

**As Introduced**

**127th General Assembly  
Regular Session  
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**H. B. No. 575**

**Representative Schindel**

**Cosponsors: Representatives Setzer, Fessler, Evans, Gibbs, Batchelder,  
Flowers, McGregor, J.**

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**A B I L L**

To amend section 5739.01 of the Revised Code to 1  
exempt from the sales tax massage therapy that is 2  
provided by an individual who holds a certificate 3  
to practice massage therapy. 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 subdivisions, 11  
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 absolutely 14  
or conditionally, whether for a price or rental, in money or by 15  
exchange, and by any means whatsoever: 16

(1) All transactions by which title or possession, or both, 17

of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

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

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one

person owns or controls the business operation of another member 49  
of the group. In the case of corporations with stock, one 50  
corporation owns or controls another if it owns more than fifty 51  
per cent of the other corporation's common stock with voting 52  
rights. 53

(f) Telecommunications service, including prepaid calling 54  
service, prepaid wireless calling service, or ancillary service, 55  
is or is to be provided, but not including coin-operated telephone 56  
service; 57

(g) Landscaping and lawn care service is or is to be 58  
provided; 59

(h) Private investigation and security service is or is to be 60  
provided; 61

(i) Information services or tangible personal property is 62  
provided or ordered by means of a nine hundred telephone call; 63

(j) Building maintenance and janitorial service is or is to 64  
be provided; 65

(k) Employment service is or is to be provided; 66

(l) Employment placement service is or is to be provided; 67

(m) Exterminating service is or is to be provided; 68

(n) Physical fitness facility service is or is to be 69  
provided; 70

(o) Recreation and sports club service is or is to be 71  
provided; 72

(p) On and after August 1, 2003, satellite broadcasting 73  
service is or is to be provided; 74

(q) On and after August 1, 2003, personal care service is or 75  
is to be provided to an individual. As used in this division, 76  
"personal care service" includes skin care, the application of 77

cosmetics, manicuring, pedicuring, hair removal, tattooing, body 78  
piercing, tanning, massage, and other similar services. "Personal 79  
care service" does not include a service provided by or on the 80  
order of a licensed physician or licensed chiropractor, massage 81  
therapy provided by an individual who holds a valid certificate to 82  
practice massage therapy issued under section 4731.15 of the 83  
Revised Code, or the cutting, coloring, or styling of an 84  
individual's hair. 85

(r) On and after August 1, 2003, the transportation of 86  
persons by motor vehicle or aircraft is or is to be provided, when 87  
the transportation is entirely within this state, except for 88  
transportation provided by an ambulance service, by a transit bus, 89  
as defined in section 5735.01 of the Revised Code, and 90  
transportation provided by a citizen of the United States holding 91  
a certificate of public convenience and necessity issued under 49 92  
U.S.C. 41102; 93

(s) On and after August 1, 2003, motor vehicle towing service 94  
is or is to be provided. As used in this division, "motor vehicle 95  
towing service" means the towing or conveyance of a wrecked, 96  
disabled, or illegally parked motor vehicle. 97

(t) On and after August 1, 2003, snow removal service is or 98  
is to be provided. As used in this division, "snow removal 99  
service" means the removal of snow by any mechanized means, but 100  
does not include the providing of such service by a person that 101  
has less than five thousand dollars in sales of such service 102  
during the calendar year. 103

(u) Electronic publishing service is or is to be provided to 104  
a consumer for use in business, except that such transactions 105  
occurring between members of an affiliated group, as defined in 106  
division (B)(3)(e) of this section, are not sales. 107

(4) All transactions by which printed, imprinted, 108

overprinted, lithographic, multilithic, blueprinted, photostatic, 109  
or other productions or reproductions of written or graphic matter 110  
are or are to be furnished or transferred; 111

(5) The production or fabrication of tangible personal 112  
property for a consideration for consumers who furnish either 113  
directly or indirectly the materials used in the production of 114  
fabrication work; and include the furnishing, preparing, or 115  
serving for a consideration of any tangible personal property 116  
consumed on the premises of the person furnishing, preparing, or 117  
serving such tangible personal property. Except as provided in 118  
section 5739.03 of the Revised Code, a construction contract 119  
pursuant to which tangible personal property is or is to be 120  
incorporated into a structure or improvement on and becoming a 121  
part of real property is not a sale of such tangible personal 122  
property. The construction contractor is the consumer of such 123  
tangible personal property, provided that the sale and 124  
installation of carpeting, the sale and installation of 125  
agricultural land tile, the sale and erection or installation of 126  
portable grain bins, or the provision of landscaping and lawn care 127  
service and the transfer of property as part of such service is 128  
never a construction contract. 129

As used in division (B)(5) of this section: 130

(a) "Agricultural land tile" means fired clay or concrete 131  
tile, or flexible or rigid perforated plastic pipe or tubing, 132  
incorporated or to be incorporated into a subsurface drainage 133  
system appurtenant to land used or to be used directly in 134  
production by farming, agriculture, horticulture, or floriculture. 135  
The term does not include such materials when they are or are to 136  
be incorporated into a drainage system appurtenant to a building 137  
or structure even if the building or structure is used or to be 138  
used in such production. 139

(b) "Portable grain bin" means a structure that is used or to 140

be used by a person engaged in farming or agriculture to shelter 141  
the person's grain and that is designed to be disassembled without 142  
significant damage to its component parts. 143

(6) All transactions in which all of the shares of stock of a 144  
closely held corporation are transferred, if the corporation is 145  
not engaging in business and its entire assets consist of boats, 146  
planes, motor vehicles, or other tangible personal property 147  
operated primarily for the use and enjoyment of the shareholders; 148

(7) All transactions in which a warranty, maintenance or 149  
service contract, or similar agreement by which the vendor of the 150  
warranty, contract, or agreement agrees to repair or maintain the 151  
tangible personal property of the consumer is or is to be 152  
provided; 153

(8) The transfer of copyrighted motion picture films used 154  
solely for advertising purposes, except that the transfer of such 155  
films for exhibition purposes is not a sale. 156

(9) On and after August 1, 2003, all transactions by which 157  
tangible personal property is or is to be stored, except such 158  
property that the consumer of the storage holds for sale in the 159  
regular course of business. 160

Except as provided in this section, "sale" and "selling" do 161  
not include transfers of interest in leased property where the 162  
original lessee and the terms of the original lease agreement 163  
remain unchanged, or professional, insurance, or personal service 164  
transactions that involve the transfer of tangible personal 165  
property as an inconsequential element, for which no separate 166  
charges are made. 167

(C) "Vendor" means the person providing the service or by 168  
whom the transfer effected or license given by a sale is or is to 169  
be made or given and, for sales described in division (B)(3)(i) of 170  
this section, the telecommunications service vendor that provides 171

the nine hundred telephone service; if two or more persons are 172  
engaged in business at the same place of business under a single 173  
trade name in which all collections on account of sales by each 174  
are made, such persons shall constitute a single vendor. 175

Physicians, dentists, hospitals, and veterinarians who are 176  
engaged in selling tangible personal property as received from 177  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 178  
articles, are vendors. Veterinarians who are engaged in 179  
transferring to others for a consideration drugs, the dispensing 180  
of which does not require an order of a licensed veterinarian or 181  
physician under federal law, are vendors. 182

(D)(1) "Consumer" means the person for whom the service is 183  
provided, to whom the transfer effected or license given by a sale 184  
is or is to be made or given, to whom the service described in 185  
division (B)(3)(f) or (i) of this section is charged, or to whom 186  
the admission is granted. 187

(2) Physicians, dentists, hospitals, and blood banks operated 188  
by nonprofit institutions and persons licensed to practice 189  
veterinary medicine, surgery, and dentistry are consumers of all 190  
tangible personal property and services purchased by them in 191  
connection with the practice of medicine, dentistry, the rendition 192  
of hospital or blood bank service, or the practice of veterinary 193  
medicine, surgery, and dentistry. In addition to being consumers 194  
of drugs administered by them or by their assistants according to 195  
their direction, veterinarians also are consumers of drugs that 196  
under federal law may be dispensed only by or upon the order of a 197  
licensed veterinarian or physician, when transferred by them to 198  
others for a consideration to provide treatment to animals as 199  
directed by the veterinarian. 200

(3) A person who performs a facility management, or similar 201  
service contract for a contractee is a consumer of all tangible 202  
personal property and services purchased for use in connection 203

with the performance of such contract, regardless of whether title 204  
to any such property vests in the contractee. The purchase of such 205  
property and services is not subject to the exception for resale 206  
under division (E)(1) of this section. 207

(4)(a) In the case of a person who purchases printed matter 208  
for the purpose of distributing it or having it distributed to the 209  
public or to a designated segment of the public, free of charge, 210  
that person is the consumer of that printed matter, and the 211  
purchase of that printed matter for that purpose is a sale. 212

(b) In the case of a person who produces, rather than 213  
purchases, printed matter for the purpose of distributing it or 214  
having it distributed to the public or to a designated segment of 215  
the public, free of charge, that person is the consumer of all 216  
~~tangible~~ tangible personal property and services purchased for use 217  
or consumption in the production of that printed matter. That 218  
person is not entitled to claim exemption under division 219  
(B)(42)(f) of section 5739.02 of the Revised Code for any material 220  
incorporated into the printed matter or any equipment, supplies, 221  
or services primarily used to produce the printed matter. 222

(c) The distribution of printed matter to the public or to a 224  
designated segment of the public, free of charge, is not a sale to 225  
the members of the public to whom the printed matter is 226  
distributed or to any persons who purchase space in the printed 227  
matter for advertising or other purposes. 228

(5) A person who makes sales of any of the services listed in 229  
division (B)(3) of this section is the consumer of any tangible 230  
personal property used in performing the service. The purchase of 231  
that property is not subject to the resale exception under 232  
division (E)(1) of this section. 233

(6) A person who engages in highway transportation for hire 234



is the consumer of all packaging materials purchased by that 235  
person and used in performing the service, except for packaging 236  
materials sold by such person in a transaction separate from the 237  
service. 238

(E) "Retail sale" and "sales at retail" include all sales, 239  
except those in which the purpose of the consumer is to resell the 240  
thing transferred or benefit of the service provided, by a person 241  
engaging in business, in the form in which the same is, or is to 242  
be, received by the person. 243

(F) "Business" includes any activity engaged in by any person 244  
with the object of gain, benefit, or advantage, either direct or 245  
indirect. "Business" does not include the activity of a person in 246  
managing and investing the person's own funds. 247

(G) "Engaging in business" means commencing, conducting, or 248  
continuing in business, and liquidating a business when the 249  
liquidator thereof holds itself out to the public as conducting 250  
such business. Making a casual sale is not engaging in business. 251

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 252  
(3) of this section, means the total amount of consideration, 253  
including cash, credit, property, and services, for which tangible 254  
personal property or services are sold, leased, or rented, valued 255  
in money, whether received in money or otherwise, without any 256  
deduction for any of the following: 257

(i) The vendor's cost of the property sold; 258

(ii) The cost of materials used, labor or service costs, 259  
interest, losses, all costs of transportation to the vendor, all 260  
taxes imposed on the vendor, including the tax imposed under 261  
Chapter 5751. of the Revised Code, and any other expense of the 262  
vendor; 263

(iii) Charges by the vendor for any services necessary to 264  
complete the sale; 265

(iv) On and after August 1, 2003, delivery charges. As used	266
in this division, "delivery charges" means charges by the vendor	267
for preparation and delivery to a location designated by the	268
consumer of tangible personal property or a service, including	269
transportation, shipping, postage, handling, crating, and packing.	270
(v) Installation charges;	271
(vi) Credit for any trade-in.	272
(b) "Price" includes consideration received by the vendor	273
from a third party, if the vendor actually receives the	274
consideration from a party other than the consumer, and the	275
consideration is directly related to a price reduction or discount	276
on the sale; the vendor has an obligation to pass the price	277
reduction or discount through to the consumer; the amount of the	278
consideration attributable to the sale is fixed and determinable	279
by the vendor at the time of the sale of the item to the consumer;	280
and one of the following criteria is met:	281
(i) The consumer presents a coupon, certificate, or other	282
document to the vendor to claim a price reduction or discount	283
where the coupon, certificate, or document is authorized,	284
distributed, or granted by a third party with the understanding	285
that the third party will reimburse any vendor to whom the coupon,	286
certificate, or document is presented;	287
(ii) The consumer identifies the consumer's self to the	288
seller as a member of a group or organization entitled to a price	289
reduction or discount. A preferred customer card that is available	290
to any patron does not constitute membership in such a group or	291
organization.	292
(iii) The price reduction or discount is identified as a	293
third party price reduction or discount on the invoice received by	294
the consumer, or on a coupon, certificate, or other document	295
presented by the consumer.	296

(c) "Price" does not include any of the following:	297
(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;	298 299 300
(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;	301 302 303 304
(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.	305 306 307 308 309 310
(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.	311 312 313 314
(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.	315 316 317 318 319 320 321
(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the	322 323 324 325 326 327

credit afforded the consumer by the dealer for the watercraft, 328  
watercraft and trailer, or outboard motor received in trade. As 329  
used in this division, "watercraft" includes an outdrive unit 330  
attached to the watercraft. 331

(I) "Receipts" means the total amount of the prices of the 332  
sales of vendors, provided that cash discounts allowed and taken 333  
on sales at the time they are consummated are not included, minus 334  
any amount deducted as a bad debt pursuant to section 5739.121 of 335  
the Revised Code. "Receipts" does not include the sale price of 336  
property returned or services rejected by consumers when the full 337  
sale price and tax are refunded either in cash or by credit. 338

(J) "Place of business" means any location at which a person 339  
engages in business. 340

(K) "Premises" includes any real property or portion thereof 341  
upon which any person engages in selling tangible personal 342  
property at retail or making retail sales and also includes any 343  
real property or portion thereof designated for, or devoted to, 344  
use in conjunction with the business engaged in by such person. 345

(L) "Casual sale" means a sale of an item of tangible 346  
personal property that was obtained by the person making the sale, 347  
through purchase or otherwise, for the person's own use and was 348  
previously subject to any state's taxing jurisdiction on its sale 349  
or use, and includes such items acquired for the seller's use that 350  
are sold by an auctioneer employed directly by the person for such 351  
purpose, provided the location of such sales is not the 352  
auctioneer's permanent place of business. As used in this 353  
division, "permanent place of business" includes any location 354  
where such auctioneer has conducted more than two auctions during 355  
the year. 356

(M) "Hotel" means every establishment kept, used, maintained, 357  
advertised, or held out to the public to be a place where sleeping 358

accommodations are offered to guests, in which five or more rooms 359  
are used for the accommodation of such guests, whether the rooms 360  
are in one or several structures. 361

(N) "Transient guests" means persons occupying a room or 362  
rooms for sleeping accommodations for less than thirty consecutive 363  
days. 364

(O) "Making retail sales" means the effecting of transactions 365  
wherein one party is obligated to pay the price and the other 366  
party is obligated to provide a service or to transfer title to or 367  
possession of the item sold. "Making retail sales" does not 368  
include the preliminary acts of promoting or soliciting the retail 369  
sales, other than the distribution of printed matter which 370  
displays or describes and prices the item offered for sale, nor 371  
does it include delivery of a predetermined quantity of tangible 372  
personal property or transportation of property or personnel to or 373  
from a place where a service is performed, regardless of whether 374  
the vendor is a delivery vendor. 375

(P) "Used directly in the rendition of a public utility 376  
service" means that property that is to be incorporated into and 377  
will become a part of the consumer's production, transmission, 378  
transportation, or distribution system and that retains its 379  
classification as tangible personal property after such 380  
incorporation; fuel or power used in the production, transmission, 381  
transportation, or distribution system; and tangible personal 382  
property used in the repair and maintenance of the production, 383  
transmission, transportation, or distribution system, including 384  
only such motor vehicles as are specially designed and equipped 385  
for such use. Tangible personal property and services used 386  
primarily in providing highway transportation for hire are not 387  
used directly in the rendition of a public utility service. In 388  
this definition, "public utility" includes a citizen of the United 389  
States holding, and required to hold, a certificate of public 390

convenience and necessity issued under 49 U.S.C. 41102. 391

(Q) "Refining" means removing or separating a desirable 392  
product from raw or contaminated materials by distillation or 393  
physical, mechanical, or chemical processes. 394

(R) "Assembly" and "assembling" mean attaching or fitting 395  
together parts to form a product, but do not include packaging a 396  
product. 397

(S) "Manufacturing operation" means a process in which 398  
materials are changed, converted, or transformed into a different 399  
state or form from which they previously existed and includes 400  
refining materials, assembling parts, and preparing raw materials 401  
and parts by mixing, measuring, blending, or otherwise committing 402  
such materials or parts to the manufacturing process. 403  
"Manufacturing operation" does not include packaging. 404

(T) "Fiscal officer" means, with respect to a regional 405  
transit authority, the secretary-treasurer thereof, and with 406  
respect to a county that is a transit authority, the fiscal 407  
officer of the county transit board if one is appointed pursuant 408  
to section 306.03 of the Revised Code or the county auditor if the 409  
board of county commissioners operates the county transit system. 410

(U) "Transit authority" means a regional transit authority 411  
created pursuant to section 306.31 of the Revised Code or a county 412  
in which a county transit system is created pursuant to section 413  
306.01 of the Revised Code. For the purposes of this chapter, a 414  
transit authority must extend to at least the entire area of a 415  
single county. A transit authority that includes territory in more 416  
than one county must include all the area of the most populous 417  
county that is a part of such transit authority. County population 418  
shall be measured by the most recent census taken by the United 419  
States census bureau. 420

(V) "Legislative authority" means, with respect to a regional 421

transit authority, the board of trustees thereof, and with respect 422  
to a county that is a transit authority, the board of county 423  
commissioners. 424

(W) "Territory of the transit authority" means all of the 425  
area included within the territorial boundaries of a transit 426  
authority as they from time to time exist. Such territorial 427  
boundaries must at all times include all the area of a single 428  
county or all the area of the most populous county that is a part 429  
of such transit authority. County population shall be measured by 430  
the most recent census taken by the United States census bureau. 431

(X) "Providing a service" means providing or furnishing 432  
anything described in division (B)(3) of this section for 433  
consideration. 434

(Y)(1)(a) "Automatic data processing" means processing of 435  
others' data, including keypunching or similar data entry services 436  
together with verification thereof, or providing access to 437  
computer equipment for the purpose of processing data. 438

(b) "Computer services" means providing services consisting 439  
of specifying computer hardware configurations and evaluating 440  
technical processing characteristics, computer programming, and 441  
training of computer programmers and operators, provided in 442  
conjunction with and to support the sale, lease, or operation of 443  
taxable computer equipment or systems. 444

(c) "Electronic information services" means providing access 445  
to computer equipment by means of telecommunications equipment for 446  
the purpose of either of the following: 447

(i) Examining or acquiring data stored in or accessible to 448  
the computer equipment; 449

(ii) Placing data into the computer equipment to be retrieved 450  
by designated recipients with access to the computer equipment. 451

For transactions occurring on or after the effective date of 452  
the amendment of this section by H.B. 157 of the 127th general 453  
assembly, December 21, 2007, "electronic information services" 454  
does not include electronic publishing as defined in division 455  
(LLL) of this section. 456

(d) "Automatic data processing, computer services, or 457  
electronic information services" shall not include personal or 458  
professional services. 459

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 460  
section, "personal and professional services" means all services 461  
other than automatic data processing, computer services, or 462  
electronic information services, including but not limited to: 463

(a) Accounting and legal services such as advice on tax 464  
matters, asset management, budgetary matters, quality control, 465  
information security, and auditing and any other situation where 466  
the service provider receives data or information and studies, 467  
alters, analyzes, interprets, or adjusts such material; 468

(b) Analyzing business policies and procedures; 469

(c) Identifying management information needs; 470

(d) Feasibility studies, including economic and technical 471  
analysis of existing or potential computer hardware or software 472  
needs and alternatives; 473

(e) Designing policies, procedures, and custom software for 474  
collecting business information, and determining how data should 475  
be summarized, sequenced, formatted, processed, controlled, and 476  
reported so that it will be meaningful to management; 477

(f) Developing policies and procedures that document how 478  
business events and transactions are to be authorized, executed, 479  
and controlled; 480

(g) Testing of business procedures; 481



(h) Training personnel in business procedure applications;	482
(i) Providing credit information to users of such information	483
by a consumer reporting agency, as defined in the "Fair Credit	484
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or	485
as hereafter amended, including but not limited to gathering,	486
organizing, analyzing, recording, and furnishing such information	487
by any oral, written, graphic, or electronic medium;	488
(j) Providing debt collection services by any oral, written,	489
graphic, or electronic means.	490
The services listed in divisions (Y)(2)(a) to (j) of this	491
section are not automatic data processing or computer services.	492
(Z) "Highway transportation for hire" means the	493
transportation of personal property belonging to others for	494
consideration by any of the following:	495
(1) The holder of a permit or certificate issued by this	496
state or the United States authorizing the holder to engage in	497
transportation of personal property belonging to others for	498
consideration over or on highways, roadways, streets, or any	499
similar public thoroughfare;	500
(2) A person who engages in the transportation of personal	501
property belonging to others for consideration over or on	502
highways, roadways, streets, or any similar public thoroughfare	503
but who could not have engaged in such transportation on December	504
11, 1985, unless the person was the holder of a permit or	505
certificate of the types described in division (Z)(1) of this	506
section;	507
(3) A person who leases a motor vehicle to and operates it	508
for a person described by division (Z)(1) or (2) of this section.	509
(AA)(1) "Telecommunications service" means the electronic	510
transmission, conveyance, or routing of voice, data, audio, video,	511

or any other information or signals to a point, or between or 512  
among points. "Telecommunications service" includes such 513  
transmission, conveyance, or routing in which computer processing 514  
applications are used to act on the form, code, or protocol of the 515  
content for purposes of transmission, conveyance, or routing 516  
without regard to whether the service is referred to as voice-over 517  
internet protocol service or is classified by the federal 518  
communications commission as enhanced or value-added. 519  
"Telecommunications service" does not include any of the 520  
following: 521

(a) Data processing and information services that allow data 522  
to be generated, acquired, stored, processed, or retrieved and 523  
delivered by an electronic transmission to a consumer where the 524  
consumer's primary purpose for the underlying transaction is the 525  
processed data or information; 526

(b) Installation or maintenance of wiring or equipment on a 527  
customer's premises; 528

(c) Tangible personal property; 529

(d) Advertising, including directory advertising; 530

(e) Billing and collection services provided to third 531  
parties; 532

(f) Internet access service; 533

(g) Radio and television audio and video programming 534  
services, regardless of the medium, including the furnishing of 535  
transmission, conveyance, and routing of such services by the 536  
programming service provider. Radio and television audio and video 537  
programming services include, but are not limited to, cable 538  
service, as defined in 47 U.S.C. 522(6), and audio and video 539  
programming services delivered by commercial mobile radio service 540  
providers, as defined in 47 C.F.R. 20.3; 541

(h) Ancillary service;	542
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	543 544
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:	545 546 547 548 549
(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.	550 551 552 553 554
(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.	555 556 557
(c) "Directory assistance" means an ancillary service of providing telephone number or address information.	558 559
(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service.	560 561 562 563 564
(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.	565 566 567 568 569
(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's	570 571

customers to call in to the subscriber's prerecorded announcement 572  
or live service, and which is typically marketed under the name 573  
"900" service and any subsequent numbers designated by the federal 574  
communications commission. "900 service" does not include the 575  
charge for collection services provided by the seller of the 576  
telecommunications service to the subscriber, or services or 577  
products sold by the subscriber to the subscriber's customer. 578

(4) "Prepaid calling service" means the right to access 579  
exclusively telecommunications services, which must be paid for in 580  
advance and which enables the origination of calls using an access 581  
number or authorization code, whether manually or electronically 582  
dialed, and that is sold in predetermined units of dollars of 583  
which the number declines with use in a known amount. 584

(5) "Prepaid wireless calling service" means a 585  
telecommunications service that provides the right to utilize 586  
mobile telecommunications service as well as other 587  
non-telecommunications services, including the download of digital 588  
products delivered electronically, and content and ancillary 589  
services, that must be paid for in advance and that is sold in 590  
predetermined units of dollars of which the number declines with 591  
use in a known amount. 592

(6) "Value-added non-voice data service" means a 593  
telecommunications service in which computer processing 594  
applications are used to act on the form, content, code, or 595  
protocol of the information or data primarily for a purpose other 596  
than transmission, conveyance, or routing. 597

(7) "Coin-operated telephone service" means a 598  
telecommunications service paid for by inserting money into a 599  
telephone accepting direct deposits of money to operate. 600

(8) "Customer" has the same meaning as in section 5739.034 of 601  
the Revised Code. 602

(BB) "Laundry and dry cleaning services" means removing soil 603  
or dirt from towels, linens, articles of clothing, or other fabric 604  
items that belong to others and supplying towels, linens, articles 605  
of clothing, or other fabric items. "Laundry and dry cleaning 606  
services" does not include the provision of self-service 607  
facilities for use by consumers to remove soil or dirt from 608  
towels, linens, articles of clothing, or other fabric items. 609

(CC) "Magazines distributed as controlled circulation 610  
publications" means magazines containing at least twenty-four 611  
pages, at least twenty-five per cent editorial content, issued at 612  
regular intervals four or more times a year, and circulated 613  
without charge to the recipient, provided that such magazines are 614  
not owned or controlled by individuals or business concerns which 615  
conduct such publications as an auxiliary to, and essentially for 616  
the advancement of the main business or calling of, those who own 617  
or control them. 618

(DD) "Landscaping and lawn care service" means the services 619  
of planting, seeding, sodding, removing, cutting, trimming, 620  
pruning, mulching, aerating, applying chemicals, watering, 621  
fertilizing, and providing similar services to establish, promote, 622  
or control the growth of trees, shrubs, flowers, grass, ground 623  
cover, and other flora, or otherwise maintaining a lawn or 624  
landscape grown or maintained by the owner for ornamentation or 625  
other nonagricultural purpose. However, "landscaping and lawn care 626  
service" does not include the providing of such services by a 627  
person who has less than five thousand dollars in sales of such 628  
services during the calendar year. 629

(EE) "Private investigation and security service" means the 630  
performance of any activity for which the provider of such service 631  
is required to be licensed pursuant to Chapter 4749. of the 632  
Revised Code, or would be required to be so licensed in performing 633  
such services in this state, and also includes the services of 634

conducting polygraph examinations and of monitoring or overseeing 635  
the activities on or in, or the condition of, the consumer's home, 636  
business, or other facility by means of electronic or similar 637  
monitoring devices. "Private investigation and security service" 638  
does not include special duty services provided by off-duty police 639  
officers, deputy sheriffs, and other peace officers regularly 640  
employed by the state or a political subdivision. 641

(FF) "Information services" means providing conversation, 642  
giving consultation or advice, playing or making a voice or other 643  
recording, making or keeping a record of the number of callers, 644  
and any other service provided to a consumer by means of a nine 645  
hundred telephone call, except when the nine hundred telephone 646  
call is the means by which the consumer makes a contribution to a 647  
recognized charity. 648

(GG) "Research and development" means designing, creating, or 649  
formulating new or enhanced products, equipment, or manufacturing 650  
processes, and also means conducting scientific or technological 651  
inquiry and experimentation in the physical sciences with the goal 652  
of increasing scientific knowledge which may reveal the bases for 653  
new or enhanced products, equipment, or manufacturing processes. 654

(HH) "Qualified research and development equipment" means 655  
capitalized tangible personal property, and leased personal 656  
property that would be capitalized if purchased, used by a person 657  
primarily to perform research and development. Tangible personal 658  
property primarily used in testing, as defined in division (A)(4) 659  
of section 5739.011 of the Revised Code, or used for recording or 660  
storing test results, is not qualified research and development 661  
equipment unless such property is primarily used by the consumer 662  
in testing the product, equipment, or manufacturing process being 663  
created, designed, or formulated by the consumer in the research 664  
and development activity or in recording or storing such test 665  
results. 666

(II) "Building maintenance and janitorial service" means 667  
cleaning the interior or exterior of a building and any tangible 668  
personal property located therein or thereon, including any 669  
services incidental to such cleaning for which no separate charge 670  
is made. However, "building maintenance and janitorial service" 671  
does not include the providing of such service by a person who has 672  
less than five thousand dollars in sales of such service during 673  
the calendar year. 674

(JJ) "Employment service" means providing or supplying 675  
personnel, on a temporary or long-term basis, to perform work or 676  
labor under the supervision or control of another, when the 677  
personnel so provided or supplied receive their wages, salary, or 678  
other compensation from the provider or supplier of the employment 679  
service or from a third party that provided or supplied the 680  
personnel to the provider or supplier. "Employment service" does 681  
not include: 682

(1) Acting as a contractor or subcontractor, where the 683  
personnel performing the work are not under the direct control of 684  
the purchaser. 685

(2) Medical and health care services. 686

(3) Supplying personnel to a purchaser pursuant to a contract 687  
of at least one year between the service provider and the 688  
purchaser that specifies that each employee covered under the 689  
contract is assigned to the purchaser on a permanent basis. 690

(4) Transactions between members of an affiliated group, as 691  
defined in division (B)(3)(e) of this section. 692

(5) Transactions where the personnel so provided or supplied 693  
by a provider or supplier to a purchaser of an employment service 694  
are then provided or supplied by that purchaser to a third party 695  
as an employment service, except "employment service" does include 696  
the transaction between that purchaser and the third party. 697

(KK) "Employment placement service" means locating or finding 698  
employment for a person or finding or locating an employee to fill 699  
an available position. 700

(LL) "Exterminating service" means eradicating or attempting 701  
to eradicate vermin infestations from a building or structure, or 702  
the area surrounding a building or structure, and includes 703  
activities to inspect, detect, or prevent vermin infestation of a 704  
building or structure. 705

(MM) "Physical fitness facility service" means all 706  
transactions by which a membership is granted, maintained, or 707  
renewed, including initiation fees, membership dues, renewal fees, 708  
monthly minimum fees, and other similar fees and dues, by a 709  
physical fitness facility such as an athletic club, health spa, or 710  
gymnasium, which entitles the member to use the facility for 711  
physical exercise. 712

(NN) "Recreation and sports club service" means all 713  
transactions by which a membership is granted, maintained, or 714  
renewed, including initiation fees, membership dues, renewal fees, 715  
monthly minimum fees, and other similar fees and dues, by a 716  
recreation and sports club, which entitles the member to use the 717  
facilities of the organization. "Recreation and sports club" means 718  
an organization that has ownership of, or controls or leases on a 719  
continuing, long-term basis, the facilities used by its members 720  
and includes an aviation club, gun or shooting club, yacht club, 721  
card club, swimming club, tennis club, golf club, country club, 722  
riding club, amateur sports club, or similar organization. 723

(OO) "Livestock" means farm animals commonly raised for food 724  
or food production, and includes but is not limited to cattle, 725  
sheep, goats, swine, and poultry. "Livestock" does not include 726  
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 727  
animals for use in laboratories or for exhibition, or other 728  
animals not commonly raised for food or food production. 729



(PP) "Livestock structure" means a building or structure used 730  
exclusively for the housing, raising, feeding, or sheltering of 731  
livestock, and includes feed storage or handling structures and 732  
structures for livestock waste handling. 733

(QQ) "Horticulture" means the growing, cultivation, and 734  
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 735  
and nursery stock. As used in this division, "nursery stock" has 736  
the same meaning as in section 927.51 of the Revised Code. 737

(RR) "Horticulture structure" means a building or structure 738  
used exclusively for the commercial growing, raising, or 739  
overwintering of horticultural products, and includes the area 740  
used for stocking, storing, and packing horticultural products 741  
when done in conjunction with the production of those products. 742

(SS) "Newspaper" means an unbound publication bearing a title 743  
or name that is regularly published, at least as frequently as 744  
biweekly, and distributed from a fixed place of business to the 745  
public in a specific geographic area, and that contains a 746  
substantial amount of news matter of international, national, or 747  
local events of interest to the general public. 748

(TT) "Professional racing team" means a person that employs 749  
at least twenty full-time employees for the purpose of conducting 750  
a motor vehicle racing business for profit. The person must 751  
conduct the business with the purpose of racing one or more motor 752  
racing vehicles in at least ten competitive professional racing 753  
events each year that comprise all or part of a motor racing 754  
series sanctioned by one or more motor racing sanctioning 755  
organizations. A "motor racing vehicle" means a vehicle for which 756  
the chassis, engine, and parts are designed exclusively for motor 757  
racing, and does not include a stock or production model vehicle 758  
that may be modified for use in racing. For the purposes of this 759  
division: 760

(1) A "competitive professional racing event" is a motor 761  
vehicle racing event sanctioned by one or more motor racing 762  
sanctioning organizations, at which aggregate cash prizes in 763  
excess of eight hundred thousand dollars are awarded to the 764  
competitors. 765

(2) "Full-time employee" means an individual who is employed 766  
for consideration for thirty-five or more hours a week, or who 767  
renders any other standard of service generally accepted by custom 768  
or specified by contract as full-time employment. 769

(UU)(1) "Lease" or "rental" means any transfer of the 770  
possession or control of tangible personal property for a fixed or 771  
indefinite term, for consideration. "Lease" or "rental" includes 772  
future options to purchase or extend, and agreements described in 773  
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 774  
the amount of consideration may be increased or decreased by 775  
reference to the amount realized upon the sale or disposition of 776  
the property. "Lease" or "rental" does not include: 777

(a) A transfer of possession or control of tangible personal 778  
property under a security agreement or a deferred payment plan 779  
that requires the transfer of title upon completion of the 780  
required payments; 781

(b) A transfer of possession or control of tangible personal 782  
property under an agreement that requires the transfer of title 783  
upon completion of required payments and payment of an option 784  
price that does not exceed the greater of one hundred dollars or 785  
one per cent of the total required payments; 786

(c) Providing tangible personal property along with an 787  
operator for a fixed or indefinite period of time, if the operator 788  
is necessary for the property to perform as designed. For purposes 789  
of this division, the operator must do more than maintain, 790  
inspect, or set-up the tangible personal property. 791

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

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

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

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

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

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible

personal property" includes motor vehicles, electricity, water, 823  
gas, steam, and prewritten computer software. 824

(ZZ) "Direct mail" means printed material delivered or 825  
distributed by United States mail or other delivery service to a 826  
mass audience or to addressees on a mailing list provided by the 827  
consumer or at the direction of the consumer when the cost of the 828  
items are not billed directly to the recipients. "Direct mail" 829  
includes tangible personal property supplied directly or 830  
indirectly by the consumer to the direct mail vendor for inclusion 831  
in the package containing the printed material. "Direct mail" does 832  
not include multiple items of printed material delivered to a 833  
single address. 834

(AAA) "Computer" means an electronic device that accepts 835  
information in digital or similar form and manipulates it for a 836  
result based on a sequence of instructions. 837

(BBB) "Computer software" means a set of coded instructions 838  
designed to cause a computer or automatic data processing 839  
equipment to perform a task. 840

(CCC) "Delivered electronically" means delivery of computer 841  
software from the seller to the purchaser by means other than 842  
tangible storage media. 843

(DDD) "Prewritten computer software" means computer software, 844  
including prewritten upgrades, that is not designed and developed 845  
by the author or other creator to the specifications of a specific 846  
purchaser. The combining of two or more prewritten computer 847  
software programs or prewritten portions thereof does not cause 848  
the combination to be other than prewritten computer software. 849  
"Prewritten computer software" includes software designed and 850  
developed by the author or other creator to the specifications of 851  
a specific purchaser when it is sold to a person other than the 852  
purchaser. If a person modifies or enhances computer software of 853

which the person is not the author or creator, the person shall be 854  
deemed to be the author or creator only of such person's 855  
modifications or enhancements. Prewritten computer software or a 856  
prewritten portion thereof that is modified or enhanced to any 857  
degree, where such modification or enhancement is designed and 858  
developed to the specifications of a specific purchaser, remains 859  
prewritten computer software; provided, however, that where there 860  
is a reasonable, separately stated charge or an invoice or other 861  
statement of the price given to the purchaser for the modification 862  
or enhancement, the modification or enhancement shall not 863  
constitute prewritten computer software. 864

(EEE)(1) "Food" means substances, whether in liquid, 865  
concentrated, solid, frozen, dried, or dehydrated form, that are 866  
sold for ingestion or chewing by humans and are consumed for their 867  
taste or nutritional value. "Food" does not include alcoholic 868  
beverages, dietary supplements, soft drinks, or tobacco. 869

(2) As used in division (EEE)(1) of this section: 870

(a) "Alcoholic beverages" means beverages that are suitable 871  
for human consumption and contain one-half of one per cent or more 872  
of alcohol by volume. 873

(b) "Dietary supplements" means any product, other than 874  
tobacco, that is intended to supplement the diet and that is 875  
intended for ingestion in tablet, capsule, powder, softgel, 876  
gelcap, or liquid form, or, if not intended for ingestion in such 877  
a form, is not represented as conventional food for use as a sole 878  
item of a meal or of the diet; that is required to be labeled as a 879  
dietary supplement, identifiable by the "supplement facts" box 880  
found on the label, as required by 21 C.F.R. 101.36; and that 881  
contains one or more of the following dietary ingredients: 882

(i) A vitamin; 883

(ii) A mineral; 884

(iii) An herb or other botanical;	885
(iv) An amino acid;	886
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	887 888
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(2)(b)(i) to (v) of this section.	889 890 891
(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.	892 893 894 895 896
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	897 898
(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.	899 900 901 902 903 904 905 906 907
(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	908 909 910 911
(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve	912 913 914

a medical purpose, generally is not useful to a person in the 915  
absence of illness or injury, and is not worn in or on the body. 916  
"Durable medical equipment" does not include mobility enhancing 917  
equipment. 918

(III) "Mobility enhancing equipment" means equipment, 919  
including repair and replacement parts for such equipment, that is 920  
primarily and customarily used to provide or increase the ability 921  
to move from one place to another and is appropriate for use 922  
either in a home or a motor vehicle, that is not generally used by 923  
persons with normal mobility, and that does not include any motor 924  
vehicle or equipment on a motor vehicle normally provided by a 925  
motor vehicle manufacturer. "Mobility enhancing equipment" does 926  
not include durable medical equipment. 927

(JJJ) "Prosthetic device" means a replacement, corrective, or 928  
supportive device, including repair and replacement parts for the 929  
device, worn on or in the human body to artificially replace a 930  
missing portion of the body, prevent or correct physical deformity 931  
or malfunction, or support a weak or deformed portion of the body. 932  
As used in this division, "prosthetic device" does not include 933  
corrective eyeglasses, contact lenses, or dental prosthesis. 934

(KKK)(1) "Fractional aircraft ownership program" means a 935  
program in which persons within an affiliated group sell and 936  
manage fractional ownership program aircraft, provided that at 937  
least one hundred airworthy aircraft are operated in the program 938  
and the program meets all of the following criteria: 939

(a) Management services are provided by at least one program 940  
manager within an affiliated group on behalf of the fractional 941  
owners. 942

(b) Each program aircraft is owned or possessed by at least 943  
one fractional owner. 944

(c) Each fractional owner owns or possesses at least a 945

one-sixteenth interest in at least one fixed-wing program 946  
aircraft. 947

(d) A dry-lease aircraft interchange arrangement is in effect 948  
among all of the fractional owners. 949

(e) Multi-year program agreements are in effect regarding the 950  
fractional ownership, management services, and dry-lease aircraft 951  
interchange arrangement aspects of the program. 952

(2) As used in division (KKK)(1) of this section: 953

(a) "Affiliated group" has the same meaning as in division 954  
(B)(3)(e) of this section. 955

(b) "Fractional owner" means a person that owns or possesses 956  
at least a one-sixteenth interest in a program aircraft and has 957  
entered into the agreements described in division (KKK)(1)(e) of 958  
this section. 959

(c) "Fractional ownership program aircraft" or "program 960  
aircraft" means a turbojet aircraft that is owned or possessed by 961  
a fractional owner and that has been included in a dry-lease 962  
aircraft interchange arrangement and agreement under divisions 963  
(KKK)(1)(d) and (e) of this section, or an aircraft a program 964  
manager owns or possesses primarily for use in a fractional 965  
aircraft ownership program. 966

(d) "Management services" means administrative and aviation 967  
support services furnished under a fractional aircraft ownership 968  
program in accordance with a management services agreement under 969  
division (KKK)(1)(e) of this section, and offered by the program 970  
manager to the fractional owners, including, at a minimum, the 971  
establishment and implementation of safety guidelines; the 972  
coordination of the scheduling of the program aircraft and crews; 973  
program aircraft maintenance; program aircraft insurance; crew 974  
training for crews employed, furnished, or contracted by the 975  
program manager or the fractional owner; the satisfaction of 976



record-keeping requirements; and the development and use of an 977  
operations manual and a maintenance manual for the fractional 978  
aircraft ownership program. 979

(e) "Program manager" means the person that offers management 980  
services to fractional owners pursuant to a management services 981  
agreement under division (KKK)(1)(e) of this section. 982

(LLL) "Electronic publishing" means providing access to one 983  
or more of the following primarily for business customers, 984  
including the federal government or a state government or a 985  
political subdivision thereof, to conduct research: news; 986  
business, financial, legal, consumer, or credit materials; 987  
editorials, columns, reader commentary, or features; photos or 988  
images; archival or research material; legal notices, identity 989  
verification, or public records; scientific, educational, 990  
instructional, technical, professional, trade, or other literary 991  
materials; or other similar information which has been gathered 992  
and made available by the provider to the consumer in an 993  
electronic format. Providing electronic publishing includes the 994  
functions necessary for the acquisition, formatting, editing, 995  
storage, and dissemination of data or information that is the 996  
subject of a sale. 997

**Section 2.** That existing section 5739.01 of the Revised Code 998  
is hereby repealed. 999

**Section 3.** That the amendment by this act of section 5739.01 1000  
of the Revised Code first applies on the first day of the month 1001  
immediately following the effective date of this act. 1002