

As Reported by the Senate Ways and Means Committee

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SENATORS Blessing, Mead, Amstutz, DiDonato, McLin, Spada, Jordan

A B I L L

To amend section 5739.02 of the Revised Code to exempt
from the sales and use tax items used to assist
handicapped persons in accessing or operating motor
vehicles or to modify motor vehicles for the
transportation of wheelchairs.

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

Section 1. That section 5739.02 of the Revised Code be
amended to read as follows:

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Sec. 5739.02. For the purpose of providing revenue with which
to meet the needs of the state, for the use of the general revenue
fund of the state, for the purpose of securing a thorough and
efficient system of common schools throughout the state, for the
purpose of affording revenues, in addition to those from general

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property taxes, permitted under constitutional limitations, and 13
from other sources, for the support of local governmental 14
functions, and for the purpose of reimbursing the state for the 15
expense of administering this chapter, an excise tax is hereby 16
levied on each retail sale made in this state. 17

(A) The tax shall be collected pursuant to the schedules in 18
section 5739.025 of the Revised Code. 19

The tax applies and is collectible when the sale is made, 20
regardless of the time when the price is paid or delivered. 21

In the case of a sale, the price of which consists in whole 22
or in part of rentals for the use of the thing transferred, the 23
tax, as regards such rentals, shall be measured by the 24
installments thereof. 25

In the case of a sale of a service defined under division 26
(MM) or (NN) of section 5739.01 of the Revised Code, the price of 27
which consists in whole or in part of a membership for the receipt 28
of the benefit of the service, the tax applicable to the sale 29
shall be measured by the installments thereof. 30

(B) The tax does not apply to the following: 31

(1) Sales to the state or any of its political subdivisions, 32
or to any other state or its political subdivisions if the laws of 33
that state exempt from taxation sales made to this state and its 34
political subdivisions; 35

(2) Sales of food for human consumption off the premises 36
where sold; 37

(3) Sales of food sold to students only in a cafeteria, 38
dormitory, fraternity, or sorority maintained in a private, 39
public, or parochial school, college, or university; 40

(4) Sales of newspapers, and of magazine subscriptions 41
shipped by second class mail, and sales or transfers of magazines 42

distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit

organizations operated exclusively for charitable purposes as
defined in division (B)(12) of this section, provided that the
number of days on which such tangible personal property or
services, other than items never subject to the tax, are sold does
not exceed six in any calendar year. If the number of days on
which such sales are made exceeds six in any calendar year, the
church or organization shall be considered to be engaged in
business and all subsequent sales by it shall be subject to the
tax. In counting the number of days, all sales by groups within a
church or within an organization shall be considered to be sales
of that church or organization, except that sales made by separate
student clubs and other groups of students of a primary or
secondary school, and sales made by a parent-teacher association,
booster group, or similar organization that raises money to
support or fund curricular or extracurricular activities of a
primary or secondary school, shall not be considered to be sales
of such school, and sales by each such club, group, association,
or organization shall be counted separately for purposes of the
six-day limitation. This division does not apply to sales by a
noncommercial educational radio or television broadcasting
station.

(10) Sales not within the taxing power of this state under
the Constitution of the United States;

(11) The transportation of persons or property, unless the
transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to
churches, to organizations exempt from taxation under section
501(c)(3) of the Internal Revenue Code of 1986, and to any other
nonprofit organizations operated exclusively for charitable
purposes in this state, no part of the net income of which inures
to the benefit of any private shareholder or individual, and no
substantial part of the activities of which consists of carrying

on propaganda or otherwise attempting to influence legislation; 106
sales to offices administering one or more homes for the aged or 107
one or more hospital facilities exempt under section 140.08 of the 108
Revised Code; and sales to organizations described in division (D) 109
of section 5709.12 of the Revised Code. 110

"Charitable purposes" means the relief of poverty; the 111
improvement of health through the alleviation of illness, disease, 112
or injury; the operation of an organization exclusively for the 113
provision of professional, laundry, printing, and purchasing 114
services to hospitals or charitable institutions; the operation of 115
a home for the aged, as defined in section 5701.13 of the Revised 116
Code; the operation of a radio or television broadcasting station 117
that is licensed by the federal communications commission as a 118
noncommercial educational radio or television station; the 119
operation of a nonprofit animal adoption service or a county 120
humane society; the promotion of education by an institution of 121
learning that maintains a faculty of qualified instructors, 122
teaches regular continuous courses of study, and confers a 123
recognized diploma upon completion of a specific curriculum; the 124
operation of a parent-teacher association, booster group, or 125
similar organization primarily engaged in the promotion and 126
support of the curricular or extracurricular activities of a 127
primary or secondary school; the operation of a community or area 128
center in which presentations in music, dramatics, the arts, and 129
related fields are made in order to foster public interest and 130
education therein; the production of performances in music, 131
dramatics, and the arts; or the promotion of education by an 132
organization engaged in carrying on research in, or the 133
dissemination of, scientific and technological knowledge and 134
information primarily for the public. 135

Nothing in this division shall be deemed to exempt sales to 136
any organization for use in the operation or carrying on of a 137

trade or business, or sales to a home for the aged for use in the 138
operation of independent living facilities as defined in division 139
(A) of section 5709.12 of the Revised Code. 140

(13) Building and construction materials and services sold to 141
construction contractors for incorporation into a structure or 142
improvement to real property under a construction contract with 143
this state or a political subdivision thereof, or with the United 144
States government or any of its agencies; building and 145
construction materials and services sold to construction 146
contractors for incorporation into a structure or improvement to 147
real property that are accepted for ownership by this state or any 148
of its political subdivisions, or by the United States government 149
or any of its agencies at the time of completion of such 150
structures or improvements; building and construction materials 151
sold to construction contractors for incorporation into a 152
horticulture structure or livestock structure for a person engaged 153
in the business of horticulture or producing livestock; building 154
materials and services sold to a construction contractor for 155
incorporation into a house of public worship or religious 156
education, or a building used exclusively for charitable purposes 157
under a construction contract with an organization whose purpose 158
is as described in division (B)(12) of this section; building 159
materials and services sold to a construction contractor for 160
incorporation into a building under a construction contract with 161
an organization exempt from taxation under section 501(c)(3) of 162
the Internal Revenue Code of 1986 when the building is to be used 163
exclusively for the organization's exempt purposes; building and 164
construction materials sold for incorporation into the original 165
construction of a sports facility under section 307.696 of the 166
Revised Code; and building and construction materials and services 167
sold to a construction contractor for incorporation into real 168
property outside this state if such materials and services, when 169

sold to a construction contractor in the state in which the real
property is located for incorporation into real property in that
state, would be exempt from a tax on sales levied by that state;

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

(15) Sales to persons engaged in any of the activities
mentioned in division (E)(2) or (9) of section 5739.01 of the
Revised Code, to persons engaged in making retail sales, or to
persons who purchase for sale from a manufacturer tangible
personal property that was produced by the manufacturer in
accordance with specific designs provided by the purchaser, of
packages, including material, labels, and parts for packages, and
of machinery, equipment, and material for use primarily in
packaging tangible personal property produced for sale, including
any machinery, equipment, and supplies used to make labels or
packages, to prepare packages or products for labeling, or to
label packages or products, by or on the order of the person doing
the packaging, or sold at retail. "Packages" includes bags,
baskets, cartons, crates, boxes, cans, bottles, bindings,
wrappings, and other similar devices and containers, and
"packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to
purchase the food. As used in division (B)(16) of this section,
"food" has the same meaning as in the "Food Stamp Act of 1977," 91
Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations
adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture,
horticulture, or floriculture, of tangible personal property for
use or consumption directly in the production by farming,
agriculture, horticulture, or floriculture of other tangible

personal property for use or consumption directly in the
production of tangible personal property for sale by farming,
agriculture, horticulture, or floriculture; or material and parts
for incorporation into any such tangible personal property for use
or consumption in production; and of tangible personal property
for such use or consumption in the conditioning or holding of
products produced by and for such use, consumption, or sale by
persons engaged in farming, agriculture, horticulture, or
floriculture, except where such property is incorporated into real
property;

(18) Sales of drugs dispensed by a licensed pharmacist upon
the order of a licensed health professional authorized to
prescribe drugs to a human being, as the term "licensed health
professional authorized to prescribe drugs" is defined in section
4729.01 of the Revised Code; insulin as recognized in the official
United States pharmacopoeia; urine and blood testing materials
when used by diabetics or persons with hypoglycemia to test for
glucose or acetone; hypodermic syringes and needles when used by
diabetics for insulin injections; epoetin alfa when purchased for
use in the treatment of persons with end-stage renal disease;
hospital beds when purchased for use by persons with medical
problems for medical purposes; and oxygen and oxygen-dispensing
equipment when purchased for use by persons with medical problems
for medical purposes;

(19)(a) Sales of artificial limbs or portion thereof, breast
prostheses, and other prosthetic devices for humans; braces or
other devices for supporting weakened or nonfunctioning parts of
the human body; ~~wheelchairs; devices used to lift wheelchairs into
motor vehicles and parts and accessories to such devices;~~ crutches
or other devices to aid human perambulation; and items of tangible
personal property used to supplement impaired functions of the
human body such as respiration, hearing, or elimination;

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(b) Sales of wheelchairs; items incorporated into or used in 234
conjunction with a motor vehicle for the purpose of transporting 235
wheelchairs, other than transportation conducted in connection 236
with the sale or delivery of wheelchairs; and items incorporated 237
into or used in conjunction with a motor vehicle that are 238
specifically designed to assist a person with a disability to 239
access or operate the motor vehicle. As used in this division, 240
"person with a disability" means any person who has lost the use 241
of one or both legs or one or both arms, who is blind, deaf, or 242
disabled to the extent that the person is unable to move about 243
without the aid of crutches or a wheelchair, or whose mobility is 244
restricted by a permanent cardiovascular, pulmonary, or other 245
disabling condition. No 246

(c) No exemption under this division shall be allowed for 247
nonprescription drugs, medicines, or remedies; items or devices 248
used to supplement vision; items or devices whose function is 249
solely or primarily cosmetic; or physical fitness equipment. This 250
division does not apply to sales to a physician or medical 251
facility for use in the treatment of a patient. 252

(20) Sales of emergency and fire protection vehicles and 253
equipment to nonprofit organizations for use solely in providing 254
fire protection and emergency services, including trauma care and 255
emergency medical services, for political subdivisions of the 256
state; 257

(21) Sales of tangible personal property manufactured in this 258
state, if sold by the manufacturer in this state to a retailer for 259
use in the retail business of the retailer outside of this state 260
and if possession is taken from the manufacturer by the purchaser 261
within this state for the sole purpose of immediately removing the 262
same from this state in a vehicle owned by the purchaser; 263

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(22) Sales of services provided by the state or any of its 265

political subdivisions, agencies, instrumentalities, institutions,
or authorities, or by governmental entities of the state or any of
its political subdivisions, agencies, instrumentalities,
institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state
upon the presentation of an affidavit executed in this state by
the nonresident purchaser affirming that the purchaser is a
nonresident of this state, that possession of the motor vehicle is
taken in this state for the sole purpose of immediately removing
it from this state, that the motor vehicle will be permanently
titled and registered in another state, and that the motor vehicle
will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for
sale of tangible personal property used or consumed directly in
such preparation, including such tangible personal property used
for cleaning, sanitizing, preserving, grading, sorting, and
classifying by size; packages, including material and parts for
packages, and machinery, equipment, and material for use in
packaging eggs for sale; and handling and transportation equipment
and parts therefor, except motor vehicles licensed to operate on
public highways, used in intraplant or interplant transfers or
shipment of eggs in the process of preparation for sale, when the
plant or plants within or between which such transfers or
shipments occur are operated by the same person. "Packages"
includes containers, cases, baskets, flats, fillers, filler flats,
cartons, closure materials, labels, and labeling materials, and
"packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use,
except the sale of bottled water, distilled water, mineral water,
carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged
exclusively in the treatment, distribution, and sale of water to

consumers, if such water is delivered to consumers through pipes 298
or tubing. 299

(26) Fees charged for inspection or reinspection of motor 300
vehicles under section 3704.14 of the Revised Code; 301

(27) Sales to persons licensed to conduct a food service 302
operation pursuant to section 3717.43 of the Revised Code, of 303
tangible personal property primarily used directly for the 304
following: 305

(a) To prepare food for human consumption for sale; 306

(b) To preserve food that has been or will be prepared for 307
human consumption for sale by the food service operator, not 308
including tangible personal property used to display food for 309
selection by the consumer; 310

(c) To clean tangible personal property used to prepare or 311
serve food for human consumption for sale. 312

(28) Sales of animals by nonprofit animal adoption services 313
or county humane societies; 314

(29) Sales of services to a corporation described in division 315
(A) of section 5709.72 of the Revised Code, and sales of tangible 316
personal property that qualifies for exemption from taxation under 317
section 5709.72 of the Revised Code; 318

(30) Sales and installation of agricultural land tile, as 319
defined in division (B)(5)(a) of section 5739.01 of the Revised 320
Code; 321

(31) Sales and erection or installation of portable grain 322
bins, as defined in division (B)(5)(b) of section 5739.01 of the 323
Revised Code; 324

(32) The sale, lease, repair, and maintenance of, parts for, 325
or items attached to or incorporated in, motor vehicles that are 326
primarily used for transporting tangible personal property by a 327

person engaged in highway transportation for hire;

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

(34) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(34) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.

(35) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of

such coins.

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

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(b) Sales to direct marketing vendors of preliminary
materials such as photographs, artwork, and typesetting that will
be used in printing advertising material; of printed matter that
offers free merchandise or chances to win sweepstake prizes and
that is mailed to potential customers with advertising material
described in division (B)(36)(a) of this section; and of equipment
such as telephones, computers, facsimile machines, and similar
tangible personal property primarily used to accept orders for
direct marketing retail sales.

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

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For purposes of division (B)(36) of this section, "direct
marketing" means the method of selling where consumers order
tangible personal property by United States mail, delivery
service, or telecommunication and the vendor delivers or ships the
tangible personal property sold to the consumer from a warehouse,
catalogue distribution center, or similar fulfillment facility by
means of the United States mail, delivery service, or common
carrier.

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(37) Sales to a person engaged in the business of
horticulture or producing livestock of materials to be
incorporated into a horticulture structure or livestock structure;

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(38) The sale of a motor vehicle that is used exclusively for
a vanpool ridesharing arrangement to persons participating in the

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vanpool ridesharing arrangement when the vendor is selling the 391
vehicle pursuant to a contract between the vendor and the 392
department of transportation; 393

(39) Sales of personal computers, computer monitors, computer 394
keyboards, modems, and other peripheral computer equipment to an 395
individual who is licensed or certified to teach in an elementary 396
or a secondary school in this state for use by that individual in 397
preparation for teaching elementary or secondary school students; 398
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(40) Sales to a professional racing team of any of the 400
following: 401

(a) Motor racing vehicles; 402

(b) Repair services for motor racing vehicles; 403

(c) Items of property that are attached to or incorporated in 404
motor racing vehicles, including engines, chassis, and all other 405
components of the vehicles, and all spare, replacement, and 406
rebuilt parts or components of the vehicles; except not including 407
tires, consumable fluids, paint, and accessories consisting of 408
instrumentation sensors and related items added to the vehicle to 409
collect and transmit data by means of telemetry and other forms of 410
communication. 411

(41) Sales of used manufactured homes and used mobile homes, 412
as defined in section 5739.0210 of the Revised Code, made on or 413
after January 1, 2000; 414

(42) Sales of tangible personal property and services to a 415
provider of electricity used or consumed directly and primarily in 416
generating, transmitting, or distributing electricity for use by 417
others, including property that is or is to be incorporated into 418
and will become a part of the consumer's production, transmission, 419
or distribution system and that retains its classification as 420
tangible personal property after incorporation; fuel or power used 421

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in the production, transmission, or distribution of electricity;
and tangible personal property and services used in the repair and
maintenance of the production, transmission, or distribution
system, including only those motor vehicles as are specially
designed and equipped for such use. The exemption provided in this
division shall be in lieu of all other exceptions in division
(E)(2) of section 5739.01 of the Revised Code to which a provider
of electricity may otherwise be entitled based on the use of the
tangible personal property or service purchased in generating,
transmitting, or distributing electricity.

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

As used in this section, except in division (B)(16) of this
section, "food" includes cereals and cereal products, milk and
milk products including ice cream, meat and meat products, fish
and fish products, eggs and egg products, vegetables and vegetable
products, fruits, fruit products, and pure fruit juices,
condiments, sugar and sugar products, coffee and coffee
substitutes, tea, and cocoa and cocoa products. It does not
include: spirituous or malt liquors; soft drinks; sodas and
beverages that are ordinarily dispensed at bars and soda fountains
or in connection therewith, other than coffee, tea, and cocoa;
root beer and root beer extracts; malt and malt extracts; mineral
oils, cod liver oils, and halibut liver oil; medicines, including
tonics, vitamin preparations, and other products sold primarily
for their medicinal properties; and water, including mineral,
bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which
lodging by a hotel is or is to be furnished to transient guests
pursuant to this section and division (B) of section 5739.01 of

the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the

Revised Code. 485

(6) A county from levying an excise tax not to exceed one and 486
one-half per cent of such transactions pursuant to division (D) of 487
section 5739.024 of the Revised Code. Such tax is in addition to 488
any tax imposed under division (C)(3) or (4) of this section. 489
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(7) A county from levying an excise tax not to exceed one and 491
one-half per cent of such transactions pursuant to division (E) of 492
section 5739.024 of the Revised Code. Such a tax is in addition to 493
any tax imposed under division (C)(3), (4), or (6) of this 494
section. 495

(D) The levy of this tax on retail sales of recreation and 496
sports club service shall not prevent a municipal corporation from 497
levying any tax on recreation and sports club dues or on any 498
income generated by recreation and sports club dues. 499

Section 2. That existing section 5739.02 of the Revised Code 500
is hereby repealed. 501

Section 3. Section 5739.02 of the Revised Code is presented 502
in this act as a composite of the section as amended by Am. Sub. 503
H.B. 138, H.B. 612, and Am. Sub. H.B. 640 all of the 123rd General 504
Assembly. This is in recognition of the principle stated in 505
division (B) of section 1.52 of the Revised Code that such 506
amendments are to be harmonized where not substantively 507
irreconcilable and constitutes a legislative finding that such is 508
the resulting version in effect prior to the effective date of 509
this act. 510