

**As Introduced**

**132nd General Assembly**

**Regular Session**

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**H. B. No. 177**

**Representatives West, Young**

**Cosponsors: Representatives Patterson, Vitale, Boggs, Riedel, Thompson,  
Bocchieri, Sheehy, Dean, Howse, Antonio, Reece, Lepore-Hagan, Fedor**

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**A BILL**

To amend section 5739.01 of the Revised Code to 1  
exempt memberships to gyms or other recreational 2  
facilities operated by charitable organizations 3  
from sales and use taxation. 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

(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, unless such service is or is to be provided by an 73

<u>organization that is exempt from taxation under section 501(c)</u>	74
<u>(3) of the Internal Revenue Code;</u>	75
(o) Recreation and sports club service is or is to be	76
provided, <u>unless such service is or is to be provided by an</u>	77
<u>organization that is exempt from taxation under section 501(c)</u>	78
<u>(3) of the Internal Revenue Code;</u>	79
(p) On and after August 1, 2003, satellite broadcasting	80
service is or is to be provided;	81
(q) On and after August 1, 2003, personal care service is	82
or is to be provided to an individual. As used in this division,	83
"personal care service" includes skin care, the application of	84
cosmetics, manicuring, pedicuring, hair removal, tattooing, body	85
piercing, tanning, massage, and other similar services.	86
"Personal care service" does not include a service provided by	87
or on the order of a licensed physician or licensed	88
chiropractor, or the cutting, coloring, or styling of an	89
individual's hair.	90
(r) On and after August 1, 2003, the transportation of	91
persons by motor vehicle or aircraft is or is to be provided,	92
when the transportation is entirely within this state, except	93
for transportation provided by an ambulance service, by a	94
transit bus, as defined in section 5735.01 of the Revised Code,	95
and transportation provided by a citizen of the United States	96
holding a certificate of public convenience and necessity issued	97
under 49 U.S.C. 41102;	98
(s) On and after August 1, 2003, motor vehicle towing	99
service is or is to be provided. As used in this division,	100
"motor vehicle towing service" means the towing or conveyance of	101
a wrecked, disabled, or illegally parked motor vehicle.	102

(t) On and after August 1, 2003, snow removal service is 103  
or is to be provided. As used in this division, "snow removal 104  
service" means the removal of snow by any mechanized means, but 105  
does not include the providing of such service by a person that 106  
has less than five thousand dollars in sales of such service 107  
during the calendar year. 108

(u) Electronic publishing service is or is to be provided 109  
to a consumer for use in business, except that such transactions 110  
occurring between members of an affiliated group, as defined in 111  
division (B) (3) (e) of this section, are not sales. 112

(4) All transactions by which printed, imprinted, 113  
overprinted, lithographic, multilithic, blueprinted, 114  
photostatic, or other productions or reproductions of written or 115  
graphic matter are or are to be furnished or transferred; 116

(5) The production or fabrication of tangible personal 117  
property for a consideration for consumers who furnish either 118  
directly or indirectly the materials used in the production of 119  
fabrication work; and include the furnishing, preparing, or 120  
serving for a consideration of any tangible personal property 121  
consumed on the premises of the person furnishing, preparing, or 122  
serving such tangible personal property. Except as provided in 123  
section 5739.03 of the Revised Code, a construction contract 124  
pursuant to which tangible personal property is or is to be 125  
incorporated into a structure or improvement on and becoming a 126  
part of real property is not a sale of such tangible personal 127  
property. The construction contractor is the consumer of such 128  
tangible personal property, provided that the sale and 129  
installation of carpeting, the sale and installation of 130  
agricultural land tile, the sale and erection or installation of 131  
portable grain bins, or the provision of landscaping and lawn 132

care service and the transfer of property as part of such 133  
service is never a construction contract. 134

As used in division (B) (5) of this section: 135

(a) "Agricultural land tile" means fired clay or concrete 136  
tile, or flexible or rigid perforated plastic pipe or tubing, 137  
incorporated or to be incorporated into a subsurface drainage 138  
system appurtenant to land used or to be used primarily in 139  
production by farming, agriculture, horticulture, or 140  
floriculture. The term does not include such materials when they 141  
are or are to be incorporated into a drainage system appurtenant 142  
to a building or structure even if the building or structure is 143  
used or to be used in such production. 144

(b) "Portable grain bin" means a structure that is used or 145  
to be used by a person engaged in farming or agriculture to 146  
shelter the person's grain and that is designed to be 147  
disassembled without significant damage to its component parts. 148

(6) All transactions in which all of the shares of stock 149  
of a closely held corporation are transferred, or an ownership 150  
interest in a pass-through entity, as defined in section 5733.04 151  
of the Revised Code, is transferred, if the corporation or pass- 152  
through entity is not engaging in business and its entire assets 153  
consist of boats, planes, motor vehicles, or other tangible 154  
personal property operated primarily for the use and enjoyment 155  
of the shareholders or owners; 156

(7) All transactions in which a warranty, maintenance or 157  
service contract, or similar agreement by which the vendor of 158  
the warranty, contract, or agreement agrees to repair or 159  
maintain the tangible personal property of the consumer is or is 160  
to be provided; 161

(8) The transfer of copyrighted motion picture films used 162  
solely for advertising purposes, except that the transfer of 163  
such films for exhibition purposes is not a sale; 164

(9) On and after August 1, 2003, all transactions by which 165  
tangible personal property is or is to be stored, except such 166  
property that the consumer of the storage holds for sale in the 167  
regular course of business; 168

(10) All transactions in which "guaranteed auto 169  
protection" is provided whereby a person promises to pay to the 170  
consumer the difference between the amount the consumer receives 171  
from motor vehicle insurance and the amount the consumer owes to 172  
a person holding title to or a lien on the consumer's motor 173  
vehicle in the event the consumer's motor vehicle suffers a 174  
total loss under the terms of the motor vehicle insurance policy 175  
or is stolen and not recovered, if the protection and its price 176  
are included in the purchase or lease agreement; 177

(11) (a) Except as provided in division (B) (11) (b) of this 178  
section, on and after October 1, 2009, all transactions by which 179  
health care services are paid for, reimbursed, provided, 180  
delivered, arranged for, or otherwise made available by a 181  
medicaid health insuring corporation pursuant to the 182  
corporation's contract with the state. 183

(b) If the centers for medicare and medicaid services of 184  
the United States department of health and human services 185  
determines that the taxation of transactions described in 186  
division (B) (11) (a) of this section constitutes an impermissible 187  
health care-related tax under the "Social Security Act," section 188  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 189  
the medicaid director shall notify the tax commissioner of that 190  
determination. Beginning with the first day of the month 191

following that notification, the transactions described in 192  
division (B) (11) (a) of this section are not sales for the 193  
purposes of this chapter or Chapter 5741. of the Revised Code. 194  
The tax commissioner shall order that the collection of taxes 195  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 196  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 197  
for transactions occurring on or after that date. 198

(12) All transactions by which a specified digital product 199  
is provided for permanent use or less than permanent use, 200  
regardless of whether continued payment is required. 201

Except as provided in this section, "sale" and "selling" 202  
do not include transfers of interest in leased property where 203  
the original lessee and the terms of the original lease 204  
agreement remain unchanged, or professional, insurance, or 205  
personal service transactions that involve the transfer of 206  
tangible personal property as an inconsequential element, for 207  
which no separate charges are made. 208

(C) "Vendor" means the person providing the service or by 209  
whom the transfer effected or license given by a sale is or is 210  
to be made or given and, for sales described in division (B) (3) 211  
(i) of this section, the telecommunications service vendor that 212  
provides the nine hundred telephone service; if two or more 213  
persons are engaged in business at the same place of business 214  
under a single trade name in which all collections on account of 215  
sales by each are made, such persons shall constitute a single 216  
vendor. 217

Physicians, dentists, hospitals, and veterinarians who are 218  
engaged in selling tangible personal property as received from 219  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 220  
articles, are vendors. Veterinarians who are engaged in 221



transferring to others for a consideration drugs, the dispensing 222  
of which does not require an order of a licensed veterinarian or 223  
physician under federal law, are vendors. 224

(D) (1) "Consumer" means the person for whom the service is 225  
provided, to whom the transfer effected or license given by a 226  
sale is or is to be made or given, to whom the service described 227  
in division (B) (3) (f) or (i) of this section is charged, or to 228  
whom the admission is granted. 229

(2) Physicians, dentists, hospitals, and blood banks 230  
operated by nonprofit institutions and persons licensed to 231  
practice veterinary medicine, surgery, and dentistry are 232  
consumers of all tangible personal property and services 233  
purchased by them in connection with the practice of medicine, 234  
dentistry, the rendition of hospital or blood bank service, or 235  
the practice of veterinary medicine, surgery, and dentistry. In 236  
addition to being consumers of drugs administered by them or by 237  
their assistants according to their direction, veterinarians 238  
also are consumers of drugs that under federal law may be 239  
dispensed only by or upon the order of a licensed veterinarian 240  
or physician, when transferred by them to others for a 241  
consideration to provide treatment to animals as directed by the 242  
veterinarian. 243

(3) A person who performs a facility management, or 244  
similar service contract for a contractee is a consumer of all 245  
tangible personal property and services purchased for use in 246  
connection with the performance of such contract, regardless of 247  
whether title to any such property vests in the contractee. The 248  
purchase of such property and services is not subject to the 249  
exception for resale under division (E) (1) of this section. 250

(4) (a) In the case of a person who purchases printed 251

matter for the purpose of distributing it or having it 252  
distributed to the public or to a designated segment of the 253  
public, free of charge, that person is the consumer of that 254  
printed matter, and the purchase of that printed matter for that 255  
purpose is a sale. 256

(b) In the case of a person who produces, rather than 257  
purchases, printed matter for the purpose of distributing it or 258  
having it distributed to the public or to a designated segment 259  
of the public, free of charge, that person is the consumer of 260  
all tangible personal property and services purchased for use or 261  
consumption in the production of that printed matter. That 262  
person is not entitled to claim exemption under division (B) (42) 263  
(f) of section 5739.02 of the Revised Code for any material 264  
incorporated into the printed matter or any equipment, supplies, 265  
or services primarily used to produce the printed matter. 266

(c) The distribution of printed matter to the public or to 267  
a designated segment of the public, free of charge, is not a 268  
sale to the members of the public to whom the printed matter is 269  
distributed or to any persons who purchase space in the printed 270  
matter for advertising or other purposes. 271

(5) A person who makes sales of any of the services listed 272  
in division (B) (3) of this section is the consumer of any 273  
tangible personal property used in performing the service. The 274  
purchase of that property is not subject to the resale exception 275  
under division (E) (1) of this section. 276

(6) A person who engages in highway transportation for 277  
hire is the consumer of all packaging materials purchased by 278  
that person and used in performing the service, except for 279  
packaging materials sold by such person in a transaction 280  
separate from the service. 281

(7) In the case of a transaction for health care services 282  
under division (B) (11) of this section, a medicaid health 283  
insuring corporation is the consumer of such services. The 284  
purchase of such services by a medicaid health insuring 285  
corporation is not subject to the exception for resale under 286  
division (E) (1) of this section or to the exemptions provided 287  
under divisions (B) (12), (18), (19), and (22) of section 5739.02 288  
of the Revised Code. 289

(E) "Retail sale" and "sales at retail" include all sales, 290  
except those in which the purpose of the consumer is to resell 291  
the thing transferred or benefit of the service provided, by a 292  
person engaging in business, in the form in which the same is, 293  
or is to be, received by the person. 294

(F) "Business" includes any activity engaged in by any 295  
person with the object of gain, benefit, or advantage, either 296  
direct or indirect. "Business" does not include the activity of 297  
a person in managing and investing the person's own funds. 298

(G) "Engaging in business" means commencing, conducting, 299  
or continuing in business, and liquidating a business when the 300  
liquidator thereof holds itself out to the public as conducting 301  
such business. Making a casual sale is not engaging in business. 302

(H) (1) (a) "Price," except as provided in divisions (H) (2), 303  
(3), and (4) of this section, means the total amount of 304  
consideration, including cash, credit, property, and services, 305  
for which tangible personal property or services are sold, 306  
leased, or rented, valued in money, whether received in money or 307  
otherwise, without any deduction for any of the following: 308

(i) The vendor's cost of the property sold; 309

(ii) The cost of materials used, labor or service costs, 310

interest, losses, all costs of transportation to the vendor, all	311
taxes imposed on the vendor, including the tax imposed under	312
Chapter 5751. of the Revised Code, and any other expense of the	313
vendor;	314
(iii) Charges by the vendor for any services necessary to	315
complete the sale;	316
(iv) On and after August 1, 2003, delivery charges. As	317
used in this division, "delivery charges" means charges by the	318
vendor for preparation and delivery to a location designated by	319
the consumer of tangible personal property or a service,	320
including transportation, shipping, postage, handling, crating,	321
and packing.	322
(v) Installation charges;	323
(vi) Credit for any trade-in.	324
(b) "Price" includes consideration received by the vendor	325
from a third party, if the vendor actually receives the	326
consideration from a party other than the consumer, and the	327
consideration is directly related to a price reduction or	328
discount on the sale; the vendor has an obligation to pass the	329
price reduction or discount through to the consumer; the amount	330
of the consideration attributable to the sale is fixed and	331
determinable by the vendor at the time of the sale of the item	332
to the consumer; and one of the following criteria is met:	333
(i) The consumer presents a coupon, certificate, or other	334
document to the vendor to claim a price reduction or discount	335
where the coupon, certificate, or document is authorized,	336
distributed, or granted by a third party with the understanding	337
that the third party will reimburse any vendor to whom the	338
coupon, certificate, or document is presented;	339

(ii) The consumer identifies the consumer's self to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group or organization.

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

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

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

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

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

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

(v) The dollar value of a gift card that is not sold by a

vendor or purchased by a consumer and that is redeemed by the 369  
consumer in purchasing tangible personal property or services if 370  
the vendor is not reimbursed and does not receive compensation 371  
from a third party to cover all or part of the gift card value. 372  
For the purposes of this division, a gift card is not sold by a 373  
vendor or purchased by a consumer if it is distributed pursuant 374  
to an awards, loyalty, or promotional program. Past and present 375  
purchases of tangible personal property or services by the 376  
consumer shall not be treated as consideration exchanged for a 377  
gift card. 378

(2) In the case of a sale of any new motor vehicle by a 379  
new motor vehicle dealer, as defined in section 4517.01 of the 380  
Revised Code, in which another motor vehicle is accepted by the 381  
dealer as part of the consideration received, "price" has the 382  
same meaning as in division (H)(1) of this section, reduced by 383  
the credit afforded the consumer by the dealer for the motor 384  
vehicle received in trade. 385

(3) In the case of a sale of any watercraft or outboard 386  
motor by a watercraft dealer licensed in accordance with section 387  
1547.543 of the Revised Code, in which another watercraft, 388  
watercraft and trailer, or outboard motor is accepted by the 389  
dealer as part of the consideration received, "price" has the 390  
same meaning as in division (H)(1) of this section, reduced by 391  
the credit afforded the consumer by the dealer for the 392  
watercraft, watercraft and trailer, or outboard motor received 393  
in trade. As used in this division, "watercraft" includes an 394  
outdrive unit attached to the watercraft. 395

(4) In the case of transactions for health care services 396  
under division (B)(11) of this section, "price" means the amount 397  
of managed care premiums received each month by a medicaid 398

health insuring corporation. 399

(I) "Receipts" means the total amount of the prices of the 400  
sales of vendors, provided that the dollar value of gift cards 401  
distributed pursuant to an awards, loyalty, or promotional 402  
program, and cash discounts allowed and taken on sales at the 403  
time they are consummated are not included, minus any amount 404  
deducted as a bad debt pursuant to section 5739.121 of the 405  
Revised Code. "Receipts" does not include the sale price of 406  
property returned or services rejected by consumers when the 407  
full sale price and tax are refunded either in cash or by 408  
credit. 409

(J) "Place of business" means any location at which a 410  
person engages in business. 411

(K) "Premises" includes any real property or portion 412  
thereof upon which any person engages in selling tangible 413  
personal property at retail or making retail sales and also 414  
includes any real property or portion thereof designated for, or 415  
devoted to, use in conjunction with the business engaged in by 416  
such person. 417

(L) "Casual sale" means a sale of an item of tangible 418  
personal property that was obtained by the person making the 419  
sale, through purchase or otherwise, for the person's own use 420  
and was previously subject to any state's taxing jurisdiction on 421  
its sale or use, and includes such items acquired for the 422  
seller's use that are sold by an auctioneer employed directly by 423  
the person for such purpose, provided the location of such sales 424  
is not the auctioneer's permanent place of business. As used in 425  
this division, "permanent place of business" includes any 426  
location where such auctioneer has conducted more than two 427  
auctions during the year. 428

(M) "Hotel" means every establishment kept, used, 429  
maintained, advertised, or held out to the public to be a place 430  
where sleeping accommodations are offered to guests, in which 431  
five or more rooms are used for the accommodation of such 432  
guests, whether the rooms are in one or several structures, 433  
except as otherwise provided in division (G) of section 5739.09 434  
of the Revised Code. 435

(N) "Transient guests" means persons occupying a room or 436  
rooms for sleeping accommodations for less than thirty 437  
consecutive days. 438

(O) "Making retail sales" means the effecting of 439  
transactions wherein one party is obligated to pay the price and 440  
the other party is obligated to provide a service or to transfer 441  
title to or possession of the item sold. "Making retail sales" 442  
does not include the preliminary acts of promoting or soliciting 443  
the retail sales, other than the distribution of printed matter 444  
which displays or describes and prices the item offered for 445  
sale, nor does it include delivery of a predetermined quantity 446  
of tangible personal property or transportation of property or 447  
personnel to or from a place where a service is performed. 448

(P) "Used directly in the rendition of a public utility 449  
service" means that property that is to be incorporated into and 450  
will become a part of the consumer's production, transmission, 451  
transportation, or distribution system and that retains its 452  
classification as tangible personal property after such 453  
incorporation; fuel or power used in the production, 454  
transmission, transportation, or distribution system; and 455  
tangible personal property used in the repair and maintenance of 456  
the production, transmission, transportation, or distribution 457  
system, including only such motor vehicles as are specially 458



designed and equipped for such use. Tangible personal property 459  
and services used primarily in providing highway transportation 460  
for hire are not used directly in the rendition of a public 461  
utility service. In this definition, "public utility" includes a 462  
citizen of the United States holding, and required to hold, a 463  
certificate of public convenience and necessity issued under 49 464  
U.S.C. 41102. 465

(Q) "Refining" means removing or separating a desirable 466  
product from raw or contaminated materials by distillation or 467  
physical, mechanical, or chemical processes. 468

(R) "Assembly" and "assembling" mean attaching or fitting 469  
together parts to form a product, but do not include packaging a 470  
product. 471

(S) "Manufacturing operation" means a process in which 472  
materials are changed, converted, or transformed into a 473  
different state or form from which they previously existed and 474  
includes refining materials, assembling parts, and preparing raw 475  
materials and parts by mixing, measuring, blending, or otherwise 476  
committing such materials or parts to the manufacturing process. 477  
"Manufacturing operation" does not include packaging. 478

(T) "Fiscal officer" means, with respect to a regional 479  
transit authority, the secretary-treasurer thereof, and with 480  
respect to a county that is a transit authority, the fiscal 481  
officer of the county transit board if one is appointed pursuant 482  
to section 306.03 of the Revised Code or the county auditor if 483  
the board of county commissioners operates the county transit 484  
system. 485

(U) "Transit authority" means a regional transit authority 486  
created pursuant to section 306.31 of the Revised Code or a 487

county in which a county transit system is created pursuant to 488  
section 306.01 of the Revised Code. For the purposes of this 489  
chapter, a transit authority must extend to at least the entire 490  
area of a single county. A transit authority that includes 491  
territory in more than one county must include all the area of 492  
the most populous county that is a part of such transit 493  
authority. County population shall be measured by the most 494  
recent census taken by the United States census bureau. 495

(V) "Legislative authority" means, with respect to a 496  
regional transit authority, the board of trustees thereof, and 497  
with respect to a county that is a transit authority, the board 498  
of county commissioners. 499

(W) "Territory of the transit authority" means all of the 500  
area included within the territorial boundaries of a transit 501  
authority as they from time to time exist. Such territorial 502  
boundaries must at all times include all the area of a single 503  
county or all the area of the most populous county that is a 504  
part of such transit authority. County population shall be 505  
measured by the most recent census taken by the United States 506  
census bureau. 507

(X) "Providing a service" means providing or furnishing 508  
anything described in division (B) (3) of this section for 509  
consideration. 510

(Y) (1) (a) "Automatic data processing" means processing of 511  
others' data, including keypunching or similar data entry 512  
services together with verification thereof, or providing access 513  
to computer equipment for the purpose of processing data. 514

(b) "Computer services" means providing services 515  
consisting of specifying computer hardware configurations and 516

evaluating technical processing characteristics, computer 517  
programming, and training of computer programmers and operators, 518  
provided in conjunction with and to support the sale, lease, or 519  
operation of taxable computer equipment or systems. 520

(c) "Electronic information services" means providing 521  
access to computer equipment by means of telecommunications 522  
equipment for the purpose of either of the following: 523

(i) Examining or acquiring data stored in or accessible to 524  
the computer equipment; 525

(ii) Placing data into the computer equipment to be 526  
retrieved by designated recipients with access to the computer 527  
equipment. 528

For transactions occurring on or after the effective date 529  
of the amendment of this section by H.B. 157 of the 127th 530  
general assembly, December 21, 2007, "electronic information 531  
services" does not include electronic publishing as defined in 532  
division (LLL) of this section. 533

(d) "Automatic data processing, computer services, or 534  
electronic information services" shall not include personal or 535  
professional services. 536

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 537  
section, "personal and professional services" means all services 538  
other than automatic data processing, computer services, or 539  
electronic information services, including but not limited to: 540

(a) Accounting and legal services such as advice on tax 541  
matters, asset management, budgetary matters, quality control, 542  
information security, and auditing and any other situation where 543  
the service provider receives data or information and studies, 544  
alters, analyzes, interprets, or adjusts such material; 545

(b) Analyzing business policies and procedures;	546
(c) Identifying management information needs;	547
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	548 549 550
(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;	551 552 553 554 555
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	556 557 558
(g) Testing of business procedures;	559
(h) Training personnel in business procedure applications;	560
(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;	561 562 563 564 565 566 567
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	568 569
(k) Providing digital advertising services.	570
The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing or computer services.	571 572

(Z) "Highway transportation for hire" means the 573  
transportation of personal property belonging to others for 574  
consideration by any of the following: 575

(1) The holder of a permit or certificate issued by this 576  
state or the United States authorizing the holder to engage in 577  
transportation of personal property belonging to others for 578  
consideration over or on highways, roadways, streets, or any 579  
similar public thoroughfare; 580

(2) A person who engages in the transportation of personal 581  
property belonging to others for consideration over or on 582  
highways, roadways, streets, or any similar public thoroughfare 583  
but who could not have engaged in such transportation on 584  
December 11, 1985, unless the person was the holder of a permit 585  
or certificate of the types described in division (Z)(1) of this 586  
section; 587

(3) A person who leases a motor vehicle to and operates it 588  
for a person described by division (Z)(1) or (2) of this 589  
section. 590

(AA) (1) "Telecommunications service" means the electronic 591  
transmission, conveyance, or routing of voice, data, audio, 592  
video, or any other information or signals to a point, or 593  
between or among points. "Telecommunications service" includes 594  
such transmission, conveyance, or routing in which computer 595  
processing applications are used to act on the form, code, or 596  
protocol of the content for purposes of transmission, 597  
conveyance, or routing without regard to whether the service is 598  
referred to as voice-over internet protocol service or is 599  
classified by the federal communications commission as enhanced 600  
or value-added. "Telecommunications service" does not include 601  
any of the following: 602

(a) Data processing and information services that allow 603  
data to be generated, acquired, stored, processed, or retrieved 604  
and delivered by an electronic transmission to a consumer where 605  
the consumer's primary purpose for the underlying transaction is 606  
the processed data or information; 607

(b) Installation or maintenance of wiring or equipment on 608  
a customer's premises; 609

(c) Tangible personal property; 610

(d) Advertising, including directory advertising; 611

(e) Billing and collection services provided to third 612  
parties; 613

(f) Internet access service; 614

(g) Radio and television audio and video programming 615  
services, regardless of the medium, including the furnishing of 616  
transmission, conveyance, and routing of such services by the 617  
programming service provider. Radio and television audio and 618  
video programming services include, but are not limited to, 619  
cable service, as defined in 47 U.S.C. 522(6), and audio and 620  
video programming services delivered by commercial mobile radio 621  
service providers, as defined in 47 C.F.R. 20.3; 622

(h) Ancillary service; 623

(i) Digital products delivered electronically, including 624  
software, music, video, reading materials, or ring tones. 625

(2) "Ancillary service" means a service that is associated 626  
with or incidental to the provision of telecommunications 627  
service, including conference bridging service, detailed 628  
telecommunications billing service, directory assistance, 629  
vertical service, and voice mail service. As used in this 630

division: 631

(a) "Conference bridging service" means an ancillary 632  
service that links two or more participants of an audio or video 633  
conference call, including providing a telephone number. 634  
"Conference bridging service" does not include 635  
telecommunications services used to reach the conference bridge. 636

(b) "Detailed telecommunications billing service" means an 637  
ancillary service of separately stating information pertaining 638  
to individual calls on a customer's billing statement. 639

(c) "Directory assistance" means an ancillary service of 640  
providing telephone number or address information. 641

(d) "Vertical service" means an ancillary service that is 642  
offered in connection with one or more telecommunications 643  
services, which offers advanced calling features that allow 644  
customers to identify callers and manage multiple calls and call 645  
connections, including conference bridging service. 646

(e) "Voice mail service" means an ancillary service that 647  
enables the customer to store, send, or receive recorded 648  
messages. "Voice mail service" does not include any vertical 649  
services that the customer may be required to have in order to 650  
utilize the voice mail service. 651

(3) "900 service" means an inbound toll telecommunications 652  
service purchased by a subscriber that allows the subscriber's 653  
customers to call in to the subscriber's prerecorded 654  
announcement or live service, and which is typically marketed 655  
under the name "900 service" and any subsequent numbers 656  
designated by the federal communications commission. "900 657  
service" does not include the charge for collection services 658  
provided by the seller of the telecommunications service to the 659

subscriber, or services or products sold by the subscriber to 660  
the subscriber's customer. 661

(4) "Prepaid calling service" means the right to access 662  
exclusively telecommunications services, which must be paid for 663  
in advance and which enables the origination of calls using an 664  
access number or authorization code, whether manually or 665  
electronically dialed, and that is sold in predetermined units 666  
or dollars of which the number declines with use in a known 667  
amount. 668

(5) "Prepaid wireless calling service" means a 669  
telecommunications service that provides the right to utilize 670  
mobile telecommunications service as well as other non- 671  
telecommunications services, including the download of digital 672  
products delivered electronically, and content and ancillary 673  
services, that must be paid for in advance and that is sold in 674  
predetermined units or dollars of which the number declines with 675  
use in a known amount. 676

(6) "Value-added non-voice data service" means a 677  
telecommunications service in which computer processing 678  
applications are used to act on the form, content, code, or 679  
protocol of the information or data primarily for a purpose 680  
other than transmission, conveyance, or routing. 681

(7) "Coin-operated telephone service" means a 682  
telecommunications service paid for by inserting money into a 683  
telephone accepting direct deposits of money to operate. 684

(8) "Customer" has the same meaning as in section 5739.034 685  
of the Revised Code. 686

(BB) "Laundry and dry cleaning services" means removing 687  
soil or dirt from towels, linens, articles of clothing, or other 688



fabric items that belong to others and supplying towels, linens, 689  
articles of clothing, or other fabric items. "Laundry and dry 690  
cleaning services" does not include the provision of self- 691  
service facilities for use by consumers to remove soil or dirt 692  
from towels, linens, articles of clothing, or other fabric 693  
items. 694

(CC) "Magazines distributed as controlled circulation 695  
publications" means magazines containing at least twenty-four 696  
pages, at least twenty-five per cent editorial content, issued 697  
at regular intervals four or more times a year, and circulated 698  
without charge to the recipient, provided that such magazines 699  
are not owned or controlled by individuals or business concerns 700  
which conduct such publications as an auxiliary to, and 701  
essentially for the advancement of the main business or calling 702  
of, those who own or control them. 703

(DD) "Landscaping and lawn care service" means the 704  
services of planting, seeding, sodding, removing, cutting, 705  
trimming, pruning, mulching, aerating, applying chemicals, 706  
watering, fertilizing, and providing similar services to 707  
establish, promote, or control the growth of trees, shrubs, 708  
flowers, grass, ground cover, and other flora, or otherwise 709  
maintaining a lawn or landscape grown or maintained by the owner 710  
for ornamentation or other nonagricultural purpose. However, 711  
"landscaping and lawn care service" does not include the 712  
providing of such services by a person who has less than five 713  
thousand dollars in sales of such services during the calendar 714  
year. 715

(EE) "Private investigation and security service" means 716  
the performance of any activity for which the provider of such 717  
service is required to be licensed pursuant to Chapter 4749. of 718

the Revised Code, or would be required to be so licensed in 719  
performing such services in this state, and also includes the 720  
services of conducting polygraph examinations and of monitoring 721  
or overseeing the activities on or in, or the condition of, the 722  
consumer's home, business, or other facility by means of 723  
electronic or similar monitoring devices. "Private investigation 724  
and security service" does not include special duty services 725  
provided by off-duty police officers, deputy sheriffs, and other 726  
peace officers regularly employed by the state or a political 727  
subdivision. 728

(FF) "Information services" means providing conversation, 729  
giving consultation or advice, playing or making a voice or 730  
other recording, making or keeping a record of the number of 731  
callers, and any other service provided to a consumer by means 732  
of a nine hundred telephone call, except when the nine hundred 733  
telephone call is the means by which the consumer makes a 734  
contribution to a recognized charity. 735

(GG) "Research and development" means designing, creating, 736  
or formulating new or enhanced products, equipment, or 737  
manufacturing processes, and also means conducting scientific or 738  
technological inquiry and experimentation in the physical 739  
sciences with the goal of increasing scientific knowledge which 740  
may reveal the bases for new or enhanced products, equipment, or 741  
manufacturing processes. 742

(HH) "Qualified research and development equipment" means 743  
capitalized tangible personal property, and leased personal 744  
property that would be capitalized if purchased, used by a 745  
person primarily to perform research and development. Tangible 746  
personal property primarily used in testing, as defined in 747  
division (A) (4) of section 5739.011 of the Revised Code, or used 748

for recording or storing test results, is not qualified research 749  
and development equipment unless such property is primarily used 750  
by the consumer in testing the product, equipment, or 751  
manufacturing process being created, designed, or formulated by 752  
the consumer in the research and development activity or in 753  
recording or storing such test results. 754

(II) "Building maintenance and janitorial service" means 755  
cleaning the interior or exterior of a building and any tangible 756  
personal property located therein or thereon, including any 757  
services incidental to such cleaning for which no separate 758  
charge is made. However, "building maintenance and janitorial 759  
service" does not include the providing of such service by a 760  
person who has less than five thousand dollars in sales of such 761  
service during the calendar year. As used in this division, 762  
"cleaning" does not include sanitation services necessary for an 763  
establishment described in 21 U.S.C. 608 to comply with rules 764  
and regulations adopted pursuant to that section. 765

(JJ) "Employment service" means providing or supplying 766  
personnel, on a temporary or long-term basis, to perform work or 767  
labor under the supervision or control of another, when the 768  
personnel so provided or supplied receive their wages, salary, 769  
or other compensation from the provider or supplier of the 770  
employment service or from a third party that provided or 771  
supplied the personnel to the provider or supplier. "Employment 772  
service" does not include: 773

(1) Acting as a contractor or subcontractor, where the 774  
personnel performing the work are not under the direct control 775  
of the purchaser. 776

(2) Medical and health care services. 777

(3) Supplying personnel to a purchaser pursuant to a 778  
contract of at least one year between the service provider and 779  
the purchaser that specifies that each employee covered under 780  
the contract is assigned to the purchaser on a permanent basis. 781

(4) Transactions between members of an affiliated group, 782  
as defined in division (B) (3) (e) of this section. 783

(5) Transactions where the personnel so provided or 784  
supplied by a provider or supplier to a purchaser of an 785  
employment service are then provided or supplied by that 786  
purchaser to a third party as an employment service, except 787  
"employment service" does include the transaction between that 788  
purchaser and the third party. 789

(KK) "Employment placement service" means locating or 790  
finding employment for a person or finding or locating an 791  
employee to fill an available position. 792

(LL) "Exterminating service" means eradicating or 793  
attempting to eradicate vermin infestations from a building or 794  
structure, or the area surrounding a building or structure, and 795  
includes activities to inspect, detect, or prevent vermin 796  
infestation of a building or structure. 797

(MM) "Physical fitness facility service" means all 798  
transactions by which a membership is granted, maintained, or 799  
renewed, including initiation fees, membership dues, renewal 800  
fees, monthly minimum fees, and other similar fees and dues, by 801  
a physical fitness facility such as an athletic club, health 802  
spa, or gymnasium, which entitles the member to use the facility 803  
for physical exercise. 804

(NN) "Recreation and sports club service" means all 805  
transactions by which a membership is granted, maintained, or 806

renewed, including initiation fees, membership dues, renewal 807  
fees, monthly minimum fees, and other similar fees and dues, by 808  
a recreation and sports club, which entitles the member to use 809  
the facilities of the organization. "Recreation and sports club" 810  
means an organization that has ownership of, or controls or 811  
leases on a continuing, long-term basis, the facilities used by 812  
its members and includes an aviation club, gun or shooting club, 813  
yacht club, card club, swimming club, tennis club, golf club, 814  
country club, riding club, amateur sports club, or similar 815  
organization. 816

(OO) "Livestock" means farm animals commonly raised for 817  
food, food production, or other agricultural purposes, 818  
including, but not limited to, cattle, sheep, goats, swine, 819  
poultry, and captive deer. "Livestock" does not include 820  
invertebrates, amphibians, reptiles, domestic pets, animals for 821  
use in laboratories or for exhibition, or other animals not 822  
commonly raised for food or food production. 823

(PP) "Livestock structure" means a building or structure 824  
used exclusively for the housing, raising, feeding, or 825  
sheltering of livestock, and includes feed storage or handling 826  
structures and structures for livestock waste handling. 827

(QQ) "Horticulture" means the growing, cultivation, and 828  
production of flowers, fruits, herbs, vegetables, sod, 829  
mushrooms, and nursery stock. As used in this division, "nursery 830  
stock" has the same meaning as in section 927.51 of the Revised 831  
Code. 832

(RR) "Horticulture structure" means a building or 833  
structure used exclusively for the commercial growing, raising, 834  
or overwintering of horticultural products, and includes the 835  
area used for stocking, storing, and packing horticultural 836

products when done in conjunction with the production of those 837  
products. 838

(SS) "Newspaper" means an unbound publication bearing a 839  
title or name that is regularly published, at least as 840  
frequently as biweekly, and distributed from a fixed place of 841  
business to the public in a specific geographic area, and that 842  
contains a substantial amount of news matter of international, 843  
national, or local events of interest to the general public. 844

(TT) "Professional racing team" means a person that 845  
employs at least twenty full-time employees for the purpose of 846  
conducting a motor vehicle racing business for profit. The 847  
person must conduct the business with the purpose of racing one 848  
or more motor racing vehicles in at least ten competitive 849  
professional racing events each year that comprise all or part 850  
of a motor racing series sanctioned by one or more motor racing 851  
sanctioning organizations. A "motor racing vehicle" means a 852  
vehicle for which the chassis, engine, and parts are designed 853  
exclusively for motor racing, and does not include a stock or 854  
production model vehicle that may be modified for use in racing. 855  
For the purposes of this division: 856

(1) A "competitive professional racing event" is a motor 857  
vehicle racing event sanctioned by one or more motor racing 858  
sanctioning organizations, at which aggregate cash prizes in 859  
excess of eight hundred thousand dollars are awarded to the 860  
competitors. 861

(2) "Full-time employee" means an individual who is 862  
employed for consideration for thirty-five or more hours a week, 863  
or who renders any other standard of service generally accepted 864  
by custom or specified by contract as full-time employment. 865

(UU) (1) "Lease" or "rental" means any transfer of the 866  
possession or control of tangible personal property for a fixed 867  
or indefinite term, for consideration. "Lease" or "rental" 868  
includes future options to purchase or extend, and agreements 869  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 870  
trailers where the amount of consideration may be increased or 871  
decreased by reference to the amount realized upon the sale or 872  
disposition of the property. "Lease" or "rental" does not 873  
include: 874

(a) A transfer of possession or control of tangible 875  
personal property under a security agreement or a deferred 876  
payment plan that requires the transfer of title upon completion 877  
of the required payments; 878

(b) A transfer of possession or control of tangible 879  
personal property under an agreement that requires the transfer 880  
of title upon completion of required payments and payment of an 881  
option price that does not exceed the greater of one hundred 882  
dollars or one per cent of the total required payments; 883

(c) Providing tangible personal property along with an 884  
operator for a fixed or indefinite period of time, if the 885  
operator is necessary for the property to perform as designed. 886  
For purposes of this division, the operator must do more than 887  
maintain, inspect, or set up the tangible personal property. 888

(2) "Lease" and "rental," as defined in division (UU) of 889  
this section, shall not apply to leases or rentals that exist 890  
before June 26, 2003. 891

(3) "Lease" and "rental" have the same meaning as in 892  
division (UU) (1) of this section regardless of whether a 893  
transaction is characterized as a lease or rental under 894

generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws. 895  
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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. 898  
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(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 906  
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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. 908  
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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. 918  
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(ZZ) "Direct mail" means printed material delivered or 924  
distributed by United States mail or other delivery service to a 925  
mass audience or to addressees on a mailing list provided by the 926  
consumer or at the direction of the consumer when the cost of 927  
the items are not billed directly to the recipients. "Direct 928  
mail" includes tangible personal property supplied directly or 929  
indirectly by the consumer to the direct mail vendor for 930  
inclusion in the package containing the printed material. 931  
"Direct mail" does not include multiple items of printed 932  
material delivered to a single address. 933

(AAA) "Computer" means an electronic device that accepts 934  
information in digital or similar form and manipulates it for a 935  
result based on a sequence of instructions. 936

(BBB) "Computer software" means a set of coded 937  
instructions designed to cause a computer or automatic data 938  
processing equipment to perform a task. 939

(CCC) "Delivered electronically" means delivery of 940  
computer software from the seller to the purchaser by means 941  
other than tangible storage media. 942

(DDD) "Prewritten computer software" means computer 943  
software, including prewritten upgrades, that is not designed 944  
and developed by the author or other creator to the 945  
specifications of a specific purchaser. The combining of two or 946  
more prewritten computer software programs or prewritten 947  
portions thereof does not cause the combination to be other than 948  
prewritten computer software. "Prewritten computer software" 949  
includes software designed and developed by the author or other 950  
creator to the specifications of a specific purchaser when it is 951  
sold to a person other than the purchaser. If a person modifies 952  
or enhances computer software of which the person is not the 953

author or creator, the person shall be deemed to be the author 954  
or creator only of such person's modifications or enhancements. 955  
Prewritten computer software or a prewritten portion thereof 956  
that is modified or enhanced to any degree, where such 957  
modification or enhancement is designed and developed to the 958  
specifications of a specific purchaser, remains prewritten 959  
computer software; provided, however, that where there is a 960  
reasonable, separately stated charge or an invoice or other 961  
statement of the price given to the purchaser for the 962  
modification or enhancement, the modification or enhancement 963  
shall not constitute prewritten computer software. 964

(EEE) (1) "Food" means substances, whether in liquid, 965  
concentrated, solid, frozen, dried, or dehydrated form, that are 966  
sold for ingestion or chewing by humans and are consumed for 967  
their taste or nutritional value. "Food" does not include 968  
alcoholic beverages, dietary supplements, soft drinks, or 969  
tobacco. 970

(2) As used in division (EEE) (1) of this section: 971

(a) "Alcoholic beverages" means beverages that are 972  
suitable for human consumption and contain one-half of one per 973  
cent or more of alcohol by volume. 974

(b) "Dietary supplements" means any product, other than 975  
tobacco, that is intended to supplement the diet and that is 976  
intended for ingestion in tablet, capsule, powder, softgel, 977  
gelcap, or liquid form, or, if not intended for ingestion in 978  
such a form, is not represented as conventional food for use as 979  
a sole item of a meal or of the diet; that is required to be 980  
labeled as a dietary supplement, identifiable by the "supplement 981  
facts" box found on the label, as required by 21 C.F.R. 101.36; 982  
and that contains one or more of the following dietary 983

ingredients:	984
(i) A vitamin;	985
(ii) A mineral;	986
(iii) An herb or other botanical;	987
(iv) An amino acid;	988
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	989 990
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section.	991 992 993
(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.	994 995 996 997 998
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	999 1000
(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.	1001 1002 1003 1004 1005 1006 1007 1008 1009
(GGG) "Prescription" means an order, formula, or recipe	1010

issued in any form of oral, written, electronic, or other means 1011  
of transmission by a duly licensed practitioner authorized by 1012  
the laws of this state to issue a prescription. 1013

(HHH) "Durable medical equipment" means equipment, 1014  
including repair and replacement parts for such equipment, that 1015  
can withstand repeated use, is primarily and customarily used to 1016  
serve a medical purpose, generally is not useful to a person in 1017  
the absence of illness or injury, and is not worn in or on the 1018  
body. "Durable medical equipment" does not include mobility 1019  
enhancing equipment. 1020

(III) "Mobility enhancing equipment" means equipment, 1021  
including repair and replacement parts for such equipment, that 1022  
is primarily and customarily used to provide or increase the 1023  
ability to move from one place to another and is appropriate for 1024  
use either in a home or a motor vehicle, that is not generally 1025  
used by persons with normal mobility, and that does not include 1026  
any motor vehicle or equipment on a motor vehicle normally 1027  
provided by a motor vehicle manufacturer. "Mobility enhancing 1028  
equipment" does not include durable medical equipment. 1029

(JJJ) "Prosthetic device" means a replacement, corrective, 1030  
or supportive device, including repair and replacement parts for 1031  
the device, worn on or in the human body to artificially replace 1032  
a missing portion of the body, prevent or correct physical 1033  
deformity or malfunction, or support a weak or deformed portion 1034  
of the body. As used in this division, "prosthetic device" does 1035  
not include corrective eyeglasses, contact lenses, or dental 1036  
prosthesis. 1037

(KKK) (1) "Fractional aircraft ownership program" means a 1038  
program in which persons within an affiliated group sell and 1039  
manage fractional ownership program aircraft, provided that at 1040

least one hundred airworthy aircraft are operated in the program 1041  
and the program meets all of the following criteria: 1042

(a) Management services are provided by at least one 1043  
program manager within an affiliated group on behalf of the 1044  
fractional owners. 1045

(b) Each program aircraft is owned or possessed by at 1046  
least one fractional owner. 1047

(c) Each fractional owner owns or possesses at least a 1048  
one-sixteenth interest in at least one fixed-wing program 1049  
aircraft. 1050

(d) A dry-lease aircraft interchange arrangement is in 1051  
effect among all of the fractional owners. 1052

(e) Multi-year program agreements are in effect regarding 1053  
the fractional ownership, management services, and dry-lease 1054  
aircraft interchange arrangement aspects of the program. 1055

(2) As used in division (KKK)(1) of this section: 1056

(a) "Affiliated group" has the same meaning as in division 1057  
(B)(3)(e) of this section. 1058

(b) "Fractional owner" means a person that owns or 1059  
possesses at least a one-sixteenth interest in a program 1060  
aircraft and has entered into the agreements described in 1061  
division (KKK)(1)(e) of this section. 1062

(c) "Fractional ownership program aircraft" or "program 1063  
aircraft" means a turbojet aircraft that is owned or possessed 1064  
by a fractional owner and that has been included in a dry-lease 1065  
aircraft interchange arrangement and agreement under divisions 1066  
(KKK)(1)(d) and (e) of this section, or an aircraft a program 1067  
manager owns or possesses primarily for use in a fractional 1068

aircraft ownership program. 1069

(d) "Management services" means administrative and 1070  
aviation support services furnished under a fractional aircraft 1071  
ownership program in accordance with a management services 1072  
agreement under division (KKK) (1) (e) of this section, and 1073  
offered by the program manager to the fractional owners, 1074  
including, at a minimum, the establishment and implementation of 1075  
safety guidelines; the coordination of the scheduling of the 1076  
program aircraft and crews; program aircraft maintenance; 1077  
program aircraft insurance; crew training for crews employed, 1078  
furnished, or contracted by the program manager or the 1079  
fractional owner; the satisfaction of record-keeping 1080  
requirements; and the development and use of an operations 1081  
manual and a maintenance manual for the fractional aircraft 1082  
ownership program. 1083

(e) "Program manager" means the person that offers 1084  
management services to fractional owners pursuant to a 1085  
management services agreement under division (KKK) (1) (e) of this 1086  
section. 1087

(LLL) "Electronic publishing" means providing access to 1088  
one or more of the following primarily for business customers, 1089  
including the federal government or a state government or a 1090  
political subdivision thereof, to conduct research: news; 1091  
business, financial, legal, consumer, or credit materials; 1092  
editorials, columns, reader commentary, or features; photos or 1093  
images; archival or research material; legal notices, identity 1094  
verification, or public records; scientific, educational, 1095  
instructional, technical, professional, trade, or other literary 1096  
materials; or other similar information which has been gathered 1097  
and made available by the provider to the consumer in an 1098

electronic format. Providing electronic publishing includes the 1099  
functions necessary for the acquisition, formatting, editing, 1100  
storage, and dissemination of data or information that is the 1101  
subject of a sale. 1102

(MMM) "Medicaid health insuring corporation" means a 1103  
health insuring corporation that holds a certificate of 1104  
authority under Chapter 1751. of the Revised Code and is under 1105  
contract with the department of ~~job and family services~~ medicaid 1106  
pursuant to section ~~5111.17~~ 5167.10 of the Revised Code. 1107

(NNN) "Managed care premium" means any premium, 1108  
capitation, or other payment a medicaid health insuring 1109  
corporation receives for providing or arranging for the 1110  
provision of health care services to its members or enrollees 1111  
residing in this state. 1112

(OOO) "Captive deer" means deer and other cervidae that 1113  
have been legally acquired, or their offspring, that are 1114  
privately owned for agricultural or farming purposes. 1115

(PPP) "Gift card" means a document, card, certificate, or 1116  
other record, whether tangible or intangible, that may be 1117  
redeemed by a consumer for a dollar value when making a purchase 1118  
of tangible personal property or services. 1119

(QQQ) "Specified digital product" means an electronically 1120  
transferred digital audiovisual work, digital audio work, or 1121  
digital book. 1122

As used in division (QQQ) of this section: 1123

(1) "Digital audiovisual work" means a series of related 1124  
images that, when shown in succession, impart an impression of 1125  
motion, together with accompanying sounds, if any. 1126

(2) "Digital audio work" means a work that results from 1127  
the fixation of a series of musical, spoken, or other sounds, 1128  
including digitized sound files that are downloaded onto a 1129  
device and that may be used to alert the customer with respect 1130  
to a communication. 1131

(3) "Digital book" means a work that is generally 1132  
recognized in the ordinary and usual sense as a book. 1133

(4) "Electronically transferred" means obtained by the 1134  
purchaser by means other than tangible storage media. 1135

(RRR) "Digital advertising services" means providing 1136  
access, by means of telecommunications equipment, to computer 1137  
equipment that is used to enter, upload, download, review, 1138  
manipulate, store, add, or delete data for the purpose of 1139  
electronically displaying, delivering, placing, or transferring 1140  
promotional advertisements to potential customers about products 1141  
or services or about industry or business brands. 1142

(SSS) "Municipal gas utility" means a municipal 1143  
corporation that owns or operates a system for the distribution 1144  
of natural gas. 1145

**Section 2.** That existing section 5739.01 of the Revised 1146  
Code is hereby repealed. 1147

**Section 3.** The amendment by this act of section 5739.01 of 1148  
the Revised Code applies beginning on the first day of the first 1149  
July after this act takes effect. 1150

**Section 4.** Section 5739.01 of the Revised Code is 1151  
presented in this act as a composite of the section as amended 1152  
by both Sub. H.B. 390 and H.B. 466 of the 131st General 1153  
Assembly. The General Assembly, applying the principle stated in 1154  
division (B) of section 1.52 of the Revised Code that amendments 1155



are to be harmonized if reasonably capable of simultaneous	1156
operation, finds that the composite is the resulting version of	1157
the section in effect prior to the effective date of the section	1158
as presented in this act.	1159