamin; 1378

(ii) A mineral; 1379

(iii) An herb or other botanical; 1380

(iv) An amino acid; 1381

(v) A dietary substance for use by humans to supplement 1382
the diet by increasing the total dietary intake; 1383

(vi) A concentrate, metabolite, constituent, extract, or 1384
combination of any ingredient described in divisions (EEE) (2) (b) 1385
(i) to (v) of this section. 1386

(c) "Soft drinks" means nonalcoholic beverages that 1387
contain natural or artificial sweeteners. "Soft drinks" does not 1388
include beverages that contain milk or milk products, soy, rice, 1389
or similar milk substitutes, or that contains greater than fifty 1390
per cent vegetable or fruit juice by volume. 1391

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 1392
tobacco, or any other item that contains tobacco. 1393

(FFF) "Drug" means a compound, substance, or preparation, 1394
and any component of a compound, substance, or preparation, 1395
other than food, dietary supplements, or alcoholic beverages 1396
that is recognized in the official United States pharmacopoeia, 1397
official homeopathic pharmacopoeia of the United States, or 1398
official national formulary, and supplements to them; is 1399
intended for use in the diagnosis, cure, mitigation, treatment, 1400
or prevention of disease; or is intended to affect the structure 1401
or any function of the body. 1402

(GGG) "Prescription" means an order, formula, or recipe 1403
issued in any form of oral, written, electronic, or other means 1404
of transmission by a duly licensed practitioner authorized by 1405
the laws of this state to issue a prescription. 1406

(HHH) "Durable medical equipment" means equipment, 1407
including repair and replacement parts for such equipment, that 1408
can withstand repeated use, is primarily and customarily used to 1409
serve a medical purpose, generally is not useful to a person in 1410
the absence of illness or injury, and is not worn in or on the 1411
body. "Durable medical equipment" does not include mobility 1412

enhancing equipment. 1413

(III) "Mobility enhancing equipment" means equipment, 1414
including repair and replacement parts for such equipment, that 1415
is primarily and customarily used to provide or increase the 1416
ability to move from one place to another and is appropriate for 1417
use either in a home or a motor vehicle, that is not generally 1418
used by persons with normal mobility, and that does not include 1419
any motor vehicle or equipment on a motor vehicle normally 1420
provided by a motor vehicle manufacturer. "Mobility enhancing 1421
equipment" does not include durable medical equipment. 1422

(JJJ) "Prosthetic device" means a replacement, corrective, 1423
or supportive device, including repair and replacement parts for 1424
the device, worn on or in the human body to artificially replace 1425
a missing portion of the body, prevent or correct physical 1426
deformity or malfunction, or support a weak or deformed portion 1427
of the body. As used in this division, before July 1, 2019, 1428
"prosthetic device" does not include corrective eyeglasses, 1429
contact lenses, or dental prosthesis. On or after July 1, 2019, 1430
"prosthetic device" does not include dental prosthesis but does 1431
include corrective eyeglasses or contact lenses. 1432

(KKK) (1) "Fractional aircraft ownership program" means a 1433
program in which persons within an affiliated group sell and 1434
manage fractional ownership program aircraft, provided that at 1435
least one hundred airworthy aircraft are operated in the program 1436
and the program meets all of the following criteria: 1437

(a) Management services are provided by at least one 1438
program manager within an affiliated group on behalf of the 1439
fractional owners. 1440

(b) Each program aircraft is owned or possessed by at 1441

least one fractional owner. 1442

(c) Each fractional owner owns or possesses at least a 1443
one-sixteenth interest in at least one fixed-wing program 1444
aircraft. 1445

(d) A dry-lease aircraft interchange arrangement is in 1446
effect among all of the fractional owners. 1447

(e) Multi-year program agreements are in effect regarding 1448
the fractional ownership, management services, and dry-lease 1449
aircraft interchange arrangement aspects of the program. 1450

(2) As used in division (KKK)(1) of this section: 1451

(a) "Affiliated group" has the same meaning as in division 1452
(B)(3)(e) of this section. 1453

(b) "Fractional owner" means a person that owns or 1454
possesses at least a one-sixteenth interest in a program 1455
aircraft and has entered into the agreements described in 1456
division (KKK)(1)(e) of this section. 1457

(c) "Fractional ownership program aircraft" or "program 1458
aircraft" means a turbojet aircraft that is owned or possessed 1459
by a fractional owner and that has been included in a dry-lease 1460
aircraft interchange arrangement and agreement under divisions 1461
(KKK)(1)(d) and (e) of this section, or an aircraft a program 1462
manager owns or possesses primarily for use in a fractional 1463
aircraft ownership program. 1464

(d) "Management services" means administrative and 1465
aviation support services furnished under a fractional aircraft 1466
ownership program in accordance with a management services 1467
agreement under division (KKK)(1)(e) of this section, and 1468
offered by the program manager to the fractional owners, 1469

including, at a minimum, the establishment and implementation of 1470
safety guidelines; the coordination of the scheduling of the 1471
program aircraft and crews; program aircraft maintenance; 1472
program aircraft insurance; crew training for crews employed, 1473
furnished, or contracted by the program manager or the 1474
fractional owner; the satisfaction of record-keeping 1475
requirements; and the development and use of an operations 1476
manual and a maintenance manual for the fractional aircraft 1477
ownership program. 1478

(e) "Program manager" means the person that offers 1479
management services to fractional owners pursuant to a 1480
management services agreement under division (KKK) (1) (e) of this 1481
section. 1482

(LLL) "Electronic publishing" means providing access to 1483
one or more of the following primarily for business customers, 1484
including the federal government or a state government or a 1485
political subdivision thereof, to conduct research: news; 1486
business, financial, legal, consumer, or credit materials; 1487
editorials, columns, reader commentary, or features; photos or 1488
images; archival or research material; legal notices, identity 1489
verification, or public records; scientific, educational, 1490
instructional, technical, professional, trade, or other literary 1491
materials; or other similar information which has been gathered 1492
and made available by the provider to the consumer in an 1493
electronic format. Providing electronic publishing includes the 1494
functions necessary for the acquisition, formatting, editing, 1495
storage, and dissemination of data or information that is the 1496
subject of a sale. 1497

(MMM) "Medicaid health insuring corporation" means a 1498
health insuring corporation that holds a certificate of 1499

authority under Chapter 1751. of the Revised Code and is under 1500
contract with the department of medicaid pursuant to section 1501
5167.10 of the Revised Code. 1502

(NNN) "Managed care premium" means any premium, 1503
capitation, or other payment a medicaid health insuring 1504
corporation receives for providing or arranging for the 1505
provision of health care services to its members or enrollees 1506
residing in this state. 1507

(OOO) "Captive deer" means deer and other cervidae that 1508
have been legally acquired, or their offspring, that are 1509
privately owned for agricultural or farming purposes. 1510

(PPP) "Gift card" means a document, card, certificate, or 1511
other record, whether tangible or intangible, that may be 1512
redeemed by a consumer for a dollar value when making a purchase 1513
of tangible personal property or services. 1514

(QQQ) "Specified digital product" means an electronically 1515
transferred digital audiovisual work, digital audio work, or 1516
digital book. 1517

As used in division (QQQ) of this section: 1518

(1) "Digital audiovisual work" means a series of related 1519
images that, when shown in succession, impart an impression of 1520
motion, together with accompanying sounds, if any. 1521

(2) "Digital audio work" means a work that results from 1522
the fixation of a series of musical, spoken, or other sounds, 1523
including digitized sound files that are downloaded onto a 1524
device and that may be used to alert the customer with respect 1525
to a communication. 1526

(3) "Digital book" means a work that is generally 1527

recognized in the ordinary and usual sense as a book. 1528

(4) "Electronically transferred" means obtained by the 1529
purchaser by means other than tangible storage media. 1530

(RRR) "Digital advertising services" means providing 1531
access, by means of telecommunications equipment, to computer 1532
equipment that is used to enter, upload, download, review, 1533
manipulate, store, add, or delete data for the purpose of 1534
electronically displaying, delivering, placing, or transferring 1535
promotional advertisements to potential customers about products 1536
or services or about industry or business brands. 1537

(SSS) (1) "Transportation network company" and 1538
"transportation network company services" have the same meanings 1539
as in section 3942.01 of the Revised Code. 1540

(2) "Peer-to-peer car sharing program" has the same 1541
meaning as in section 4516.01 of the Revised Code. 1542

Section 2. That existing sections 4549.65 and 5739.01 of 1543
the Revised Code are hereby repealed. 1544

Section 3. The amendment by this act of division (C) of 1545
section 5739.01 of the Revised Code applies retrospectively to 1546
all cases pending on or transactions occurring before, on, or 1547
after the effective date of that amendment. The amendment is 1548
remedial in nature and clarifies the status of vendors under 1549
Chapter 5739. of the Revised Code and does not change the 1550
existing application of that chapter. 1551