

As Introduced

**127th General Assembly
Regular Session
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S. B. No. 117

Senator Jacobson

**Cosponsors: Senators Miller, R., Spada, Buehrer, Mumper, Niehaus, Stivers,
Mason**

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A B I L L

To amend sections 153.64, 4939.01, 4939.03, 4939.04, 1
4939.05, 4939.08, and 5739.01, to enact sections 2
1332.21, 1332.22, 1332.23, 1332.24, 1332.25, 3
1332.26, 1332.27, 1332.28, 1332.29, 1332.30, 4
1332.31, 1332.32, 1332.33, 1332.34, and 1332.35, 5
and to repeal sections 505.90, 505.91, and 505.92 6
of the Revised Code to provide for the issuance of 7
video service authorizations by the Director of 8
Commerce. 9

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

Section 1. That sections 153.64, 4939.01, 4939.03, 4939.04, 10
4939.05, 4939.08, and 5739.01 be amended and sections 1332.21, 11
1332.22, 1332.23, 1332.24, 1332.25, 1332.26, 1332.27, 1332.28, 12
1332.29, 1332.30, 1332.31, 1332.32, 1332.33, 1332.34, and 1332.35 13
be enacted to read as follows: 14

Sec. 153.64. (A) As used in this section: 15

(1) "Public improvement" means any construction, 16
reconstruction, improvement, enlargement, alteration, or repair of 17
a building, highway, drainage system, water system, road, street, 18

alley, sewer, ditch, sewage disposal plant, water works, and all 19
other structures or works of any nature by a public authority. 20

(2) "Public authority" includes the state, or a county, 21
township, municipal corporation, school district, or other 22
political subdivision, or any public agency, authority, board, 23
commission, instrumentality, or special district of or in the 24
state or a county, township, municipal corporation, school 25
district, or other political subdivision. 26

(3) "Underground utility facilities" includes any item buried 27
or placed below ground or submerged under water for use in 28
connection with the storage or conveyance of water or sewage; or 29
electronic, telephonic, or telegraphic communications; 30
electricity; electric energy; petroleum products; manufactured, 31
mixed, or natural gas; synthetic or liquified natural gas; propane 32
gas; or other substances. "Underground utility facilities" 33
includes, but is not limited to, all operational underground 34
pipes, sewers, tubing, conduits, cables, valves, lines, wires, 35
manholes, and attachments, whether owned by any public or private 36
or profit or nonprofit person, firm, partnership, company, 37
corporation, joint stock association, joint venture, or voluntary 38
association, wherever organized or incorporated, except for a 39
private septic system in a single- or double-family dwelling 40
utilized only for that dwelling and not connected to any other 41
system. 42

(4) "Underground utility protection service" means a 43
notification center not an owner of an underground utility 44
facility, existing for the purpose of receiving notice from public 45
authorities and from other persons that plan to prepare plans and 46
specifications for, or engage in, public improvements involving 47
digging, blasting, excavating, or other underground construction 48
activities and distributing this information to its members. 49
"Registered underground utility protection service" means an 50

underground utility protection service registered with the 51
secretary of state and the public utilities commission of Ohio 52
pursuant to division (F) of this section. 53

(5) "Owner of underground utility facility" does not include 54
telephone companies classified as medium or small under rule 55
4901-7-01 of the Ohio Administrative Code, owners of pipelines 56
that conduct liquid petroleum products, or cable television 57
companies ~~as defined in division (B) of section 505.90 of the~~ 58
~~Revised Code~~ to the extent that it requires membership in an 59
underground utility protection service. 60

(6) "Construction area" means the area delineated on the 61
plans and specifications for the public improvement within which 62
the work provided for in the contract will be performed. 63

(B) In any public improvement which may involve underground 64
utility facilities, the public authority, prior to preparing plans 65
and specifications, shall contact the registered underground 66
utility protection services and the owners of underground utility 67
facilities that are not members of a registered underground 68
utility protection service for the existence and location of all 69
underground utility facilities within the construction area. The 70
public authority shall include, in the plans and specifications 71
for such improvement, the identity and location of the existing 72
underground utility facilities located in the construction area as 73
provided to the public authority by the owner of the underground 74
utility facility and the name, address, and telephone number of 75
each owner of any underground utility facilities in the 76
construction area that does not subscribe to a registered 77
underground utility protection service. Any anticipated temporary 78
or permanent relocation of underground utility facilities deemed 79
necessary by the public authority shall be negotiated or arranged 80
by the public authority with the owners of the underground utility 81
facilities prior to the start of construction. If a temporary or 82

permanent relocation of utility facilities is necessary, the owner 83
of the underground utility facility shall be given a reasonable 84
time to move such utility facilities unless the contractor to whom 85
the contract for a public improvement is awarded or its 86
subcontractor agrees with the owner of the underground utility 87
facility to coordinate relocation with construction operations. 88
The public authority, within ten calendar days after award of a 89
contract for a public improvement, shall notify in writing all 90
owners of underground utility facilities known to be located in 91
the construction area of the public improvement of the name and 92
address of the contractor to whom the contract for the public 93
improvement was awarded. Where notice is given in writing by 94
certified mail, the return receipt, signed by any person to whom 95
the notice is delivered, shall be conclusive proof of notice. 96

(C) The contractor to whom a contract for a public 97
improvement is awarded or its subcontractor, at least two working 98
days, excluding Saturdays, Sundays, and legal holidays, prior to 99
commencing construction operations in the construction area which 100
may involve underground utility facilities, shall cause notice to 101
be given to the registered underground utility protection services 102
and the owners of underground utility facilities shown on the 103
plans and specifications who are not members of a registered 104
underground utility protection service, in writing, by telephone, 105
or in person. Where notice is given in writing by certified mail, 106
the return receipt, signed by any person to whom the notice is 107
delivered, shall be conclusive proof of notice. The owner of the 108
underground utility facility, within forty-eight hours, excluding 109
Saturdays, Sundays, and legal holidays, after notice is received, 110
shall stake, mark, or otherwise designate the location of the 111
underground utility facilities in the construction area in such a 112
manner as to indicate their course together with the approximate 113
depth at which they were installed. The marking or locating shall 114
be coordinated to stay approximately two days ahead of the planned 115

construction. 116

(D) If the public authority fails to comply with the 117
requirements of division (B) of this section, the contractor to 118
whom the work is awarded or its subcontractor complies with the 119
requirements of division (C) of this section, and the contractor 120
or its subcontractor encounters underground utility facilities in 121
the construction area that would have been shown on the plans and 122
specifications for such improvement had the registered underground 123
utility protection service or owner of the underground utility 124
facility who is not a member of a registered underground utility 125
protection service whose name, address, and telephone number is 126
provided by the public authority been contacted, then the 127
contractor, upon notification to the public authority, is entitled 128
to an increase to the contract price for itself or its 129
subcontractor for any additional work that must be undertaken or 130
additional time that will be required and is entitled to an 131
extension of the completion date of the contract for the period of 132
time of any delays to the construction of the public improvement. 133

In the event of a dispute as to the application of this 134
section, procedures may be commenced under the applicable terms of 135
the construction contract, or if the contract contains no 136
provision for final resolution of the dispute, pursuant to the 137
procedures for arbitration in Chapter 2711. of the Revised Code. 138

This section does not affect rights between the contractors 139
and the public authority for any increase in contract price or 140
additional time to perform the contract when the public authority 141
complies with division (B) of this section. 142

Any public authority who complies with the requirements of 143
division (B) of this section and any contractor or its 144
subcontractor who complies with the requirements of division (C) 145
of this section shall not be responsible to the owner of the 146
underground utility facility if underground utility lines are 147

encountered not as marked in accordance with the provisions of 148
division (C) of this section by the owner of the underground 149
utility facility, unless the contractor or its subcontractor has 150
actual notice of the underground utility facility. Except as noted 151
in this division, this section does not affect rights between the 152
contractor or its subcontractor and the owner of the underground 153
utility facility for failure to mark or erroneously marking 154
utility lines. The public authority shall not make as a 155
requirement of any contract for public improvement any change in 156
responsibilities between the public authority and the owners of 157
the underground utility facilities in connection with damage, 158
injury, or loss to any property in connection with underground 159
utility facilities. 160

The contractor or its subcontractor shall alert immediately 161
the occupants of nearby premises as to any emergency that ~~he~~ the 162
contractor or subcontractor may create or discover at or near such 163
premises. The contractor or its subcontractor shall report 164
immediately to the owner or operator of the underground facility 165
any break or leak on its lines or any dent, gouge, groove, or 166
other damage to such lines or to their coating or cathodic 167
protection, made or discovered in the course of their excavation. 168

(E) This section does not affect rights between the public 169
authority and the owners of the underground utility facilities for 170
responsibility for costs involving removal, relocation, or 171
protection of existing underground utility facilities, or for 172
costs for delays occasioned thereby. 173

(F) An underground utility protection service shall register 174
with the secretary of state and the public utilities commission of 175
Ohio, identifying its name, address, telephone number, membership, 176
and other pertinent information. The secretary of state and 177
commission shall establish procedures for accepting such 178
registrations and providing information about registrants to 179

public authorities on request. 180

Sec. 1332.21. As used in sections 1332.21 to 1332.35 of the 181
Revised Code: 182

(A) "Access to video service" means the capability of a video 183
service provider to provide video service at a household address 184
irrespective of whether an owner or landlord or other responsible 185
person has granted entrance or a subscriber has ordered the 186
service. 187

(B) "Basic local exchange service" has the same meaning as in 188
section 4927.01 of the Revised Code. 189

(C) "Cable operator," "cable service," "cable system," 190
"franchise," and "franchising authority" have the same meanings as 191
in the "Cable Communications Policy Act of 1984," Pub. L. No. 192
98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522. 193

(D) "Competitive video service agreement" means any 194
agreement, memorandum of understanding, or other document that 195
provides or has the effect of providing, whether or not as a 196
franchise, authorization by a municipal corporation or township 197
for the provision of video service within its boundaries by a 198
person using telecommunications facilities to provide that 199
service. 200

(E) "Household" means, consistent with the regulations of the 201
United States census bureau, a house, an apartment, a mobile home, 202
a group of rooms, or a single room that is intended for occupancy 203
as separate living quarters. "Separate living quarters" are those 204
in which the occupants live and eat separately from any other 205
persons in the building and that have direct access from the 206
outside of the building or through a common hall. 207

(F) "Low-income households" means those residential 208
households that are located within the video service provider's 209

video service area and have an average annual household income of 210
less than thirty-five thousand dollars based on United States 211
census bureau estimates on January 1, 2007. 212

(G) "PEG channel" means a channel, for public, educational, 213
and governmental programming, made available by a video service 214
provider or cable operator for noncommercial use. 215

(H) "Telecommunications service" has the same meaning as in 216
the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title 217
I, Section 3, 110 Stat. 60, 47 U.S.C. 153. 218

(I) "Video programming" means programming provided by, or 219
generally considered comparable to programming provided by, a 220
television broadcast station, as set forth in the "Cable 221
Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 222
2781, 47 U.S.C. 522. 223

(J) "Video service" means the provision of video programming 224
over wires or cables located at least in part in public 225
rights-of-way, regardless of the technology used to deliver that 226
programming, including internet protocol technology or any other 227
technology. The term includes cable service, but excludes video 228
programming provided to subscribers by a commercial mobile service 229
provider, as defined in the "Telecommunications Act of 1996," Pub. 230
L. No. 104-104, Title VII, Sections 704(a) and 705, 110 Stat. 61, 231
151, 153, 47 U.S.C. 332; video programming provided solely as part 232
of and via a service that enables users to access content, 233
information, electronic mail, or other services offered over the 234
public internet; and signals distributed by a cable television 235
system to paying subscribers in the unincorporated area of a 236
township prior to October 1, 1979, as authorized under section 237
505.91 of the Revised Code as that section existed prior to its 238
repeal by B. of the 127th general assembly, unless a 239
franchise was subsequently issued to the same company as 240
authorized under that section. 241

(K) "Video service area" means the service area specified 242
pursuant to divisions (A) and (B) of section 1332.25 of the 243
Revised Code. 244

(L) "Video service network" means wires or cables and 245
associated facilities or components used to deliver video service 246
and includes a cable system. 247

(M) "Video service provider" means a person granted a video 248
service authorization under sections 1332.21 to 1332.35 of the 249
Revised Code. 250

Sec. 1332.22. The general assembly finds and declares all of 251
the following for the purposes of sections 1332.21 to 1332.35 of 252
the Revised Code: 253

(A) Video service brings significant daily benefits to this 254
state by providing news, education, and entertainment. 255

(B) This state's economy will be enhanced by investment in 256
new communications and video programming infrastructure, including 257
fiber optic and internet protocol technologies. 258

(C) Enhancing the existing broadband infrastructure and 259
increasing consumer access to robust and reliable broadband 260
products and services are also important, statewide public 261
purposes. 262

(D) To date, there has been only minimal competitive entry by 263
telephone companies into the facilities-based video programming 264
market in this state, in part, because local franchise 265
requirements may present barriers to entry. 266

(E) Increased competition in the provision of video service 267
will provide new and more video programming choices for consumers 268
in this state, and new providers have stated their desire to 269
supply that service. 270

(F) The time-to-market interval is critical for new entrants 271

<u>seeking to compete with incumbents.</u>	272
<u>(G) Local franchise, right-of-way, and other requirements may</u>	273
<u>present inordinate delays for new entrants.</u>	274
<u>(H) This state can and should provide a uniform regulatory</u>	275
<u>framework by which persons can rapidly and expeditiously provide</u>	276
<u>video service to residents of this state regardless of their</u>	277
<u>jurisdictional locations, which framework will serve to clarify</u>	278
<u>the authority and obligations of those persons under right-of-way</u>	279
<u>laws of this state, promote rapid competitive entry into the video</u>	280
<u>service market, and encourage additional, significant</u>	281
<u>infrastructure investment.</u>	282
<u>(I) Maintaining an existing franchise in cases where new</u>	283
<u>entrants obtain video service authorizations is not appropriate</u>	284
<u>unless the incumbent chooses to maintain that franchise.</u>	285
<u>(J) The continued development of Ohio's video service market</u>	286
<u>and promotion of infrastructure investment are matters of</u>	287
<u>statewide concern and are properly subject to exercises of this</u>	288
<u>state's police power.</u>	289
<u>(K) By analogy to <i>Am. Financial Servs. Assn. et al. v.</i></u>	290
<u><i>Cleveland</i>, 112 Ohio St. 3d 170, 2006-Ohio-6043, citing <i>Canton v.</i></u>	291
<u><i>State</i>, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus, sections</u>	292
<u>1332.21 to 1332.35 of the Revised Code are intended as a</u>	293
<u>comprehensive legislative enactment operating uniformly throughout</u>	294
<u>this state, setting forth police regulations, and prescribing a</u>	295
<u>rule of conduct upon citizens generally.</u>	296
<u>Sec. 1332.23. (A) No person shall provide video service in</u>	297
<u>this state on or after the effective date of this section except</u>	298
<u>pursuant to a video service authorization issued under section</u>	299
<u>1332.24 of the Revised Code or pursuant to the terms and</u>	300
<u>conditions of a franchise or competitive video service agreement</u>	301

continuing in effect only as provided under division (B)(1)(a) or 302
(b) of this section. Such person includes a person operating or 303
proposing to operate a video service network using 304
telecommunications facilities located in public rights-of-way 305
pursuant to a certificate, a franchise other than a video service 306
authorization, a competitive service agreement, an ordinance, or a 307
resolution that authorizes construction and operation of those 308
facilities to provide telecommunications service. 309

(B)(1)(a) Solely at the option of a person that offers 310
service under a franchise or competitive video service agreement 311
in effect on the effective date of this section, the person may 312
continue on and after that date to provide service within the 313
franchise area or the respective municipal corporation or 314
unincorporated area of a township pursuant to the terms and 315
conditions of the franchise or agreement, except as otherwise 316
provided in section 1332.30 of the Revised Code. However, no such 317
franchise or agreement shall be renewed or extended beyond the 318
existing term of the franchise or agreement or its earlier 319
termination pursuant to the terms and conditions of the respective 320
franchise or agreement. 321

(b) Any person that is providing video service in this state 322
on the effective date of this section pursuant to the terms and 323
conditions of an expired franchise or competitive video service 324
agreement has ninety days beginning on the effective date of this 325
section to file an application for a video service authorization 326
under section 1332.25 of the Revised Code. 327

(2) A person that offers service under a franchise or 328
competitive video service agreement pursuant to division (B)(1)(a) 329
of this section may apply at any time under section 1332.25 of the 330
Revised Code for a video service authorization to provide video 331
service within this state. Upon the effective date of the video 332

service authorization, the franchise or competitive video service 333
agreement terminates, and, except as provided in division (F)(2) 334
of section 1332.30 of the Revised Code, no provision of that 335
franchise or agreement is enforceable. 336

(C) Video service constitutes cable service over a cable 337
system for the purposes of sections 1332.01 to 1332.10 of the 338
Revised Code. 339

Sec. 1332.24. (A)(1) In accordance with section 1332.25 of 340
the Revised Code, the director of commerce may issue to any 341
person, or renew, a video service authorization, which 342
authorization confers on the person the authority to provide video 343
service in its video service area; construct and operate a video 344
service network in, along, across, or on public rights-of-way for 345
the provision of video service; and, when necessary to provide 346
that service, exercise the power of a telegraph company under 347
section 4931.04 of the Revised Code. The term of a video service 348
authorization or authorization renewal shall be ten years. 349

(2) For the purposes of the "Cable Communications Policy Act 350
of 1984," Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et 351
seq., a video service authorization shall constitute a franchise 352
under that law, and the director shall be the sole franchising 353
authority under that law for video service authorizations in this 354
state. 355

(B)(1) The director has no authority to regulate video 356
service in this state, including, but not limited to, the rates, 357
terms, or conditions of that service. However, the director may 358
investigate alleged violations of or failures to comply with 359
division (A) of section 1332.23, division (C) of section 1332.25, 360
division (A), (B), or (C) of section 1332.27, division (A) of 361
section 1332.28, division (A) or (B) of section 1332.29, or 362
section 1332.31 or 1332.32 of the Revised Code, or complaints 363

concerning any such violation or failure. 364

(2) In conducting an investigation under division (B)(1) of 365
this section, the director, by subpoena, may compel witnesses to 366
testify in relation to any matter over which the director has 367
jurisdiction and may require the production of any book, record, 368
or other document pertaining to that matter. If a person fails to 369
file any statement or report, obey any subpoena, give testimony, 370
produce any book, record, or other document as required by a 371
subpoena, or permit photocopying of any book, record, or other 372
document subpoenaed, the court of common pleas of any county in 373
this state, upon application made to it by the director, shall 374
compel obedience by attachment proceedings for contempt, as in the 375
case of disobedience of the requirements of a subpoena issued from 376
the court or a refusal to testify. 377

(3) If the director finds that a person has violated or 378
failed to comply with division (A) of section 1332.23, division 379
(C) of section 1332.25, division (A), (B), or (C) of section 380
1332.27, division (A) of section 1332.28, division (A) or (B) of 381
section 1332.29, or section 1332.31 or 1332.32 of the Revised 382
Code, and the person has failed to cure the violation or failure 383
after reasonable, written notice and reasonable time to cure, the 384
director may apply to the court of common pleas of any county in 385
this state for an order enjoining the activity or requiring 386
compliance. Such an action shall be commenced not later than three 387
years after the date the alleged violation or failure occurred or 388
was reasonably discovered. Upon a showing by the director that the 389
person has engaged in a violation or failure to comply, the court 390
shall grant an injunction, restraining order, or other appropriate 391
relief. 392

(C) The public utilities commission has no authority over a 393
video service provider in its offering of video service or a cable 394
operator in its offering of cable or video service, or over any 395

person in its offering of video service pursuant to a competitive 396
video service agreement. 397

Sec. 1332.25. (A) An application made to the director of 398
commerce for a video service authorization under section 1332.24 399
of the Revised Code shall require and contain only the following: 400

(1) Specification of the location of the applicant's 401
principal place of business and the names of the applicant's 402
principal executive officers; 403

(2) Specification of the geographic and political boundaries 404
of the applicant's proposed video service area; 405

(3) A general description of the type or types of 406
technologies the applicant will use to deliver the video 407
programming, which may include wireline, wireless, or any other 408
alternative technology, subject, as applicable, to section 1332.29 409
of the Revised Code; 410

(4) An attestation that the applicant has filed or will 411
timely file with the federal communications commission all forms 412
required by that agency in advance of offering video service in 413
this state; 414

(5) An attestation that the applicant will comply with 415
applicable federal, state, and local laws; 416

(6) An attestation that the applicant is legally, 417
financially, and technically qualified to provide video service. 418

(B) For the purpose of division (A)(2) of this section: 419

(1) The video service areas of video service providers may 420
overlap. 421

(2) A specified video service area shall be coextensive with 422
municipal, township unincorporated area, or county boundaries, 423
except as authorized under division (B)(3) of this section, but 424

nothing in sections 1332.21 to 1332.35 of the Revised Code shall 425
require a video service provider to provide access to video 426
service within the entire video service area. 427

(3) The specified video service area of a person using 428
telecommunications facilities to provide video service on the 429
effective date of this section or of any other person later so 430
using telecommunications facilities shall be the geographic area 431
in which the person offers basic local exchange service. 432

(4) The specified video service area of an applicant cable 433
operator that offers service under a franchise in effect on the 434
effective date of this section initially shall be, at minimum, the 435
franchise area established under that franchise. 436

(C) A video service provider shall immediately file an 437
application to amend its video service authorization with the 438
director to reflect any change in the information required under 439
division (A)(1), (2), or (3) of this section. An amendment 440
pursuant to division (A)(2) of this section shall include any new 441
delivery technology information required by division (A)(3) of 442
this section. 443

(D) Within ten days after its filing or within ten days after 444
the filing of supplemental information necessary to make it 445
complete, the director shall determine the completeness of an 446
application filed under division (A) or (C) of this section 447
relative to the respective requirements of divisions (A), (B), and 448
(C) of this section and, as applicable, shall notify the applicant 449
of an incompleteness determination, state the bases for that 450
determination, and inform the applicant that it may resubmit a 451
corrected application. The director shall issue a video service 452
authorization, authorization renewal, or amended authorization 453
within twenty days after the director's determination that the 454
filed application is complete. 455

If the director does not notify the applicant regarding the 456
completeness of the application within the time period specified 457
in this division or does not issue the authorization requested by 458
a completed application within the applicable time period, the 459
application shall be deemed complete, and the authorization or 460
amended authorization deemed issued on the thirty-first day after 461
the application's filing date. 462

Sec. 1332.26. (A) No political subdivision shall require a 463
video service provider to obtain from it any authority to provide 464
video service within its boundaries. 465

(B) Except as authorized under division (C) of this section 466
and under sections 1332.30, 1332.33, and 1332.34 of the Revised 467
Code, no political subdivision shall request anything of value 468
from a video service provider for providing video service; impose 469
any fee, license, or gross receipt tax on the provision of video 470
service by such a provider; or impose any franchise or other 471
requirement on the provision of video service by a video service 472
provider, including, but not limited to, any provision regulating 473
rates charged by a video service provider or establishing any 474
build-out requirement or requirement to deploy any facility or 475
equipment. 476

(C)(1) A municipal corporation or township by ordinance or 477
resolution may require a video service provider providing video 478
service within its respective boundaries to conform its provision 479
of that service to customer service requirements that are 480
consistent with and not more stringent than those specified in 47 481
C.F.R. 76.309(c). 482

(2) Division (C)(1) of this section does not apply if there 483
are two or more persons offering video service, excluding 484
providers of direct-to-home satellite service, within the 485
respective boundaries or if the video service provider is subject 486

to effective competition, as defined in 47 C.F.R. 76.905, in its 487
video service area. 488

Sec. 1332.27. (A) Before providing video service to one or 489
more subscribers within its video service area or any additional 490
video service area under division (C) of section 1332.25 of the 491
Revised Code, a video service provider shall provide ten days' 492
advance, written notice of that service or additional service to 493
the respective municipal corporation, township, or county. 494

(B) A video service provider may transfer its video service 495
authorization to a successor. Within ten days after completing the 496
transfer, the provider shall provide written notice to the 497
respective municipal corporation, township, or county. The 498
transfer is not valid until the date that the successor files a 499
complete affidavit with the director of commerce containing the 500
information specified in division (A) of section 1332.25 of the 501
Revised Code. The director has no authority to act upon the notice 502
or the completed affidavit. 503

(C) A video service provider may terminate video service to 504
its video service area, but only after providing thirty days' 505
advance, written notice to the director, affected subscribers, and 506
the respective municipal corporations, townships, or counties 507
comprising the video service area. The director has no authority 508
to act upon the notice. 509

Sec. 1332.28. (A) Consistent with the "Telecommunications Act 510
of 1996," Pub. L. No. 104-104, Title III, Sections 303(a), 110 511
Stat. 61, 124, 47 U.S.C. 541(a)(3), no video service provider 512
shall deny access to video service to any group of potential 513
residential subscribers in its video service area because of the 514
race or income of the residents in the local area in which the 515
group resides. 516

(B) It is an affirmative defense to a violation of division 517
(A) of this section if the video service provider can demonstrate 518
either of the following: 519

(1) Three years after the date it began providing video 520
service in its video service area, at least twenty-five per cent 521
of households with access to the provider's video service are 522
low-income households. 523

(2) Five years after the date it began providing video 524
service in its video service area and thereafter, at least thirty 525
per cent of the households with access to the provider's video 526
service are low-income households. 527

Sec. 1332.29. (A)(1) A video service provider that both uses 528
telecommunications facilities to provide video service and has 529
more than one million telephone access lines in this state shall 530
provide access to video service to at least: 531

(a) Twenty-five per cent of the households in its video 532
service area within two years after the date it began providing 533
video service in that area; 534

(b) Fifty per cent of the households in its video service 535
area within five years after the date it began providing video 536
service in that area, except that a video service provider need 537
not meet that fifty per cent requirement until two years after at 538
least thirty per cent of the households with access to the 539
provider's video service under its video service authorization 540
subscribe to the service for six consecutive months. 541

(2) A video service provider may comply with division 542
(A)(1)(a) or (b) of this section through the use of alternative 543
technology, except satellite technology, that offers service, 544
functionality, and content demonstrably similar to the service, 545
functionality, and content the provider otherwise provides through 546

its video service network. 547

(B) A video service provider shall file an annual report with 548
the director of commerce describing its compliance with division 549
(A) of this section or, as applicable, its progress toward that 550
compliance. 551

(C) A video service provider may apply to the director for a 552
waiver of or for an extension of time to comply with division 553
(A)(1) of this section. The director may grant the waiver or 554
extension only if the director determines that the video service 555
provider has made substantial and continual effort to comply and 556
determines that one or more of the following caused the provider's 557
inability to comply: 558

(1) The provider is unable to obtain access to public and 559
private rights-of-way under reasonable terms and conditions. 560

(2) Developments or buildings are not subject to competition 561
because of existing, exclusive service arrangements. 562

(3) Developments or buildings are inaccessible using 563
reasonable technical solutions under commercially reasonable terms 564
and conditions. 565

(4) A natural disaster prevents compliance. 566

(5) There are other factors beyond the provider's control. 567

If an extension of time is granted, the director shall 568
establish a new compliance deadline. If a waiver is granted, the 569
director shall specify the requirement or requirements waived. 570

Sec. 1332.30. (A) Any municipal corporation or township that 571
lies within a video service provider's video service area may 572
require the video service provider by written notice to provide 573
PEG channels for noncommercial use. Following such a request, a 574
video service provider shall provide the PEG channels one hundred 575
twenty days after the municipal corporation or township is able to 576

deliver the PEG channel content. The provider may use any service 577
tier viewed by more than fifty per cent of the subscribers in the 578
video service area to provide PEG channels under this section. 579

(1) Except as provided in division (A)(2) of this section, 580
the number of required PEG channels shall not exceed three if the 581
respective municipal corporation or township has a population of 582
at least fifty thousand, or two if the population is less than 583
fifty thousand. If there is more than one video service provider 584
providing PEG channels in the municipal corporation or township, 585
the number of channels shall be the same for all the video service 586
providers. 587

(2) If a video service provider distributes video programming 588
through a single headend or video hub office to a video service 589
area consisting of one or more municipal corporations or the 590
unincorporated areas of one or more townships, or of one or more 591
municipal corporations and unincorporated areas, that have, in the 592
aggregate, a population of at least fifty thousand, none of those 593
municipal corporations or townships shall require the provider to 594
provide, in the aggregate, channel capacity for more than three 595
PEG channels. In the situation where the aggregate population is 596
less than fifty thousand, none of those municipal corporations or 597
townships shall require the provider to provide, in the aggregate, 598
channel capacity for more than two PEG channels. The foregoing 599
limits shall constitute the total number of PEG channels that may 600
be designated on all video service networks that share a common 601
headend or video hub office, regardless of the number of municipal 602
corporations or townships served, and the populations of all those 603
municipal corporations or unincorporated areas shall be aggregated 604
for the purpose of applying those limits. 605

(B) No municipal corporation or township shall require a 606
video service provider to provide any institutional network or 607

equivalent capacity on its video service network. 608

(C) Except as otherwise provided in this section, no 609
municipal corporation or township shall require a video service 610
provider to provide any funds, services, programming, facilities, 611
or equipment related to public, educational, or governmental use 612
of channel capacity. The operation of a PEG channel and the 613
production of any programming that appears on the channel shall be 614
the sole responsibility of the municipal corporation or township. 615
The video service provider shall bear only the responsibility for 616
the transmission to subscribers of the PEG channel programming. 617

(D) The municipal corporation or township shall ensure that 618
any PEG channel content and programming it submits to a video 619
service provider is compatible with the technology or protocol the 620
provider uses to deliver video service, and shall not require or 621
necessitate any alteration or change in content or transmission 622
signal. 623

(E) A video service provider may reclaim and program a PEG 624
channel that it determines is not substantially utilized. At such 625
time as the municipal corporation or township that caused the 626
establishment of the PEG channel can later certify that the 627
channel will be substantially utilized, the video service 628
provider, within one hundred twenty days after the date the video 629
service provider receives that certification, shall restore the 630
reclaimed channel as a PEG channel. However, the provider shall be 631
under no obligation to carry that channel on any specified tier of 632
service. For the purpose of this division and division (F)(2) of 633
this section, a PEG channel is "substantially utilized" when at 634
least twelve hours of noncharacter-generated content are 635
programmed on that channel each calendar day and at least eighty 636
per cent of the programming is nonrepeat and locally produced. 637

(F)(1) The provisions of this section preempt and supersede 638
any provision of a franchise, competitive video service agreement, 639

ordinance, or resolution granted, enacted, or adopted by a 640
municipal corporation or township and in effect on the effective 641
date of this section regarding PEG channels and the provision of 642
institutional network or equivalent capacity under that franchise, 643
agreement, ordinance, or resolution. 644

(2) However, if such a franchise, agreement, ordinance, or 645
resolution requires fewer PEG channels than those required 646
pursuant to division (A) of this section, the requirement of the 647
respective franchise, agreement, ordinance, or resolution shall 648
apply to all video service providers providing video service 649
within the respective municipal or township unincorporated area 650
boundaries, and the municipal corporation or township later may 651
require activation of additional PEG channels, not exceeding the 652
number required pursuant to division (A) of this section, if it 653
specifies that the additional channels will be substantially 654
utilized. 655

Sec. 1332.31. A video service provider shall implement an 656
informal process for handling inquiries from any person concerning 657
billing issues, service issues, and other subscriber complaints. 658

Sec. 1332.32. Not later than six months after the effective 659
date of its video service authorization, a video service provider 660
shall carry emergency interrupt service announcements transmitted 661
by local television broadcasters and shall transmit national, 662
state, and local emergency interrupt service announcements as 663
required by 47 C.F.R. 11.11 et seq. or as otherwise required by 664
the federal communications commission. 665

Sec. 1332.33. (A) Not sooner than forty-five days after the 666
end of each calendar quarter, a video service provider shall pay a 667
video service provider fee to each municipal corporation and each 668
township in which it offers video service. The fee shall be 669

calculated quarterly by determining the provider's gross revenue 670
for the preceding calendar quarter as described in division (B) of 671
this section and multiplying the result by the percentage 672
specified in division (C)(1) or (2) of this section. 673

(B) Gross revenue shall be computed in accordance with 674
generally accepted accounting principles. 675

(1) Gross revenue shall consist of all of the following 676
revenue for the calendar quarter that is collected by the provider 677
for video service from all its subscribers having a service 678
address within any portion of the municipal corporation or, 679
respectively, the unincorporated area of the township: 680

(a) Recurring monthly charges for video service; 681

(b) Event-based charges for video service, including, but not 682
limited to, pay-per-view and video-on-demand charges; 683

(c) Charges for rental of set top boxes and other video 684
service equipment; 685

(d) Service charges related to the provision of video 686
service, including, but not limited to, activation, installation, 687
and repair; 688

(e) Administrative charges related to the provision of video 689
service, including, but not limited to, service order and service 690
termination charges. 691

(2) Gross revenue shall not include any of the following: 692

(a) Any taxes, fees, or assessments that are collected by the 693
video service provider from video service subscribers for 694
pass-through to any federal, state, or local government agency, 695
including the video service provider fee authorized under this 696
section and the federal communication commission user fee; 697

(b) Uncollectible charges, except that uncollectible charges, 698

all or part of which are written off as bad debt but subsequently 699
collected, less the expenses of their collection shall be included 700
in gross revenue in the quarter collected; 701

(c) Late payment charges; 702

(d) Maintenance charges; 703

(e) Charges for services other than video service, reasonably 704
identifiable on books or records the video service provider keeps 705
in the regular course of business or by other reasonable means, 706
that are aggregated or bundled with amounts billed to video 707
service subscribers, including, but not limited to, any revenue 708
received by a video service provider or its affiliates for 709
telecommunications service, information service, or the provision 710
of directory or internet advertising, including yellow pages, 711
white pages, banner advertising, and electronic publishing; 712

(f) Reimbursement by programmers of marketing costs actually 713
incurred by the video service provider; 714

(g) Any revenue not expressly enumerated in division (B)(1) 715
of this section. 716

(C)(1) If in the calendar quarter a franchise fee is payable 717
by a cable operator under a franchise in effect in a municipal 718
corporation or township as provided under division (B) of section 719
1332.23 of the Revised Code, the percentage of gross revenue 720
payable in that calendar quarter by a video service provider to 721
the municipal corporation or township shall be the same percentage 722
of gross revenue payable in that calendar quarter pursuant to that 723
franchise, not to exceed five per cent. If there is more than one 724
such franchise of a cable operator in effect in that quarter, the 725
lowest such percentage shall be used. 726

(2) Otherwise, the percentage shall be zero or such higher 727
percentage, not to exceed five per cent, as is specified in an 728
ordinance or resolution that the municipal corporation or township 729

may enact or adopt for the purpose of this section. 730

(D) A video service provider that pays a video service 731
provider fee pursuant to this section may include a portion of 732
that fee in the regular bill of each of its video service 733
subscribers that has a service address within any portion of the 734
municipal corporation or, respectively, within the unincorporated 735
area of the township. 736

Sec. 1332.34. (A) At its sole expense and not more often than 737
once per calendar year, a municipal corporation or township may 738
conduct an audit for the purpose of verifying the accuracy of a 739
video service provider's calculation of the video service provider 740
fees it paid to the municipal corporation or township in the audit 741
period. For the purpose of the audit, the video service provider 742
shall make available for inspection, at the location where such 743
records are kept in the normal course of business, those records 744
pertaining to its gross revenue as defined in division (B) of 745
section 1332.33 of the Revised Code. The provider need not retain 746
those records for longer than three years after the year for which 747
the fee was payable, unless the municipal corporation or township 748
has commenced an action under division (C) of this section. 749

(B)(1) No municipal corporation or township shall employ, 750
appoint, or retain any person for compensation that is dependent 751
in any manner upon the outcome of an audit under division (A) of 752
this section, including compensation dependent on the audit 753
findings or the recovery of fees or other payment. 754

(2) No person shall solicit or accept compensation that is 755
dependent in any manner upon the outcome of an audit under 756
division (A) of this section, including compensation dependent on 757
the audit findings or the recovery of fees or other payment by the 758
municipal corporation, township, or video service provider. 759

(C) An action by the municipal corporation or township or by 760

the video service provider to dispute the amount of video service 761
provider fee due based on the audit results shall be brought in a 762
court of competent jurisdiction not later than two years following 763
the end of the quarter to which the disputed amount relates. 764

(D) A municipal corporation or township shall be deemed to 765
accept as full payment any payment of a video service provider fee 766
that it does not challenge as provided under division (C) of this 767
section. 768

Sec. 1332.35. Nothing in sections 1332.21 to 1332.34 of the 769
Revised Code is intended to be inconsistent with the "Cable 770
Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C. 521 771
to 573. 772

Sec. 4939.01. As used in sections 4939.01 to 4939.08 of the 773
Revised Code: 774

(A) "Cable operator," "cable service," and "franchise" have 775
the same meanings as in the "Cable Communications Policy Act of 776
1984," 98 Stat. 2779, 47 U.S.C.A. 522. 777

(B) "Occupy or use" means, with respect to a public way, to 778
place a tangible thing in a public way for any purpose, including, 779
but not limited to, constructing, repairing, positioning, 780
maintaining, or operating lines, poles, pipes, conduits, ducts, 781
equipment, or other structures, appurtenances, or facilities 782
necessary for the delivery of public utility services or any 783
services provided by a cable operator. 784

(C) "Person" means any natural person, corporation, or 785
partnership and also includes any governmental entity. 786

(D) "Public utility" means any company described in section 787
4905.03 of the Revised Code except in divisions (A)(3) and (10) of 788
that section, which company also is a public utility as defined in 789
section 4905.02 of the Revised Code; and includes any electric 790

supplier as defined in section 4933.81 of the Revised Code. 791

(E) "Public way" means the surface of, and the space within, 792
through, on, across, above, or below, any public street, public 793
road, public highway, public freeway, public lane, public path, 794
public alley, public court, public sidewalk, public boulevard, 795
public parkway, public drive, and any other land dedicated or 796
otherwise designated for a compatible public use, which, on or 797
after the effective date of this section, is owned or controlled 798
by a municipal corporation. "Public way" excludes a private 799
easement. 800

(F) "Public way fee" means a fee levied to recover the costs 801
incurred by a municipal corporation and associated with the 802
occupancy or use of a public way. 803

(G) "Video service provider" has the same meaning as in 804
section 1332.21 of the Revised Code. 805

Sec. 4939.03. (A) No person shall occupy or use a public way 806
except in accordance with law. 807

(B) In occupying or using a public way, no person shall 808
unreasonably compromise the public health, safety, and welfare. 809

(C)(1) No person shall occupy or use a public way without 810
first obtaining any requisite consent of the municipal corporation 811
owning or controlling the public way. 812

(2) ~~Except~~ (a) Consent to occupy or use a public way shall be 813
deemed granted for all lines, poles, pipes, conduits, ducts, 814
equipment, or other appurtenances, structures, or facilities of a 815
public utility, cable operator, or video service provider 816
thirty-one days after it files a completed request for consent 817
with the municipal corporation or on such earlier date as that 818
request is granted by the municipal corporation. 819

(b) In the case of a request for consent made by any other 820

person to a municipal corporation and except as otherwise provided 821
in division (C)(5) of this section, a municipal corporation, shall 822
grant or deny its consent not later than sixty days after the date 823
of filing ~~by a person~~ of a completed request ~~for consent, shall~~ 824
~~grant or deny its consent~~ by the person. 825

(3) A For persons under division (C)(2)(b) of this section, a 826
municipal corporation shall not unreasonably withhold or deny 827
consent. 828

(4) If a request by a person for consent is denied, the 829
municipal corporation shall provide to the person in writing its 830
reasons for denying the request and such information as the person 831
may reasonably request to obtain consent. 832

(5) Except in the case of a public utility subject to the 833
jurisdiction and recognized on the rolls of the public utilities 834
commission ~~or of~~, a cable operator possessing a valid franchise 835
awarded pursuant to the "Cable Communications Policy Act of 1984," 836
98 Stat. 2779, 47 U.S.C.A. 541, or a video service provider, a 837
municipal corporation, for good cause shown, may withhold, deny, 838
or delay its consent to any person based upon the person's failure 839
to possess the financial, technical, and managerial resources 840
necessary to protect the public health, safety, and welfare. 841

(6) Initial consent for occupancy or use of a public way 842
shall be conclusively presumed for all lines, poles, pipes, 843
conduits, ducts, equipment, or other appurtenances, structures, or 844
facilities of a public utility or cable operator that, on ~~the~~ 845
~~effective date of this section~~ July 2, 2002, lawfully so occupy or 846
use a public way. However, such presumed consent does not relieve 847
the public utility ~~or~~, cable operator, or video service provider 848
of compliance with any law related to the ongoing occupancy or use 849
of a public way. 850

Sec. 4939.04. (A)(1) A municipal corporation shall provide 851

public utilities ~~or~~, cable operators, and video service providers 852
with open, comparable, nondiscriminatory, and competitively 853
neutral access to its public ways. 854

(2) Nothing in division (A)(1) of this section prohibits a 855
municipal corporation from ~~establishing priorities for~~ 856
prioritizing access to or occupancy or use of a public way by a 857
public utility ~~or~~, cable operator, or video service provider when 858
the public way cannot accommodate all public way occupants or 859
users, ~~which priorities as applied to public utilities or cable~~ 860
~~operators shall~~ provided the prioritization is not be unduly 861
discriminatory and ~~shall be~~ is competitively neutral. 862

(B) The management, regulation, and administration of a 863
public way by a municipal corporation with regard to matters of 864
local concern shall be presumed to be a valid exercise of the 865
power of local self-government granted by Section 3 of Article 866
XVIII of the Ohio Constitution. 867

Sec. 4939.05. (A) A municipal corporation shall not require 868
any nonmonetary compensation or free service, or levy any tax, for 869
the right or privilege to occupy or use a public way, and shall 870
not levy a public way fee except in accordance with this section. 871

(B)(1) A municipal corporation may levy different public way 872
fees based upon the amount of public ways occupied or used, the 873
type of utility service provided by a public utility, or any 874
different treatment required by the public health, safety, and 875
welfare. 876

(2) A municipal corporation may waive all or a portion of any 877
public way fee for a governmental entity or a charitable 878
organization. 879

(3) A municipal corporation shall not require any person, 880
including a reseller, that does not occupy or use a public way 881

owned or controlled by the municipal corporation to pay it a 882
public way fee. 883

(4) A municipal corporation that, subject to sections 1332.23 884
and 1332.26 of the Revised Code, charges a franchise fee or 885
otherwise receives free service or other nonmonetary compensation 886
as part of a franchise between a cable operator and the municipal 887
corporation or that receives video service provider fees from a 888
video service provider pursuant to section 1332.33 of the Revised 889
Code shall grant the cable operator or, respectively, the video 890
service provider, for the occupancy or use of the public way 891
related to ~~the its~~ provision of ~~any services provided by the cable~~ 892
~~operator,~~ a credit, offset, or deduction against any public way 893
fee or like charge for all such payments, for their duration, that 894
are made by the cable operator or, respectively, by the video 895
service provider and, as applicable in the case of a cable 896
operator, the retail value of the free service or other 897
nonmonetary compensation. 898

(C) Public way fees levied by a municipal corporation shall 899
be based only on costs that the municipal corporation both has 900
actually incurred and can clearly demonstrate are or can be 901
properly allocated and assigned to the occupancy or use of a 902
public way. The costs shall be reasonably and competitively 903
neutrally allocated among all persons occupying or using public 904
ways owned or controlled by the municipal corporation, including, 905
but not limited to, persons for which payments are waived as 906
authorized by division (B) of this section or for which 907
compensation is otherwise obtained. No public way fee shall 908
include a return on or exceed the amount of costs reasonably 909
allocated by the municipal corporation to such occupant or user or 910
pursuant to any reasonable classification of occupants or users. 911

(D) A municipal corporation that levies a public way fee 912
shall establish and maintain a special fund for all such fees 913

remitted to the municipal corporation and, with respect to that 914
special fund, shall be subject to sections 5705.09, 5705.10, 915
5705.14, 5705.15, 5705.16, 5705.39, 5705.40, 5705.41, 5705.44, and 916
5705.45 of the Revised Code and any other applicable provision of 917
Chapter 5705. of the Revised Code concerning the establishment or 918
maintenance of a special fund. 919

(E) At least forty-five days prior to the date of enactment 920
of a public way ordinance by a municipal corporation, the 921
municipal corporation shall file with the public utilities 922
commission a notice that the ordinance is being considered. 923

Sec. 4939.08. (A) Nothing in sections 4939.01 to 4939.07 of 924
the Revised Code applies to a franchise or to any agreement with a 925
public utility or cable operator, for the balance of its term, if 926
the franchise or agreement meets all of the following: 927

(1) The franchise was granted, or the agreement was 928
authorized by ordinance or otherwise and was entered into, by a 929
municipal corporation prior to ~~the effective date of this section~~ 930
July 2, 2002. 931

(2) The franchise or agreement authorizes the occupation or 932
use of public ways. 933

(3) The public utility agrees with the applicable public way 934
fees, or nonmonetary compensation, if any, or the cable operator 935
pays the applicable fee or utilizes the credit, offset, or 936
deduction specified in division (B)(4) of section 4939.05 of the 937
Revised Code. 938

(B) Except as otherwise provided in division (A) of section 939
4939.06 of the Revised Code, nothing in sections 4939.01 to 940
4939.07 of the Revised Code applies to an ordinance both governing 941
public ways and enacted by a municipal corporation prior to 942
September 29, 1999, unless, on or after that date, the ordinance 943

is materially modified. 944

(C) Nothing in sections 4939.01 to 4939.07 of the Revised 945
Code authorizes a municipal corporation to levy a fee, other than 946
a public way fee authorized by section 4939.05 of the Revised 947
Code, on a pipeline company or an operator of a pipeline facility 948
regulated under the "Accountable Pipeline Safety and Partnership 949
Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or on an 950
operating partner or affiliated business unit operating under 951
guidelines of the federal energy regulatory commission as they 952
relate to the construction and operation of a pipeline. 953

(D) Nothing in sections 4939.01 to 4939.07 and this section 954
of the Revised Code prohibits a municipal corporation from doing 955
either of the following: 956

(1) Charging a cable operator, but not a video service 957
provider, a franchise fee in accordance with the "Cable 958
Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 959
542, and sections 1332.21 to 1332.35 of the Revised Code or 960
charging a video service provider a video service provider fee 961
under section 1332.33 of the Revised Code; 962

(2) Allowing a credit, offset, or deduction against the 963
payment of a construction permit fee for any such franchise fee a 964
cable operator pays to the municipal corporation or, respectively, 965
for any such video service provider fee a video service provider 966
pays to the municipal corporation. 967

Sec. 5739.01. As used in this chapter: 968

(A) "Person" includes individuals, receivers, assignees, 969
trustees in bankruptcy, estates, firms, partnerships, 970
associations, joint-stock companies, joint ventures, clubs, 971
societies, corporations, the state and its political subdivisions, 972
and combinations of individuals of any form. 973

(B) "Sale" and "selling" include all of the following	974
transactions for a consideration in any manner, whether absolutely	975
or conditionally, whether for a price or rental, in money or by	976
exchange, and by any means whatsoever:	977
(1) All transactions by which title or possession, or both,	978
of tangible personal property, is or is to be transferred, or a	979
license to use or consume tangible personal property is or is to	980
be granted;	981
(2) All transactions by which lodging by a hotel is or is to	982
be furnished to transient guests;	983
(3) All transactions by which:	984
(a) An item of tangible personal property is or is to be	985
repaired, except property, the purchase of which would not be	986
subject to the tax imposed by section 5739.02 of the Revised Code;	987
(b) An item of tangible personal property is or is to be	988
installed, except property, the purchase of which would not be	989
subject to the tax imposed by section 5739.02 of the Revised Code	990
or property that is or is to be incorporated into and will become	991
a part of a production, transmission, transportation, or	992
distribution system for the delivery of a public utility service;	993
(c) The service of washing, cleaning, waxing, polishing, or	994
painting a motor vehicle is or is to be furnished;	995
(d) Until August 1, 2003, industrial laundry cleaning	996
services are or are to be provided and, on and after August 1,	997
2003, laundry and dry cleaning services are or are to be provided;	998
(e) Automatic data processing, computer services, or	999
electronic information services are or are to be provided for use	1000
in business when the true object of the transaction is the receipt	1001
by the consumer of automatic data processing, computer services,	1002
or electronic information services rather than the receipt of	1003

personal or professional services to which automatic data 1004
processing, computer services, or electronic information services 1005
are incidental or supplemental. Notwithstanding any other 1006
provision of this chapter, such transactions that occur between 1007
members of an affiliated group are not sales. An affiliated group 1008
means two or more persons related in such a way that one person 1009
owns or controls the business operation of another member of the 1010
group. In the case of corporations with stock, one corporation 1011
owns or controls another if it owns more than fifty per cent of 1012
the other corporation's common stock with voting rights. 1013

(f) Telecommunications service, including prepaid calling 1014
service, prepaid wireless calling service, or ancillary service, 1015
is or is to be provided, but not including coin-operated telephone 1016
service; 1017

(g) Landscaping and lawn care service is or is to be 1018
provided; 1019

(h) Private investigation and security service is or is to be 1020
provided; 1021

(i) Information services or tangible personal property is 1022
provided or ordered by means of a nine hundred telephone call; 1023

(j) Building maintenance and janitorial service is or is to 1024
be provided; 1025

(k) Employment service is or is to be provided; 1026

(l) Employment placement service is or is to be provided; 1027

(m) Exterminating service is or is to be provided; 1028

(n) Physical fitness facility service is or is to be 1029
provided; 1030

(o) Recreation and sports club service is or is to be 1031
provided; 1032

(p) On and after August 1, 2003, satellite broadcasting 1033

service is or is to be provided; 1034

(q) On and after August 1, 2003, personal care service is or 1035
is to be provided to an individual. As used in this division, 1036
"personal care service" includes skin care, the application of 1037
cosmetics, manicuring, pedicuring, hair removal, tattooing, body 1038
piercing, tanning, massage, and other similar services. "Personal 1039
care service" does not include a service provided by or on the 1040
order of a licensed physician or licensed chiropractor, or the 1041
cutting, coloring, or styling of an individual's hair. 1042

(r) On and after August 1, 2003, the transportation of 1043
persons by motor vehicle or aircraft is or is to be provided, when 1044
the transportation is entirely within this state, except for 1045
transportation provided by an ambulance service, by a transit bus, 1046
as defined in section 5735.01 of the Revised Code, and 1047
transportation provided by a citizen of the United States holding 1048
a certificate of public convenience and necessity issued under 49 1049
U.S.C. 41102; 1050

(s) On and after August 1, 2003, motor vehicle towing service 1051
is or is to be provided. As used in this division, "motor vehicle 1052
towing service" means the towing or conveyance of a wrecked, 1053
disabled, or illegally parked motor vehicle. 1054

(t) On and after August 1, 2003, snow removal service is or 1055
is to be provided. As used in this division, "snow removal 1056
service" means the removal of snow by any mechanized means, but 1057
does not include the providing of such service by a person that 1058
has less than five thousand dollars in sales of such service 1059
during the calendar year. 1060

(4) All transactions by which printed, imprinted, 1061
overprinted, lithographic, multilithic, blueprinted, photostatic, 1062
or other productions or reproductions of written or graphic matter 1063
are or are to be furnished or transferred; 1064

(5) The production or fabrication of tangible personal 1065
property for a consideration for consumers who furnish either 1066
directly or indirectly the materials used in the production of 1067
fabrication work; and include the furnishing, preparing, or 1068
serving for a consideration of any tangible personal property 1069
consumed on the premises of the person furnishing, preparing, or 1070
serving such tangible personal property. Except as provided in 1071
section 5739.03 of the Revised Code, a construction contract 1072
pursuant to which tangible personal property is or is to be 1073
incorporated into a structure or improvement on and becoming a 1074
part of real property is not a sale of such tangible personal 1075
property. The construction contractor is the consumer of such 1076
tangible personal property, provided that the sale and 1077
installation of carpeting, the sale and installation of 1078
agricultural land tile, the sale and erection or installation of 1079
portable grain bins, or the provision of landscaping and lawn care 1080
service and the transfer of property as part of such service is 1081
never a construction contract. 1082

As used in division (B)(5) of this section: 1083

(a) "Agricultural land tile" means fired clay or concrete 1084
tile, or flexible or rigid perforated plastic pipe or tubing, 1085
incorporated or to be incorporated into a subsurface drainage 1086
system appurtenant to land used or to be used directly in 1087
production by farming, agriculture, horticulture, or floriculture. 1088
The term does not include such materials when they are or are to 1089
be incorporated into a drainage system appurtenant to a building 1090
or structure even if the building or structure is used or to be 1091
used in such production. 1092

(b) "Portable grain bin" means a structure that is used or to 1093
be used by a person engaged in farming or agriculture to shelter 1094
the person's grain and that is designed to be disassembled without 1095
significant damage to its component parts. 1096

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

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

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

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

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

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

are made, such persons shall constitute a single vendor. 1128

Physicians, dentists, hospitals, and veterinarians who are 1129
engaged in selling tangible personal property as received from 1130
others, such as eyeglasses, mouthwashes, dentifrices, or similar 1131
articles, are vendors. Veterinarians who are engaged in 1132
transferring to others for a consideration drugs, the dispensing 1133
of which does not require an order of a licensed veterinarian or 1134
physician under federal law, are vendors. 1135

(D)(1) "Consumer" means the person for whom the service is 1136
provided, to whom the transfer effected or license given by a sale 1137
is or is to be made or given, to whom the service described in 1138
division (B)(3)(f) or (i) of this section is charged, or to whom 1139
the admission is granted. 1140

(2) Physicians, dentists, hospitals, and blood banks operated 1141
by nonprofit institutions and persons licensed to practice 1142
veterinary medicine, surgery, and dentistry are consumers of all 1143
tangible personal property and services purchased by them in 1144
connection with the practice of medicine, dentistry, the rendition 1145
of hospital or blood bank service, or the practice of veterinary 1146
medicine, surgery, and dentistry. In addition to being consumers 1147
of drugs administered by them or by their assistants according to 1148
their direction, veterinarians also are consumers of drugs that 1149
under federal law may be dispensed only by or upon the order of a 1150
licensed veterinarian or physician, when transferred by them to 1151
others for a consideration to provide treatment to animals as 1152
directed by the veterinarian. 1153

(3) A person who performs a facility management, or similar 1154
service contract for a contractee is a consumer of all tangible 1155
personal property and services purchased for use in connection 1156
with the performance of such contract, regardless of whether title 1157
to any such property vests in the contractee. The purchase of such 1158
property and services is not subject to the exception for resale 1159

under division (E)(1) of this section. 1160

(4)(a) In the case of a person who purchases printed matter 1161
for the purpose of distributing it or having it distributed to the 1162
public or to a designated segment of the public, free of charge, 1163
that person is the consumer of that printed matter, and the 1164
purchase of that printed matter for that purpose is a sale. 1165

(b) In the case of a person who produces, rather than 1166
purchases, printed matter for the purpose of distributing it or 1167
having it distributed to the public or to a designated segment of 1168
the public, free of charge, that person is the consumer of all 1169
tangible personal property and services purchased for use or 1170
consumption in the production of that printed matter. That person 1171
is not entitled to claim exemption under division (B)(42)(f) of 1172
section 5739.02 of the Revised Code for any material incorporated 1173
into the printed matter or any equipment, supplies, or services 1174
primarily used to produce the printed matter. 1175

(c) The distribution of printed matter to the public or to a 1176
designated segment of the public, free of charge, is not a sale to 1177
the members of the public to whom the printed matter is 1178
distributed or to any persons who purchase space in the printed 1179
matter for advertising or other purposes. 1180

(5) A person who makes sales of any of the services listed in 1181
division (B)(3) of this section is the consumer of any tangible 1182
personal property used in performing the service. The purchase of 1183
that property is not subject to the resale exception under 1184
division (E)(1) of this section. 1185

(6) A person who engages in highway transportation for hire 1186
is the consumer of all packaging materials purchased by that 1187
person and used in performing the service, except for packaging 1188
materials sold by such person in a transaction separate from the 1189
service. 1190

(E) "Retail sale" and "sales at retail" include all sales, 1191
except those in which the purpose of the consumer is to resell the 1192
thing transferred or benefit of the service provided, by a person 1193
engaging in business, in the form in which the same is, or is to 1194
be, received by the person. 1195

(F) "Business" includes any activity engaged in by any person 1196
with the object of gain, benefit, or advantage, either direct or 1197
indirect. "Business" does not include the activity of a person in 1198
managing and investing the person's own funds. 1199

(G) "Engaging in business" means commencing, conducting, or 1200
continuing in business, and liquidating a business when the 1201
liquidator thereof holds itself out to the public as conducting 1202
such business. Making a casual sale is not engaging in business. 1203

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 1204
(3) of this section, means the total amount of consideration, 1205
including cash, credit, property, and services, for which tangible 1206
personal property or services are sold, leased, or rented, valued 1207
in money, whether received in money or otherwise, without any 1208
deduction for any of the following: 1209

(i) The vendor's cost of the property sold; 1210

(ii) The cost of materials used, labor or service costs, 1211
interest, losses, all costs of transportation to the vendor, all 1212
taxes imposed on the vendor, including the tax imposed under 1213
Chapter 5751. of the Revised Code, and any other expense of the 1214
vendor; 1215

(iii) Charges by the vendor for any services necessary to 1216
complete the sale; 1217

(iv) On and after August 1, 2003, delivery charges. As used 1218
in this division, "delivery charges" means charges by the vendor 1219
for preparation and delivery to a location designated by the 1220
consumer of tangible personal property or a service, including 1221

transportation, shipping, postage, handling, crating, and packing.	1222
(v) Installation charges;	1223
(vi) Credit for any trade-in.	1224
(b) "Price" includes consideration received by the vendor	1225
from a third party, if the vendor actually receives the	1226
consideration from a party other than the consumer, and the	1227
consideration is directly related to a price reduction or discount	1228
on the sale; the vendor has an obligation to pass the price	1229
reduction or discount through to the consumer; the amount of the	1230
consideration attributable to the sale is fixed and determinable	1231
by the vendor at the time of the sale of the item to the consumer;	1232
and one of the following criteria is met:	1233
(i) The consumer presents a coupon, certificate, or other	1234
document to the vendor to claim a price reduction or discount	1235
where the coupon, certificate, or document is authorized,	1236
distributed, or granted by a third party with the understanding	1237
that the third party will reimburse any vendor to whom the coupon,	1238
certificate, or document is presented;	1239
(ii) The consumer identifies the consumer's self to the	1240
seller as a member of a group or organization entitled to a price	1241
reduction or discount. A preferred customer card that is available	1242
to any patron does not constitute membership in such a group or	1243
organization.	1244
(iii) The price reduction or discount is identified as a	1245
third party price reduction or discount on the invoice received by	1246
the consumer, or on a coupon, certificate, or other document	1247
presented by the consumer.	1248
(c) "Price" does not include any of the following:	1249
(i) Discounts, including cash, term, or coupons that are not	1250
reimbursed by a third party that are allowed by a vendor and taken	1251

by a consumer on a sale; 1252

(ii) Interest, financing, and carrying charges from credit 1253
extended on the sale of tangible personal property or services, if 1254
the amount is separately stated on the invoice, bill of sale, or 1255
similar document given to the purchaser; 1256

(iii) Any taxes legally imposed directly on the consumer that 1257
are separately stated on the invoice, bill of sale, or similar 1258
document given to the consumer. For the purpose of this division, 1259
the tax imposed under Chapter 5751. of the Revised Code is not a 1260
tax directly on the consumer, even if the tax or a portion thereof 1261
is separately stated. 1262

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this 1263
section, any discount allowed by an automobile manufacturer to its 1264
employee, or to the employee of a supplier, on the purchase of a 1265
new motor vehicle from a new motor vehicle dealer in this state. 1266

(2) In the case of a sale of any new motor vehicle by a new 1267
motor vehicle dealer, as defined in section 4517.01 of the Revised 1268
Code, in which another motor vehicle is accepted by the dealer as 1269
part of the consideration received, "price" has the same meaning 1270
as in division (H)(1) of this section, reduced by the credit 1271
afforded the consumer by the dealer for the motor vehicle received 1272
in trade. 1273

(3) In the case of a sale of any watercraft or outboard motor 1274
by a watercraft dealer licensed in accordance with section 1275
1547.543 of the Revised Code, in which another watercraft, 1276
watercraft and trailer, or outboard motor is accepted by the 1277
dealer as part of the consideration received, "price" has the same 1278
meaning as in division (H)(1) of this section, reduced by the 1279
credit afforded the consumer by the dealer for the watercraft, 1280
watercraft and trailer, or outboard motor received in trade. As 1281
used in this division, "watercraft" includes an outdrive unit 1282

attached to the watercraft. 1283

(I) "Receipts" means the total amount of the prices of the 1284
sales of vendors, provided that cash discounts allowed and taken 1285
on sales at the time they are consummated are not included, minus 1286
any amount deducted as a bad debt pursuant to section 5739.121 of 1287
the Revised Code. "Receipts" does not include the sale price of 1288
property returned or services rejected by consumers when the full 1289
sale price and tax are refunded either in cash or by credit. 1290

(J) "Place of business" means any location at which a person 1291
engages in business. 1292

(K) "Premises" includes any real property or portion thereof 1293
upon which any person engages in selling tangible personal 1294
property at retail or making retail sales and also includes any 1295
real property or portion thereof designated for, or devoted to, 1296
use in conjunction with the business engaged in by such person. 1297

(L) "Casual sale" means a sale of an item of tangible 1298
personal property that was obtained by the person making the sale, 1299
through purchase or otherwise, for the person's own use and was 1300
previously subject to any state's taxing jurisdiction on its sale 1301
or use, and includes such items acquired for the seller's use that 1302
are sold by an auctioneer employed directly by the person for such 1303
purpose, provided the location of such sales is not the 1304
auctioneer's permanent place of business. As used in this 1305
division, "permanent place of business" includes any location 1306
where such auctioneer has conducted more than two auctions during 1307
the year. 1308

(M) "Hotel" means every establishment kept, used, maintained, 1309
advertised, or held out to the public to be a place where sleeping 1310
accommodations are offered to guests, in which five or more rooms 1311
are used for the accommodation of such guests, whether the rooms 1312
are in one or several structures. 1313

(N) "Transient guests" means persons occupying a room or 1314
rooms for sleeping accommodations for less than thirty consecutive 1315
days. 1316

(O) "Making retail sales" means the effecting of transactions 1317
wherein one party is obligated to pay the price and the other 1318
party is obligated to provide a service or to transfer title to or 1319
possession of the item sold. "Making retail sales" does not 1320
include the preliminary acts of promoting or soliciting the retail 1321
sales, other than the distribution of printed matter which 1322
displays or describes and prices the item offered for sale, nor 1323
does it include delivery of a predetermined quantity of tangible 1324
personal property or transportation of property or personnel to or 1325
from a place where a service is performed, regardless of whether 1326
the vendor is a delivery vendor. 1327

(P) "Used directly in the rendition of a public utility 1328
service" means that property that is to be incorporated into and 1329
will become a part of the consumer's production, transmission, 1330
transportation, or distribution system and that retains its 1331
classification as tangible personal property after such 1332
incorporation; fuel or power used in the production, transmission, 1333
transportation, or distribution system; and tangible personal 1334
property used in the repair and maintenance of the production, 1335
transmission, transportation, or distribution system, including 1336
only such motor vehicles as are specially designed and equipped 1337
for such use. Tangible personal property and services used 1338
primarily in providing highway transportation for hire are not 1339
used directly in the rendition of a public utility service. In 1340
this definition, "public utility" includes a citizen of the United 1341
States holding, and required to hold, a certificate of public 1342
convenience and necessity issued under 49 U.S.C. 41102. 1343

(Q) "Refining" means removing or separating a desirable 1344
product from raw or contaminated materials by distillation or 1345

physical, mechanical, or chemical processes. 1346

(R) "Assembly" and "assembling" mean attaching or fitting 1347
together parts to form a product, but do not include packaging a 1348
product. 1349

(S) "Manufacturing operation" means a process in which 1350
materials are changed, converted, or transformed into a different 1351
state or form from which they previously existed and includes 1352
refining materials, assembling parts, and preparing raw materials 1353
and parts by mixing, measuring, blending, or otherwise committing 1354
such materials or parts to the manufacturing process. 1355
"Manufacturing operation" does not include packaging. 1356

(T) "Fiscal officer" means, with respect to a regional 1357
transit authority, the secretary-treasurer thereof, and with 1358
respect to a county that is a transit authority, the fiscal 1359
officer of the county transit board if one is appointed pursuant 1360
to section 306.03 of the Revised Code or the county auditor if the 1361
board of county commissioners operates the county transit system. 1362

(U) "Transit authority" means a regional transit authority 1363
created pursuant to section 306.31 of the Revised Code or a county 1364
in which a county transit system is created pursuant to section 1365
306.01 of the Revised Code. For the purposes of this chapter, a 1366
transit authority must extend to at least the entire area of a 1367
single county. A transit authority that includes territory in more 1368
than one county must include all the area of the most populous 1369
county that is a part of such transit authority. County population 1370
shall be measured by the most recent census taken by the United 1371
States census bureau. 1372

(V) "Legislative authority" means, with respect to a regional 1373
transit authority, the board of trustees thereof, and with respect 1374
to a county that is a transit authority, the board of county 1375
commissioners. 1376

(W) "Territory of the transit authority" means all of the 1377
area included within the territorial boundaries of a transit 1378
authority as they from time to time exist. Such territorial 1379
boundaries must at all times include all the area of a single 1380
county or all the area of the most populous county that is a part 1381
of such transit authority. County population shall be measured by 1382
the most recent census taken by the United States census bureau. 1383

(X) "Providing a service" means providing or furnishing 1384
anything described in division (B)(3) of this section for 1385
consideration. 1386

(Y)(1)(a) "Automatic data processing" means processing of 1387
others' data, including keypunching or similar data entry services 1388
together with verification thereof, or providing access to 1389
computer equipment for the purpose of processing data. 1390

(b) "Computer services" means providing services consisting 1391
of specifying computer hardware configurations and evaluating 1392
technical processing characteristics, computer programming, and 1393
training of computer programmers and operators, provided in 1394
conjunction with and to support the sale, lease, or operation of 1395
taxable computer equipment or systems. 1396

(c) "Electronic information services" means providing access 1397
to computer equipment by means of telecommunications equipment for 1398
the purpose of either of the following: 1399

(i) Examining or acquiring data stored in or accessible to 1400
the computer equipment; 1401

(ii) Placing data into the computer equipment to be retrieved 1402
by designated recipients with access to the computer equipment. 1403

(d) "Automatic data processing, computer services, or 1404
electronic information services" shall not include personal or 1405
professional services. 1406

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 1407
section, "personal and professional services" means all services 1408
other than automatic data processing, computer services, or 1409
electronic information services, including but not limited to: 1410

(a) Accounting and legal services such as advice on tax 1411
matters, asset management, budgetary matters, quality control, 1412
information security, and auditing and any other situation where 1413
the service provider receives data or information and studies, 1414
alters, analyzes, interprets, or adjusts such material; 1415

(b) Analyzing business policies and procedures; 1416

(c) Identifying management information needs; 1417

(d) Feasibility studies, including economic and technical 1418
analysis of existing or potential computer hardware or software 1419
needs and alternatives; 1420

(e) Designing policies, procedures, and custom software for 1421
collecting business information, and determining how data should 1422
be summarized, sequenced, formatted, processed, controlled, and 1423
reported so that it will be meaningful to management; 1424

(f) Developing policies and procedures that document how 1425
business events and transactions are to be authorized, executed, 1426
and controlled; 1427

(g) Testing of business procedures; 1428

(h) Training personnel in business procedure applications; 1429

(i) Providing credit information to users of such information 1430
by a consumer reporting agency, as defined in the "Fair Credit 1431
Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or 1432
as hereafter amended, including but not limited to gathering, 1433
organizing, analyzing, recording, and furnishing such information 1434
by any oral, written, graphic, or electronic medium; 1435

(j) Providing debt collection services by any oral, written, 1436

graphic, or electronic means. 1437

The services listed in divisions (Y)(2)(a) to (j) of this 1438
section are not automatic data processing or computer services. 1439

(Z) "Highway transportation for hire" means the 1440
transportation of personal property belonging to others for 1441
consideration by any of the following: 1442

(1) The holder of a permit or certificate issued by this 1443
state or the United States authorizing the holder to engage in 1444
transportation of personal property belonging to others for 1445
consideration over or on highways, roadways, streets, or any 1446
similar public thoroughfare; 1447

(2) A person who engages in the transportation of personal 1448
property belonging to others for consideration over or on 1449
highways, roadways, streets, or any similar public thoroughfare 1450
but who could not have engaged in such transportation on December 1451
11, 1985, unless the person was the holder of a permit or 1452
certificate of the types described in division (Z)(1) of this 1453
section; 1454

(3) A person who leases a motor vehicle to and operates it 1455
for a person described by division (Z)(1) or (2) of this section. 1456

(AA)(1) "Telecommunications service" means the electronic 1457
transmission, conveyance, or routing of voice, data, audio, video, 1458
or any other information or signals to a point, or between or 1459
among points. "Telecommunications service" includes such 1460
transmission, conveyance, or routing in which computer processing 1461
applications are used to act on the form, code, or protocol of the 1462
content for purposes of transmission, conveyance, or routing 1463
without regard to whether the service is referred to as voice-over 1464
internet protocol service or is classified by the federal 1465
communications commission as enhanced or value-added. 1466
"Telecommunications service" does not include any of the 1467

following: 1468

(a) Data processing and information services that allow data 1469
to be generated, acquired, stored, processed, or retrieved and 1470
delivered by an electronic transmission to a consumer where the 1471
consumer's primary purpose for the underlying transaction is the 1472
processed data or information; 1473

(b) Installation or maintenance of wiring or equipment on a 1474
customer's premises; 1475

(c) Tangible personal property; 1476

(d) Advertising, including directory advertising; 1477

(e) Billing and collection services provided to third 1478
parties; 1479

(f) Internet access service; 1480

(g) Radio and television audio and video programming 1481
services, regardless of the medium, including the furnishing of 1482
transmission, conveyance, and routing of such services by the 1483
programming service provider. Radio and television audio and video 1484
programming services include, but are not limited to, cable 1485
service, as defined in 47 U.S.C. 522(6), video service delivered 1486
by video service providers under sections 1332.21 to 1332.35 of 1487
the Revised Code, and audio and video programming services 1488
delivered by commercial mobile radio service providers, as defined 1489
in 47 C.F.R. 20.3; 1490

(h) Ancillary service; 1491

(i) Digital products delivered electronically, including 1492
software, music, video, reading materials, or ring tones. 1493

(2) "Ancillary service" means a service that is associated 1494
with or incidental to the provision of telecommunications service, 1495
including conference bridging service, detailed telecommunications 1496
billing service, directory assistance, vertical service, and voice 1497

mail service. As used in this division: 1498

(a) "Conference bridging service" means an ancillary service 1499
that links two or more participants of an audio or video 1500
conference call, including providing a telephone number. 1501
"Conference bridging service" does not include telecommunications 1502
services used to reach the conference bridge. 1503

(b) "Detailed telecommunications billing service" means an 1504
ancillary service of separately stating information pertaining to 1505
individual calls on a customer's billing statement. 1506

(c) "Directory assistance" means an ancillary service of 1507
providing telephone number or address information. 1508

(d) "Vertical service" means an ancillary service that is 1509
offered in connection with one or more telecommunications 1510
services, which offers advanced calling features that allow 1511
customers to identify callers and manage multiple calls and call 1512
connections, including conference bridging service. 1513

(e) "Voice mail service" means an ancillary service that 1514
enables the customer to store, send, or receive recorded messages. 1515
"Voice mail service" does not include any vertical services that 1516
the customer may be required to have in order to utilize the voice 1517
mail service. 1518

(3) "900 service" means an inbound toll telecommunications 1519
service purchased by a subscriber that allows the subscriber's 1520
customers to call in to the subscriber's prerecorded announcement 1521
or live service, and which is typically marketed under the name 1522
"900" service and any subsequent numbers designated by the federal 1523
communications commission. "900 service" does not include the 1524
charge for collection services provided by the seller of the 1525
telecommunications service to the subscriber, or services or 1526
products sold by the subscriber to the subscriber's customer. 1527

(4) "Prepaid calling service" means the right to access 1528

exclusively telecommunications services, which must be paid for in 1529
advance and which enables the origination of calls using an access 1530
number or authorization code, whether manually or electronically 1531
dialed, and that is sold in predetermined units of dollars of 1532
which the number declines with use in a known amount. 1533

(5) "Prepaid wireless calling service" means a 1534
telecommunications service that provides the right to utilize 1535
mobile telecommunications service as well as other 1536
non-telecommunications services, including the download of digital 1537
products delivered electronically, and content and ancillary 1538
services, that must be paid for in advance and that is sold in 1539
predetermined units of dollars of which the number declines with 1540
use in a known amount. 1541

(6) "Value-added non-voice data service" means a 1542
telecommunications service in which computer processing 1543
applications are used to act on the form, content, code, or 1544
protocol of the information or data primarily for a purpose other 1545
than transmission, conveyance, or routing. 1546

(7) "Coin-operated telephone service" means a 1547
telecommunications service paid for by inserting money into a 1548
telephone accepting direct deposits of money to operate. 1549

(8) "Customer" has the same meaning as in section 5739.034 of 1550
the Revised Code. 1551

(BB) "Laundry and dry cleaning services" means removing soil 1552
or dirt from towels, linens, articles of clothing, or other fabric 1553
items that belong to others and supplying towels, linens, articles 1554
of clothing, or other fabric items. "Laundry and dry cleaning 1555
services" does not include the provision of self-service 1556
facilities for use by consumers to remove soil or dirt from 1557
towels, linens, articles of clothing, or other fabric items. 1558

(CC) "Magazines distributed as controlled circulation 1559

publications" means magazines containing at least twenty-four 1560
pages, at least twenty-five per cent editorial content, issued at 1561
regular intervals four or more times a year, and circulated 1562
without charge to the recipient, provided that such magazines are 1563
not owned or controlled by individuals or business concerns which 1564
conduct such publications as an auxiliary to, and essentially for 1565
the advancement of the main business or calling of, those who own 1566
or control them. 1567

(DD) "Landscaping and lawn care service" means the services 1568
of planting, seeding, sodding, removing, cutting, trimming, 1569
pruning, mulching, aerating, applying chemicals, watering, 1570
fertilizing, and providing similar services to establish, promote, 1571
or control the growth of trees, shrubs, flowers, grass, ground 1572
cover, and other flora, or otherwise maintaining a lawn or 1573
landscape grown or maintained by the owner for ornamentation or 1574
other nonagricultural purpose. However, "landscaping and lawn care 1575
service" does not include the providing of such services by a 1576
person who has less than five thousand dollars in sales of such 1577
services during the calendar year. 1578

(EE) "Private investigation and security service" means the 1579
performance of any activity for which the provider of such service 1580
is required to be licensed pursuant to Chapter 4749. of the 1581
Revised Code, or would be required to be so licensed in performing 1582
such services in this state, and also includes the services of 1583
conducting polygraph examinations and of monitoring or overseeing 1584
the activities on or in, or the condition of, the consumer's home, 1585
business, or other facility by means of electronic or similar 1586
monitoring devices. "Private investigation and security service" 1587
does not include special duty services provided by off-duty police 1588
officers, deputy sheriffs, and other peace officers regularly 1589
employed by the state or a political subdivision. 1590

(FF) "Information services" means providing conversation, 1591

giving consultation or advice, playing or making a voice or other 1592
recording, making or keeping a record of the number of callers, 1593
and any other service provided to a consumer by means of a nine 1594
hundred telephone call, except when the nine hundred telephone 1595
call is the means by which the consumer makes a contribution to a 1596
recognized charity. 1597

(GG) "Research and development" means designing, creating, or 1598
formulating new or enhanced products, equipment, or manufacturing 1599
processes, and also means conducting scientific or technological 1600
inquiry and experimentation in the physical sciences with the goal 1601
of increasing scientific knowledge which may reveal the bases for 1602
new or enhanced products, equipment, or manufacturing processes. 1603

(HH) "Qualified research and development equipment" means 1604
capitalized tangible personal property, and leased personal 1605
property that would be capitalized if purchased, used by a person 1606
primarily to perform research and development. Tangible personal 1607
property primarily used in testing, as defined in division (A)(4) 1608
of section 5739.011 of the Revised Code, or used for recording or 1609
storing test results, is not qualified research and development 1610
equipment unless such property is primarily used by the consumer 1611
in testing the product, equipment, or manufacturing process being 1612
created, designed, or formulated by the consumer in the research 1613
and development activity or in recording or storing such test 1614
results. 1615

(II) "Building maintenance and janitorial service" means 1616
cleaning the interior or exterior of a building and any tangible 1617
personal property located therein or thereon, including any 1618
services incidental to such cleaning for which no separate charge 1619
is made. However, "building maintenance and janitorial service" 1620
does not include the providing of such service by a person who has 1621
less than five thousand dollars in sales of such service during 1622
the calendar year. 1623

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

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

(2) Medical and health care services.

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

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

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

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

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

(MM) "Physical fitness facility service" means all 1655
transactions by which a membership is granted, maintained, or 1656
renewed, including initiation fees, membership dues, renewal fees, 1657
monthly minimum fees, and other similar fees and dues, by a 1658
physical fitness facility such as an athletic club, health spa, or 1659
gymnasium, which entitles the member to use the facility for 1660
physical exercise. 1661

(NN) "Recreation and sports club service" means all 1662
transactions by which a membership is granted, maintained, or 1663
renewed, including initiation fees, membership dues, renewal fees, 1664
monthly minimum fees, and other similar fees and dues, by a 1665
recreation and sports club, which entitles the member to use the 1666
facilities of the organization. "Recreation and sports club" means 1667
an organization that has ownership of, or controls or leases on a 1668
continuing, long-term basis, the facilities used by its members 1669
and includes an aviation club, gun or shooting club, yacht club, 1670
card club, swimming club, tennis club, golf club, country club, 1671
riding club, amateur sports club, or similar organization. 1672

(OO) "Livestock" means farm animals commonly raised for food 1673
or food production, and includes but is not limited to cattle, 1674
sheep, goats, swine, and poultry. "Livestock" does not include 1675
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 1676
animals for use in laboratories or for exhibition, or other 1677
animals not commonly raised for food or food production. 1678

(PP) "Livestock structure" means a building or structure used 1679
exclusively for the housing, raising, feeding, or sheltering of 1680
livestock, and includes feed storage or handling structures and 1681
structures for livestock waste handling. 1682

(QQ) "Horticulture" means the growing, cultivation, and 1683
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 1684
and nursery stock. As used in this division, "nursery stock" has 1685
the same meaning as in section 927.51 of the Revised Code. 1686

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

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

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

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

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

(UU)(1) "Lease" or "rental" means any transfer of the 1719
possession or control of tangible personal property for a fixed or 1720
indefinite term, for consideration. "Lease" or "rental" includes 1721
future options to purchase or extend, and agreements described in 1722
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 1723
the amount of consideration may be increased or decreased by 1724
reference to the amount realized upon the sale or disposition of 1725
the property. "Lease" or "rental" does not include: 1726

(a) A transfer of possession or control of tangible personal 1727
property under a security agreement or a deferred payment plan 1728
that requires the transfer of title upon completion of the 1729
required payments; 1730

(b) A transfer of possession or control of tangible personal 1731
property under an agreement that requires the transfer of title 1732
upon completion of required payments and payment of an option 1733
price that does not exceed the greater of one hundred dollars or 1734
one per cent of the total required payments; 1735

(c) Providing tangible personal property along with an 1736
operator for a fixed or indefinite period of time, if the operator 1737
is necessary for the property to perform as designed. For purposes 1738
of this division, the operator must do more than maintain, 1739
inspect, or set-up the tangible personal property. 1740

(2) "Lease" and "rental," as defined in division (UU) of this 1741
section, shall not apply to leases or rentals that exist before 1742
June 26, 2003. 1743

(3) "Lease" and "rental" have the same meaning as in division 1744
(UU)(1) of this section regardless of whether a transaction is 1745
characterized as a lease or rental under generally accepted 1746
accounting principles, the Internal Revenue Code, Title XIII of 1747
the Revised Code, or other federal, state, or local laws. 1748

(VV) "Mobile telecommunications service" has the same meaning 1749

as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 1750
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, 1751
on and after August 1, 2003, includes related fees and ancillary 1752
services, including universal service fees, detailed billing 1753
service, directory assistance, service initiation, voice mail 1754
service, and vertical services, such as caller ID and three-way 1755
calling. 1756

(WW) "Certified service provider" has the same meaning as in 1757
section 5740.01 of the Revised Code. 1758

(XX) "Satellite broadcasting service" means the distribution 1759
or broadcasting of programming or services by satellite directly 1760
to the subscriber's receiving equipment without the use of ground 1761
receiving or distribution equipment, except the subscriber's 1762
receiving equipment or equipment used in the uplink process to the 1763
satellite, and includes all service and rental charges, premium 1764
channels or other special services, installation and repair 1765
service charges, and any other charges having any connection with 1766
the provision of the satellite broadcasting service. 1767

(YY) "Tangible personal property" means personal property 1768
that can be seen, weighed, measured, felt, or touched, or that is 1769
in any other manner perceptible to the senses. For purposes of 1770
this chapter and Chapter 5741. of the Revised Code, "tangible 1771
personal property" includes motor vehicles, electricity, water, 1772
gas, steam, and prewritten computer software. 1773

(ZZ) "Direct mail" means printed material delivered or 1774
distributed by United States mail or other delivery service to a 1775
mass audience or to addressees on a mailing list provided by the 1776
consumer or at the direction of the consumer when the cost of the 1777
items are not billed directly to the recipients. "Direct mail" 1778
includes tangible personal property supplied directly or 1779
indirectly by the consumer to the direct mail vendor for inclusion 1780
in the package containing the printed material. "Direct mail" does 1781

not include multiple items of printed material delivered to a 1782
single address. 1783

(AAA) "Computer" means an electronic device that accepts 1784
information in digital or similar form and manipulates it for a 1785
result based on a sequence of instructions. 1786

(BBB) "Computer software" means a set of coded instructions 1787
designed to cause a computer or automatic data processing 1788
equipment to perform a task. 1789

(CCC) "Delivered electronically" means delivery of computer 1790
software from the seller to the purchaser by means other than 1791
tangible storage media. 1792

(DDD) "Prewritten computer software" means computer software, 1793
including prewritten upgrades, that is not designed and developed 1794
by the author or other creator to the specifications of a specific 1795
purchaser. The combining of two or more prewritten computer 1796
software programs or prewritten portions thereof does not cause 1797
the combination to be other than prewritten computer software. 1798
"Prewritten computer software" includes software designed and 1799
developed by the author or other creator to the specifications of 1800
a specific purchaser when it is sold to a person other than the 1801
purchaser. If a person modifies or enhances computer software of 1802
which the person is not the author or creator, the person shall be 1803
deemed to be the author or creator only of such person's 1804
modifications or enhancements. Prewritten computer software or a 1805
prewritten portion thereof that is modified or enhanced to any 1806
degree, where such modification or enhancement is designed and 1807
developed to the specifications of a specific purchaser, remains 1808
prewritten computer software; provided, however, that where there 1809
is a reasonable, separately stated charge or an invoice or other 1810
statement of the price given to the purchaser for the modification 1811
or enhancement, the modification or enhancement shall not 1812
constitute prewritten computer software. 1813

(EEE)(1) "Food" means substances, whether in liquid, 1814
concentrated, solid, frozen, dried, or dehydrated form, that are 1815
sold for ingestion or chewing by humans and are consumed for their 1816
taste or nutritional value. "Food" does not include alcoholic 1817
beverages, dietary supplements, soft drinks, or tobacco. 1818

(2) As used in division (EEE)(1) of this section: 1819

(a) "Alcoholic beverages" means beverages that are suitable 1820
for human consumption and contain one-half of one per cent or more 1821
of alcohol by volume. 1822

(b) "Dietary supplements" means any product, other than 1823
tobacco, that is intended to supplement the diet and that is 1824
intended for ingestion in tablet, capsule, powder, softgel, 1825
gelcap, or liquid form, or, if not intended for ingestion in such 1826
a form, is not represented as conventional food for use as a sole 1827
item of a meal or of the diet; that is required to be labeled as a 1828
dietary supplement, identifiable by the "supplement facts" box 1829
found on the label, as required by 21 C.F.R. 101.36; and that 1830
contains one or more of the following dietary ingredients: 1831

(i) A vitamin; 1832

(ii) A mineral; 1833

(iii) An herb or other botanical; 1834

(iv) An amino acid; 1835

(v) A dietary substance for use by humans to supplement the 1836
diet by increasing the total dietary intake; 1837

(vi) A concentrate, metabolite, constituent, extract, or 1838
combination of any ingredient described in divisions 1839
(EEE)(2)(b)(i) to (v) of this section. 1840

(c) "Soft drinks" means nonalcoholic beverages that contain 1841
natural or artificial sweeteners. "Soft drinks" does not include 1842
beverages that contain milk or milk products, soy, rice, or 1843

similar milk substitutes, or that contains greater than fifty per 1844
cent vegetable or fruit juice by volume. 1845

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 1846
tobacco, or any other item that contains tobacco. 1847

(FFF) "Drug" means a compound, substance, or preparation, and 1848
any component of a compound, substance, or preparation, other than 1849
food, dietary supplements, or alcoholic beverages that is 1850
recognized in the official United States pharmacopoeia, official 1851
homeopathic pharmacopoeia of the United States, or official 1852
national formulary, and supplements to them; is intended for use 1853
in the diagnosis, cure, mitigation, treatment, or prevention of 1854
disease; or is intended to affect the structure or any function of 1855
the body. 1856

(GGG) "Prescription" means an order, formula, or recipe 1857
issued in any form of oral, written, electronic, or other means of 1858
transmission by a duly licensed practitioner authorized by the 1859
laws of this state to issue a prescription. 1860

(HHH) "Durable medical equipment" means equipment, including 1861
repair and replacement parts for such equipment, that can 1862
withstand repeated use, is primarily and customarily used to serve 1863
a medical purpose, generally is not useful to a person in the 1864
absence of illness or injury, and is not worn in or on the body. 1865
"Durable medical equipment" does not include mobility enhancing 1866
equipment. 1867

(III) "Mobility enhancing equipment" means equipment, 1868
including repair and replacement parts for such equipment, that is 1869
primarily and customarily used to provide or increase the ability 1870
to move from one place to another and is appropriate for use 1871
either in a home or a motor vehicle, that is not generally used by 1872
persons with normal mobility, and that does not include any motor 1873
vehicle or equipment on a motor vehicle normally provided by a 1874

motor vehicle manufacturer. "Mobility enhancing equipment" does 1875
not include durable medical equipment. 1876

(JJJ) "Prosthetic device" means a replacement, corrective, or 1877
supportive device, including repair and replacement parts for the 1878
device, worn on or in the human body to artificially replace a 1879
missing portion of the body, prevent or correct physical deformity 1880
or malfunction, or support a weak or deformed portion of the body. 1881
As used in this division, "prosthetic device" does not include 1882
corrective eyeglasses, contact lenses, or dental prosthesis. 1883

(KKK)(1) "Fractional aircraft ownership program" means a 1884
program in which persons within an affiliated group sell and 1885
manage fractional ownership program aircraft, provided that at 1886
least one hundred airworthy aircraft are operated in the program 1887
and the program meets all of the following criteria: 1888

(a) Management services are provided by at least one program 1889
manager within an affiliated group on behalf of the fractional 1890
owners. 1891

(b) Each program aircraft is owned or possessed by at least 1892
one fractional owner. 1893

(c) Each fractional owner owns or possesses at least a 1894
one-sixteenth interest in at least one fixed-wing program 1895
aircraft. 1896

(d) A dry-lease aircraft interchange arrangement is in effect 1897
among all of the fractional owners. 1898

(e) Multi-year program agreements are in effect regarding the 1899
fractional ownership, management services, and dry-lease aircraft 1900
interchange arrangement aspects of the program. 1901

(2) As used in division (KKK)(1) of this section: 1902

(a) "Affiliated group" has the same meaning as in division 1903
(B)(3)(e) of this section. 1904

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

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

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

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

Section 2. That existing sections 153.64, 4939.01, 4939.03,
4939.04, 4939.05, 4939.08, and 5739.01 and sections 505.90,
505.91, and 505.92 of the Revised Code are hereby repealed.

Section 3. Section 5739.01 of the Revised Code is presented

in this act as a composite of the section as amended by both Sub.	1936
H.B. 293 and Am. Sub. H.B. 699 of the 126th General Assembly. The	1937
General Assembly, applying the principle stated in division (B) of	1938
section 1.52 of the Revised Code that amendments are to be	1939
harmonized if reasonably capable of simultaneous operation, finds	1940
that the composite is the resulting version of the section in	1941
effect prior to the effective date of the section as presented in	1942
this act.	1943