

As Introduced

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H. B. No. 472

Representatives Lundy, Patten

**Cosponsors: Representatives Hite, Murray, Phillips, Belcher, Foley,
Harwood, Hagan, Pryor, Bolon, Letson, Heard, Yuko**

—

A BILL

To amend section 5739.02 and to enact sections 1
3346.01 to 3346.07 of the Revised Code to enact 2
the "Textbook Affordability Act" with respect to 3
college textbook sales. 4

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

Section 1. That section 5739.02 be amended and sections 5
3346.01, 3346.02, 3346.03, 3346.04, 3346.05, 3346.06, and 3346.07 6
of the Revised Code be enacted to read as follows: 7

Sec. 3346.01. As used in this chapter: 8

(A) "Bookstore" means any store affiliated or under contract 9
with a state institution of higher education to sell materials to 10
students that is in the business of selling textbooks, 11
supplemental learning materials, bundled textbook packages, or 12
other school-related supplies on or in the near vicinity of the 13
campus of a state institution of higher education. 14

(B) "Bundle" means packaging a textbook and supplemental 15
learning materials together to be sold for one price. 16

(C) "Publisher" means a publishing house, firm, or company 17

that publishes, sells, or contracts for the sale of textbooks or 18
other learning materials to state institutions of higher education 19
or bookstores. 20

(D) "State institution of higher education" has the same 21
meaning as in section 3345.011 of the Revised Code. 22

(E) "Supplemental learning materials" means learning 23
materials used in teaching a course that supplement the primary 24
textbook in any form, including another book, a workbook, or a 25
CD-ROM. 26

Sec. 3346.02. No bookstore shall bundle, or order from the 27
publisher bundled, textbooks and supplemental learning materials 28
and offer that bundle for sale. 29

Sec. 3346.03. No professor, faculty member, instructor, or 30
other employee of a state institution of higher education shall 31
profit in any way from the sale of textbooks and other learning 32
materials used in a class taught by that person, other than 33
royalties from authorship. 34

As used in this section, "profit" does not include any free 35
supplemental learning materials or any associated training for use 36
of technology related to use of a textbook for instruction. 37

Sec. 3346.04. Each bookstore shall post the wholesale cost of 38
each new textbook sold at the bookstore at or near the front 39
counter of the bookstore or on the bookstore's or state 40
institution of higher education's web site. 41

Sec. 3346.05. No bookstore shall purchase for resale 42
previously used textbooks or other learning materials at less than 43
half the price the student originally paid to purchase the 44
textbook or other learning materials. This prohibition applies 45

only during the period following the completion of the semester or 46
quarter in which the textbook or other learning material was used 47
and prior to the start of the next academic semester or quarter. 48

No bookstore shall enter into or renew a contract with any 49
publisher or other entity that purchases and resells used books 50
that would require the bookstore to purchase for resale textbooks 51
or other learning materials for less than what is required under 52
this section. 53

Sec. 3346.06. (A) Each academic year, the board of trustees 54
of each state institution of higher education shall provide to the 55
chancellor of the Ohio board of regents, in the form and manner 56
and before a deadline established by the chancellor, a list of 57
each textbook, and its cost, used at the institution in that 58
academic year. The chancellor and the board of regents shall meet 59
annually to review the reports to monitor efforts by the 60
institutions to encourage faculty to be sensitive to the costs of 61
textbooks in the selection process and to make textbooks more 62
affordable. 63

(B) The chancellor shall create and implement a bulk 64
purchasing program for the most commonly used books determined 65
from the list of books provided annually under division (A) of 66
this section. The program shall include a method for reselling the 67
books to students to reflect the savings resulting from bulk 68
purchasing. 69

Sec. 3346.07. (A) The chancellor of the Ohio board of regents 70
shall negotiate with publishers and shall issue a plan under which 71
each publisher shall provide one or more electronic versions, if 72
such a version is legally available, of each of the publisher's 73
textbooks that is required for use at a state institution of 74
higher education as a main textbook of a class. The chancellor 75

shall issue and implement the plan not later than two years after 76
the effective date of this section. The chancellor may negotiate 77
and issue subsequent modifications to the plan. 78

(B) The chancellor shall negotiate and include in the plan 79
provisions requiring publishers to provide electronic versions of 80
each of the publisher's textbooks that is required for use at a 81
state institution of higher education in one or more formats that 82
are accessible to students with disabilities. The formats must be 83
compatible with commonly used Braille translations or speech 84
synthesis software. The chancellor shall issue and implement these 85
provisions as soon as practicable after the effective date of this 86
section, but the provisions shall apply beginning not later than 87
the start of the first academic year commencing at least two years 88
after the effective date of this section. 89

(C) Each publisher shall comply with the plan issued and 90
modified by the chancellor under this section. 91

(D) Each bookstore shall offer for purchase each electronic 92
version of a textbook provided by a publisher under this section. 93

(E) Each publisher shall ensure that the format of each 94
electronic textbook required under divisions (A) and (B) of this 95
section maintains, as much as possible, the structural integrity 96
of the printed version of the textbook. A publisher may 97
incorporate technical security measures within electronic 98
textbooks to prevent unauthorized copying, modification, 99
distribution, or use. 100

Sec. 5739.02. For the purpose of providing revenue with which 101
to meet the needs of the state, for the use of the general revenue 102
fund of the state, for the purpose of securing a thorough and 103
efficient system of common schools throughout the state, for the 104
purpose of affording revenues, in addition to those from general 105
property taxes, permitted under constitutional limitations, and 106

from other sources, for the support of local governmental 107
functions, and for the purpose of reimbursing the state for the 108
expense of administering this chapter, an excise tax is hereby 109
levied on each retail sale made in this state. 110

(A)(1) The tax shall be collected as provided in section 111
5739.025 of the Revised Code. The rate of the tax shall be five 112
and one-half per cent. The tax applies and is collectible when the 113
sale is made, regardless of the time when the price is paid or 114
delivered. 115

(2) In the case of the lease or rental, with a fixed term of 116
more than thirty days or an indefinite term with a minimum period 117
of more than thirty days, of any motor vehicles designed by the 118
manufacturer to carry a load of not more than one ton, watercraft, 119
outboard motor, or aircraft, or of any tangible personal property, 120
other than motor vehicles designed by the manufacturer to carry a 121
load of more than one ton, to be used by the lessee or renter 122
primarily for business purposes, the tax shall be collected by the 123
vendor at the time the lease or rental is consummated and shall be 124
calculated by the vendor on the basis of the total amount to be 125
paid by the lessee or renter under the lease agreement. If the 126
total amount of the consideration for the lease or rental includes 127
amounts that are not calculated at the time the lease or rental is 128
executed, the tax shall be calculated and collected by the vendor 129
at the time such amounts are billed to the lessee or renter. In 130
the case of an open-end lease or rental, the tax shall be 131
calculated by the vendor on the basis of the total amount to be 132
paid during the initial fixed term of the lease or rental, and for 133
each subsequent renewal period as it comes due. As used in this 134
division, "motor vehicle" has the same meaning as in section 135
4501.01 of the Revised Code, and "watercraft" includes an outdrive 136
unit attached to the watercraft. 137

A lease with a renewal clause and a termination penalty or 138

similar provision that applies if the renewal clause is not 139
exercised is presumed to be a sham transaction. In such a case, 140
the tax shall be calculated and paid on the basis of the entire 141
length of the lease period, including any renewal periods, until 142
the termination penalty or similar provision no longer applies. 143
The taxpayer shall bear the burden, by a preponderance of the 144
evidence, that the transaction or series of transactions is not a 145
sham transaction. 146

(3) Except as provided in division (A)(2) of this section, in 147
the case of a sale, the price of which consists in whole or in 148
part of the lease or rental of tangible personal property, the tax 149
shall be measured by the installments of that lease or rental. 150

(4) In the case of a sale of a physical fitness facility 151
service or recreation and sports club service, the price of which 152
consists in whole or in part of a membership for the receipt of 153
the benefit of the service, the tax applicable to the sale shall 154
be measured by the installments thereof. 155

(B) The tax does not apply to the following: 156

(1) Sales to the state or any of its political subdivisions, 157
or to any other state or its political subdivisions if the laws of 158
that state exempt from taxation sales made to this state and its 159
political subdivisions; 160

(2) Sales of food for human consumption off the premises 161
where sold; 162

(3) Sales of food sold to students only in a cafeteria, 163
dormitory, fraternity, or sorority maintained in a private, 164
public, or parochial school, college, or university; 165

(4) Sales of newspapers and of magazine subscriptions and 166
sales or transfers of magazines distributed as controlled 167
circulation publications; 168

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

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

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

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

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

defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

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

(c) Divisions (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.

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

(11) Except for transactions that are sales under division (B)(3)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable

purposes in this state, no part of the net income of which inures 232
to the benefit of any private shareholder or individual, and no 233
substantial part of the activities of which consists of carrying 234
on propaganda or otherwise attempting to influence legislation; 235
sales to offices administering one or more homes for the aged or 236
one or more hospital facilities exempt under section 140.08 of the 237
Revised Code; and sales to organizations described in division (D) 238
of section 5709.12 of the Revised Code. 239

"Charitable purposes" means the relief of poverty; the 240
improvement of health through the alleviation of illness, disease, 241
or injury; the operation of an organization exclusively for the 242
provision of professional, laundry, printing, and purchasing 243
services to hospitals or charitable institutions; the operation of 244
a home for the aged, as defined in section 5701.13 of the Revised 245
Code; the operation of a radio or television broadcasting station 246
that is licensed by the federal communications commission as a 247
noncommercial educational radio or television station; the 248
operation of a nonprofit animal adoption service or a county 249
humane society; the promotion of education by an institution of 250
learning that maintains a faculty of qualified instructors, 251
teaches regular continuous courses of study, and confers a 252
recognized diploma upon completion of a specific curriculum; the 253
operation of a parent-teacher association, booster group, or 254
similar organization primarily engaged in the promotion and 255
support of the curricular or extracurricular activities of a 256
primary or secondary school; the operation of a community or area 257
center in which presentations in music, dramatics, the arts, and 258
related fields are made in order to foster public interest and 259
education therein; the production of performances in music, 260
dramatics, and the arts; or the promotion of education by an 261
organization engaged in carrying on research in, or the 262
dissemination of, scientific and technological knowledge and 263
information primarily for the public. 264

Nothing in this division shall be deemed to exempt sales to 265
any organization for use in the operation or carrying on of a 266
trade or business, or sales to a home for the aged for use in the 267
operation of independent living facilities as defined in division 268
(A) of section 5709.12 of the Revised Code. 269

(13) Building and construction materials and services sold to 270
construction contractors for incorporation into a structure or 271
improvement to real property under a construction contract with 272
this state or a political subdivision of this state, or with the 273
United States government or any of its agencies; building and 274
construction materials and services sold to construction 275
contractors for incorporation into a structure or improvement to 276
real property that are accepted for ownership by this state or any 277
of its political subdivisions, or by the United States government 278
or any of its agencies at the time of completion of the structures 279
or improvements; building and construction materials sold to 280
construction contractors for incorporation into a horticulture 281
structure or livestock structure for a person engaged in the 282
business of horticulture or producing livestock; building 283
materials and services sold to a construction contractor for 284
incorporation into a house of public worship or religious 285
education, or a building used exclusively for charitable purposes 286
under a construction contract with an organization whose purpose 287
is as described in division (B)(12) of this section; building 288
materials and services sold to a construction contractor for 289
incorporation into a building under a construction contract with 290
an organization exempt from taxation under section 501(c)(3) of 291
the Internal Revenue Code of 1986 when the building is to be used 292
exclusively for the organization's exempt purposes; building and 293
construction materials sold for incorporation into the original 294
construction of a sports facility under section 307.696 of the 295
Revised Code; and building and construction materials and services 296
sold to a construction contractor for incorporation into real 297

property outside this state if such materials and services, when 298
sold to a construction contractor in the state in which the real 299
property is located for incorporation into real property in that 300
state, would be exempt from a tax on sales levied by that state; 301

(14) Sales of ships or vessels or rail rolling stock used or 302
to be used principally in interstate or foreign commerce, and 303
repairs, alterations, fuel, and lubricants for such ships or 304
vessels or rail rolling stock; 305

(15) Sales to persons primarily engaged in any of the 306
activities mentioned in division (B)(42)(a) or (g) of this 307
section, to persons engaged in making retail sales, or to persons 308
who purchase for sale from a manufacturer tangible personal 309
property that was produced by the manufacturer in accordance with 310
specific designs provided by the purchaser, of packages, including 311
material, labels, and parts for packages, and of machinery, 312
equipment, and material for use primarily in packaging tangible 313
personal property produced for sale, including any machinery, 314
equipment, and supplies used to make labels or packages, to 315
prepare packages or products for labeling, or to label packages or 316
products, by or on the order of the person doing the packaging, or 317
sold at retail. "Packages" includes bags, baskets, cartons, 318
crates, boxes, cans, bottles, bindings, wrappings, and other 319
similar devices and containers, but does not include motor 320
vehicles or bulk tanks, trailers, or similar devices attached to 321
motor vehicles. "Packaging" means placing in a package. Division 322
(B)(15) of this section does not apply to persons engaged in 323
highway transportation for hire. 324

(16) Sales of food to persons using supplemental nutrition 325
assistance program benefits to purchase the food. As used in this 326
division, "food" has the same meaning as in 7 U.S.C. 2012 and 327
federal regulations adopted pursuant to the Food and Nutrition Act 328
of 2008. 329

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

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

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

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and

emergency medical services, for political subdivisions of the 362
state; 363

(21) Sales of tangible personal property manufactured in this 364
state, if sold by the manufacturer in this state to a retailer for 365
use in the retail business of the retailer outside of this state 366
and if possession is taken from the manufacturer by the purchaser 367
within this state for the sole purpose of immediately removing the 368
same from this state in a vehicle owned by the purchaser; 369

(22) Sales of services provided by the state or any of its 370
political subdivisions, agencies, instrumentalities, institutions, 371
or authorities, or by governmental entities of the state or any of 372
its political subdivisions, agencies, instrumentalities, 373
institutions, or authorities; 374

(23) Sales of motor vehicles to nonresidents of this state 375
under the circumstances described in division (B) of section 376
5739.029 of the Revised Code; 377

(24) Sales to persons engaged in the preparation of eggs for 378
sale of tangible personal property used or consumed directly in 379
such preparation, including such tangible personal property used 380
for cleaning, sanitizing, preserving, grading, sorting, and 381
classifying by size; packages, including material and parts for 382
packages, and machinery, equipment, and material for use in 383
packaging eggs for sale; and handling and transportation equipment 384
and parts therefor, except motor vehicles licensed to operate on 385
public highways, used in intraplant or interplant transfers or 386
shipment of eggs in the process of preparation for sale, when the 387
plant or plants within or between which such transfers or 388
shipments occur are operated by the same person. "Packages" 389
includes containers, cases, baskets, flats, fillers, filler flats, 390
cartons, closure materials, labels, and labeling materials, and 391
"packaging" means placing therein. 392

(25)(a) Sales of water to a consumer for residential use,	393
except the sale of bottled water, distilled water, mineral water,	394
carbonated water, or ice;	395
(b) Sales of water by a nonprofit corporation engaged	396
exclusively in the treatment, distribution, and sale of water to	397
consumers, if such water is delivered to consumers through pipes	398
or tubing.	399
(26) Fees charged for inspection or reinspection of motor	400
vehicles under section 3704.14 of the Revised Code;	401
(27) Sales to persons licensed to conduct a food service	402
operation pursuant to section 3717.43 of the Revised Code, of	403
tangible personal property primarily used directly for the	404
following:	405
(a) To prepare food for human consumption for sale;	406
(b) To preserve food that has been or will be prepared for	407
human consumption for sale by the food service operator, not	408
including tangible personal property used to display food for	409
selection by the consumer;	410
(c) To clean tangible personal property used to prepare or	411
serve food for human consumption for sale.	412
(28) Sales of animals by nonprofit animal adoption services	413
or county humane societies;	414
(29) Sales of services to a corporation described in division	415
(A) of section 5709.72 of the Revised Code, and sales of tangible	416
personal property that qualifies for exemption from taxation under	417
section 5709.72 of the Revised Code;	418
(30) Sales and installation of agricultural land tile, as	419
defined in division (B)(5)(a) of section 5739.01 of the Revised	420
Code;	421
(31) Sales and erection or installation of portable grain	422

bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

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

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

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

(35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and

describes tangible personal property offered for retail sale. 455

(b) Sales to direct marketing vendors of preliminary 456
materials such as photographs, artwork, and typesetting that will 457
be used in printing advertising material; of printed matter that 458
offers free merchandise or chances to win sweepstake prizes and 459
that is mailed to potential customers with advertising material 460
described in division (B)(35)(a) of this section; and of equipment 461
such as telephones, computers, facsimile machines, and similar 462
tangible personal property primarily used to accept orders for 463
direct marketing retail sales. 464

(c) Sales of automatic food vending machines that preserve 465
food with a shelf life of forty-five days or less by refrigeration 466
and dispense it to the consumer. 467

For purposes of division (B)(35) of this section, "direct 468
marketing" means the method of selling where consumers order 469
tangible personal property by United States mail, delivery 470
service, or telecommunication and the vendor delivers or ships the 471
tangible personal property sold to the consumer from a warehouse, 472
catalogue distribution center, or similar fulfillment facility by 473
means of the United States mail, delivery service, or common 474
carrier. 475

(36) Sales to a person engaged in the business of 476
horticulture or producing livestock of materials to be 477
incorporated into a horticulture structure or livestock structure; 478

(37) Sales of personal computers, computer monitors, computer 479
keyboards, modems, and other peripheral computer equipment to an 480
individual who is licensed or certified to teach in an elementary 481
or a secondary school in this state for use by that individual in 482
preparation for teaching elementary or secondary school students; 483

(38) Sales to a professional racing team of any of the 484
following: 485

(a) Motor racing vehicles;	486
(b) Repair services for motor racing vehicles;	487
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.	488 489 490 491 492 493 494 495
(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	496 497 498
(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.	499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515
(41) Sales to a person providing services under division	516

(B)(3)(r) of section 5739.01 of the Revised Code of tangible 517
personal property and services used directly and primarily in 518
providing taxable services under that section. 519

(42) Sales where the purpose of the purchaser is to do any of 520
the following: 521

(a) To incorporate the thing transferred as a material or a 522
part into tangible personal property to be produced for sale by 523
manufacturing, assembling, processing, or refining; or to use or 524
consume the thing transferred directly in producing tangible 525
personal property for sale by mining, including, without 526
limitation, the extraction from the earth of all substances that 527
are classed geologically as minerals, production of crude oil and 528
natural gas, farming, agriculture, horticulture, or floriculture, 529
or directly in the rendition of a public utility service, except 530
that the sales tax levied by this section shall be collected upon 531
all meals, drinks, and food for human consumption sold when 532
transporting persons. Persons engaged in rendering farming, 533
agricultural, horticultural, or floricultural services, and 534
services in the exploration for, and production of, crude oil and 535
natural gas, for others are deemed engaged directly in farming, 536
agriculture, horticulture, and floriculture, or exploration for, 537
and production of, crude oil and natural gas. This paragraph does 538
not exempt from "retail sale" or "sales at retail" the sale of 539
tangible personal property that is to be incorporated into a 540
structure or improvement to real property. 541

(b) To hold the thing transferred as security for the 542
performance of an obligation of the vendor; 543

(c) To resell, hold, use, or consume the thing transferred as 544
evidence of a contract of insurance; 545

(d) To use or consume the thing directly in commercial 546
fishing; 547

(e) To incorporate the thing transferred as a material or a 548
part into, or to use or consume the thing transferred directly in 549
the production of, magazines distributed as controlled circulation 550
publications; 551

(f) To use or consume the thing transferred in the production 552
and preparation in suitable condition for market and sale of 553
printed, imprinted, overprinted, lithographic, multilithic, 554
blueprinted, photostatic, or other productions or reproductions of 555
written or graphic matter; 556

(g) To use the thing transferred, as described in section 557
5739.011 of the Revised Code, primarily in a manufacturing 558
operation to produce tangible personal property for sale; 559

(h) To use the benefit of a warranty, maintenance or service 560
contract, or similar agreement, as described in division (B)(7) of 561
section 5739.01 of the Revised Code, to repair or maintain 562
tangible personal property, if all of the property that is the 563
subject of the warranty, contract, or agreement would not be 564
subject to the tax imposed by this section; 565

(i) To use the thing transferred as qualified research and 566
development equipment; 567

(j) To use or consume the thing transferred primarily in 568
storing, transporting, mailing, or otherwise handling purchased 569
sales inventory in a warehouse, distribution center, or similar 570
facility when the inventory is primarily distributed outside this 571
state to retail stores of the person who owns or controls the 572
warehouse, distribution center, or similar facility, to retail 573
stores of an affiliated group of which that person is a member, or 574
by means of direct marketing. This division does not apply to 575
motor vehicles registered for operation on the public highways. As 576
used in this division, "affiliated group" has the same meaning as 577
in division (B)(3)(e) of section 5739.01 of the Revised Code and 578

"direct marketing" has the same meaning as in division (B)(35) of 579
this section. 580

(k) To use or consume the thing transferred to fulfill a 581
contractual obligation incurred by a warrantor pursuant to a 582
warranty provided as a part of the price of the tangible personal 583
property sold or by a vendor of a warranty, maintenance or service 584
contract, or similar agreement the provision of which is defined 585
as a sale under division (B)(7) of section 5739.01 of the Revised 586
Code; 587

(l) To use or consume the thing transferred in the production 588
of a newspaper for distribution to the public; 589

(m) To use tangible personal property to perform a service 590
listed in division (B)(3) of section 5739.01 of the Revised Code, 591
if the property is or is to be permanently transferred to the 592
consumer of the service as an integral part of the performance of 593
the service; 594

(n) To use or consume the thing transferred in acquiring, 595
formatting, editing, storing, and disseminating data or 596
information by electronic publishing. 597

As used in division (B)(42) of this section, "thing" includes 598
all transactions included in divisions (B)(3)(a), (b), and (e) of 599
section 5739.01 of the Revised Code. 600

(43) Sales conducted through a coin operated device that 601
activates vacuum equipment or equipment that dispenses water, 602
whether or not in combination with soap or other cleaning agents 603
or wax, to the consumer for the consumer's use on the premises in 604
washing, cleaning, or waxing a motor vehicle, provided no other 605
personal property or personal service is provided as part of the 606
transaction. 607

(44) Sales of replacement and modification parts for engines, 608
airframes, instruments, and interiors in, and paint for, aircraft 609

used primarily in a fractional aircraft ownership program, and 610
sales of services for the repair, modification, and maintenance of 611
such aircraft, and machinery, equipment, and supplies primarily 612
used to provide those services. 613

(45) Sales of telecommunications service that is used 614
directly and primarily to perform the functions of a call center. 615
As used in this division, "call center" means any physical 616
location where telephone calls are placed or received in high 617
volume for the purpose of making sales, marketing, customer 618
service, technical support, or other specialized business 619
activity, and that employs at least fifty individuals that engage 620
in call center activities on a full-time basis, or sufficient 621
individuals to fill fifty full-time equivalent positions. 622

(46) Sales by a telecommunications service vendor of 900 623
service to a subscriber. This division does not apply to 624
information services, as defined in division (FF) of section 625
5739.01 of the Revised Code. 626

(47) Sales of value-added non-voice data service. This 627
division does not apply to any similar service that is not 628
otherwise a telecommunications service. 629

(48)(a) Sales of machinery, equipment, and software to a 630
qualified direct selling entity for use in a warehouse or 631
distribution center primarily for storing, transporting, or 632
otherwise handling inventory that is held for sale to independent 633
salespersons who operate as direct sellers and that is held 634
primarily for distribution outside this state; 635

(b) As used in division (B)(48)(a) of this section: 636

(i) "Direct seller" means a person selling consumer products 637
to individuals for personal or household use and not from a fixed 638
retail location, including selling such product at in-home product 639
demonstrations, parties, and other one-on-one selling. 640

(ii) "Qualified direct selling entity" means an entity 641
selling to direct sellers at the time the entity enters into a tax 642
credit agreement with the tax credit authority pursuant to section 643
122.17 of the Revised Code, provided that the agreement was 644
entered into on or after January 1, 2007. Neither contingencies 645
relevant to the granting of, nor later developments with respect 646
to, the tax credit shall impair the status of the qualified direct 647
selling entity under division (B)(48) of this section after 648
execution of the tax credit agreement by the tax credit authority. 649

(c) Division (B)(48) of this section is limited to machinery, 650
equipment, and software first stored, used, or consumed in this 651
state within the period commencing June 24, 2008, and ending on 652
the date that is five years after that date. 653

(49) Sales of materials, parts, equipment, or engines used in 654
the repair or maintenance of aircraft or avionics systems of such 655
aircraft, and sales of repair, remodeling, replacement, or 656
maintenance services in this state performed on aircraft or on an 657
aircraft's avionics, engine, or component materials or parts. As 658
used in division (B)(49) of this section, "aircraft" means 659
aircraft of more than six thousand pounds maximum certified 660
takeoff weight or used exclusively in general aviation. 661

(50) Sales of full flight simulators that are used for pilot 662
or flight-crew training, sales of repair or replacement parts or 663
components, and sales of repair or maintenance services for such 664
full flight simulators. "Full flight simulator" means a replica of 665
a specific type, or make, model, and series of aircraft cockpit. 666
It includes the assemblage of equipment and computer programs 667
necessary to represent aircraft operations in ground and flight 668
conditions, a visual system providing an out-of-the-cockpit view, 669
and a system that provides cues at least equivalent to those of a 670
three-degree-of-freedom motion system, and has the full range of 671
capabilities of the systems installed in the device as described 672

in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

(51) Sales of textbooks and written supplemental materials required for coursework at an eligible institution, as defined in section 5747.01 of the Revised Code, or a private institution exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code.

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

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

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

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

Section 3. This act shall be known as the "Textbook

Affordability Act." 703

Section 4. The Chancellor of the Ohio Board of Regents shall 704
develop pilot textbook rental programs at two or more state 705
institutions of higher education to commence not later than the 706
start of the 2011-2012 academic year and to last for two years. 707
The rental programs shall be optional to students and shall be 708
designed to be financially self-sustaining. The Chancellor shall 709
submit a report to the General Assembly in accordance with section 710
101.68 of the Revised Code not later than one year after 711
completion of the pilot programs. The report shall include 712
implementation strategies for programs at all state institutions 713
of higher education, including any further potential recommended 714
action by the General Assembly. A campus or program that 715
participates in a textbook rental pilot program may establish 716
policies and procedures for the program and shall report annually 717
to the General Assembly in accordance with section 101.68 of the 718
Revised Code and to the Chancellor with information on the 719
procedures, savings, and participant comment. 720

Section 5. Any bookstore that, prior to the effective date of 721
this section, entered into a contract with a publisher that 722
requires the purchase for resale of used textbooks in violation of 723
section 3346.05 of the Revised Code shall not be required to 724
comply with that section until the expiration of the contract. Any 725
renewal of the contract shall comply with that section. 726