

As Introduced

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Representatives Hambley, Brinkman

**Cosponsors: Representatives McColley, DeVitis, Kick, Carfagna, Koehler,
Reineke, Dean, Riedel, Romanchuk, Lipps, Goodman, Merrin, Green, Henne,
Greenspan, Thompson, Rogers, Leland, Bocchieri, Becker**

A BILL

To amend section 5739.01 of the Revised Code to 1
authorize a sales and use tax trade-in credit 2
for purchases of used motor vehicles from a 3
licensed dealer. 4

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

Section 1. That section 5739.01 of the Revised Code be 5
amended to read as follows: 6

Sec. 5739.01. As used in this chapter: 7

(A) "Person" includes individuals, receivers, assignees, 8
trustees in bankruptcy, estates, firms, partnerships, 9
associations, joint-stock companies, joint ventures, clubs, 10
societies, corporations, the state and its political 11
subdivisions, and combinations of individuals of any form. 12

(B) "Sale" and "selling" include all of the following 13
transactions for a consideration in any manner, whether 14
absolutely or conditionally, whether for a price or rental, in 15
money or by exchange, and by any means whatsoever: 16

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| (1) All transactions by which title or possession, or | 17 |
| both, of tangible personal property, is or is to be transferred, | 18 |
| or a license to use or consume tangible personal property is or | 19 |
| is to be granted; | 20 |
| (2) All transactions by which lodging by a hotel is or is | 21 |
| to be furnished to transient guests; | 22 |
| (3) All transactions by which: | 23 |
| (a) An item of tangible personal property is or is to be | 24 |
| repaired, except property, the purchase of which would not be | 25 |
| subject to the tax imposed by section 5739.02 of the Revised | 26 |
| Code; | 27 |
| (b) An item of tangible personal property is or is to be | 28 |
| installed, except property, the purchase of which would not be | 29 |
| subject to the tax imposed by section 5739.02 of the Revised | 30 |
| Code or property that is or is to be incorporated into and will | 31 |
| become a part of a production, transmission, transportation, or | 32 |
| distribution system for the delivery of a public utility | 33 |
| service; | 34 |
| (c) The service of washing, cleaning, waxing, polishing, | 35 |
| or painting a motor vehicle is or is to be furnished; | 36 |
| (d) Until August 1, 2003, industrial laundry cleaning | 37 |
| services are or are to be provided and, on and after August 1, | 38 |
| 2003, laundry and dry cleaning services are or are to be | 39 |
| provided; | 40 |
| (e) Automatic data processing, computer services, or | 41 |
| electronic information services are or are to be provided for | 42 |
| use in business when the true object of the transaction is the | 43 |
| receipt by the consumer of automatic data processing, computer | 44 |
| services, or electronic information services rather than the | 45 |

receipt of personal or professional services to which automatic 46
data processing, computer services, or electronic information 47
services are incidental or supplemental. Notwithstanding any 48
other provision of this chapter, such transactions that occur 49
between members of an affiliated group are not sales. An 50
"affiliated group" means two or more persons related in such a 51
way that one person owns or controls the business operation of 52
another member of the group. In the case of corporations with 53
stock, one corporation owns or controls another if it owns more 54
than fifty per cent of the other corporation's common stock with 55
voting rights. 56

(f) Telecommunications service, including prepaid calling 57
service, prepaid wireless calling service, or ancillary service, 58
is or is to be provided, but not including coin-operated 59
telephone service; 60

(g) Landscaping and lawn care service is or is to be 61
provided; 62

(h) Private investigation and security service is or is to 63
be provided; 64

(i) Information services or tangible personal property is 65
provided or ordered by means of a nine hundred telephone call; 66

(j) Building maintenance and janitorial service is or is 67
to be provided; 68

(k) Employment service is or is to be provided; 69

(l) Employment placement service is or is to be provided; 70

(m) Exterminating service is or is to be provided; 71

(n) Physical fitness facility service is or is to be 72
provided; 73

(o) Recreation and sports club service is or is to be provided; 74
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(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided; 76
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(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair. 78
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(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102; 87
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(s) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle. 95
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(t) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that 99
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has less than five thousand dollars in sales of such service 103
during the calendar year. 104

(u) Electronic publishing service is or is to be provided 105
to a consumer for use in business, except that such transactions 106
occurring between members of an affiliated group, as defined in 107
division (B) (3) (e) of this section, are not sales. 108

(4) All transactions by which printed, imprinted, 109
overprinted, lithographic, multilithic, blueprinted, 110
photostatic, or other productions or reproductions of written or 111
graphic matter are or are to be furnished or transferred; 112

(5) The production or fabrication of tangible personal 113
property for a consideration for consumers who furnish either 114
directly or indirectly the materials used in the production of 115
fabrication work; and include the furnishing, preparing, or 116
serving for a consideration of any tangible personal property 117
consumed on the premises of the person furnishing, preparing, or 118
serving such tangible personal property. Except as provided in 119
section 5739.03 of the Revised Code, a construction contract 120
pursuant to which tangible personal property is or is to be 121
incorporated into a structure or improvement on and becoming a 122
part of real property is not a sale of such tangible personal 123
property. The construction contractor is the consumer of such 124
tangible personal property, provided that the sale and 125
installation of carpeting, the sale and installation of 126
agricultural land tile, the sale and erection or installation of 127
portable grain bins, or the provision of landscaping and lawn 128
care service and the transfer of property as part of such 129
service is never a construction contract. 130

As used in division (B) (5) of this section: 131

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

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

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

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

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

(9) On and after August 1, 2003, all transactions by which 161
tangible personal property is or is to be stored, except such 162
property that the consumer of the storage holds for sale in the 163
regular course of business; 164

(10) All transactions in which "guaranteed auto 165
protection" is provided whereby a person promises to pay to the 166
consumer the difference between the amount the consumer receives 167
from motor vehicle insurance and the amount the consumer owes to 168
a person holding title to or a lien on the consumer's motor 169
vehicle in the event the consumer's motor vehicle suffers a 170
total loss under the terms of the motor vehicle insurance policy 171
or is stolen and not recovered, if the protection and its price 172
are included in the purchase or lease agreement; 173

(11) (a) Except as provided in division (B) (11) (b) of this 174
section, on and after October 1, 2009, all transactions by which 175
health care services are paid for, reimbursed, provided, 176
delivered, arranged for, or otherwise made available by a 177
medicaid health insuring corporation pursuant to the 178
corporation's contract with the state. 179

(b) If the centers for medicare and medicaid services of 180
the United States department of health and human services 181
determines that the taxation of transactions described in 182
division (B) (11) (a) of this section constitutes an impermissible 183
health care-related tax under the "Social Security Act," section 184
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 185
the medicaid director shall notify the tax commissioner of that 186
determination. Beginning with the first day of the month 187
following that notification, the transactions described in 188
division (B) (11) (a) of this section are not sales for the 189
purposes of this chapter or Chapter 5741. of the Revised Code. 190

The tax commissioner shall order that the collection of taxes 191
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 192
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 193
for transactions occurring on or after that date. 194

(12) All transactions by which a specified digital product 195
is provided for permanent use or less than permanent use, 196
regardless of whether continued payment is required. 197

Except as provided in this section, "sale" and "selling" 198
do not include transfers of interest in leased property where 199
the original lessee and the terms of the original lease 200
agreement remain unchanged, or professional, insurance, or 201
personal service transactions that involve the transfer of 202
tangible personal property as an inconsequential element, for 203
which no separate charges are made. 204

(C) "Vendor" means the person providing the service or by 205
whom the transfer effected or license given by a sale is or is 206
to be made or given and, for sales described in division (B)(3) 207
(i) of this section, the telecommunications service vendor that 208
provides the nine hundred telephone service; if two or more 209
persons are engaged in business at the same place of business 210
under a single trade name in which all collections on account of 211
sales by each are made, such persons shall constitute a single 212
vendor. 213

Physicians, dentists, hospitals, and veterinarians who are 214
engaged in selling tangible personal property as received from 215
others, such as eyeglasses, mouthwashes, dentifrices, or similar 216
articles, are vendors. Veterinarians who are engaged in 217
transferring to others for a consideration drugs, the dispensing 218
of which does not require an order of a licensed veterinarian or 219
physician under federal law, are vendors. 220

(D) (1) "Consumer" means the person for whom the service is 221
provided, to whom the transfer effected or license given by a 222
sale is or is to be made or given, to whom the service described 223
in division (B) (3) (f) or (i) of this section is charged, or to 224
whom the admission is granted. 225

(2) Physicians, dentists, hospitals, and blood banks 226
operated by nonprofit institutions and persons licensed to 227
practice veterinary medicine, surgery, and dentistry are 228
consumers of all tangible personal property and services 229
purchased by them in connection with the practice of medicine, 230
dentistry, the rendition of hospital or blood bank service, or 231
the practice of veterinary medicine, surgery, and dentistry. In 232
addition to being consumers of drugs administered by them or by 233
their assistants according to their direction, veterinarians 234
also are consumers of drugs that under federal law may be 235
dispensed only by or upon the order of a licensed veterinarian 236
or physician, when transferred by them to others for a 237
consideration to provide treatment to animals as directed by the 238
veterinarian. 239

(3) A person who performs a facility management, or 240
similar service contract for a contractee is a consumer of all 241
tangible personal property and services purchased for use in 242
connection with the performance of such contract, regardless of 243
whether title to any such property vests in the contractee. The 244
purchase of such property and services is not subject to the 245
exception for resale under division (E) (1) of this section. 246

(4) (a) In the case of a person who purchases printed 247
matter for the purpose of distributing it or having it 248
distributed to the public or to a designated segment of the 249
public, free of charge, that person is the consumer of that 250

printed matter, and the purchase of that printed matter for that 251
purpose is a sale. 252

(b) In the case of a person who produces, rather than 253
purchases, printed matter for the purpose of distributing it or 254
having it distributed to the public or to a designated segment 255
of the public, free of charge, that person is the consumer of 256
all tangible personal property and services purchased for use or 257
consumption in the production of that printed matter. That 258
person is not entitled to claim exemption under division (B)(42) 259
(f) of section 5739.02 of the Revised Code for any material 260
incorporated into the printed matter or any equipment, supplies, 261
or services primarily used to produce the printed matter. 262

(c) The distribution of printed matter to the public or to 263
a designated segment of the public, free of charge, is not a 264
sale to the members of the public to whom the printed matter is 265
distributed or to any persons who purchase space in the printed 266
matter for advertising or other purposes. 267

(5) A person who makes sales of any of the services listed 268
in division (B)(3) of this section is the consumer of any 269
tangible personal property used in performing the service. The 270
purchase of that property is not subject to the resale exception 271
under division (E)(1) of this section. 272

(6) A person who engages in highway transportation for 273
hire is the consumer of all packaging materials purchased by 274
that person and used in performing the service, except for 275
packaging materials sold by such person in a transaction 276
separate from the service. 277

(7) In the case of a transaction for health care services 278
under division (B)(11) of this section, a medicaid health 279

insuring corporation is the consumer of such services. The 280
purchase of such services by a medicaid health insuring 281
corporation is not subject to the exception for resale under 282
division (E) (1) of this section or to the exemptions provided 283
under divisions (B) (12), (18), (19), and (22) of section 5739.02 284
of the Revised Code. 285

(E) "Retail sale" and "sales at retail" include all sales, 286
except those in which the purpose of the consumer is to resell 287
the thing transferred or benefit of the service provided, by a 288
person engaging in business, in the form in which the same is, 289
or is to be, received by the person. 290

(F) "Business" includes any activity engaged in by any 291
person with the object of gain, benefit, or advantage, either 292
direct or indirect. "Business" does not include the activity of 293
a person in managing and investing the person's own funds. 294

(G) "Engaging in business" means commencing, conducting, 295
or continuing in business, and liquidating a business when the 296
liquidator thereof holds itself out to the public as conducting 297
such business. Making a casual sale is not engaging in business. 298

(H) (1) (a) "Price," except as provided in divisions (H) (2), 299
(3), and (4) of this section, means the total amount of 300
consideration, including cash, credit, property, and services, 301
for which tangible personal property or services are sold, 302
leased, or rented, valued in money, whether received in money or 303
otherwise, without any deduction for any of the following: 304

(i) The vendor's cost of the property sold; 305

(ii) The cost of materials used, labor or service costs, 306
interest, losses, all costs of transportation to the vendor, all 307
taxes imposed on the vendor, including the tax imposed under 308

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| Chapter 5751. of the Revised Code, and any other expense of the | 309 |
| vendor; | 310 |
| (iii) Charges by the vendor for any services necessary to | 311 |
| complete the sale; | 312 |
| (iv) On and after August 1, 2003, delivery charges. As | 313 |
| used in this division, "delivery charges" means charges by the | 314 |
| vendor for preparation and delivery to a location designated by | 315 |
| the consumer of tangible personal property or a service, | 316 |
| including transportation, shipping, postage, handling, crating, | 317 |
| and packing. | 318 |
| (v) Installation charges; | 319 |
| (vi) Credit for any trade-in. | 320 |
| (b) "Price" includes consideration received by the vendor | 321 |
| from a third party, if the vendor actually receives the | 322 |
| consideration from a party other than the consumer, and the | 323 |
| consideration is directly related to a price reduction or | 324 |
| discount on the sale; the vendor has an obligation to pass the | 325 |
| price reduction or discount through to the consumer; the amount | 326 |
| of the consideration attributable to the sale is fixed and | 327 |
| determinable by the vendor at the time of the sale of the item | 328 |
| to the consumer; and one of the following criteria is met: | 329 |
| (i) The consumer presents a coupon, certificate, or other | 330 |
| document to the vendor to claim a price reduction or discount | 331 |
| where the coupon, certificate, or document is authorized, | 332 |
| distributed, or granted by a third party with the understanding | 333 |
| that the third party will reimburse any vendor to whom the | 334 |
| coupon, certificate, or document is presented; | 335 |
| (ii) The consumer identifies the consumer's self to the | 336 |
| seller as a member of a group or organization entitled to a | 337 |

price reduction or discount. A preferred customer card that is 338
available to any patron does not constitute membership in such a 339
group or organization. 340

(iii) The price reduction or discount is identified as a 341
third party price reduction or discount on the invoice received 342
by the consumer, or on a coupon, certificate, or other document 343
presented by the consumer. 344

(c) "Price" does not include any of the following: 345

(i) Discounts, including cash, term, or coupons that are 346
not reimbursed by a third party that are allowed by a vendor and 347
taken by a consumer on a sale; 348

(ii) Interest, financing, and carrying charges from credit 349
extended on the sale of tangible personal property or services, 350
if the amount is separately stated on the invoice, bill of sale, 351
or similar document given to the purchaser; 352

(iii) Any taxes legally imposed directly on the consumer 353
that are separately stated on the invoice, bill of sale, or 354
similar document given to the consumer. For the purpose of this 355
division, the tax imposed under Chapter 5751. of the Revised 356
Code is not a tax directly on the consumer, even if the tax or a 357
portion thereof is separately stated. 358

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 359
this section, any discount allowed by an automobile manufacturer 360
to its employee, or to the employee of a supplier, on the 361
purchase of a new motor vehicle from a new motor vehicle dealer 362
in this state. 363

(v) The dollar value of a gift card that is not sold by a 364
vendor or purchased by a consumer and that is redeemed by the 365
consumer in purchasing tangible personal property or services if 366

the vendor is not reimbursed and does not receive compensation 367
from a third party to cover all or part of the gift card value. 368
For the purposes of this division, a gift card is not sold by a 369
vendor or purchased by a consumer if it is distributed pursuant 370
to an awards, loyalty, or promotional program. Past and present 371
purchases of tangible personal property or services by the 372
consumer shall not be treated as consideration exchanged for a 373
gift card. 374

(2) In the case of a sale of any ~~new~~ motor vehicle by a 375
new or used motor vehicle dealer, as defined in section 4517.01 376
of the Revised Code, in which another motor vehicle is accepted 377
by the dealer as part of the consideration received, "price" has 378
the same meaning as in division (H)(1) of this section, reduced 379
by the credit afforded the consumer by the dealer for the motor 380
vehicle received in trade. 381

(3) In the case of a sale of any watercraft or outboard 382
motor by a watercraft dealer licensed in accordance with section 383
1547.543 of the Revised Code, in which another watercraft, 384
watercraft and trailer, or outboard motor is accepted by the 385
dealer as part of the consideration received, "price" has the 386
same meaning as in division (H)(1) of this section, reduced by 387
the credit afforded the consumer by the dealer for the 388
watercraft, watercraft and trailer, or outboard motor received 389
in trade. As used in this division, "watercraft" includes an 390
outdrive unit attached to the watercraft. 391

(4) In the case of transactions for health care services 392
under division (B)(11) of this section, "price" means the amount 393
of managed care premiums received each month by a medicaid 394
health insuring corporation. 395

(I) "Receipts" means the total amount of the prices of the 396

sales of vendors, provided that the dollar value of gift cards 397
distributed pursuant to an awards, loyalty, or promotional 398
program, and cash discounts allowed and taken on sales at the 399
time they are consummated are not included, minus any amount 400
deducted as a bad debt pursuant to section 5739.121 of the 401
Revised Code. "Receipts" does not include the sale price of 402
property returned or services rejected by consumers when the 403
full sale price and tax are refunded either in cash or by 404
credit. 405

(J) "Place of business" means any location at which a 406
person engages in business. 407

(K) "Premises" includes any real property or portion 408
thereof upon which any person engages in selling tangible 409
personal property at retail or making retail sales and also 410
includes any real property or portion thereof designated for, or 411
devoted to, use in conjunction with the business engaged in by 412
such person. 413

(L) "Casual sale" means a sale of an item of tangible 414
personal property that was obtained by the person making the 415
sale, through purchase or otherwise, for the person's own use 416
and was previously subject to any state's taxing jurisdiction on 417
its sale or use, and includes such items acquired for the 418
seller's use that are sold by an auctioneer employed directly by 419
the person for such purpose, provided the location of such sales 420
is not the auctioneer's permanent place of business. As used in 421
this division, "permanent place of business" includes any 422
location where such auctioneer has conducted more than two 423
auctions during the year. 424

(M) "Hotel" means every establishment kept, used, 425
maintained, advertised, or held out to the public to be a place 426

where sleeping accommodations are offered to guests, in which 427
five or more rooms are used for the accommodation of such 428
guests, whether the rooms are in one or several structures, 429
except as otherwise provided in division (G) of section 5739.09 430
of the Revised Code. 431

(N) "Transient guests" means persons occupying a room or 432
rooms for sleeping accommodations for less than thirty 433
consecutive days. 434

(O) "Making retail sales" means the effecting of 435
transactions wherein one party is obligated to pay the price and 436
the other party is obligated to provide a service or to transfer 437
title to or possession of the item sold. "Making retail sales" 438
does not include the preliminary acts of promoting or soliciting 439
the retail sales, other than the distribution of printed matter 440
which displays or describes and prices the item offered for 441
sale, nor does it include delivery of a predetermined quantity 442
of tangible personal property or transportation of property or 443
personnel to or from a place where a service is performed. 444

(P) "Used directly in the rendition of a public utility 445
service" means that property that is to be incorporated into and 446
will become a part of the consumer's production, transmission, 447
transportation, or distribution system and that retains its 448
classification as tangible personal property after such 449
incorporation; fuel or power used in the production, 450
transmission, transportation, or distribution system; and 451
tangible personal property used in the repair and maintenance of 452
the production, transmission, transportation, or distribution 453
system, including only such motor vehicles as are specially 454
designed and equipped for such use. Tangible personal property 455
and services used primarily in providing highway transportation 456

for hire are not used directly in the rendition of a public 457
utility service. In this definition, "public utility" includes a 458
citizen of the United States holding, and required to hold, a 459
certificate of public convenience and necessity issued under 49 460
U.S.C. 41102. 461

(Q) "Refining" means removing or separating a desirable 462
product from raw or contaminated materials by distillation or 463
physical, mechanical, or chemical processes. 464

(R) "Assembly" and "assembling" mean attaching or fitting 465
together parts to form a product, but do not include packaging a 466
product. 467

(S) "Manufacturing operation" means a process in which 468
materials are changed, converted, or transformed into a 469
different state or form from which they previously existed and 470
includes refining materials, assembling parts, and preparing raw 471
materials and parts by mixing, measuring, blending, or otherwise 472
committing such materials or parts to the manufacturing process. 473
"Manufacturing operation" does not include packaging. 474

(T) "Fiscal officer" means, with respect to a regional 475
transit authority, the secretary-treasurer thereof, and with 476
respect to a county that is a transit authority, the fiscal 477
officer of the county transit board if one is appointed pursuant 478
to section 306.03 of the Revised Code or the county auditor if 479
the board of county commissioners operates the county transit 480
system. 481

(U) "Transit authority" means a regional transit authority 482
created pursuant to section 306.31 of the Revised Code or a 483
county in which a county transit system is created pursuant to 484
section 306.01 of the Revised Code. For the purposes of this 485

chapter, a transit authority must extend to at least the entire 486
area of a single county. A transit authority that includes 487
territory in more than one county must include all the area of 488
the most populous county that is a part of such transit 489
authority. County population shall be measured by the most 490
recent census taken by the United States census bureau. 491

(V) "Legislative authority" means, with respect to a 492
regional transit authority, the board of trustees thereof, and 493
with respect to a county that is a transit authority, the board 494
of county commissioners. 495

(W) "Territory of the transit authority" means all of the 496
area included within the territorial boundaries of a transit 497
authority as they from time to time exist. Such territorial 498
boundaries must at all times include all the area of a single 499
county or all the area of the most populous county that is a 500
part of such transit authority. County population shall be 501
measured by the most recent census taken by the United States 502
census bureau. 503

(X) "Providing a service" means providing or furnishing 504
anything described in division (B) (3) of this section for 505
consideration. 506

(Y) (1) (a) "Automatic data processing" means processing of 507
others' data, including keypunching or similar data entry 508
services together with verification thereof, or providing access 509
to computer equipment for the purpose of processing data. 510

(b) "Computer services" means providing services 511
consisting of specifying computer hardware configurations and 512
evaluating technical processing characteristics, computer 513
programming, and training of computer programmers and operators, 514

provided in conjunction with and to support the sale, lease, or 515
operation of taxable computer equipment or systems. 516

(c) "Electronic information services" means providing 517
access to computer equipment by means of telecommunications 518
equipment for the purpose of either of the following: 519

(i) Examining or acquiring data stored in or accessible to 520
the computer equipment; 521

(ii) Placing data into the computer equipment to be 522
retrieved by designated recipients with access to the computer 523
equipment. 524

For transactions occurring on or after the effective date 525
of the amendment of this section by H.B. 157 of the 127th 526
general assembly, December 21, 2007, "electronic information 527
services" does not include electronic publishing as defined in 528
division (LLL) of this section. 529

(d) "Automatic data processing, computer services, or 530
electronic information services" shall not include personal or 531
professional services. 532

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 533
section, "personal and professional services" means all services 534
other than automatic data processing, computer services, or 535
electronic information services, including but not limited to: 536

(a) Accounting and legal services such as advice on tax 537
matters, asset management, budgetary matters, quality control, 538
information security, and auditing and any other situation where 539
the service provider receives data or information and studies, 540
alters, analyzes, interprets, or adjusts such material; 541

(b) Analyzing business policies and procedures; 542

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|--|---|
| (c) Identifying management information needs; | 543 |
| (d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives; | 544 545 546 |
| (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; | 547 548 549 550 551 |
| (f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled; | 552 553 554 |
| (g) Testing of business procedures; | 555 |
| (h) Training personnel in business procedure applications; | 556 |
| (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; | 557 558 559 560 561 562 563 |
| (j) Providing debt collection services by any oral, written, graphic, or electronic means; | 564 565 |
| (k) Providing digital advertising services. | 566 |
| The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing or computer services. | 567 568 |
| (Z) "Highway transportation for hire" means the | 569 |

transportation of personal property belonging to others for 570
consideration by any of the following: 571

(1) The holder of a permit or certificate issued by this 572
state or the United States authorizing the holder to engage in 573
transportation of personal property belonging to others for 574
consideration over or on highways, roadways, streets, or any 575
similar public thoroughfare; 576

(2) A person who engages in the transportation of personal 577
property belonging to others for consideration over or on 578
highways, roadways, streets, or any similar public thoroughfare 579
but who could not have engaged in such transportation on 580
December 11, 1985, unless the person was the holder of a permit 581
or certificate of the types described in division (Z)(1) of this 582
section; 583

(3) A person who leases a motor vehicle to and operates it 584
for a person described by division (Z)(1) or (2) of this 585
section. 586

(AA) (1) "Telecommunications service" means the electronic 587
transmission, conveyance, or routing of voice, data, audio, 588
video, or any other information or signals to a point, or 589
between or among points. "Telecommunications service" includes 590
such transmission, conveyance, or routing in which computer 591
processing applications are used to act on the form, code, or 592
protocol of the content for purposes of transmission, 593
conveyance, or routing without regard to whether the service is 594
referred to as voice-over internet protocol service or is 595
classified by the federal communications commission as enhanced 596
or value-added. "Telecommunications service" does not include 597
any of the following: 598

| | |
|---|--|
| (a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information; | 599 600 601 602 603 |
| (b) Installation or maintenance of wiring or equipment on a customer's premises; | 604 605 |
| (c) Tangible personal property; | 606 |
| (d) Advertising, including directory advertising; | 607 |
| (e) Billing and collection services provided to third parties; | 608 609 |
| (f) Internet access service; | 610 |
| (g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3; | 611 612 613 614 615 616 617 618 |
| (h) Ancillary service; | 619 |
| (i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones. | 620 621 |
| (2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this | 622 623 624 625 626 |

division: 627

(a) "Conference bridging service" means an ancillary 628
service that links two or more participants of an audio or video 629
conference call, including providing a telephone number. 630
"Conference bridging service" does not include 631
telecommunications services used to reach the conference bridge. 632

(b) "Detailed telecommunications billing service" means an 633
ancillary service of separately stating information pertaining 634
to individual calls on a customer's billing statement. 635

(c) "Directory assistance" means an ancillary service of 636
providing telephone number or address information. 637

(d) "Vertical service" means an ancillary service that is 638
offered in connection with one or more telecommunications 639
services, which offers advanced calling features that allow 640
customers to identify callers and manage multiple calls and call 641
connections, including conference bridging service. 642

(e) "Voice mail service" means an ancillary service that 643
enables the customer to store, send, or receive recorded 644
messages. "Voice mail service" does not include any vertical 645
services that the customer may be required to have in order to 646
utilize the voice mail service. 647

(3) "900 service" means an inbound toll telecommunications 648
service purchased by a subscriber that allows the subscriber's 649
customers to call in to the subscriber's prerecorded 650
announcement or live service, and which is typically marketed 651
under the name "900 service" and any subsequent numbers 652
designated by the federal communications commission. "900 653
service" does not include the charge for collection services 654
provided by the seller of the telecommunications service to the 655

subscriber, or services or products sold by the subscriber to 656
the subscriber's customer. 657

(4) "Prepaid calling service" means the right to access 658
exclusively telecommunications services, which must be paid for 659
in advance and which enables the origination of calls using an 660
access number or authorization code, whether manually or 661
electronically dialed, and that is sold in predetermined units 662
or dollars of which the number declines with use in a known 663
amount. 664

(5) "Prepaid wireless calling service" means a 665
telecommunications service that provides the right to utilize 666
mobile telecommunications service as well as other non- 667
telecommunications services, including the download of digital 668
products delivered electronically, and content and ancillary 669
services, that must be paid for in advance and that is sold in 670
predetermined units or dollars of which the number declines with 671
use in a known amount. 672

(6) "Value-added non-voice data service" means a 673
telecommunications service in which computer processing 674
applications are used to act on the form, content, code, or 675
protocol of the information or data primarily for a purpose 676
other than transmission, conveyance, or routing. 677

(7) "Coin-operated telephone service" means a 678
telecommunications service paid for by inserting money into a 679
telephone accepting direct deposits of money to operate. 680

(8) "Customer" has the same meaning as in section 5739.034 681
of the Revised Code. 682

(BB) "Laundry and dry cleaning services" means removing 683
soil or dirt from towels, linens, articles of clothing, or other 684

fabric items that belong to others and supplying towels, linens, 685
articles of clothing, or other fabric items. "Laundry and dry 686
cleaning services" does not include the provision of self- 687
service facilities for use by consumers to remove soil or dirt 688
from towels, linens, articles of clothing, or other fabric 689
items. 690

(CC) "Magazines distributed as controlled circulation 691
publications" means magazines containing at least twenty-four 692
pages, at least twenty-five per cent editorial content, issued 693
at regular intervals four or more times a year, and circulated 694
without charge to the recipient, provided that such magazines 695
are not owned or controlled by individuals or business concerns 696
which conduct such publications as an auxiliary to, and 697
essentially for the advancement of the main business or calling 698
of, those who own or control them. 699

(DD) "Landscaping and lawn care service" means the 700
services of planting, seeding, sodding, removing, cutting, 701
trimming, pruning, mulching, aerating, applying chemicals, 702
watering, fertilizing, and providing similar services to 703
establish, promote, or control the growth of trees, shrubs, 704
flowers, grass, ground cover, and other flora, or otherwise 705
maintaining a lawn or landscape grown or maintained by the owner 706
for ornamentation or other nonagricultural purpose. However, 707
"landscaping and lawn care service" does not include the 708
providing of such services by a person who has less than five 709
thousand dollars in sales of such services during the calendar 710
year. 711

(EE) "Private investigation and security service" means 712
the performance of any activity for which the provider of such 713
service is required to be licensed pursuant to Chapter 4749. of 714

the Revised Code, or would be required to be so licensed in 715
performing such services in this state, and also includes the 716
services of conducting polygraph examinations and of monitoring 717
or overseeing the activities on or in, or the condition of, the 718
consumer's home, business, or other facility by means of 719
electronic or similar monitoring devices. "Private investigation 720
and security service" does not include special duty services 721
provided by off-duty police officers, deputy sheriffs, and other 722
peace officers regularly employed by the state or a political 723
subdivision. 724

(FF) "Information services" means providing conversation, 725
giving consultation or advice, playing or making a voice or 726
other recording, making or keeping a record of the number of 727
callers, and any other service provided to a consumer by means 728
of a nine hundred telephone call, except when the nine hundred 729
telephone call is the means by which the consumer makes a 730
contribution to a recognized charity. 731

(GG) "Research and development" means designing, creating, 732
or formulating new or enhanced products, equipment, or 733
manufacturing processes, and also means conducting scientific or 734
technological inquiry and experimentation in the physical 735
sciences with the goal of increasing scientific knowledge which 736
may reveal the bases for new or enhanced products, equipment, or 737
manufacturing processes. 738

(HH) "Qualified research and development equipment" means 739
capitalized tangible personal property, and leased personal 740
property that would be capitalized if purchased, used by a 741
person primarily to perform research and development. Tangible 742
personal property primarily used in testing, as defined in 743
division (A) (4) of section 5739.011 of the Revised Code, or used 744

for recording or storing test results, is not qualified research 745
and development equipment unless such property is primarily used 746
by the consumer in testing the product, equipment, or 747
manufacturing process being created, designed, or formulated by 748
the consumer in the research and development activity or in 749
recording or storing such test results. 750

(II) "Building maintenance and janitorial service" means 751
cleaning the interior or exterior of a building and any tangible 752
personal property located therein or thereon, including any 753
services incidental to such cleaning for which no separate 754
charge is made. However, "building maintenance and janitorial 755
service" does not include the providing of such service by a 756
person who has less than five thousand dollars in sales of such 757
service during the calendar year. As used in this division, 758
"cleaning" does not include sanitation services necessary for an 759
establishment described in 21 U.S.C. 608 to comply with rules 760
and regulations adopted pursuant to that section. 761

(JJ) "Employment service" means providing or supplying 762
personnel, on a temporary or long-term basis, to perform work or 763
labor under the supervision or control of another, when the 764
personnel so provided or supplied receive their wages, salary, 765
or other compensation from the provider or supplier of the 766
employment service or from a third party that provided or 767
supplied the personnel to the provider or supplier. "Employment 768
service" does not include: 769

(1) Acting as a contractor or subcontractor, where the 770
personnel performing the work are not under the direct control 771
of the purchaser. 772

(2) Medical and health care services. 773

(3) Supplying personnel to a purchaser pursuant to a 774
contract of at least one year between the service provider and 775
the purchaser that specifies that each employee covered under 776
the contract is assigned to the purchaser on a permanent basis. 777

(4) Transactions between members of an affiliated group, 778
as defined in division (B) (3) (e) of this section. 779

(5) Transactions where the personnel so provided or 780
supplied by a provider or supplier to a purchaser of an 781
employment service are then provided or supplied by that 782
purchaser to a third party as an employment service, except 783
"employment service" does include the transaction between that 784
purchaser and the third party. 785

(KK) "Employment placement service" means locating or 786
finding employment for a person or finding or locating an 787
employee to fill an available position. 788

(LL) "Exterminating service" means eradicating or 789
attempting to eradicate vermin infestations from a building or 790
structure, or the area surrounding a building or structure, and 791
includes activities to inspect, detect, or prevent vermin 792
infestation of a building or structure. 793

(MM) "Physical fitness facility service" means all 794
transactions by which a membership is granted, maintained, or 795
renewed, including initiation fees, membership dues, renewal 796
fees, monthly minimum fees, and other similar fees and dues, by 797
a physical fitness facility such as an athletic club, health 798
spa, or gymnasium, which entitles the member to use the facility 799
for physical exercise. 800

(NN) "Recreation and sports club service" means all 801
transactions by which a membership is granted, maintained, or 802

renewed, including initiation fees, membership dues, renewal 803
fees, monthly minimum fees, and other similar fees and dues, by 804
a recreation and sports club, which entitles the member to use 805
the facilities of the organization. "Recreation and sports club" 806
means an organization that has ownership of, or controls or 807
leases on a continuing, long-term basis, the facilities used by 808
its members and includes an aviation club, gun or shooting club, 809
yacht club, card club, swimming club, tennis club, golf club, 810
country club, riding club, amateur sports club, or similar 811
organization. 812

(OO) "Livestock" means farm animals commonly raised for 813
food, food production, or other agricultural purposes, 814
including, but not limited to, cattle, sheep, goats, swine, 815
poultry, and captive deer. "Livestock" does not include 816
invertebrates, amphibians, reptiles, domestic pets, animals for 817
use in laboratories or for exhibition, or other animals not 818
commonly raised for food or food production. 819

(PP) "Livestock structure" means a building or structure 820
used exclusively for the housing, raising, feeding, or 821
sheltering of livestock, and includes feed storage or handling 822
structures and structures for livestock waste handling. 823

(QQ) "Horticulture" means the growing, cultivation, and 824
production of flowers, fruits, herbs, vegetables, sod, 825
mushrooms, and nursery stock. As used in this division, "nursery 826
stock" has the same meaning as in section 927.51 of the Revised 827
Code. 828

(RR) "Horticulture structure" means a building or 829
structure used exclusively for the commercial growing, raising, 830
or overwintering of horticultural products, and includes the 831
area used for stocking, storing, and packing horticultural 832

products when done in conjunction with the production of those 833
products. 834

(SS) "Newspaper" means an unbound publication bearing a 835
title or name that is regularly published, at least as 836
frequently as biweekly, and distributed from a fixed place of 837
business to the public in a specific geographic area, and that 838
contains a substantial amount of news matter of international, 839
national, or local events of interest to the general public. 840

(TT) "Professional racing team" means a person that 841
employs at least twenty full-time employees for the purpose of 842
conducting a motor vehicle racing business for profit. The 843
person must conduct the business with the purpose of racing one 844
or more motor racing vehicles in at least ten competitive 845
professional racing events each year that comprise all or part 846
of a motor racing series sanctioned by one or more motor racing 847
sanctioning organizations. A "motor racing vehicle" means a 848
vehicle for which the chassis, engine, and parts are designed 849
exclusively for motor racing, and does not include a stock or 850
production model vehicle that may be modified for use in racing. 851
For the purposes of this division: 852

(1) A "competitive professional racing event" is a motor 853
vehicle racing event sanctioned by one or more motor racing 854
sanctioning organizations, at which aggregate cash prizes in 855
excess of eight hundred thousand dollars are awarded to the 856
competitors. 857

(2) "Full-time employee" means an individual who is 858
employed for consideration for thirty-five or more hours a week, 859
or who renders any other standard of service generally accepted 860
by custom or specified by contract as full-time employment. 861

(UU) (1) "Lease" or "rental" means any transfer of the 862
possession or control of tangible personal property for a fixed 863
or indefinite term, for consideration. "Lease" or "rental" 864
includes future options to purchase or extend, and agreements 865
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 866
trailers where the amount of consideration may be increased or 867
decreased by reference to the amount realized upon the sale or 868
disposition of the property. "Lease" or "rental" does not 869
include: 870

(a) A transfer of possession or control of tangible 871
personal property under a security agreement or a deferred 872
payment plan that requires the transfer of title upon completion 873
of the required payments; 874

(b) A transfer of possession or control of tangible 875
personal property under an agreement that requires the transfer 876
of title upon completion of required payments and payment of an 877
option price that does not exceed the greater of one hundred 878
dollars or one per cent of the total required payments; 879

(c) Providing tangible personal property along with an 880
operator for a fixed or indefinite period of time, if the 881
operator is necessary for the property to perform as designed. 882
For purposes of this division, the operator must do more than 883
maintain, inspect, or set up the tangible personal property. 884

(2) "Lease" and "rental," as defined in division (UU) of 885
this section, shall not apply to leases or rentals that exist 886
before June 26, 2003. 887

(3) "Lease" and "rental" have the same meaning as in 888
division (UU) (1) of this section regardless of whether a 889
transaction is characterized as a lease or rental under 890

generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws. 891
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(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. 894
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(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 902
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(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service. 904
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(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software. 914
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(ZZ) "Direct mail" means printed material delivered or 920
distributed by United States mail or other delivery service to a 921
mass audience or to addressees on a mailing list provided by the 922
consumer or at the direction of the consumer when the cost of 923
the items are not billed directly to the recipients. "Direct 924
mail" includes tangible personal property supplied directly or 925
indirectly by the consumer to the direct mail vendor for 926
inclusion in the package containing the printed material. 927
"Direct mail" does not include multiple items of printed 928
material delivered to a single address. 929

(AAA) "Computer" means an electronic device that accepts 930
information in digital or similar form and manipulates it for a 931
result based on a sequence of instructions. 932

(BBB) "Computer software" means a set of coded 933
instructions designed to cause a computer or automatic data 934
processing equipment to perform a task. 935

(CCC) "Delivered electronically" means delivery of 936
computer software from the seller to the purchaser by means 937
other than tangible storage media. 938

(DDD) "Prewritten computer software" means computer 939
software, including prewritten upgrades, that is not designed 940
and developed by the author or other creator to the 941
specifications of a specific purchaser. The combining of two or 942
more prewritten computer software programs or prewritten 943
portions thereof does not cause the combination to be other than 944
prewritten computer software. "Prewritten computer software" 945
includes software designed and developed by the author or other 946
creator to the specifications of a specific purchaser when it is 947
sold to a person other than the purchaser. If a person modifies 948
or enhances computer software of which the person is not the 949

author or creator, the person shall be deemed to be the author 950
or creator only of such person's modifications or enhancements. 951
Prewritten computer software or a prewritten portion thereof 952
that is modified or enhanced to any degree, where such 953
modification or enhancement is designed and developed to the 954
specifications of a specific purchaser, remains prewritten 955
computer software; provided, however, that where there is a 956
reasonable, separately stated charge or an invoice or other 957
statement of the price given to the purchaser for the 958
modification or enhancement, the modification or enhancement 959
shall not constitute prewritten computer software. 960

(EEE) (1) "Food" means substances, whether in liquid, 961
concentrated, solid, frozen, dried, or dehydrated form, that are 962
sold for ingestion or chewing by humans and are consumed for 963
their taste or nutritional value. "Food" does not include 964
alcoholic beverages, dietary supplements, soft drinks, or 965
tobacco. 966

(2) As used in division (EEE) (1) of this section: 967

(a) "Alcoholic beverages" means beverages that are 968
suitable for human consumption and contain one-half of one per 969
cent or more of alcohol by volume. 970

(b) "Dietary supplements" means any product, other than 971
tobacco, that is intended to supplement the diet and that is 972
intended for ingestion in tablet, capsule, powder, softgel, 973
gelcap, or liquid form, or, if not intended for ingestion in 974
such a form, is not represented as conventional food for use as 975
a sole item of a meal or of the diet; that is required to be 976
labeled as a dietary supplement, identifiable by the "supplement 977
facts" box found on the label, as required by 21 C.F.R. 101.36; 978
and that contains one or more of the following dietary 979

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|---|---|
| ingredients: | 980 |
| (i) A vitamin; | 981 |
| (ii) A mineral; | 982 |
| (iii) An herb or other botanical; | 983 |
| (iv) An amino acid; | 984 |
| (v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; | 985 986 |
| (vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section. | 987 988 989 |
| (c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume. | 990 991 992 993 994 |
| (d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. | 995 996 |
| (FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body. | 997 998 999 1000 1001 1002 1003 1004 1005 |
| (GGG) "Prescription" means an order, formula, or recipe | 1006 |

issued in any form of oral, written, electronic, or other means 1007
of transmission by a duly licensed practitioner authorized by 1008
the laws of this state to issue a prescription. 1009

(HHH) "Durable medical equipment" means equipment, 1010
including repair and replacement parts for such equipment, that 1011
can withstand repeated use, is primarily and customarily used to 1012
serve a medical purpose, generally is not useful to a person in 1013
the absence of illness or injury, and is not worn in or on the 1014
body. "Durable medical equipment" does not include mobility 1015
enhancing equipment. 1016

(III) "Mobility enhancing equipment" means equipment, 1017
including repair and replacement parts for such equipment, that 1018
is primarily and customarily used to provide or increase the 1019
ability to move from one place to another and is appropriate for 1020
use either in a home or a motor vehicle, that is not generally 1021
used by persons with normal mobility, and that does not include 1022
any motor vehicle or equipment on a motor vehicle normally 1023
provided by a motor vehicle manufacturer. "Mobility enhancing 1024
equipment" does not include durable medical equipment. 1025

(JJJ) "Prosthetic device" means a replacement, corrective, 1026
or supportive device, including repair and replacement parts for 1027
the device, worn on or in the human body to artificially replace 1028
a missing portion of the body, prevent or correct physical 1029
deformity or malfunction, or support a weak or deformed portion 1030
of the body. As used in this division, "prosthetic device" does 1031
not include corrective eyeglasses, contact lenses, or dental 1032
prosthesis. 1033

(KKK) (1) "Fractional aircraft ownership program" means a 1034
program in which persons within an affiliated group sell and 1035
manage fractional ownership program aircraft, provided that at 1036

least one hundred airworthy aircraft are operated in the program 1037
and the program meets all of the following criteria: 1038

(a) Management services are provided by at least one 1039
program manager within an affiliated group on behalf of the 1040
fractional owners. 1041

(b) Each program aircraft is owned or possessed by at 1042
least one fractional owner. 1043

(c) Each fractional owner owns or possesses at least a 1044
one-sixteenth interest in at least one fixed-wing program 1045
aircraft. 1046

(d) A dry-lease aircraft interchange arrangement is in 1047
effect among all of the fractional owners. 1048

(e) Multi-year program agreements are in effect regarding 1049
the fractional ownership, management services, and dry-lease 1050
aircraft interchange arrangement aspects of the program. 1051

(2) As used in division (KKK)(1) of this section: 1052

(a) "Affiliated group" has the same meaning as in division 1053
(B)(3)(e) of this section. 1054

(b) "Fractional owner" means a person that owns or 1055
possesses at least a one-sixteenth interest in a program 1056
aircraft and has entered into the agreements described in 1057
division (KKK)(1)(e) of this section. 1058

(c) "Fractional ownership program aircraft" or "program 1059
aircraft" means a turbojet aircraft that is owned or possessed 1060
by a fractional owner and that has been included in a dry-lease 1061
aircraft interchange arrangement and agreement under divisions 1062
(KKK)(1)(d) and (e) of this section, or an aircraft a program 1063
manager owns or possesses primarily for use in a fractional 1064

aircraft ownership program. 1065

(d) "Management services" means administrative and 1066
aviation support services furnished under a fractional aircraft 1067
ownership program in accordance with a management services 1068
agreement under division (KKK) (1) (e) of this section, and 1069
offered by the program manager to the fractional owners, 1070
including, at a minimum, the establishment and implementation of 1071
safety guidelines; the coordination of the scheduling of the 1072
program aircraft and crews; program aircraft maintenance; 1073
program aircraft insurance; crew training for crews employed, 1074
furnished, or contracted by the program manager or the 1075
fractional owner; the satisfaction of record-keeping 1076
requirements; and the development and use of an operations 1077
manual and a maintenance manual for the fractional aircraft 1078
ownership program. 1079

(e) "Program manager" means the person that offers 1080
management services to fractional owners pursuant to a 1081
management services agreement under division (KKK) (1) (e) of this 1082
section. 1083

(LLL) "Electronic publishing" means providing access to 1084
one or more of the following primarily for business customers, 1085
including the federal government or a state government or a 1086
political subdivision thereof, to conduct research: news; 1087
business, financial, legal, consumer, or credit materials; 1088
editorials, columns, reader commentary, or features; photos or 1089
images; archival or research material; legal notices, identity 1090
verification, or public records; scientific, educational, 1091
instructional, technical, professional, trade, or other literary 1092
materials; or other similar information which has been gathered 1093
and made available by the provider to the consumer in an 1094

electronic format. Providing electronic publishing includes the 1095
functions necessary for the acquisition, formatting, editing, 1096
storage, and dissemination of data or information that is the 1097
subject of a sale. 1098

(MMM) "Medicaid health insuring corporation" means a 1099
health insuring corporation that holds a certificate of 1100
authority under Chapter 1751. of the Revised Code and is under 1101
contract with the department of ~~job and family services~~ medicaid 1102
pursuant to section ~~5111.17~~ 5167.10 of the Revised Code. 1103

(NNN) "Managed care premium" means any premium, 1104
capitation, or other payment a medicaid health insuring 1105
corporation receives for providing or arranging for the 1106
provision of health care services to its members or enrollees 1107
residing in this state. 1108

(OOO) "Captive deer" means deer and other cervidae that 1109
have been legally acquired, or their offspring, that are 1110
privately owned for agricultural or farming purposes. 1111

(PPP) "Gift card" means a document, card, certificate, or 1112
other record, whether tangible or intangible, that may be 1113
redeemed by a consumer for a dollar value when making a purchase 1114
of tangible personal property or services. 1115

(QQQ) "Specified digital product" means an electronically 1116
transferred digital audiovisual work, digital audio work, or 1117
digital book. 1118

As used in division (QQQ) of this section: 1119

(1) "Digital audiovisual work" means a series of related 1120
images that, when shown in succession, impart an impression of 1121
motion, together with accompanying sounds, if any. 1122

(2) "Digital audio work" means a work that results from 1123
the fixation of a series of musical, spoken, or other sounds, 1124
including digitized sound files that are downloaded onto a 1125
device and that may be used to alert the customer with respect 1126
to a communication. 1127

(3) "Digital book" means a work that is generally 1128
recognized in the ordinary and usual sense as a book. 1129

(4) "Electronically transferred" means obtained by the 1130
purchaser by means other than tangible storage media. 1131

(RRR) "Digital advertising services" means providing 1132
access, by means of telecommunications equipment, to computer 1133
equipment that is used to enter, upload, download, review, 1134
manipulate, store, add, or delete data for the purpose of 1135
electronically displaying, delivering, placing, or transferring 1136
promotional advertisements to potential customers about products 1137
or services or about industry or business brands. 1138

(SSS) "Municipal gas utility" means a municipal 1139
corporation that owns or operates a system for the distribution 1140
of natural gas. 1141

Section 2. That existing section 5739.01 of the Revised 1142
Code is hereby repealed. 1143

Section 3. The amendment by this act of section 5739.01 of 1144
the Revised Code applies on and after the first day of the first 1145
month that begins after the effective date of this act. 1146

Section 4. Section 5739.01 of the Revised Code is 1147
presented in this act as a composite of the section as amended 1148
by both Sub. H.B. 390 and H.B. 466 of the 131st General 1149
Assembly. The General Assembly, applying the principle stated in 1150
division (B) of section 1.52 of the Revised Code that amendments 1151

are to be harmonized if reasonably capable of simultaneous 1152
operation, finds that the composite is the resulting version of 1153
the section in effect prior to the effective date of the section 1154
as presented in this act. 1155