

As Reported by the House Transportation and Public Safety Committee

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Am. H. B. No. 292

Representatives Sobecki, Cutrona

**Cosponsors: Representatives Crossman, Smith, K., Galonski, Russo, Miller, J.,
Lepore-Hagan, O'Brien, Sheehy, Upchurch, Jarrells, Cross, Stewart, Miller, A.,
Lightbody, Creech, Bird, Weinstein, Carfagna**

A BILL

To amend section 5739.02 and to enact sections 1
4501.82 and 4501.821 of the Revised Code to 2
create a temporary sales tax exemption for 3
electric vehicle production parts and to create 4
the Electric Vehicle Commission. 5

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

Section 1. That section 5739.02 be amended and sections 6
4501.82 and 4501.821 of the Revised Code be enacted to read as 7
follows: 8

Sec. 4501.82. (A) As used in this section, "electric 9
vehicle product" means a battery powered electric vehicle, an 10
alternative powertrain technology vehicle, a hydrogen powered 11
vehicle, or a plug-in electric motor vehicle, as well as the 12
charging stations needed to make use of those vehicles. 13

(B) The electric vehicle commission is hereby established. 14

(C) The commission is established within the department of 15
transportation, which shall provide administrative support to 16
the commission as needed for the commission to carry out the 17

<u>responsibilities prescribed in this section and in section</u>	18
<u>4501.821 of the Revised Code.</u>	19
<u>(D) The commission shall consist of the following members:</u>	20
<u>(1) Two members of the senate, appointed by the president</u>	21
<u>of the senate, one of whom shall be of the same political party</u>	22
<u>as the president of the senate and one of whom shall be from a</u>	23
<u>different political party;</u>	24
<u>(2) Two members of the house of representatives, appointed</u>	25
<u>by the speaker of the house of representatives, one of whom</u>	26
<u>shall be of the same political party as the speaker of the house</u>	27
<u>of representatives and one of whom shall be from a different</u>	28
<u>political party;</u>	29
<u>(3) Six members appointed by the governor, as follows:</u>	30
<u>(a) One representative of local governments;</u>	31
<u>(b) One representative of organized labor operating in the</u>	32
<u>automotive industry;</u>	33
<u>(c) One representative of the automotive industry;</u>	34
<u>(d) One representative of the Ohio automobile dealers</u>	35
<u>association;</u>	36
<u>(e) One representative of the electric vehicle charging</u>	37
<u>station manufacturing industry;</u>	38
<u>(f) One representative of clean fuels Ohio.</u>	39
<u>(E) (1) A member of the commission appointed by the</u>	40
<u>governor shall serve a four-year term. A member may be</u>	41
<u>reappointed.</u>	42
<u>(2) The governor may remove a member appointed pursuant to</u>	43
<u>division (D) (3) of this section.</u>	44

(3) A vacancy created under division (E) (1) or (2) of this section shall be filled by the governor. 45
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(F) (1) A member of the commission that is a member of the general assembly shall serve until the end of the member's current term of office in the general assembly expires or until the legislator is removed as a member of the commission by the president of the senate or the speaker of the house, as applicable. 47
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(2) The president of the senate may remove members of the commission who are appointed pursuant to division (D) (1) of this section. The speaker of the house of representatives may remove a member appointed pursuant to division (D) (2) of this section. 53
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(3) A vacancy created under division (F) (1) of this section shall be filled in accordance with divisions (D) (1) or (2) of this section, as applicable. The term of a such a member shall be in accordance with division (F) (1) of this section. 57
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(G) Members of the commission shall be appointed not later than thirty days after the effective date of this section. The governor shall designate one of the members appointed under division (D) of this section to act as the chairperson of the commission and annually thereafter. The commission shall hold its initial meeting not later than thirty days after the last member is appointed. All subsequent meetings of the commission shall be held at the call of the chairperson. Five members of the commission constitute a quorum. 61
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(H) The members of the commission shall serve without compensation but shall receive travel reimbursement at the same mileage rate allowed for the reimbursement of travel expenses of state agents as provided by rule of the director of budget and 70
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management pursuant to division (B) of section 126.31 of the 74
Revised Code. 75

Sec. 4501.821. (A) The electric vehicle commission 76
established under section 4501.82 of the Revised Code shall be 77
responsible for making all policy decisions relating to the 78
evaluations, determinations, and other duties described in 79
division (B) of this section and the report described in 80
division (C) of this section. 81

(B) The commission shall be responsible for all of the 82
following: 83

(1) Evaluating the inventory of existing electric vehicle 84
product facilities and production capability; 85

(2) Evaluating the inventory of skilled and non-skilled 86
workers in the electric vehicle product industry; 87

(3) Evaluating opportunities and needs for training within 88
the electric vehicle product industry; 89

(4) Determining if training centers promoting careers in 90
the electric vehicle product industry should be created or 91
transitioned from traditional automotive industry training 92
centers; 93

(5) Determining which traditional automotive industry 94
facilities should be transitioned into electric vehicle product 95
facilities; 96

(6) Identifying and evaluating opportunities for growth 97
within the electric vehicle product industry; 98

(7) Identifying and documenting results from previous 99
instances of retooling and transforming manufacturing facilities 100
in the automotive industry; 101

<u>(8) Identifying opportunities for research and development</u>	102
<u>within the electric vehicle product industry;</u>	103
<u>(9) Evaluating the effectiveness of the tax exemption for</u>	104
<u>electric vehicle products created under section 5739.02 of the</u>	105
<u>Revised Code;</u>	106
<u>(10) Tracking employment data from the electric vehicle</u>	107
<u>product industry, including job growth or contraction figures,</u>	108
<u>wages paid, and other factors related to employment.</u>	109
<u>(C) The commission shall annually make a report to the</u>	110
<u>department of transportation, the president of the senate, the</u>	111
<u>minority leader of the senate, the speaker of the house of</u>	112
<u>representatives, and the minority leader of the house of</u>	113
<u>representatives. The report shall include a description of all</u>	114
<u>activities undertaken by the commission during the prior year.</u>	115
<u>The report shall be in an electronic format and shall be</u>	116
<u>delivered no later than the thirtieth day of September.</u>	117
<u>(D) The commission may adopt rules in accordance with</u>	118
<u>Chapter 119. of the Revised Code as necessary to carry out the</u>	119
<u>requirements of this section and section 4501.82 of the Revised</u>	120
<u>Code.</u>	121
Sec. 5739.02. For the purpose of providing revenue with	122
which to meet the needs of the state, for the use of the general	123
revenue fund of the state, for the purpose of securing a	124
thorough and efficient system of common schools throughout the	125
state, for the purpose of affording revenues, in addition to	126
those from general property taxes, permitted under	127
constitutional limitations, and from other sources, for the	128
support of local governmental functions, and for the purpose of	129
reimbursing the state for the expense of administering this	130

chapter, an excise tax is hereby levied on each retail sale made 131
in this state. 132

(A) (1) The tax shall be collected as provided in section 133
5739.025 of the Revised Code. The rate of the tax shall be five 134
and three-fourths per cent. The tax applies and is collectible 135
when the sale is made, regardless of the time when the price is 136
paid or delivered. 137

(2) In the case of the lease or rental, with a fixed term 138
of more than thirty days or an indefinite term with a minimum 139
period of more than thirty days, of any motor vehicles designed 140
by the manufacturer to carry a load of not more than one ton, 141
watercraft, outboard motor, or aircraft, or of any tangible 142
personal property, other than motor vehicles designed by the 143
manufacturer to carry a load of more than one ton, to be used by 144
the lessee or renter primarily for business purposes, the tax 145
shall be collected by the vendor at the time the lease or rental 146
is consummated and shall be calculated by the vendor on the 147
basis of the total amount to be paid by the lessee or renter 148
under the lease agreement. If the total amount of the 149
consideration for the lease or rental includes amounts that are 150
not calculated at the time the lease or rental is executed, the 151
tax shall be calculated and collected by the vendor at the time 152
such amounts are billed to the lessee or renter. In the case of 153
an open-end lease or rental, the tax shall be calculated by the 154
vendor on the basis of the total amount to be paid during the 155
initial fixed term of the lease or rental, and for each 156
subsequent renewal period as it comes due. As used in this 157
division, "motor vehicle" has the same meaning as in section 158
4501.01 of the Revised Code, and "watercraft" includes an 159
outdrive unit attached to the watercraft. 160

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A) (2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and sales or transfers of	190
magazines distributed as controlled circulation publications;	191
(5) The furnishing, preparing, or serving of meals without	192
charge by an employer to an employee provided the employer	193
records the meals as part compensation for services performed or	194
work done;	195
(6) (a) Sales of motor fuel upon receipt, use,	196
distribution, or sale of which in this state a tax is imposed by	197
the law of this state, but this exemption shall not apply to the	198
sale of motor fuel on which a refund of the tax is allowable	199
under division (A) of section 5735.14 of the Revised Code; and	200
the tax commissioner may deduct the amount of tax levied by this	201
section applicable to the price of motor fuel when granting a	202
refund of motor fuel tax pursuant to division (A) of section	203
5735.14 of the Revised Code and shall cause the amount deducted	204
to be paid into the general revenue fund of this state;	205
(b) Sales of motor fuel other than that described in	206
division (B) (6) (a) of this section and used for powering a	207
refrigeration unit on a vehicle other than one used primarily to	208
provide comfort to the operator or occupants of the vehicle.	209
(7) Sales of natural gas by a natural gas company or	210
municipal gas utility, of water by a water-works company, or of	211
steam by a heating company, if in each case the thing sold is	212
delivered to consumers through pipes or conduits, and all sales	213
of communications services by a telegraph company, all terms as	214
defined in section 5727.01 of the Revised Code, and sales of	215
electricity delivered through wires;	216
(8) Casual sales by a person, or auctioneer employed	217
directly by the person to conduct such sales, except as to such	218

sales of motor vehicles, watercraft or outboard motors required 219
to be titled under section 1548.06 of the Revised Code, 220
watercraft documented with the United States coast guard, 221
snowmobiles, and all-purpose vehicles as defined in section 222
4519.01 of the Revised Code; 223

(9) (a) Sales of services or tangible personal property, 224
other than motor vehicles, mobile homes, and manufactured homes, 225
by churches, organizations exempt from taxation under section 226
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 227
organizations operated exclusively for charitable purposes as 228
defined in division (B) (12) of this section, provided that the 229
number of days on which such tangible personal property or 230
services, other than items never subject to the tax, are sold 231
does not exceed six in any calendar year, except as otherwise 232
provided in division (B) (9) (b) of this section. If the number of 233
days on which such sales are made exceeds six in any calendar 234
year, the church or organization shall be considered to be 235
engaged in business and all subsequent sales by it shall be 236
subject to the tax. In counting the number of days, all sales by 237
groups within a church or within an organization shall be 238
considered to be sales of that church or organization. 239

(b) The limitation on the number of days on which tax- 240
exempt sales may be made by a church or organization under 241
division (B) (9) (a) of this section does not apply to sales made 242
by student clubs and other groups of students of a primary or 243
secondary school, or a parent-teacher association, booster 244
group, or similar organization that raises money to support or 245
fund curricular or extracurricular activities of a primary or 246
secondary school. 247

(c) Divisions (B) (9) (a) and (b) of this section do not 248

apply to sales by a noncommercial educational radio or	249
television broadcasting station.	250
(10) Sales not within the taxing power of this state under	251
the Constitution or laws of the United States or the	252
Constitution of this state;	253
(11) Except for transactions that are sales under division	254
(B) (3) (r) of section 5739.01 of the Revised Code, the	255
transportation of persons or property, unless the transportation	256
is by a private investigation and security service;	257
(12) Sales of tangible personal property or services to	258
churches, to organizations exempt from taxation under section	259
501(c) (3) of the Internal Revenue Code of 1986, and to any other	260
nonprofit organizations operated exclusively for charitable	261
purposes in this state, no part of the net income of which	262
inures to the benefit of any private shareholder or individual,	263
and no substantial part of the activities of which consists of	264
carrying on propaganda or otherwise attempting to influence	265
legislation; sales to offices administering one or more homes	266
for the aged or one or more hospital facilities exempt under	267
section 140.08 of the Revised Code; and sales to organizations	268
described in division (D) of section 5709.12 of the Revised	269
Code.	270
"Charitable purposes" means the relief of poverty; the	271
improvement of health through the alleviation of illness,	272
disease, or injury; the operation of an organization exclusively	273
for the provision of professional, laundry, printing, and	274
purchasing services to hospitals or charitable institutions; the	275
operation of a home for the aged, as defined in section 5701.13	276
of the Revised Code; the operation of a radio or television	277
broadcasting station that is licensed by the federal	278

communications commission as a noncommercial educational radio 279
or television station; the operation of a nonprofit animal 280
adoption service or a county humane society; the promotion of 281
education by an institution of learning that maintains a faculty 282
of qualified instructors, teaches regular continuous courses of 283
study, and confers a recognized diploma upon completion of a 284
specific curriculum; the operation of a parent-teacher 285
association, booster group, or similar organization primarily 286
engaged in the promotion and support of the curricular or 287
extracurricular activities of a primary or secondary school; the 288
operation of a community or area center in which presentations 289
in music, dramatics, the arts, and related fields are made in 290
order to foster public interest and education therein; the 291
production of performances in music, dramatics, and the arts; or 292
the promotion of education by an organization engaged in 293
carrying on research in, or the dissemination of, scientific and 294
technological knowledge and information primarily for the 295
public. 296

Nothing in this division shall be deemed to exempt sales 297
to any organization for use in the operation or carrying on of a 298
trade or business, or sales to a home for the aged for use in 299
the operation of independent living facilities as defined in 300
division (A) of section 5709.12 of the Revised Code. 301

(13) Building and construction materials and services sold 302
to construction contractors for incorporation into a structure 303
or improvement to real property under a construction contract 304
with this state or a political subdivision of this state, or 305
with the United States government or any of its agencies; 306
building and construction materials and services sold to 307
construction contractors for incorporation into a structure or 308
improvement to real property that are accepted for ownership by 309

this state or any of its political subdivisions, or by the 310
United States government or any of its agencies at the time of 311
completion of the structures or improvements; building and 312
construction materials sold to construction contractors for 313
incorporation into a horticulture structure or livestock 314
structure for a person engaged in the business of horticulture 315
or producing livestock; building materials and services sold to 316
a construction contractor for incorporation into a house of 317
public worship or religious education, or a building used 318
exclusively for charitable purposes under a construction 319
contract with an organization whose purpose is as described in 320
division (B) (12) of this section; building materials and 321
services sold to a construction contractor for incorporation 322
into a building under a construction contract with an 323
organization exempt from taxation under section 501(c) (3) of the 324
Internal Revenue Code of 1986 when the building is to be used 325
exclusively for the organization's exempt purposes; building and 326
construction materials sold for incorporation into the original 327
construction of a sports facility under section 307.696 of the 328
Revised Code; building and construction materials and services 329
sold to a construction contractor for incorporation into real 330
property outside this state if such materials and services, when 331
sold to a construction contractor in the state in which the real 332
property is located for incorporation into real property in that 333
state, would be exempt from a tax on sales levied by that state; 334
building and construction materials for incorporation into a 335
transportation facility pursuant to a public-private agreement 336
entered into under sections 5501.70 to 5501.83 of the Revised 337
Code; and, until one calendar year after the construction of a 338
convention center that qualifies for property tax exemption 339
under section 5709.084 of the Revised Code is completed, 340
building and construction materials and services sold to a 341

construction contractor for incorporation into the real property 342
comprising that convention center; 343

(14) Sales of ships or vessels or rail rolling stock used 344
or to be used principally in interstate or foreign commerce, and 345
repairs, alterations, fuel, and lubricants for such ships or 346
vessels or rail rolling stock; 347

(15) Sales to persons primarily engaged in any of the 348
activities mentioned in division (B) (42) (a), (g), or (h) of this 349
section, to persons engaged in making retail sales, or to 350
persons who purchase for sale from a manufacturer tangible 351
personal property that was produced by the manufacturer in 352
accordance with specific designs provided by the purchaser, of 353
packages, including material, labels, and parts for packages, 354
and of machinery, equipment, and material for use primarily in 355
packaging tangible personal property produced for sale, 356
including any machinery, equipment, and supplies used to make 357
labels or packages, to prepare packages or products for 358
labeling, or to label packages or products, by or on the order 359
of the person doing the packaging, or sold at retail. "Packages" 360
includes bags, baskets, cartons, crates, boxes, cans, bottles, 361
bindings, wrappings, and other similar devices and containers, 362
but does not include motor vehicles or bulk tanks, trailers, or 363
similar devices attached to motor vehicles. "Packaging" means 364
placing in a package. Division (B) (15) of this section does not 365
apply to persons engaged in highway transportation for hire. 366

(16) Sales of food to persons using supplemental nutrition 367
assistance program benefits to purchase the food. As used in 368
this division, "food" has the same meaning as in 7 U.S.C. 2012 369
and federal regulations adopted pursuant to the Food and 370
Nutrition Act of 2008. 371

(17) Sales to persons engaged in farming, agriculture, 372
horticulture, or floriculture, of tangible personal property for 373
use or consumption primarily in the production by farming, 374
agriculture, horticulture, or floriculture of other tangible 375
personal property for use or consumption primarily in the 376
production of tangible personal property for sale by farming, 377
agriculture, horticulture, or floriculture; or material and 378
parts for incorporation into any such tangible personal property 379
for use or consumption in production; and of tangible personal 380
property for such use or consumption in the conditioning or 381
holding of products produced by and for such use, consumption, 382
or sale by persons engaged in farming, agriculture, 383
horticulture, or floriculture, except where such property is 384
incorporated into real property; 385

(18) Sales of drugs for a human being that may be 386
dispensed only pursuant to a prescription; insulin as recognized 387
in the official United States pharmacopoeia; urine and blood 388
testing materials when used by diabetics or persons with 389
hypoglycemia to test for glucose or acetone; hypodermic syringes 390
and needles when used by diabetics for insulin injections; 391
epoetin alfa when purchased for use in the treatment of persons 392
with medical disease; hospital beds when purchased by hospitals, 393
nursing homes, or other medical facilities; and medical oxygen 394
and medical oxygen-dispensing equipment when purchased by 395
hospitals, nursing homes, or other medical facilities; 396

(19) Sales of prosthetic devices, durable medical 397
equipment for home use, or mobility enhancing equipment, when 398
made pursuant to a prescription and when such devices or 399
equipment are for use by a human being. 400

(20) Sales of emergency and fire protection vehicles and 401

equipment to nonprofit organizations for use solely in providing 402
fire protection and emergency services, including trauma care 403
and emergency medical services, for political subdivisions of 404
the state; 405

(21) Sales of tangible personal property manufactured in 406
this state, if sold by the manufacturer in this state to a 407
retailer for use in the retail business of the retailer outside 408
of this state and if possession is taken from the manufacturer 409
by the purchaser within this state for the sole purpose of 410
immediately removing the same from this state in a vehicle owned 411
by the purchaser; 412

(22) Sales of services provided by the state or any of its 413
political subdivisions, agencies, instrumentalities, 414
institutions, or authorities, or by governmental entities of the 415
state or any of its political subdivisions, agencies, 416
instrumentalities, institutions, or authorities; 417

(23) Sales of motor vehicles to nonresidents of this state 418
under the circumstances described in division (B) of section 419
5739.029 of the Revised Code; 420

(24) Sales to persons engaged in the preparation of eggs 421
for sale of tangible personal property used or consumed directly 422
in such preparation, including such tangible personal property 423
used for cleaning, sanitizing, preserving, grading, sorting, and 424
classifying by size; packages, including material and parts for 425
packages, and machinery, equipment, and material for use in 426
packaging eggs for sale; and handling and transportation 427
equipment and parts therefor, except motor vehicles licensed to 428
operate on public highways, used in intraplant or interplant 429
transfers or shipment of eggs in the process of preparation for 430
sale, when the plant or plants within or between which such 431

transfers or shipments occur are operated by the same person.	432
"Packages" includes containers, cases, baskets, flats, fillers,	433
filler flats, cartons, closure materials, labels, and labeling	434
materials, and "packaging" means placing therein.	435
(25) (a) Sales of water to a consumer for residential use;	436
(b) Sales of water by a nonprofit corporation engaged	437
exclusively in the treatment, distribution, and sale of water to	438
consumers, if such water is delivered to consumers through pipes	439
or tubing.	440
(26) Fees charged for inspection or reinspection of motor	441
vehicles under section 3704.14 of the Revised Code;	442
(27) Sales to persons licensed to conduct a food service	443
operation pursuant to section 3717.43 of the Revised Code, of	444
tangible personal property primarily used directly for the	445
following:	446
(a) To prepare food for human consumption for sale;	447
(b) To preserve food that has been or will be prepared for	448
human consumption for sale by the food service operator, not	449
including tangible personal property used to display food for	450
selection by the consumer;	451
(c) To clean tangible personal property used to prepare or	452
serve food for human consumption for sale.	453
(28) Sales of animals by nonprofit animal adoption	454
services or county humane societies;	455
(29) Sales of services to a corporation described in	456
division (A) of section 5709.72 of the Revised Code, and sales	457
of tangible personal property that qualifies for exemption from	458
taxation under section 5709.72 of the Revised Code;	459

(30) Sales and installation of agricultural land tile, as 460
defined in division (B) (5) (a) of section 5739.01 of the Revised 461
Code; 462

(31) Sales and erection or installation of portable grain 463
bins, as defined in division (B) (5) (b) of section 5739.01 of the 464
Revised Code; 465

(32) The sale, lease, repair, and maintenance of, parts 466
for, or items attached to or incorporated in, motor vehicles 467
that are primarily used for transporting tangible personal 468
property belonging to others by a person engaged in highway 469
transportation for hire, except for packages and packaging used 470
for the transportation of tangible personal property; 471

(33) Sales to the state headquarters of any veterans' 472
organization in this state that is either incorporated and 473
issued a charter by the congress of the United States or is 474
recognized by the United States veterans administration, for use 475
by the headquarters; 476

(34) Sales to a telecommunications service vendor, mobile 477
telecommunications service vendor, or satellite broadcasting 478
service vendor of tangible personal property and services used 479
directly and primarily in transmitting, receiving, switching, or 480
recording any interactive, one- or two-way electromagnetic 481
communications, including voice, image, data, and information, 482
through the use of any medium, including, but not limited to, 483
poles, wires, cables, switching equipment, computers, and record 484
storage devices and media, and component parts for the tangible 485
personal property. The exemption provided in this division shall 486
be in lieu of all other exemptions under division (B) (42) (a) or 487
(n) of this section to which the vendor may otherwise be 488
entitled, based upon the use of the thing purchased in providing 489

the telecommunications, mobile telecommunications, or satellite 490
broadcasting service. 491

(35) (a) Sales where the purpose of the consumer is to use 492
or consume the things transferred in making retail sales and 493
consisting of newspaper inserts, catalogues, coupons, flyers, 494
gift certificates, or other advertising material that prices and 495
describes tangible personal property offered for retail sale. 496

(b) Sales to direct marketing vendors of preliminary 497
materials such as photographs, artwork, and typesetting that 498
will be used in printing advertising material; and of printed 499
matter that offers free merchandise or chances to win sweepstake 500
prizes and that is mailed to potential customers with 501
advertising material described in division (B) (35) (a) of this 502
section; 503

(c) Sales of equipment such as telephones, computers, 504
facsimile machines, and similar tangible personal property 505
primarily used to accept orders for direct marketing retail 506
sales. 507

(d) Sales of automatic food vending machines that preserve 508
food with a shelf life of forty-five days or less by 509
refrigeration and dispense it to the consumer. 510

For purposes of division (B) (35) of this section, "direct 511
marketing" means the method of selling where consumers order 512
tangible personal property by United States mail, delivery 513
service, or telecommunication and the vendor delivers or ships 514
the tangible personal property sold to the consumer from a 515
warehouse, catalogue distribution center, or similar fulfillment 516
facility by means of the United States mail, delivery service, 517
or common carrier. 518

(36) Sales to a person engaged in the business of 519
horticulture or producing livestock of materials to be 520
incorporated into a horticulture structure or livestock 521
structure; 522

(37) Sales of personal computers, computer monitors, 523
computer keyboards, modems, and other peripheral computer 524
equipment to an individual who is licensed or certified to teach 525
in an elementary or a secondary school in this state for use by 526
that individual in preparation for teaching elementary or 527
secondary school students; 528

(38) Sales of tangible personal property that is not 529
required to be registered or licensed under the laws of this 530
state to a citizen of a foreign nation that is not a citizen of 531
the United States, provided the property is delivered to a 532
person in this state that is not a related member of the 533
purchaser, is physically present in this state for the sole 534
purpose of temporary storage and package consolidation, and is 535
subsequently delivered to the purchaser at a delivery address in 536
a foreign nation. As used in division (B)(38) of this section, 537
"related member" has the same meaning as in section 5733.042 of 538
the Revised Code, and "temporary storage" means the storage of 539
tangible personal property for a period of not more than sixty 540
days. 541

(39) Sales of used manufactured homes and used mobile 542
homes, as defined in section 5739.0210 of the Revised Code, made 543
on or after January 1, 2000; 544

(40) Sales of tangible personal property and services to a 545
provider of electricity used or consumed directly and primarily 546
in generating, transmitting, or distributing electricity for use 547
by others, including property that is or is to be incorporated 548

into and will become a part of the consumer's production, 549
transmission, or distribution system and that retains its 550
classification as tangible personal property after 551
incorporation; fuel or power used in the production, 552
transmission, or distribution of electricity; energy conversion 553
equipment as defined in section 5727.01 of the Revised Code; and 554
tangible personal property and services used in the repair and 555
maintenance of the production, transmission, or distribution 556
system, including only those motor vehicles as are specially 557
designed and equipped for such use. The exemption provided in 558
this division shall be in lieu of all other exemptions in 559
division (B) (42) (a) or (n) of this section to which a provider 560
of electricity may otherwise be entitled based on the use of the 561
tangible personal property or service purchased in generating, 562
transmitting, or distributing electricity. 563

(41) Sales to a person providing services under division 564
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 565
personal property and services used directly and primarily in 566
providing taxable services under that section. 567

(42) Sales where the purpose of the purchaser is to do any 568
of the following: 569

(a) To incorporate the thing transferred as a material or 570
a part into tangible personal property to be produced for sale 571
by manufacturing, assembling, processing, or refining; or to use 572
or consume the thing transferred directly in producing tangible 573
personal property for sale by mining, including, without 574
limitation, the extraction from the earth of all substances that 575
are classed geologically as minerals, or directly in the 576
rendition of a public utility service, except that the sales tax 577
levied by this section shall be collected upon all meals, 578

drinks, and food for human consumption sold when transporting	579
persons. This paragraph does not exempt from "retail sale" or	580
"sales at retail" the sale of tangible personal property that is	581
to be incorporated into a structure or improvement to real	582
property.	583
(b) To hold the thing transferred as security for the	584
performance of an obligation of the vendor;	585
(c) To resell, hold, use, or consume the thing transferred	586
as evidence of a contract of insurance;	587
(d) To use or consume the thing directly in commercial	588
fishing;	589
(e) To incorporate the thing transferred as a material or	590
a part into, or to use or consume the thing transferred directly	591
in the production of, magazines distributed as controlled	592
circulation publications;	593
(f) To use or consume the thing transferred in the	594
production and preparation in suitable condition for market and	595
sale of printed, imprinted, overprinted, lithographic,	596
multilithic, blueprinted, photostatic, or other productions or	597
reproductions of written or graphic matter;	598
(g) To use the thing transferred, as described in section	599
5739.011 of the Revised Code, primarily in a manufacturing	600
operation to produce tangible personal property for sale;	601
(h) To use the benefit of a warranty, maintenance or	602
service contract, or similar agreement, as described in division	603
(B) (7) of section 5739.01 of the Revised Code, to repair or	604
maintain tangible personal property, if all of the property that	605
is the subject of the warranty, contract, or agreement would not	606
be subject to the tax imposed by this section;	607

- (i) To use the thing transferred as qualified research and development equipment; 608
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- (j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section. 610
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- (k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B) (7) of section 5739.01 of the Revised Code; 623
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- (l) To use or consume the thing transferred in the production of a newspaper for distribution to the public; 630
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- (m) To use tangible personal property to perform a service listed in division (B) (3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service; 632
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(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(p) To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced;

(q) To use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production.

As used in division (B) (42) (q) of this section, "production" means operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth.

(i) For the purposes of division (B) (42) (q) of this	666
section, the "thing transferred" includes, but is not limited	667
to, any of the following:	668
(I) Services provided in the construction of permanent	669
access roads, services provided in the construction of the well	670
site, and services provided in the construction of temporary	671
impoundments;	672
(II) Equipment and rigging used for the specific purpose	673
of creating with integrity a wellbore pathway to underground	674
reservoirs;	675
(III) Drilling and workover services used to work within a	676
subsurface wellbore, and tangible personal property directly	677
used in providing such services;	678
(IV) Casing, tubulars, and float and centralizing	679
equipment;	680
(V) Trailers to which production equipment is attached;	681
(VI) Well completion services, including cementing of	682
casing, and tangible personal property directly used in	683
providing such services;	684
(VII) Wireline evaluation, mud logging, and perforation	685
services, and tangible personal property directly used in	686
providing such services;	687
(VIII) Reservoir stimulation, hydraulic fracturing, and	688
acidizing services, and tangible personal property directly used	689
in providing such services, including all material pumped	690
downhole;	691
(IX) Pressure pumping equipment;	692

(X) Artificial lift systems equipment;	693
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	694 695 696
(XII) Tangible personal property directly used to control production equipment.	697 698
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	699 700 701
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	702 703 704
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	705 706 707
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	708 709 710
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	711 712 713 714
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	715 716 717 718
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	719 720

(VII) Well site fencing, lighting, or security systems;	721
(VIII) Communication devices or services;	722
(IX) Office supplies;	723
(X) Trailers used as offices or lodging;	724
(XI) Motor vehicles of any kind;	725
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	726 727
(XIII) Tangible personal property used primarily as a safety device;	728 729
(XIV) Data collection or monitoring devices;	730
(XV) Access ladders, stairs, or platforms attached to storage tanks.	731 732
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	733 734 735 736 737
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section.	738 739 740 741
As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.	742 743 744
(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents	745 746 747

or wax, to the consumer for the consumer's use on the premises 748
in washing, cleaning, or waxing a motor vehicle, provided no 749
other personal property or personal service is provided as part 750
of the transaction. 751

(44) Sales of replacement and modification parts for 752
engines, airframes, instruments, and interiors in, and paint 753
for, aircraft used primarily in a fractional aircraft ownership 754
program, and sales of services for the repair, modification, and 755
maintenance of such aircraft, and machinery, equipment, and 756
supplies primarily used to provide those services. 757

(45) Sales of telecommunications service that is used 758
directly and primarily to perform the functions of a call 759
center. As used in this division, "call center" means any 760
physical location where telephone calls are placed or received 761
in high volume for the purpose of making sales, marketing, 762
customer service, technical support, or other specialized 763
business activity, and that employs at least fifty individuals 764
that engage in call center activities on a full-time basis, or 765
sufficient individuals to fill fifty full-time equivalent 766
positions. 767

(46) Sales by a telecommunications service vendor of 900 768
service to a subscriber. This division does not apply to 769
information services. 770

(47) Sales of value-added non-voice data service. This 771
division does not apply to any similar service that is not 772
otherwise a telecommunications service. 773

(48) Sales of feminine hygiene products. 774

(49) Sales of materials, parts, equipment, or engines used 775
in the repair or maintenance of aircraft or avionics systems of 776

such aircraft, and sales of repair, remodeling, replacement, or 777
maintenance services in this state performed on aircraft or on 778
an aircraft's avionics, engine, or component materials or parts. 779
As used in division (B) (49) of this section, "aircraft" means 780
aircraft of more than six thousand pounds maximum certified 781
takeoff weight or used exclusively in general aviation. 782

(50) Sales of full flight simulators that are used for 783
pilot or flight-crew training, sales of repair or replacement 784
parts or components, and sales of repair or maintenance services 785
for such full flight simulators. "Full flight simulator" means a 786
replica of a specific type, or make, model, and series of 787
aircraft cockpit. It includes the assemblage of equipment and 788
computer programs necessary to represent aircraft operations in 789
ground and flight conditions, a visual system providing an out- 790
of-the-cockpit view, and a system that provides cues at least 791
equivalent to those of a three-degree-of-freedom motion system, 792
and has the full range of capabilities of the systems installed 793
in the device as described in appendices A and B of part 60 of 794
chapter 1 of title 14 of the Code of Federal Regulations. 795

(51) Any transfer or lease of tangible personal property 796
between the state and JobsOhio in accordance with section 797
4313.02 of the Revised Code. 798

(52) (a) Sales to a qualifying corporation. 799

(b) As used in division (B) (52) of this section: 800

(i) "Qualifying corporation" means a nonprofit corporation 801
organized in this state that leases from an eligible county 802
land, buildings, structures, fixtures, and improvements to the 803
land that are part of or used in a public recreational facility 804
used by a major league professional athletic team or a class A 805

to class AAA minor league affiliate of a major league 806
professional athletic team for a significant portion of the 807
team's home schedule, provided the following apply: 808

(I) The facility is leased from the eligible county 809
pursuant to a lease that requires substantially all of the 810
revenue from the operation of the business or activity conducted 811
by the nonprofit corporation at the facility in excess of 812
operating costs, capital expenditures, and reserves to be paid 813
to the eligible county at least once per calendar year. 814

(II) Upon dissolution and liquidation of the nonprofit 815
corporation, all of its net assets are distributable to the 816
board of commissioners of the eligible county from which the 817
corporation leases the facility. 818

(ii) "Eligible county" has the same meaning as in section 819
307.695 of the Revised Code. 820

(53) Sales to or by a cable service provider, video 821
service provider, or radio or television broadcast station 822
regulated by the federal government of cable service or 823
programming, video service or programming, audio service or 824
programming, or electronically transferred digital audiovisual 825
or audio work. As used in division (B) (53) of this section, 826
"cable service" and "cable service provider" have the same 827
meanings as in section 1332.01 of the Revised Code, and "video 828
service," "video service provider," and "video programming" have 829
the same meanings as in section 1332.21 of the Revised Code. 830

(54) Sales of a digital audio work electronically 831
transferred for delivery through use of a machine, such as a 832
juke box, that does all of the following: 833

(a) Accepts direct payments to operate; 834

(b) Automatically plays a selected digital audio work for	835
a single play upon receipt of a payment described in division	836
(B) (54) (a) of this section;	837
(c) Operates exclusively for the purpose of playing	838
digital audio works in a commercial establishment.	839
(55) (a) Sales of the following occurring on the first	840
Friday of August and the following Saturday and Sunday of each	841
year, beginning in 2018:	842
(i) An item of clothing, the price of which is seventy-	843
five dollars or less;	844
(ii) An item of school supplies, the price of which is	845
twenty dollars or less;	846
(iii) An item of school instructional material, the price	847
of which is twenty dollars or less.	848
(b) As used in division (B) (55) of this section:	849
(i) "Clothing" means all human wearing apparel suitable	850
for general use. "Clothing" includes, but is not limited to,	851
aprons, household and shop; athletic supporters; baby receiving	852
blankets; bathing suits and caps; beach capes and coats; belts	853
and suspenders; boots; coats and jackets; costumes; diapers,	854
children and adult, including disposable diapers; earmuffs;	855
footlets; formal wear; garters and garter belts; girdles; gloves	856
and mittens for general use; hats and caps; hosiery; insoles for	857
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	858
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	859
sneakers; socks and stockings; steel-toed shoes; underwear;	860
uniforms, athletic and nonathletic; and wedding apparel.	861
"Clothing" does not include items purchased for use in a trade	862
or business; clothing accessories or equipment; protective	863

equipment; sports or recreational equipment; belt buckles sold 864
separately; costume masks sold separately; patches and emblems 865
sold separately; sewing equipment and supplies including, but 866
not limited to, knitting needles, patterns, pins, scissors, 867
sewing machines, sewing needles, tape measures, and thimbles; 868
and sewing materials that become part of "clothing" including, 869
but not limited to, buttons, fabric, lace, thread, yarn, and 870
zippers. 871

(ii) "School supplies" means items commonly used by a 872
student in a course of study. "School supplies" includes only 873
the following items: binders; book bags; calculators; cellophane 874
tape; blackboard chalk; compasses; composition books; crayons; 875
erasers; folders, expandable, pocket, plastic, and manila; glue, 876
paste, and paste sticks; highlighters; index cards; index card 877
boxes; legal pads; lunch boxes; markers; notebooks; paper, 878
loose-leaf ruled notebook paper, copy paper, graph paper, 879
tracing paper, manila paper, colored paper, poster board, and 880
construction paper; pencil boxes and other school supply boxes; 881
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 882
and writing tablets. "School supplies" does not include any item 883
purchased for use in a trade or business. 884

(iii) "School instructional material" means written 885
material commonly used by a student in a course of study as a 886
reference and to learn the subject being taught. "School 887
instructional material" includes only the following items: 888
reference books, reference maps and globes, textbooks, and 889
workbooks. "School instructional material" does not include any 890
material purchased for use in a trade or business. 891

(56) (a) Sales of diapers or incontinence underpads sold 892
pursuant to a prescription, for the benefit of a medicaid 893

recipient with a diagnosis of incontinence, and by a medicaid 894
provider that maintains a valid provider agreement under section 895
5164.30 of the Revised Code with the department of medicaid, 896
provided that the medicaid program covers diapers or 897
incontinence underpads as an incontinence garment. 898

(b) As used in division (B) (56) (a) of this section: 899

(i) "Diaper" means an absorbent garment worn by humans who 900
are incapable of, or have difficulty, controlling their bladder 901
or bowel movements. 902

(ii) "Incontinence underpad" means an absorbent product, 903
not worn on the body, designed to protect furniture or other 904
tangible personal property from soiling or damage due to human 905
incontinence. 906

(57) Sales, on or before December 31, 2026, of qualifying 907
property directly used in the production of electric vehicle 908
products. As used in division (B) (57) of this section: 909

(a) "Electric vehicle product" means a battery powered 910
electric vehicle, an alternative powertrain technology vehicle, 911
a hydrogen powered vehicle, or a plug-in hybrid electric 912
vehicle, and charging stations needed to make use of those 913
vehicles. 914

(b) "Qualifying property" means parts and components 915
specifically designed for use in, and unique to the production 916
of electric vehicle products, including engines, transmissions, 917
batteries, and brakes. Qualifying property does not include 918
parts or components, such as tires, interior or exterior 919
features, or any other parts or accessories, that are commonly 920
used in electric vehicle products and other motor vehicles and 921
related products. 922

(C) For the purpose of the proper administration of this 923
chapter, and to prevent the evasion of the tax, it is presumed 924
that all sales made in this state are subject to the tax until 925
the contrary is established. 926

(D) The tax collected by the vendor from the consumer 927
under this chapter is not part of the price, but is a tax 928
collection for the benefit of the state, and of counties levying 929
an additional sales tax pursuant to section 5739.021 or 5739.026 930
of the Revised Code and of transit authorities levying an 931
additional sales tax pursuant to section 5739.023 of the Revised 932
Code. Except for the discount authorized under section 5739.12 933
of the Revised Code and the effects of any rounding pursuant to 934
section 5703.055 of the Revised Code, no person other than the 935
state or such a county or transit authority shall derive any 936
benefit from the collection or payment of the tax levied by this 937
section or section 5739.021, 5739.023, or 5739.026 of the 938
Revised Code. 939

Section 2. That existing section 5739.02 of the Revised 940
Code is hereby repealed. 941

Section 3. The amendment by this act of section 5739.02 of 942
the Revised Code applies to taxable years beginning on or after 943
the effective date of this section. 944