

Senator J. Stuart Adams proposes the following substitute bill:

TRANSPORTATION NETWORK COMPANY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill amends provisions related to transportation network services.

Highlighted Provisions:

This bill:

- ▶ requires a transportation network company to register with the division of consumer protection;
- ▶ exempts a vehicle used to provide transportation network services from certain requirements;
- ▶ provides operation and eligibility requirements for a transportation network company and a transportation network driver; and
- ▶ provides insurance requirements for a transportation network company and a transportation network driver.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 13-2-1, as last amended by Laws of Utah 2014, Chapter 360
27 53-3-102, as last amended by Laws of Utah 2014, Chapter 252
28 59-12-102, as last amended by Laws of Utah 2014, Chapters 380 and 414

29 ENACTS:

30 13-51-101, Utah Code Annotated 1953
31 13-51-102, Utah Code Annotated 1953
32 13-51-103, Utah Code Annotated 1953
33 13-51-104, Utah Code Annotated 1953
34 13-51-105, Utah Code Annotated 1953
35 13-51-106, Utah Code Annotated 1953
36 13-51-107, Utah Code Annotated 1953
37 13-51-108, Utah Code Annotated 1953
38 13-51-109, Utah Code Annotated 1953

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section 13-2-1 is amended to read:

42 **13-2-1. Consumer protection division established -- Functions.**

43 (1) There is established within the Department of Commerce the Division of Consumer
44 Protection.

45 (2) The division shall administer and enforce the following:

- 46 (a) Chapter 5, Unfair Practices Act;
- 47 (b) Chapter 10a, Music Licensing Practices Act;
- 48 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 49 (d) Chapter 15, Business Opportunity Disclosure Act;
- 50 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 51 (f) Chapter 21, Credit Services Organizations Act;
- 52 (g) Chapter 22, Charitable Solicitations Act;
- 53 (h) Chapter 23, Health Spa Services Protection Act;
- 54 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 55 (j) Chapter 26, Telephone Fraud Prevention Act;
- 56 (k) Chapter 28, Prize Notices Regulation Act;

- 57 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 58 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 59 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 60 (o) Chapter 41, Price Controls During Emergencies Act;
- 61 (p) Chapter 42, Uniform Debt-Management Services Act; ~~and~~
- 62 (q) Chapter 49, Immigration Consultants Registration Act[-]; and
- 63 (r) Chapter 51, Transportation Network Company Registration Act.

64 Section 2. Section **13-51-101** is enacted to read:

65 **CHAPTER 51. TRANSPORTATION NETWORK COMPANY REGISTRATION ACT**

66 **13-51-101. Title.**

67 This chapter is known as "Transportation Network Company Registration Act."

68 Section 3. Section **13-51-102** is enacted to read:

69 **13-51-102. Definitions.**

70 (1) "Division" means the Division of Consumer Protection within the Department of
71 Commerce.

72 (2) "Prearranged ride" means a period of time that:

73 (a) begins when the transportation network driver has accepted a passenger's request
74 for a ride through the transportation network company's software application; and

75 (b) ends when the passenger exits the transportation network driver's vehicle.

76 (3) "Software application" means an Internet-connected software platform, including a
77 mobile application, that a transportation network company uses to:

78 (a) connect a transportation network driver to a passenger; and

79 (b) process passenger requests.

80 (4) "Transportation network company" means an entity that:

81 (a) uses a software application to connect a passenger to a transportation network
82 driver providing transportation network services;

83 (b) is not:

84 (i) a taxicab, as defined in Section [53-3-102](#); or

85 (ii) a motor carrier, as defined in Section [72-9-102](#); and

86 (c) does not own, control, operate, or manage the vehicle used to provide the
87 transportation network services.

- 88 (5) "Transportation network driver" means an individual who:
- 89 (a) pays a fee to a transportation network company, and, in exchange, receives a
- 90 connection to a potential passenger from the transportation network company; and
- 91 (b) operates a motor vehicle that:
- 92 (i) the individual owns, leases, or is authorized to use; and
- 93 (ii) the individual uses to provide transportation network services.
- 94 (6) "Transportation network services" means, for a transportation network driver
- 95 providing services through a transportation network company:
- 96 (a) providing a prearranged ride; or
- 97 (b) being engaged in a waiting period.
- 98 (7) "Waiting period" means a period of time when:
- 99 (a) a transportation network driver is logged into a transportation network company's
- 100 software application; and
- 101 (b) the transportation network driver is not engaged in a prearranged ride.

102 Section 4. Section **13-51-103** is enacted to read:

103 **13-51-103. Exemptions -- Transportation network company and transportation**
104 **network driver.**

105 A transportation network company or a transportation network driver is not subject to
106 the requirements applicable to:

- 107 (1) a motor carrier, under Title 72, Chapter 9, Motor Carrier Safety Act;
- 108 (2) a common carrier, under Title 59, Chapter 12, Sales and Use Tax Act; or
- 109 (3) a taxicab, under Title 53, Chapter 3, Uniform Driver License Act.

110 Section 5. Section **13-51-104** is enacted to read:

111 **13-51-104. Licensure -- Division audits -- Fines.**

- 112 (1) A person may not operate a transportation network company without registering
113 with the division under Subsection (2).
- 114 (2) The division shall register a person to operate a transportation network company if:
- 115 (a) the person:
- 116 (i) demonstrates to the division that the person meets the definition of a transportation
117 network company under Section [13-51-102](#); and
- 118 (ii) pays a registration fee in an amount determined by the division in accordance with

119 Section 63J-1-504; and

120 (b) the division determines that the person complies with the operating requirements
121 for a transportation network company described in this chapter.

122 (3) A transportation network company's registration under Subsection (2) is:

123 (a) valid until one year after the day on which the transportation network company
124 registers with the division; and

125 (b) renewable if the transportation network company meets the requirements of
126 Subsection (2).

127 (4) The division may audit the records of a transportation network company, including
128 a random sample of the transportation network company's records related to transportation
129 network drivers:

130 (a) no more than twice per year;

131 (b) at a location agreed to by the division and the transportation network company; and

132 (c) notwithstanding Subsection (4)(a), at any time to investigate a complaint.

133 (5) The division may fine a transportation network company up to \$500 for each
134 violation of this chapter.

135 Section 6. Section **13-51-105** is enacted to read:

136 **13-51-105. Operating requirements.**

137 (1) A transportation network company shall maintain an agent for service of process in
138 the state and shall notify the division of the name and address of the agent.

139 (2) A transportation network company may collect, on behalf of a transportation
140 network driver, a fare for a prearranged ride if the transportation network company:

141 (a) posts the method for calculating the fare on the transportation network company's
142 software application;

143 (b) provides a passenger the rate used to calculate the fare for a prearranged ride; and

144 (c) allows a passenger the option to obtain an estimated fare for a prearranged ride
145 before the passenger enters a transportation network driver's vehicle.

146 (3) For each prearranged ride, a transportation network company shall:

147 (a) before a passenger enters a transportation network driver's vehicle, display on the
148 transportation network company's software application a picture of the transportation network
149 driver; and

150 (b) shortly after the prearranged ride is complete, transmit an electronic receipt to the
151 passenger that lists:

152 (i) the prearranged ride's origin and destination;

153 (ii) the prearranged ride's total time and distance; and

154 (iii) an itemization of the total fare the passenger paid, if any.

155 (4) A transportation network driver may not, while providing transportation network
156 services:

157 (a) provide a ride to an individual who requests the ride by a means other than a
158 transportation network company's software application;

159 (b) solicit or accept cash payments from a passenger; or

160 (c) accept any means of payment other than payment through a transportation network
161 company's software application.

162 (5) A transportation network company shall maintain a record of:

163 (a) all trips, for a minimum of five years after the day on which the trip occurred; and

164 (b) all information in a transportation network company's possession regarding a
165 transportation network driver, for a minimum of five years after the day on which the
166 transportation network driver last provided transportation network services using the
167 transportation network company's software application.

168 (6) A transportation network company shall adopt a policy that prohibits unlawful
169 discrimination with respect to a passenger and shall:

170 (a) provide a copy of the policy to each transportation network driver; or

171 (b) post the policy on the transportation network company's website.

172 (7) (a) A transportation network driver shall accommodate:

173 (i) a service animal; or

174 (ii) an individual with a physical disability.

175 (b) A transportation network driver or transportation network company may not impose
176 an additional charge to provide the accommodations described in Subsections (7)(a) and (8).

177 (8) A transportation network company shall:

178 (a) allow a passenger to request a prearranged ride in a wheelchair-accessible vehicle;

179 and

180 (b) if a wheelchair-accessible vehicle is not available to a passenger who requests a

181 wheelchair-accessible vehicle under Subsection (8)(a), direct the passenger to a transportation
182 service that provides wheelchair-accessible service, if available.

183 (9) A transportation network company shall disclose to a transportation network driver:

184 (a) a description of the insurance coverage the transportation network company
185 provides the transportation network driver while the transportation network driver is providing
186 transportation network services, including the insurance coverage's liability limit;

187 (b) that the transportation network company's personal automobile insurance policy
188 may not provide coverage to the transportation network driver during a waiting period or a
189 prearranged ride;

190 (c) that if the vehicle the transportation network driver uses to provide transportation
191 network services has a lien against the vehicle, the transportation network driver is required to
192 notify the lienholder that the transportation network driver is using the vehicle to provide
193 transportation network services; and

194 (d) that using a vehicle with a lien against the vehicle to provide transportation network
195 services may violate the transportation network driver's contract with the lienholder.

196 (10) A transportation network company and the transportation network company's
197 insurer shall, for an incident that occurs while a transportation network driver is providing
198 transportation network services:

199 (a) cooperate with a liability insurer that insures the vehicle the transportation network
200 driver uses to provide the transportation network services;

201 (b) provide, to the liability insurer, the precise date and time that an incident occurred,
202 including the precise time when a driver logged in or out of the transportation network
203 company's software application; and

204 (c) provide the information described in Subsection (10)(b) to a liability insurer no
205 later than 10 business days after the day on which the liability insurer requests the information
206 from the transportation network company.

207 (11) If a transportation network company's insurer insures a vehicle with a lien against
208 the vehicle, and the transportation network company's insurer covers a claim regarding the
209 vehicle under comprehensive or collision coverage, the transportation network company shall
210 direct the transportation network company's insurer to issue the payment for the claim:

211 (a) directly to the person that is repairing the vehicle; or

212 (b) jointly to the owner of the vehicle and the primary lienholder.

213 Section 7. Section **13-51-106** is enacted to read:

214 **13-51-106. Transportation network driver drug or alcohol use policy.**

215 (1) A transportation network company shall implement a policy that:

216 (a) provides that a transportation network driver may not use a drug or alcohol or be
217 under the influence of a drug or alcohol while providing transportation network services;

218 (b) is posted on the transportation network company's website or software application;

219 and

220 (c) provides procedures for a passenger to report to the transportation network
221 company a transportation network driver who the passenger suspects violated the policy.

222 (2) If a transportation network company receives a complaint about a transportation
223 network driver under Subsection (1)(c), the transportation network company shall:

224 (a) suspend the transportation network company driver; and

225 (b) conduct an investigation into the transportation network company driver and the
226 conduct alleged in the complaint.

227 (3) A transportation network company shall maintain records related to a complaint or
228 investigation under this section for a minimum of two years after the day on which the
229 transportation network company receives the complaint.

230 Section 8. Section **13-51-107** is enacted to read:

231 **13-51-107. Driver requirements.**

232 (1) Before a transportation network company allows an individual to use the
233 transportation network company's software application as a transportation network driver, the
234 transportation network company shall:

235 (a) require the individual to submit to the transportation network company:

236 (i) the individual's name, address, and age;

237 (ii) a copy of the individual's driver license, including the driver license number; and

238 (iii) proof that the vehicle that the individual will use to provide transportation network
239 service is registered with the Division of Motor Vehicles;

240 (b) require the individual to consent to a criminal background check of the individual
241 by the transportation network company or the transportation network company's designee; and

242 (c) obtain and review a report that lists the individual's driving history.

243 (2) A transportation company may not allow an individual to provide transportation
244 network services as a transportation network driver if the individual:

245 (a) has committed more than three moving violations in the three years before the day
246 on which the individual applies to become a transportation network driver;

247 (b) has been convicted, in the seven years before the day on which the individual
248 applies to become a transportation network driver, of:

249 (i) driving under the influence of alcohol or drugs;

250 (ii) fraud;

251 (iii) a sexual offense;

252 (iv) a felony involving a motor vehicle;

253 (v) a crime involving property damage;

254 (vi) a crime involving theft;

255 (vii) a crime of violence; or

256 (viii) an act of terror;

257 (c) is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex
258 and Kidnap Offender Registry;

259 (d) does not have a valid Utah driver license; or

260 (e) is not at least 19 years of age.

261 (3) A transportation network company shall prohibit a transportation network driver
262 from accepting a request for a prearranged ride if the motor vehicle that the transportation
263 network driver uses to provide transportation network services fails to comply with:

264 (a) safety and inspection requirements described in Section [53-8-205](#);

265 (b) equipment standards described in Section [41-6a-1601](#); and

266 (c) emission requirements adopted by a county under Section [41-6a-1642](#).

267 (4) A transportation network driver, while providing transportation network services,
268 shall carry proof, in physical or electronic form, that the transportation network driver is
269 covered by insurance that satisfies the requirements of Section [13-51-108](#).

270 Section 9. Section **13-51-108** is enacted to read:

271 **13-51-108. Insurance.**

272 (1) A transportation network company or a transportation network driver shall maintain
273 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle

274 during a prearranged ride and that includes:

275 (a) an acknowledgment that the transportation network driver is using the vehicle in
276 connection with a transportation network company during a prearranged ride or that the
277 transportation network driver is otherwise using the vehicle for a commercial purpose;

278 (b) liability coverage for a minimum amount of \$ → ~~\$1,500,000~~ \$1,000,000 ← \$ per
278a occurrence;

279 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
280 through [31A-22-309](#);

281 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and

282 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).

283 (2) A transportation network company or a transportation network driver shall maintain
284 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle
285 during a waiting period and that includes:

286 (a) an acknowledgment that the transportation network driver is using the vehicle in
287 connection with a transportation network company during a waiting period or that the
288 transportation network driver is otherwise using the vehicle for a commercial purpose;

289 (b) liability coverage in a minimum amount, per occurrence, of:

290 (i) \$50,000 to any one individual;

291 (ii) \$100,000 to all individuals; and

292 (iii) \$30,000 for property damage;

293 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
294 through [31A-22-309](#);

295 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and

296 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).

297 (3) A transportation network company and a transportation network driver may satisfy
298 the requirements of Subsections (1) and (2) by:

299 (a) the transportation network driver purchasing coverage that complies with
300 Subsections (1) and (2);

301 (b) the transportation network company purchasing, on the transportation network
302 driver's behalf, coverage that complies with Subsections (1) and (2); or

303 (c) a combination of Subsections (3)(a) and (b).

304 (4) An insurer may offer to a transportation network driver a personal automobile

305 liability insurance policy, or an amendment or endorsement to a personal automobile liability
306 policy, that:

307 (a) covers a private passenger motor vehicle while used to provide transportation
308 network services; and

309 (b) satisfies the coverage requirements described in Subsection (1) or (2).

310 (5) Nothing in this section requires a personal automobile insurance policy to provide
311 coverage while a driver is providing transportation network services.

312 (6) If a transportation network company does not purchase a policy that complies with
313 Subsections (1) and (2) on behalf of a transportation network driver, the transportation network
314 company shall verify that the driver has purchased a policy that complies with Subsections (1)
315 and (2).

316 (7) An insurance policy that a transportation network company or a transportation
317 network driver maintains under Subsection (1) or (2):

318 (a) satisfies the security requirements of Section [41-12a-301](#); and

319 (b) may be placed with:

320 (i) an insurer that is certified under Section [31A-4-103](#); or

321 (ii) a surplus lines insurer licensed under Section [31A-23a-104](#).

322 (8) An insurer that provides coverage for a transportation network driver explicitly for
323 the transportation network driver's transportation network services under Subsection (1) or (2)
324 shall have the duty to defend a liability claim arising from an occurrence while the
325 transportation network driver is providing transportation network services.

326 (9) If insurance a transportation network driver maintains under Subsection (1) or (2)
327 lapses or ceases to exist, a transportation network company shall provide coverage complying
328 with Subsection (1) or (2) beginning with the first dollar of a claim.

329 (10) (a) An insurance policy that a transportation network company or transportation
330 network driver maintains under Subsection (1) or (2) may not provide that coverage is
331 dependent on a transportation network driver's personal automobile insurance policy first
332 denying a claim.

333 (b) Subsection (10)(a) does not apply to coverage a transportation network company
334 provides under Subsection (9) in the event a transportation network driver's coverage under
335 Subsection (1) or (2) lapses or ceases to exist.

336 (11) A personal automobile insurer:

337 (a) notwithstanding Section 31A-22-302, may offer a personal automobile liability
338 policy that excludes coverage for a loss that arises from the use of the insured vehicle to
339 provide transportation network services; and

340 (b) does not have the duty to defend or indemnify a loss if an exclusion described in
341 Subsection ~~10(a)~~ (11)(a) excludes coverage according to the policy's terms.

342 Section 10. Section 13-51-109 is enacted to read:

343 **13-51-109. Preemption clause.**

344 (1) Except as provided in Subsection (2), this chapter supersedes any regulation of a
345 municipality, county, or local government regarding a transportation network company, a
346 transportation network driver, or transportation network services.

347 (2) This chapter does not supersede a municipal, county, or local government
348 regulation regarding a transportation network driver providing transportation network services
349 at an airport.

350 Section 11. Section 53-3-102 is amended to read:

351 **53-3-102. Definitions.**

352 As used in this chapter:

353 (1) "Cancellation" means the termination by the division of a license issued through
354 error or fraud or for which consent under Section 53-3-211 has been withdrawn.

355 (2) "Class D license" means the class of license issued to drive motor vehicles not
356 defined as commercial motor vehicles or motorcycles under this chapter.

357 (3) "Commercial driver license" or "CDL" means a license:

358 (a) issued substantially in accordance with the requirements of Title XII, Pub. L.
359 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4,
360 Uniform Commercial Driver License Act, which authorizes the holder to drive a class of
361 commercial motor vehicle; and

362 (b) that was obtained by providing evidence of lawful presence in the United States
363 with one of the document requirements described in Subsection 53-3-410(1)(i)(i).

364 (4) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor
365 vehicles designed or used to transport passengers or property if the motor vehicle:

366 (i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as

367 determined by federal regulation;

368 (ii) is designed to transport 16 or more passengers, including the driver; or

369 (iii) is transporting hazardous materials and is required to be placarded in accordance
370 with 49 C.F.R. Part 172, Subpart F.

371 (b) The following vehicles are not considered a commercial motor vehicle for purposes
372 of Part 4, Uniform Commercial Driver License Act:

373 (i) equipment owned and operated by the United States Department of Defense when
374 driven by any active duty military personnel and members of the reserves and national guard on
375 active duty including personnel on full-time national guard duty, personnel on part-time
376 training, and national guard military technicians and civilians who are required to wear military
377 uniforms and are subject to the code of military justice;

378 (ii) vehicles controlled and driven by a farmer to transport agricultural products, farm
379 machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation
380 as a motor carrier for hire;

381 (iii) firefighting and emergency vehicles; [~~and~~]

382 (iv) recreational vehicles that are not used in commerce and are driven solely as family
383 or personal conveyances for recreational purposes[-]; and

384 (v) vehicles used to provide transportation network services, as defined in Section
385 [13-51-102](#).

386 (5) "Conviction" means any of the following:

387 (a) an unvacated adjudication of guilt or a determination that a person has violated or
388 failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

389 (b) an unvacated forfeiture of bail or collateral deposited to secure a person's
390 appearance in court;

391 (c) a plea of guilty or nolo contendere accepted by the court;

392 (d) the payment of a fine or court costs; or

393 (e) violation of a condition of release without bail, regardless of whether the penalty is
394 rebated, suspended, or probated.

395 (6) "Denial" or "denied" means the withdrawal of a driving privilege by the division to
396 which the provisions of Title 41, Chapter 12a, Part 4, Proof of Owner's or Operator's Security,
397 do not apply.

- 398 (7) "Director" means the division director appointed under Section 53-3-103.
- 399 (8) "Disqualification" means either:
- 400 (a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state
- 401 of a person's privileges to drive a commercial motor vehicle;
- 402 (b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386,
- 403 that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part
- 404 391; or
- 405 (c) the loss of qualification that automatically follows conviction of an offense listed in
- 406 49 C.F.R. Part 383.51.
- 407 (9) "Division" means the Driver License Division of the department created in Section
- 408 53-3-103.
- 409 (10) "Downgrade" means to obtain a lower license class than what was originally
- 410 issued during an existing license cycle.
- 411 (11) "Drive" means:
- 412 (a) to operate or be in physical control of a motor vehicle upon a highway; and
- 413 (b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections
- 414 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within
- 415 the state.
- 416 (12) (a) "Driver" means any person who drives, or is in actual physical control of a
- 417 motor vehicle in any location open to the general public for purposes of vehicular traffic.
- 418 (b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person
- 419 who is required to hold a CDL under Part 4 or federal law.
- 420 (13) "Driving privilege card" means the evidence of the privilege granted and issued
- 421 under this chapter to drive a motor vehicle to a person whose privilege was obtained without
- 422 providing evidence of lawful presence in the United States.
- 423 (14) "Extension" means a renewal completed in a manner specified by the division.
- 424 (15) "Farm tractor" means every motor vehicle designed and used primarily as a farm
- 425 implement for drawing plows, mowing machines, and other implements of husbandry.
- 426 (16) "Highway" means the entire width between property lines of every way or place of
- 427 any nature when any part of it is open to the use of the public, as a matter of right, for traffic.
- 428 (17) "Identification card" means a card issued under Part 8, Identification Card Act, to

429 a person for identification purposes.

430 (18) "Indigent" means that a person's income falls below the federal poverty guideline
431 issued annually by the U.S. Department of Health and Human Services in the Federal Register.

432 (19) "License" means the privilege to drive a motor vehicle.

433 (20) (a) "License certificate" means the evidence of the privilege issued under this
434 chapter to drive a motor vehicle.

435 (b) "License certificate" evidence includes a:

436 (i) regular license certificate;

437 (ii) limited-term license certificate;

438 (iii) driving privilege card;

439 (iv) CDL license certificate;

440 (v) limited-term CDL license certificate;

441 (vi) temporary regular license certificate; and

442 (vii) temporary limited-term license certificate.

443 (21) "Limited-term commercial driver license" or "limited-term CDL" means a license:

444 (a) issued substantially in accordance with the requirements of Title XII, Pub. L.
445 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4,
446 Uniform Commercial Driver License Act, which authorizes the holder to drive a class of
447 commercial motor vehicle; and

448 (b) that was obtained by providing evidence of lawful presence in the United States
449 with one of the document requirements described in Subsection 53-3-410(1)(i)(ii).

450 (22) "Limited-term identification card" means an identification card issued under this
451 chapter to a person whose card was obtained by providing evidence of lawful presence in the
452 United States with one of the document requirements described in Subsection
453 53-3-804(2)(i)(ii).

454 (23) "Limited-term license certificate" means the evidence of the privilege granted and
455 issued under this chapter to drive a motor vehicle to a person whose privilege was obtained
456 providing evidence of lawful presence in the United States with one of the document
457 requirements described in Subsection 53-3-205(8)(a)(ii)(B).

458 (24) "Motorboat" has the same meaning as provided under Section 73-18-2.

459 (25) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or

460 saddle for the use of the rider and designed to travel with not more than three wheels in contact
461 with the ground.

462 (26) "Office of Recovery Services" means the Office of Recovery Services, created in
463 Section [62A-11-102](#).

464 (27) (a) "Owner" means a person other than a lien holder having an interest in the
465 property or title to a vehicle.

466 (b) "Owner" includes a person entitled to the use and possession of a vehicle subject to
467 a security interest in another person but excludes a lessee under a lease not intended as security.

468 (28) "Regular identification card" means an identification card issued under this
469 chapter to a person whose card was obtained by providing evidence of lawful presence in the
470 United States with one of the document requirements described in Subsection [53-3-804\(2\)\(i\)\(i\)](#).

471 (29) "Regular license certificate" means the evidence of the privilege issued under this
472 chapter to drive a motor vehicle whose privilege was obtained by providing evidence of lawful
473 presence in the United States with one of the document requirements described in Subsection
474 [53-3-205\(8\)\(a\)\(ii\)\(A\)](#).

475 (30) "Renewal" means to validate a license certificate so that it expires at a later date.

476 (31) "Reportable violation" means an offense required to be reported to the division as
477 determined by the division and includes those offenses against which points are assessed under
478 Section [53-3-221](#).

479 (32) (a) "Resident" means an individual who:

480 (i) has established a domicile in this state, as defined in Section [41-1a-202](#), or
481 regardless of domicile, remains in this state for an aggregate period of six months or more
482 during any calendar year;

483 (ii) engages in a trade, profession, or occupation in this state, or who accepts
484 employment in other than seasonal work in this state, and who does not commute into the state;

485 (iii) declares himself to be a resident of this state by obtaining a valid Utah driver
486 license certificate or motor vehicle registration; or

487 (iv) declares himself a resident of this state to obtain privileges not ordinarily extended
488 to nonresidents, including going to school, or placing children in school without paying
489 nonresident tuition or fees.

490 (b) "Resident" does not include any of the following:

- 491 (i) a member of the military, temporarily stationed in this state;
- 492 (ii) an out-of-state student, as classified by an institution of higher education,
- 493 regardless of whether the student engages in any type of employment in this state;
- 494 (iii) a person domiciled in another state or country, who is temporarily assigned in this
- 495 state, assigned by or representing an employer, religious or private organization, or a
- 496 governmental entity; or
- 497 (iv) an immediate family member who resides with or a household member of a person
- 498 listed in Subsections (32)(b)(i) through (iii).

499 (33) "Revocation" means the termination by action of the division of a licensee's
500 privilege to drive a motor vehicle.

501 (34) (a) "School bus" means a commercial motor vehicle used to transport pre-primary,
502 primary, or secondary school students to and from home and school, or to and from school
503 sponsored events.

504 (b) "School bus" does not include a bus used as a common carrier as defined in Section
505 [59-12-102](#).

506 (35) "Suspension" means the temporary withdrawal by action of the division of a
507 licensee's privilege to drive a motor vehicle.

508 (36) "Taxicab" means any class D motor vehicle transporting any number of
509 passengers for hire and that is subject to state or federal regulation as a taxi.

510 Section 12. Section **59-12-102** is amended to read:

511 **59-12-102. Definitions.**

512 As used in this chapter:

- 513 (1) "800 service" means a telecommunications service that:
 - 514 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
 - 515 (b) is typically marketed:
 - 516 (i) under the name 800 toll-free calling;
 - 517 (ii) under the name 855 toll-free calling;
 - 518 (iii) under the name 866 toll-free calling;
 - 519 (iv) under the name 877 toll-free calling;
 - 520 (v) under the name 888 toll-free calling; or
 - 521 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

522 Federal Communications Commission.

523 (2) (a) "900 service" means an inbound toll telecommunications service that:

524 (i) a subscriber purchases;

525 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
526 the subscriber's:

527 (A) prerecorded announcement; or

528 (B) live service; and

529 (iii) is typically marketed:

530 (A) under the name 900 service; or

531 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
532 Communications Commission.

533 (b) "900 service" does not include a charge for:

534 (i) a collection service a seller of a telecommunications service provides to a
535 subscriber; or

536 (ii) the following a subscriber sells to the subscriber's customer:

537 (A) a product; or

538 (B) a service.

539 (3) (a) "Admission or user fees" includes season passes.

540 (b) "Admission or user fees" does not include annual membership dues to private
541 organizations.

542 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
543 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
544 Agreement after November 12, 2002.

545 (5) "Agreement combined tax rate" means the sum of the tax rates:

546 (a) listed under Subsection (6); and

547 (b) that are imposed within a local taxing jurisdiction.

548 (6) "Agreement sales and use tax" means a tax imposed under:

549 (a) Subsection 59-12-103(2)(a)(i)(A);

550 (b) Subsection 59-12-103(2)(b)(i);

551 (c) Subsection 59-12-103(2)(c)(i);

552 (d) Subsection 59-12-103(2)(d)(i)(A)(I);

- 553 (e) Section 59-12-204;
- 554 (f) Section 59-12-401;
- 555 (g) Section 59-12-402;
- 556 (h) Section 59-12-703;
- 557 (i) Section 59-12-802;
- 558 (j) Section 59-12-804;
- 559 (k) Section 59-12-1102;
- 560 (l) Section 59-12-1302;
- 561 (m) Section 59-12-1402;
- 562 (n) Section 59-12-1802;
- 563 (o) Section 59-12-2003;
- 564 (p) Section 59-12-2103;
- 565 (q) Section 59-12-2213;
- 566 (r) Section 59-12-2214;
- 567 (s) Section 59-12-2215;
- 568 (t) Section 59-12-2216;
- 569 (u) Section 59-12-2217; or
- 570 (v) Section 59-12-2218.
- 571 (7) "Aircraft" is as defined in Section 72-10-102.
- 572 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 573 (a) except for:
- 574 (i) an airline as defined in Section 59-2-102; or
- 575 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 576 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 577 state, of an airline; and
- 578 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 579 whether the business entity performs the following in this state:
- 580 (i) check, diagnose, overhaul, and repair:
- 581 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 582 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 583 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft

- 584 engine;
- 585 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 586 aircraft:
- 587 (A) an inspection;
- 588 (B) a repair, including a structural repair or modification;
- 589 (C) changing landing gear; and
- 590 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 591 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 592 completely apply new paint to the fixed wing turbine powered aircraft; and
- 593 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 594 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 595 authority that certifies the fixed wing turbine powered aircraft.
- 596 (9) "Alcoholic beverage" means a beverage that:
- 597 (a) is suitable for human consumption; and
- 598 (b) contains .5% or more alcohol by volume.
- 599 (10) "Alternative energy" means:
- 600 (a) biomass energy;
- 601 (b) geothermal energy;
- 602 (c) hydroelectric energy;
- 603 (d) solar energy;
- 604 (e) wind energy; or
- 605 (f) energy that is derived from:
- 606 (i) coal-to-liquids;
- 607 (ii) nuclear fuel;
- 608 (iii) oil-impregnated diatomaceous earth;
- 609 (iv) oil sands;
- 610 (v) oil shale;
- 611 (vi) petroleum coke; or
- 612 (vii) waste heat from:
- 613 (A) an industrial facility; or
- 614 (B) a power station in which an electric generator is driven through a process in which

615 water is heated, turns into steam, and spins a steam turbine.

616 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
617 facility" means a facility that:

618 (i) uses alternative energy to produce electricity; and

619 (ii) has a production capacity of two megawatts or greater.

620 (b) A facility is an alternative energy electricity production facility regardless of
621 whether the facility is:

622 (i) connected to an electric grid; or

623 (ii) located on the premises of an electricity consumer.

624 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
625 provision of telecommunications service.

626 (b) "Ancillary service" includes:

627 (i) a conference bridging service;

628 (ii) a detailed communications billing service;

629 (iii) directory assistance;

630 (iv) a vertical service; or

631 (v) a voice mail service.

632 (13) "Area agency on aging" is as defined in Section [62A-3-101](#).

633 (14) "Assisted amusement device" means an amusement device, skill device, or ride
634 device that is started and stopped by an individual:

635 (a) who is not the purchaser or renter of the right to use or operate the amusement
636 device, skill device, or ride device; and

637 (b) at the direction of the seller of the right to use the amusement device, skill device,
638 or ride device.

639 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
640 washing of tangible personal property if the cleaning or washing labor is primarily performed
641 by an individual:

642 (a) who is not the purchaser of the cleaning or washing of the tangible personal
643 property; and

644 (b) at the direction of the seller of the cleaning or washing of the tangible personal
645 property.

646 (16) "Authorized carrier" means:

647 (a) in the case of vehicles operated over public highways, the holder of credentials
648 indicating that the vehicle is or will be operated pursuant to both the International Registration
649 Plan and the International Fuel Tax Agreement;

650 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
651 certificate or air carrier's operating certificate; or

652 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
653 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling
654 stock in more than one state.

655 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the
656 following that is used as the primary source of energy to produce fuel or electricity:

657 (i) material from a plant or tree; or

658 (ii) other organic matter that is available on a renewable basis, including:

659 (A) slash and brush from forests and woodlands;

660 (B) animal waste;

661 (C) waste vegetable oil;

662 (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of
663 wastewater residuals, or through the conversion of a waste material through a nonincineration,
664 thermal conversion process;

665 (E) aquatic plants; and

666 (F) agricultural products.

667 (b) "Biomass energy" does not include:

668 (i) black liquor; or

669 (ii) treated woods.

670 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
671 property, products, or services if the tangible personal property, products, or services are:

672 (i) distinct and identifiable; and

673 (ii) sold for one nonitemized price.

674 (b) "Bundled transaction" does not include:

675 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
676 the basis of the selection by the purchaser of the items of tangible personal property included in

677 the transaction;

678 (ii) the sale of real property;

679 (iii) the sale of services to real property;

680 (iv) the retail sale of tangible personal property and a service if:

681 (A) the tangible personal property:

682 (I) is essential to the use of the service; and

683 (II) is provided exclusively in connection with the service; and

684 (B) the service is the true object of the transaction;

685 (v) the retail sale of two services if:

686 (A) one service is provided that is essential to the use or receipt of a second service;

687 (B) the first service is provided exclusively in connection with the second service; and

688 (C) the second service is the true object of the transaction;

689 (vi) a transaction that includes tangible personal property or a product subject to

690 taxation under this chapter and tangible personal property or a product that is not subject to

691 taxation under this chapter if the:

692 (A) seller's purchase price of the tangible personal property or product subject to

693 taxation under this chapter is de minimis; or

694 (B) seller's sales price of the tangible personal property or product subject to taxation

695 under this chapter is de minimis; and

696 (vii) the retail sale of tangible personal property that is not subject to taxation under

697 this chapter and tangible personal property that is subject to taxation under this chapter if:

698 (A) that retail sale includes:

699 (I) food and food ingredients;

700 (II) a drug;

701 (III) durable medical equipment;

702 (IV) mobility enhancing equipment;

703 (V) an over-the-counter drug;

704 (VI) a prosthetic device; or

705 (VII) a medical supply; and

706 (B) subject to Subsection (18)(f):

707 (I) the seller's purchase price of the tangible personal property subject to taxation under

708 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

709 (II) the seller's sales price of the tangible personal property subject to taxation under
710 this chapter is 50% or less of the seller's total sales price of that retail sale.

711 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
712 service that is distinct and identifiable does not include:

713 (A) packaging that:

714 (I) accompanies the sale of the tangible personal property, product, or service; and

715 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
716 service;

717 (B) tangible personal property, a product, or a service provided free of charge with the
718 purchase of another item of tangible personal property, a product, or a service; or

719 (C) an item of tangible personal property, a product, or a service included in the
720 definition of "purchase price."

721 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
722 product, or a service is provided free of charge with the purchase of another item of tangible
723 personal property, a product, or a service if the sales price of the purchased item of tangible
724 personal property, product, or service does not vary depending on the inclusion of the tangible
725 personal property, product, or service provided free of charge.

726 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
727 does not include a price that is separately identified by tangible personal property, product, or
728 service on the following, regardless of whether the following is in paper format or electronic
729 format:

730 (A) a binding sales document; or

731 (B) another supporting sales-related document that is available to a purchaser.

732 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
733 supporting sales-related document that is available to a purchaser includes:

734 (A) a bill of sale;

735 (B) a contract;

736 (C) an invoice;

737 (D) a lease agreement;

738 (E) a periodic notice of rates and services;

- 739 (F) a price list;
- 740 (G) a rate card;
- 741 (H) a receipt; or
- 742 (I) a service agreement.

743 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
744 property or a product subject to taxation under this chapter is de minimis if:

745 (A) the seller's purchase price of the tangible personal property or product is 10% or
746 less of the seller's total purchase price of the bundled transaction; or

747 (B) the seller's sales price of the tangible personal property or product is 10% or less of
748 the seller's total sales price of the bundled transaction.

749 (ii) For purposes of Subsection (18)(b)(vi), a seller:

750 (A) shall use the seller's purchase price or the seller's sales price to determine if the
751 purchase price or sales price of the tangible personal property or product subject to taxation
752 under this chapter is de minimis; and

753 (B) may not use a combination of the seller's purchase price and the seller's sales price
754 to determine if the purchase price or sales price of the tangible personal property or product
755 subject to taxation under this chapter is de minimis.

756 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
757 contract to determine if the sales price of tangible personal property or a product is de minimis.

758 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
759 the seller's purchase price and the seller's sales price to determine if tangible personal property
760 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
761 price of that retail sale.

762 (19) "Certified automated system" means software certified by the governing board of
763 the agreement that:

764 (a) calculates the agreement sales and use tax imposed within a local taxing
765 jurisdiction:

766 (i) on a transaction; and

767 (ii) in the states that are members of the agreement;

768 (b) determines the amount of agreement sales and use tax to remit to a state that is a
769 member of the agreement; and

- 770 (c) maintains a record of the transaction described in Subsection (19)(a)(i).
771 (20) "Certified service provider" means an agent certified:
772 (a) by the governing board of the agreement; and
773 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
774 use tax other than the seller's obligation under Section [59-12-124](#) to remit a tax on the seller's
775 own purchases.
- 776 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
777 suitable for general use.
778 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
779 commission shall make rules:
780 (i) listing the items that constitute "clothing"; and
781 (ii) that are consistent with the list of items that constitute "clothing" under the
782 agreement.
- 783 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.
784 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
785 fuels that does not constitute industrial use under Subsection (55) or residential use under
786 Subsection (105).
- 787 (24) (a) "Common carrier" means a person engaged in or transacting the business of
788 transporting passengers, freight, merchandise, or other property for hire within this state.
789 (b) (i) "Common carrier" does not include a person who, at the time the person is
790 traveling to or from that person's place of employment, transports a passenger to or from the
791 passenger's place of employment.
792 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,
793 Utah Administrative Rulemaking Act, the commission may make rules defining what
794 constitutes a person's place of employment.
- 795 (c) "Common carrier" does not include a person that provides transportation network
796 services, as defined in Section [13-51-102](#).
- 797 (25) "Component part" includes:
798 (a) poultry, dairy, and other livestock feed, and their components;
799 (b) baling ties and twine used in the baling of hay and straw;
800 (c) fuel used for providing temperature control of orchards and commercial

801 greenhouses doing a majority of their business in wholesale sales, and for providing power for
802 off-highway type farm machinery; and

803 (d) feed, seeds, and seedlings.

804 (26) "Computer" means an electronic device that accepts information:

805 (a) (i) in digital form; or

806 (ii) in a form similar to digital form; and

807 (b) manipulates that information for a result based on a sequence of instructions.

808 (27) "Computer software" means a set of coded instructions designed to cause:

809 (a) a computer to perform a task; or

810 (b) automatic data processing equipment to perform a task.

811 (28) "Computer software maintenance contract" means a contract that obligates a seller
812 of computer software to provide a customer with:

813 (a) future updates or upgrades to computer software;

814 (b) support services with respect to computer software; or

815 (c) a combination of Subsections (28)(a) and (b).

816 (29) (a) "Conference bridging service" means an ancillary service that links two or
817 more participants of an audio conference call or video conference call.

818 (b) "Conference bridging service" may include providing a telephone number as part of
819 the ancillary service described in Subsection (29)(a).

820 (c) "Conference bridging service" does not include a telecommunications service used
821 to reach the ancillary service described in Subsection (29)(a).

822 (30) "Construction materials" means any tangible personal property that will be
823 converted into real property.

824 (31) "Delivered electronically" means delivered to a purchaser by means other than
825 tangible storage media.

826 (32) (a) "Delivery charge" means a charge:

827 (i) by a seller of:

828 (A) tangible personal property;

829 (B) a product transferred electronically; or

830 (C) services; and

831 (ii) for preparation and delivery of the tangible personal property, product transferred

832 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
833 purchaser.

834 (b) "Delivery charge" includes a charge for the following:

835 (i) transportation;

836 (ii) shipping;

837 (iii) postage;

838 (iv) handling;

839 (v) crating; or

840 (vi) packing.

841 (33) "Detailed telecommunications billing service" means an ancillary service of
842 separately stating information pertaining to individual calls on a customer's billing statement.

843 (34) "Dietary supplement" means a product, other than tobacco, that:

844 (a) is intended to supplement the diet;

845 (b) contains one or more of the following dietary ingredients:

846 (i) a vitamin;

847 (ii) a mineral;

848 (iii) an herb or other botanical;

849 (iv) an amino acid;

850 (v) a dietary substance for use by humans to supplement the diet by increasing the total
851 dietary intake; or

852 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
853 described in Subsections (34)(b)(i) through (v);

854 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

855 (A) tablet form;

856 (B) capsule form;

857 (C) powder form;

858 (D) softgel form;

859 (E) gelcap form; or

860 (F) liquid form; or

861 (ii) if the product is not intended for ingestion in a form described in Subsections
862 (34)(c)(i)(A) through (F), is not represented:

863 (A) as conventional food; and

864 (B) for use as a sole item of:

865 (I) a meal; or

866 (II) the diet; and

867 (d) is required to be labeled as a dietary supplement:

868 (i) identifiable by the "Supplemental Facts" box found on the label; and

869 (ii) as required by 21 C.F.R. Sec. 101.36.

870 [~~(36)~~] (35) "Digital audio-visual work" means a series of related images which, when
871 shown in succession, imparts an impression of motion, together with accompanying sounds, if
872 any.

873 [~~(35)~~] (36) (a) "Digital audio work" means a work that results from the fixation of a
874 series of musical, spoken, or other sounds.

875 (b) "Digital audio work" includes a ringtone.

876 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
877 sense as a book.

878 (38) (a) "Direct mail" means printed material delivered or distributed by United States
879 mail or other delivery service:

880 (i) to:

881 (A) a mass audience; or

882 (B) addressees on a mailing list provided:

883 (I) by a purchaser of the mailing list; or

884 (II) at the discretion of the purchaser of the mailing list; and

885 (ii) if the cost of the printed material is not billed directly to the recipients.

886 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
887 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

888 (c) "Direct mail" does not include multiple items of printed material delivered to a
889 single address.

890 (39) "Directory assistance" means an ancillary service of providing:

891 (a) address information; or

892 (b) telephone number information.

893 (40) (a) "Disposable home medical equipment or supplies" means medical equipment

894 or supplies that:

- 895 (i) cannot withstand repeated use; and
- 896 (ii) are purchased by, for, or on behalf of a person other than:
 - 897 (A) a health care facility as defined in Section 26-21-2;
 - 898 (B) a health care provider as defined in Section 78B-3-403;
 - 899 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or
 - 900 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).

901 (b) "Disposable home medical equipment or supplies" does not include:

- 902 (i) a drug;
- 903 (ii) durable medical equipment;
- 904 (iii) a hearing aid;
- 905 (iv) a hearing aid accessory;
- 906 (v) mobility enhancing equipment; or
- 907 (vi) tangible personal property used to correct impaired vision, including:
 - 908 (A) eyeglasses; or
 - 909 (B) contact lenses.

910 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
911 commission may by rule define what constitutes medical equipment or supplies.

912 (41) (a) "Drug" means a compound, substance, or preparation, or a component of a
913 compound, substance, or preparation that is:

- 914 (i) recognized in:
 - 915 (A) the official United States Pharmacopoeia;
 - 916 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 917 (C) the official National Formulary; or
 - 918 (D) a supplement to a publication listed in Subsections (41)(a)(i)(A) through (C);
- 919 (ii) intended for use in the:
 - 920 (A) diagnosis of disease;
 - 921 (B) cure of disease;
 - 922 (C) mitigation of disease;
 - 923 (D) treatment of disease; or
 - 924 (E) prevention of disease; or

- 925 (iii) intended to affect:
- 926 (A) the structure of the body; or
- 927 (B) any function of the body.
- 928 (b) "Drug" does not include:
- 929 (i) food and food ingredients;
- 930 (ii) a dietary supplement;
- 931 (iii) an alcoholic beverage; or
- 932 (iv) a prosthetic device.
- 933 (42) (a) Except as provided in Subsection (42)(c), "durable medical equipment" means
- 934 equipment that:
- 935 (i) can withstand repeated use;
- 936 (ii) is primarily and customarily used to serve a medical purpose;
- 937 (iii) generally is not useful to a person in the absence of illness or injury; and
- 938 (iv) is not worn in or on the body.
- 939 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 940 equipment described in Subsection (42)(a).
- 941 (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 942 (43) "Electronic" means:
- 943 (a) relating to technology; and
- 944 (b) having:
- 945 (i) electrical capabilities;
- 946 (ii) digital capabilities;
- 947 (iii) magnetic capabilities;
- 948 (iv) wireless capabilities;
- 949 (v) optical capabilities;
- 950 (vi) electromagnetic capabilities; or
- 951 (vii) capabilities similar to Subsections (43)(b)(i) through (vi).
- 952 (44) "Electronic financial payment service" means an establishment:
- 953 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
- 954 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
- 955 federal Executive Office of the President, Office of Management and Budget; and

- 956 (b) that performs electronic financial payment services.
- 957 (45) "Employee" is as defined in Section 59-10-401.
- 958 (46) "Fixed guideway" means a public transit facility that uses and occupies:
- 959 (a) rail for the use of public transit; or
- 960 (b) a separate right-of-way for the use of public transit.
- 961 (47) "Fixed wing turbine powered aircraft" means an aircraft that:
- 962 (a) is powered by turbine engines;
- 963 (b) operates on jet fuel; and
- 964 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 965 (48) "Fixed wireless service" means a telecommunications service that provides radio
- 966 communication between fixed points.
- 967 (49) (a) "Food and food ingredients" means substances:
- 968 (i) regardless of whether the substances are in:
- 969 (A) liquid form;
- 970 (B) concentrated form;
- 971 (C) solid form;
- 972 (D) frozen form;
- 973 (E) dried form; or
- 974 (F) dehydrated form; and
- 975 (ii) that are:
- 976 (A) sold for:
- 977 (I) ingestion by humans; or
- 978 (II) chewing by humans; and
- 979 (B) consumed for the substance's:
- 980 (I) taste; or
- 981 (II) nutritional value.
- 982 (b) "Food and food ingredients" includes an item described in Subsection (90)(b)(iii).
- 983 (c) "Food and food ingredients" does not include:
- 984 (i) an alcoholic beverage;
- 985 (ii) tobacco; or
- 986 (iii) prepared food.

987 (50) (a) "Fundraising sales" means sales:

988 (i) (A) made by a school; or

989 (B) made by a school student;

990 (ii) that are for the purpose of raising funds for the school to purchase equipment,

991 materials, or provide transportation; and

992 (iii) that are part of an officially sanctioned school activity.

993 (b) For purposes of Subsection (50)(a)(iii), "officially sanctioned school activity"

994 means a school activity:

995 (i) that is conducted in accordance with a formal policy adopted by the school or school
996 district governing the authorization and supervision of fundraising activities;

997 (ii) that does not directly or indirectly compensate an individual teacher or other
998 educational personnel by direct payment, commissions, or payment in kind; and

999 (iii) the net or gross revenues from which are deposited in a dedicated account
1000 controlled by the school or school district.

1001 (51) "Geothermal energy" means energy contained in heat that continuously flows
1002 outward from the earth that is used as the sole source of energy to produce electricity.

1003 (52) "Governing board of the agreement" means the governing board of the agreement
1004 that is:

1005 (a) authorized to administer the agreement; and

1006 (b) established in accordance with the agreement.

1007 (53) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

1008 (i) the executive branch of the state, including all departments, institutions, boards,
1009 divisions, bureaus, offices, commissions, and committees;

1010 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
1011 Office of the Court Administrator, and similar administrative units in the judicial branch;

1012 (iii) the legislative branch of the state, including the House of Representatives, the
1013 Senate, the Legislative Printing Office, the Office of Legislative Research and General
1014 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
1015 Analyst;

1016 (iv) the National Guard;

1017 (v) an independent entity as defined in Section 63E-1-102; or

- 1018 (vi) a political subdivision as defined in Section [17B-1-102](#).
- 1019 (b) "Governmental entity" does not include the state systems of public and higher
1020 education, including:
- 1021 (i) a college campus of the Utah College of Applied Technology;
- 1022 (ii) a school;
- 1023 (iii) the State Board of Education;
- 1024 (iv) the State Board of Regents; or
- 1025 (v) an institution of higher education.
- 1026 (54) "Hydroelectric energy" means water used as the sole source of energy to produce
1027 electricity.
- 1028 (55) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
1029 other fuels:
- 1030 (a) in mining or extraction of minerals;
- 1031 (b) in agricultural operations to produce an agricultural product up to the time of
1032 harvest or placing the agricultural product into a storage facility, including:
- 1033 (i) commercial greenhouses;
- 1034 (ii) irrigation pumps;
- 1035 (iii) farm machinery;
- 1036 (iv) implements of husbandry as defined in Section [41-1a-102](#) that are not registered
1037 under Title 41, Chapter 1a, Part 2, Registration; and
- 1038 (v) other farming activities;
- 1039 (c) in manufacturing tangible personal property at an establishment described in SIC
1040 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
1041 Executive Office of the President, Office of Management and Budget;
- 1042 (d) by a scrap recycler if:
- 1043 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1044 one or more of the following items into prepared grades of processed materials for use in new
1045 products:
- 1046 (A) iron;
- 1047 (B) steel;
- 1048 (C) nonferrous metal;

- 1049 (D) paper;
- 1050 (E) glass;
- 1051 (F) plastic;
- 1052 (G) textile; or
- 1053 (H) rubber; and
- 1054 (ii) the new products under Subsection (55)(d)(i) would otherwise be made with
- 1055 nonrecycled materials; or
- 1056 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 1057 cogeneration facility as defined in Section 54-2-1.
- 1058 (56) (a) Except as provided in Subsection (56)(b), "installation charge" means a charge
- 1059 for installing:
 - 1060 (i) tangible personal property; or
 - 1061 (ii) a product transferred electronically.
- 1062 (b) "Installation charge" does not include a charge for:
 - 1063 (i) repairs or renovations of:
 - 1064 (A) tangible personal property; or
 - 1065 (B) a product transferred electronically; or
 - 1066 (ii) attaching tangible personal property or a product transferred electronically:
 - 1067 (A) to other tangible personal property; and
 - 1068 (B) as part of a manufacturing or fabrication process.
- 1069 (57) "Institution of higher education" means an institution of higher education listed in
- 1070 Section 53B-2-101.
- 1071 (58) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 1072 personal property or a product transferred electronically for:
 - 1073 (i) (A) a fixed term; or
 - 1074 (B) an indeterminate term; and
 - 1075 (ii) consideration.
- 1076 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 1077 amount of consideration may be increased or decreased by reference to the amount realized
- 1078 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 1079 Code.

- 1080 (c) "Lease" or "rental" does not include:
- 1081 (i) a transfer of possession or control of property under a security agreement or
- 1082 deferred payment plan that requires the transfer of title upon completion of the required
- 1083 payments;
- 1084 (ii) a transfer of possession or control of property under an agreement that requires the
- 1085 transfer of title:
- 1086 (A) upon completion of required payments; and
- 1087 (B) if the payment of an option price does not exceed the greater of:
- 1088 (I) \$100; or
- 1089 (II) 1% of the total required payments; or
- 1090 (iii) providing tangible personal property along with an operator for a fixed period of
- 1091 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 1092 designed.
- 1093 (d) For purposes of Subsection (58)(c)(iii), an operator is necessary for equipment to
- 1094 perform as designed if the operator's duties exceed the:
- 1095 (i) set-up of tangible personal property;
- 1096 (ii) maintenance of tangible personal property; or
- 1097 (iii) inspection of tangible personal property.
- 1098 (59) "Life science establishment" means an establishment in this state that is classified
- 1099 under the following NAICS codes of the 2007 North American Industry Classification System
- 1100 of the federal Executive Office of the President, Office of Management and Budget:
- 1101 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- 1102 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
- 1103 Manufacturing; or
- 1104 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.
- 1105 (60) "Life science research and development facility" means a facility owned, leased,
- 1106 or rented by a life science establishment if research and development is performed in 51% or
- 1107 more of the total area of the facility.
- 1108 (61) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 1109 if the tangible storage media is not physically transferred to the purchaser.
- 1110 (62) "Local taxing jurisdiction" means a:

- 1111 (a) county that is authorized to impose an agreement sales and use tax;
- 1112 (b) city that is authorized to impose an agreement sales and use tax; or
- 1113 (c) town that is authorized to impose an agreement sales and use tax.
- 1114 (63) "Manufactured home" is as defined in Section [15A-1-302](#).
- 1115 (64) "Manufacturing facility" means:
- 1116 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 1117 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 1118 Management and Budget;
- 1119 (b) a scrap recycler if:
- 1120 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1121 one or more of the following items into prepared grades of processed materials for use in new
- 1122 products:
- 1123 (A) iron;
- 1124 (B) steel;
- 1125 (C) nonferrous metal;
- 1126 (D) paper;
- 1127 (E) glass;
- 1128 (F) plastic;
- 1129 (G) textile; or
- 1130 (H) rubber; and
- 1131 (ii) the new products under Subsection (64)(b)(i) would otherwise be made with
- 1132 nonrecycled materials; or
- 1133 (c) a cogeneration facility as defined in Section [54-2-1](#) if the cogeneration facility is
- 1134 placed in service on or after May 1, 2006.
- 1135 (65) "Member of the immediate family of the producer" means a person who is related
- 1136 to a producer described in Subsection [59-12-104\(20\)\(a\)](#) as a:
- 1137 (a) child or stepchild, regardless of whether the child or stepchild is:
- 1138 (i) an adopted child or adopted stepchild; or
- 1139 (ii) a foster child or foster stepchild;
- 1140 (b) grandchild or stepgrandchild;
- 1141 (c) grandparent or stepgrandparent;

- 1142 (d) nephew or stepnephew;
- 1143 (e) niece or stepniece;
- 1144 (f) parent or stepparent;
- 1145 (g) sibling or stepsibling;
- 1146 (h) spouse;
- 1147 (i) person who is the spouse of a person described in Subsections (65)(a) through (g);

1148 or

- 1149 (j) person similar to a person described in Subsections (65)(a) through (i) as
- 1150 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 1151 Administrative Rulemaking Act.

1152 (66) "Mobile home" is as defined in Section [15A-1-302](#).

1153 (67) "Mobile telecommunications service" is as defined in the Mobile

1154 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1155 (68) (a) "Mobile wireless service" means a telecommunications service, regardless of

1156 the technology used, if:

- 1157 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 1158 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 1159 (iii) the origination point described in Subsection (68)(a)(i) and the termination point
- 1160 described in Subsection (68)(a)(ii) are not fixed.

1161 (b) "Mobile wireless service" includes a telecommunications service that is provided

1162 by a commercial mobile radio service provider.

1163 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1164 commission may by rule define "commercial mobile radio service provider."

1165 (69) (a) Except as provided in Subsection (69)(c), "mobility enhancing equipment"

1166 means equipment that is:

- 1167 (i) primarily and customarily used to provide or increase the ability to move from one
- 1168 place to another;
- 1169 (ii) appropriate for use in a:
 - 1170 (A) home; or
 - 1171 (B) motor vehicle; and
 - 1172 (iii) not generally used by persons with normal mobility.

1173 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
1174 the equipment described in Subsection (69)(a).

1175 (c) "Mobility enhancing equipment" does not include:

1176 (i) a motor vehicle;

1177 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
1178 vehicle manufacturer;

1179 (iii) durable medical equipment; or

1180 (iv) a prosthetic device.

1181 (70) "Model 1 seller" means a seller registered under the agreement that has selected a
1182 certified service provider as the seller's agent to perform all of the seller's sales and use tax
1183 functions for agreement sales and use taxes other than the seller's obligation under Section
1184 [59-12-124](#) to remit a tax on the seller's own purchases.

1185 (71) "Model 2 seller" means a seller registered under the agreement that:

1186 (a) except as provided in Subsection (71)(b), has selected a certified automated system
1187 to perform the seller's sales tax functions for agreement sales and use taxes; and

1188 (b) retains responsibility for remitting all of the sales tax:

1189 (i) collected by the seller; and

1190 (ii) to the appropriate local taxing jurisdiction.

1191 (72) (a) Subject to Subsection (72)(b), "model 3 seller" means a seller registered under
1192 the agreement that has:

1193 (i) sales in at least five states that are members of the agreement;

1194 (ii) total annual sales revenues of at least \$500,000,000;

1195 (iii) a proprietary system that calculates the amount of tax:

1196 (A) for an agreement sales and use tax; and

1197 (B) due to each local taxing jurisdiction; and

1198 (iv) entered into a performance agreement with the governing board of the agreement.

1199 (b) For purposes of Subsection (72)(a), "model 3 seller" includes an affiliated group of
1200 sellers using the same proprietary system.

1201 (73) "Model 4 seller" means a seller that is registered under the agreement and is not a
1202 model 1 seller, model 2 seller, or model 3 seller.

1203 (74) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

- 1204 (75) "Motor vehicle" is as defined in Section [41-1a-102](#).
- 1205 (76) "Oil sands" means impregnated bituminous sands that:
- 1206 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
- 1207 other hydrocarbons, or otherwise treated;
- 1208 (b) yield mixtures of liquid hydrocarbon; and
- 1209 (c) require further processing other than mechanical blending before becoming finished
- 1210 petroleum products.
- 1211 (77) "Oil shale" means a group of fine black to dark brown shales containing kerogen
- 1212 material that yields petroleum upon heating and distillation.
- 1213 (78) "Optional computer software maintenance contract" means a computer software
- 1214 maintenance contract that a customer is not obligated to purchase as a condition to the retail
- 1215 sale of computer software.
- 1216 (79) (a) "Other fuels" means products that burn independently to produce heat or
- 1217 energy.
- 1218 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 1219 personal property.
- 1220 (80) (a) "Paging service" means a telecommunications service that provides
- 1221 transmission of a coded radio signal for the purpose of activating a specific pager.
- 1222 (b) For purposes of Subsection (80)(a), the transmission of a coded radio signal
- 1223 includes a transmission by message or sound.
- 1224 (81) "Pawnbroker" is as defined in Section [13-32a-102](#).
- 1225 (82) "Pawn transaction" is as defined in Section [13-32a-102](#).
- 1226 (83) (a) "Permanently attached to real property" means that for tangible personal
- 1227 property attached to real property:
- 1228 (i) the attachment of the tangible personal property to the real property:
- 1229 (A) is essential to the use of the tangible personal property; and
- 1230 (B) suggests that the tangible personal property will remain attached to the real
- 1231 property in the same place over the useful life of the tangible personal property; or
- 1232 (ii) if the tangible personal property is detached from the real property, the detachment
- 1233 would:
- 1234 (A) cause substantial damage to the tangible personal property; or

1235 (B) require substantial alteration or repair of the real property to which the tangible
1236 personal property is attached.

1237 (b) "Permanently attached to real property" includes:

1238 (i) the attachment of an accessory to the tangible personal property if the accessory is:

1239 (A) essential to the operation of the tangible personal property; and

1240 (B) attached only to facilitate the operation of the tangible personal property;

1241 (ii) a temporary detachment of tangible personal property from real property for a

1242 repair or renovation if the repair or renovation is performed where the tangible personal

1243 property and real property are located; or

1244 (iii) property attached to oil, gas, or water pipelines, except for the property listed in

1245 Subsection (83)(c)(iii) or (iv).

1246 (c) "Permanently attached to real property" does not include:

1247 (i) the attachment of portable or movable tangible personal property to real property if
1248 that portable or movable tangible personal property is attached to real property only for:

1249 (A) convenience;

1250 (B) stability; or

1251 (C) for an obvious temporary purpose;

1252 (ii) the detachment of tangible personal property from real property except for the

1253 detachment described in Subsection (83)(b)(ii);

1254 (iii) an attachment of the following tangible personal property to real property if the

1255 attachment to real property is only through a line that supplies water, electricity, gas,

1256 telecommunications, cable, or supplies a similar item as determined by the commission by rule

1257 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1258 (A) a computer;

1259 (B) a telephone;

1260 (C) a television; or

1261 (D) tangible personal property similar to Subsections (83)(c)(iii)(A) through (C) as

1262 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

1263 Administrative Rulemaking Act; or

1264 (iv) an item listed in Subsection (123)(c).

1265 (84) "Person" includes any individual, firm, partnership, joint venture, association,

1266 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
1267 municipality, district, or other local governmental entity of the state, or any group or
1268 combination acting as a unit.

1269 (85) "Place of primary use":

1270 (a) for telecommunications service other than mobile telecommunications service,
1271 means the street address representative of where the customer's use of the telecommunications
1272 service primarily occurs, which shall be:

1273 (i) the residential street address of the customer; or

1274 (ii) the primary business street address of the customer; or

1275 (b) for mobile telecommunications service, is as defined in the Mobile
1276 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1277 (86) (a) "Postpaid calling service" means a telecommunications service a person
1278 obtains by making a payment on a call-by-call basis:

1279 (i) through the use of a:

1280 (A) bank card;

1281 (B) credit card;

1282 (C) debit card; or

1283 (D) travel card; or

1284 (ii) by a charge made to a telephone number that is not associated with the origination
1285 or termination of the telecommunications service.

1286 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1287 service, that would be a prepaid wireless calling service if the service were exclusively a
1288 telecommunications service.

1289 (87) "Postproduction" means an activity related to the finishing or duplication of a
1290 medium described in Subsection [59-12-104\(54\)\(a\)](#).

1291 (88) "Prepaid calling service" means a telecommunications service:

1292 (a) that allows a purchaser access to telecommunications service that is exclusively
1293 telecommunications service;

1294 (b) that:

1295 (i) is paid for in advance; and

1296 (ii) enables the origination of a call using an:

- 1297 (A) access number; or
- 1298 (B) authorization code;
- 1299 (c) that is dialed:
- 1300 (i) manually; or
- 1301 (ii) electronically; and
- 1302 (d) sold in predetermined units or dollars that decline:
- 1303 (i) by a known amount; and
- 1304 (ii) with use.
- 1305 (89) "Prepaid wireless calling service" means a telecommunications service:
- 1306 (a) that provides the right to utilize:
- 1307 (i) mobile wireless service; and
- 1308 (ii) other service that is not a telecommunications service, including:
- 1309 (A) the download of a product transferred electronically;
- 1310 (B) a content service; or
- 1311 (C) an ancillary service;
- 1312 (b) that:
- 1313 (i) is paid for in advance; and
- 1314 (ii) enables the origination of a call using an:
- 1315 (A) access number; or
- 1316 (B) authorization code;
- 1317 (c) that is dialed:
- 1318 (i) manually; or
- 1319 (ii) electronically; and
- 1320 (d) sold in predetermined units or dollars that decline:
- 1321 (i) by a known amount; and
- 1322 (ii) with use.
- 1323 (90) (a) "Prepared food" means:
- 1324 (i) food:
- 1325 (A) sold in a heated state; or
- 1326 (B) heated by a seller;
- 1327 (ii) two or more food ingredients mixed or combined by the seller for sale as a single

1328 item; or
1329 (iii) except as provided in Subsection (90)(c), food sold with an eating utensil provided
1330 by the seller, including a:
1331 (A) plate;
1332 (B) knife;
1333 (C) fork;
1334 (D) spoon;
1335 (E) glass;
1336 (F) cup;
1337 (G) napkin; or
1338 (H) straw.
1339 (b) "Prepared food" does not include:
1340 (i) food that a seller only:
1341 (A) cuts;
1342 (B) repackages; or
1343 (C) pasteurizes; or
1344 (ii) (A) the following:
1345 (I) raw egg;
1346 (II) raw fish;
1347 (III) raw meat;
1348 (IV) raw poultry; or
1349 (V) a food containing an item described in Subsections (90)(b)(ii)(A)(I) through (IV);
1350 and
1351 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
1352 Food and Drug Administration's Food Code that a consumer cook the items described in
1353 Subsection (90)(b)(ii)(A) to prevent food borne illness; or
1354 (iii) the following if sold without eating utensils provided by the seller:
1355 (A) food and food ingredients sold by a seller if the seller's proper primary
1356 classification under the 2002 North American Industry Classification System of the federal
1357 Executive Office of the President, Office of Management and Budget, is manufacturing in
1358 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

- 1359 Manufacturing;
- 1360 (B) food and food ingredients sold in an unheated state:
- 1361 (I) by weight or volume; and
- 1362 (II) as a single item; or
- 1363 (C) a bakery item, including:
- 1364 (I) a bagel;
- 1365 (II) a bar;
- 1366 (III) a biscuit;
- 1367 (IV) bread;
- 1368 (V) a bun;
- 1369 (VI) a cake;
- 1370 (VII) a cookie;
- 1371 (VIII) a croissant;
- 1372 (IX) a danish;
- 1373 (X) a donut;
- 1374 (XI) a muffin;
- 1375 (XII) a pastry;
- 1376 (XIII) a pie;
- 1377 (XIV) a roll;
- 1378 (XV) a tart;
- 1379 (XVI) a torte; or
- 1380 (XVII) a tortilla.
- 1381 (c) An eating utensil provided by the seller does not include the following used to
- 1382 transport the food:
- 1383 (i) a container; or
- 1384 (ii) packaging.
- 1385 (91) "Prescription" means an order, formula, or recipe that is issued:
- 1386 (a) (i) orally;
- 1387 (ii) in writing;
- 1388 (iii) electronically; or
- 1389 (iv) by any other manner of transmission; and

1390 (b) by a licensed practitioner authorized by the laws of a state.
1391 (92) (a) Except as provided in Subsection (92)(b)(ii) or (iii), "prewritten computer
1392 software" means computer software that is not designed and developed:
1393 (i) by the author or other creator of the computer software; and
1394 (ii) to the specifications of a specific purchaser.
1395 (b) "Prewritten computer software" includes:
1396 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1397 software is not designed and developed:
1398 (A) by the author or other creator of the computer software; and
1399 (B) to the specifications of a specific purchaser;
1400 (ii) computer software designed and developed by the author or other creator of the
1401 computer software to the specifications of a specific purchaser if the computer software is sold
1402 to a person other than the purchaser; or
1403 (iii) except as provided in Subsection (92)(c), prewritten computer software or a
1404 prewritten portion of prewritten computer software:
1405 (A) that is modified or enhanced to any degree; and
1406 (B) if the modification or enhancement described in Subsection (92)(b)(iii)(A) is
1407 designed and developed to the specifications of a specific purchaser.
1408 (c) "Prewritten computer software" does not include a modification or enhancement
1409 described in Subsection (92)(b)(iii) if the charges for the modification or enhancement are:
1410 (i) reasonable; and
1411 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
1412 invoice or other statement of price provided to the purchaser at the time of sale or later, as
1413 demonstrated by:
1414 (A) the books and records the seller keeps at the time of the transaction in the regular
1415 course of business, including books and records the seller keeps at the time of the transaction in
1416 the regular course of business for nontax purposes;
1417 (B) a preponderance of the facts and circumstances at the time of the transaction; and
1418 (C) the understanding of all of the parties to the transaction.
1419 (93) (a) "Private [~~communication~~] communications service" means a
1420 telecommunications service:

1421 (i) that entitles a customer to exclusive or priority use of one or more communications
1422 channels between or among termination points; and

1423 (ii) regardless of the manner in which the one or more communications channels are
1424 connected.

1425 (b) "Private communications service" includes the following provided in connection
1426 with the use of one or more communications channels:

1427 (i) an extension line;

1428 (ii) a station;

1429 (iii) switching capacity; or

1430 (iv) another associated service that is provided in connection with the use of one or
1431 more communications channels as defined in Section 59-12-215.

1432 (94) (a) Except as provided in Subsection (94)(b), "product transferred electronically"
1433 means a product transferred electronically that would be subject to a tax under this chapter if
1434 that product was transferred in a manner other than electronically.

1435 (b) "Product transferred electronically" does not include:

1436 (i) an ancillary service;

1437 (ii) computer software; or

1438 (iii) a telecommunications service.

1439 (95) (a) "Prosthetic device" means a device that is worn on or in the body to:

1440 (i) artificially replace a missing portion of the body;

1441 (ii) prevent or correct a physical deformity or physical malfunction; or

1442 (iii) support a weak or deformed portion of the body.

1443 (b) "Prosthetic device" includes:

1444 (i) parts used in the repairs or renovation of a prosthetic device;

1445 (ii) replacement parts for a prosthetic device;

1446 (iii) a dental prosthesis; or

1447 (iv) a hearing aid.

1448 (c) "Prosthetic device" does not include:

1449 (i) corrective eyeglasses; or

1450 (ii) contact lenses.

1451 (96) (a) "Protective equipment" means an item:

- 1452 (i) for human wear; and
1453 (ii) that is:
1454 (A) designed as protection:
1455 (I) to the wearer against injury or disease; or
1456 (II) against damage or injury of other persons or property; and
1457 (B) not suitable for general use.
1458 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1459 commission shall make rules:
1460 (i) listing the items that constitute "protective equipment"; and
1461 (ii) that are consistent with the list of items that constitute "protective equipment"
1462 under the agreement.
1463 (97) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
1464 printed matter, other than a photocopy:
1465 (i) regardless of:
1466 (A) characteristics;
1467 (B) copyright;
1468 (C) form;
1469 (D) format;
1470 (E) method of reproduction; or
1471 (F) source; and
1472 (ii) made available in printed or electronic format.
1473 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1474 commission may by rule define the term "photocopy."
1475 (98) (a) "Purchase price" and "sales price" mean the total amount of consideration:
1476 (i) valued in money; and
1477 (ii) for which tangible personal property, a product transferred electronically, or
1478 services are:
1479 (A) sold;
1480 (B) leased; or
1481 (C) rented.
1482 (b) "Purchase price" and "sales price" include:

- 1483 (i) the seller's cost of the tangible personal property, a product transferred
1484 electronically, or services sold;
- 1485 (ii) expenses of the seller, including:
- 1486 (A) the cost of materials used;
- 1487 (B) a labor cost;
- 1488 (C) a service cost;
- 1489 (D) interest;
- 1490 (E) a loss;
- 1491 (F) the cost of transportation to the seller; or
- 1492 (G) a tax imposed on the seller;
- 1493 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1494 (iv) consideration a seller receives from a person other than the purchaser if:
- 1495 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 1496 and
- 1497 (II) the consideration described in Subsection (98)(b)(iv)(A)(I) is directly related to a
1498 price reduction or discount on the sale;
- 1499 (B) the seller has an obligation to pass the price reduction or discount through to the
1500 purchaser;
- 1501 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1502 the seller at the time of the sale to the purchaser; and
- 1503 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1504 seller to claim a price reduction or discount; and
- 1505 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1506 coupon, or other documentation with the understanding that the person other than the seller
1507 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1508 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1509 organization allowed a price reduction or discount, except that a preferred customer card that is
1510 available to any patron of a seller does not constitute membership in a group or organization
1511 allowed a price reduction or discount; or
- 1512 (III) the price reduction or discount is identified as a third party price reduction or
1513 discount on the:

- 1514 (Aa) invoice the purchaser receives; or
- 1515 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1516 (c) "Purchase price" and "sales price" do not include:
- 1517 (i) a discount:
- 1518 (A) in a form including:
- 1519 (I) cash;
- 1520 (II) term; or
- 1521 (III) coupon;
- 1522 (B) that is allowed by a seller;
- 1523 (C) taken by a purchaser on a sale; and
- 1524 (D) that is not reimbursed by a third party; or
- 1525 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1526 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1527 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1528 transaction in the regular course of business, including books and records the seller keeps at the
- 1529 time of the transaction in the regular course of business for nontax purposes, by a
- 1530 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1531 understanding of all of the parties to the transaction:
- 1532 (A) the following from credit extended on the sale of tangible personal property or
- 1533 services:
- 1534 (I) a carrying charge;
- 1535 (II) a financing charge; or
- 1536 (III) an interest charge;
- 1537 (B) a delivery charge;
- 1538 (C) an installation charge;
- 1539 (D) a manufacturer rebate on a motor vehicle; or
- 1540 (E) a tax or fee legally imposed directly on the consumer.
- 1541 (99) "Purchaser" means a person to whom:
- 1542 (a) a sale of tangible personal property is made;
- 1543 (b) a product is transferred electronically; or
- 1544 (c) a service is furnished.

1545 (100) "Regularly rented" means:

1546 (a) rented to a guest for value three or more times during a calendar year; or

1547 (b) advertised or held out to the public as a place that is regularly rented to guests for
1548 value.

1549 (101) "Rental" is as defined in Subsection (58).

1550 (102) (a) Except as provided in Subsection (102)(b), "repairs or renovations of tangible
1551 personal property" means:

1552 (i) a repair or renovation of tangible personal property that is not permanently attached
1553 to real property; or

1554 (ii) attaching tangible personal property or a product transferred electronically to other
1555 tangible personal property or detaching tangible personal property or a product transferred
1556 electronically from other tangible personal property if:

1557 (A) the other tangible personal property to which the tangible personal property or
1558 product transferred electronically is attached or from which the tangible personal property or
1559 product transferred electronically is detached is not permanently attached to real property; and

1560 (B) the attachment of tangible personal property or a product transferred electronically
1561 to other tangible personal property or detachment of tangible personal property or a product
1562 transferred electronically from other tangible personal property is made in conjunction with a
1563 repair or replacement of tangible personal property or a product transferred electronically.

1564 (b) "Repairs or renovations of tangible personal property" does not include:

1565 (i) attaching prewritten computer software to other tangible personal property if the
1566 other tangible personal property to which the prewritten computer software is attached is not
1567 permanently attached to real property; or

1568 (ii) detaching prewritten computer software from other tangible personal property if the
1569 other tangible personal property from which the prewritten computer software is detached is
1570 not permanently attached to real property.

1571 (103) "Research and development" means the process of inquiry or experimentation
1572 aimed at the discovery of facts, devices, technologies, or applications and the process of
1573 preparing those devices, technologies, or applications for marketing.

1574 (104) (a) "Residential telecommunications services" means a telecommunications
1575 service or an ancillary service that is provided to an individual for personal use:

- 1576 (i) at a residential address; or
- 1577 (ii) at an institution, including a nursing home or a school, if the telecommunications
- 1578 service or ancillary service is provided to and paid for by the individual residing at the
- 1579 institution rather than the institution.
- 1580 (b) For purposes of Subsection (104)(a)(i), a residential address includes an:
- 1581 (i) apartment; or
- 1582 (ii) other individual dwelling unit.
- 1583 (105) "Residential use" means the use in or around a home, apartment building,
- 1584 sleeping quarters, and similar facilities or accommodations.
- 1585 (106) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
- 1586 than:
- 1587 (a) resale;
- 1588 (b) sublease; or
- 1589 (c) subrent.
- 1590 (107) (a) "Retailer" means any person engaged in a regularly organized business in
- 1591 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
- 1592 who is selling to the user or consumer and not for resale.
- 1593 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
- 1594 engaged in the business of selling to users or consumers within the state.
- 1595 (108) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
- 1596 otherwise, in any manner, of tangible personal property or any other taxable transaction under
- 1597 Subsection 59-12-103(1), for consideration.
- 1598 (b) "Sale" includes:
- 1599 (i) installment and credit sales;
- 1600 (ii) any closed transaction constituting a sale;
- 1601 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1602 chapter;
- 1603 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1604 title as security for the payment of the price; and
- 1605 (v) any transaction under which right to possession, operation, or use of any article of
- 1606 tangible personal property is granted under a lease or contract and the transfer of possession

1607 would be taxable if an outright sale were made.

1608 (109) "Sale at retail" is as defined in Subsection (106).

1609 (110) "Sale-leaseback transaction" means a transaction by which title to tangible

1610 personal property or a product transferred electronically that is subject to a tax under this

1611 chapter is transferred:

1612 (a) by a purchaser-lessee;

1613 (b) to a lessor;

1614 (c) for consideration; and

1615 (d) if:

1616 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1617 of the tangible personal property or product transferred electronically;

1618 (ii) the sale of the tangible personal property or product transferred electronically to the

1619 lessor is intended as a form of financing:

1620 (A) for the tangible personal property or product transferred electronically; and

1621 (B) to the purchaser-lessee; and

1622 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1623 is required to:

1624 (A) capitalize the tangible personal property or product transferred electronically for

1625 financial reporting purposes; and

1626 (B) account for the lease payments as payments made under a financing arrangement.

1627 (111) "Sales price" is as defined in Subsection (98).

1628 (112) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

1629 amounts charged by a school:

1630 (i) sales that are directly related to the school's educational functions or activities

1631 including:

1632 (A) the sale of:

1633 (I) textbooks;

1634 (II) textbook fees;

1635 (III) laboratory fees;

1636 (IV) laboratory supplies; or

1637 (V) safety equipment;

1638 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1639 that:
1640 (I) a student is specifically required to wear as a condition of participation in a
1641 school-related event or school-related activity; and
1642 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1643 place of ordinary clothing;
1644 (C) sales of the following if the net or gross revenues generated by the sales are
1645 deposited into a school district fund or school fund dedicated to school meals:
1646 (I) food and food ingredients; or
1647 (II) prepared food; or
1648 (D) transportation charges for official school activities; or
1649 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1650 event or school-related activity.
1651 (b) "Sales relating to schools" does not include:
1652 (i) bookstore sales of items that are not educational materials or supplies;
1653 (ii) except as provided in Subsection (112)(a)(i)(B):
1654 (A) clothing;
1655 (B) clothing accessories or equipment;
1656 (C) protective equipment; or
1657 (D) sports or recreational equipment; or
1658 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1659 event or school-related activity if the amounts paid or charged are passed through to a person:
1660 (A) other than a:
1661 (I) school;
1662 (II) nonprofit organization authorized by a school board or a governing body of a
1663 private school to organize and direct a competitive secondary school activity; or
1664 (III) nonprofit association authorized by a school board or a governing body of a
1665 private school to organize and direct a competitive secondary school activity; and
1666 (B) that is required to collect sales and use taxes under this chapter.
1667 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1668 commission may make rules defining the term "passed through."

- 1669 (113) For purposes of this section and Section 59-12-104, "school":
- 1670 (a) means:
- 1671 (i) an elementary school or a secondary school that:
- 1672 (A) is a:
- 1673 (I) public school; or
- 1674 (II) private school; and
- 1675 (B) provides instruction for one or more grades kindergarten through 12; or
- 1676 (ii) a public school district; and
- 1677 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1678 (114) "Seller" means a person that makes a sale, lease, or rental of:
- 1679 (a) tangible personal property;
- 1680 (b) a product transferred electronically; or
- 1681 (c) a service.
- 1682 (115) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1683 means tangible personal property or a product transferred electronically if the tangible personal
- 1684 property or product transferred electronically is:
- 1685 (i) used primarily in the process of:
- 1686 (A) (I) manufacturing a semiconductor;
- 1687 (II) fabricating a semiconductor; or
- 1688 (III) research or development of a:
- 1689 (Aa) semiconductor; or
- 1690 (Bb) semiconductor manufacturing process; or
- 1691 (B) maintaining an environment suitable for a semiconductor; or
- 1692 (ii) consumed primarily in the process of:
- 1693 (A) (I) manufacturing a semiconductor;
- 1694 (II) fabricating a semiconductor; or
- 1695 (III) research or development of a:
- 1696 (Aa) semiconductor; or
- 1697 (Bb) semiconductor manufacturing process; or
- 1698 (B) maintaining an environment suitable for a semiconductor.
- 1699 (b) "Semiconductor fabricating, processing, research, or development materials"

1700 includes:

1701 (i) parts used in the repairs or renovations of tangible personal property or a product
1702 transferred electronically described in Subsection (115)(a); or

1703 (ii) a chemical, catalyst, or other material used to:

1704 (A) produce or induce in a semiconductor a:

1705 (I) chemical change; or

1706 (II) physical change;

1707 (B) remove impurities from a semiconductor; or

1708 (C) improve the marketable condition of a semiconductor.

1709 (116) "Senior citizen center" means a facility having the primary purpose of providing
1710 services to the aged as defined in Section [62A-3-101](#).

1711 (117) (a) Subject to Subsections (117)(b) and (c), "short-term lodging consumable"
1712 means tangible personal property that:

1713 (i) a business that provides accommodations and services described in Subsection
1714 [59-12-103\(1\)\(i\)](#) purchases as part of a transaction to provide the accommodations and services
1715 to a purchaser;

1716 (ii) is intended to be consumed by the purchaser; and

1717 (iii) is:

1718 (A) included in the purchase price of the accommodations and services; and

1719 (B) not separately stated on an invoice, bill of sale, or other similar document provided
1720 to the purchaser.

1721 (b) "Short-term lodging consumable" includes:

1722 (i) a beverage;

1723 (ii) a brush or comb;

1724 (iii) a cosmetic;

1725 (iv) a hair care product;

1726 (v) lotion;

1727 (vi) a magazine;

1728 (vii) makeup;

1729 (viii) a meal;

1730 (ix) mouthwash;

- 1731 (x) nail polish remover;
- 1732 (xi) a newspaper;
- 1733 (xii) a notepad;
- 1734 (xiii) a pen;
- 1735 (xiv) a pencil;
- 1736 (xv) a razor;
- 1737 (xvi) saline solution;
- 1738 (xvii) a sewing kit;
- 1739 (xviii) shaving cream;
- 1740 (xix) a shoe shine kit;
- 1741 (xx) a shower cap;
- 1742 (xxi) a snack item;
- 1743 (xxii) soap;
- 1744 (xxiii) toilet paper;
- 1745 (xxiv) a toothbrush;
- 1746 (xxv) toothpaste; or
- 1747 (xxvi) an item similar to Subsections (117)(b)(i) through (xxv) as the commission may
- 1748 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1749 Rulemaking Act.
- 1750 (c) "Short-term lodging consumable" does not include:
- 1751 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 1752 property to be reused; or
- 1753 (ii) a product transferred electronically.
- 1754 (118) "Simplified electronic return" means the electronic return:
- 1755 (a) described in Section 318(C) of the agreement; and
- 1756 (b) approved by the governing board of the agreement.
- 1757 (119) "Solar energy" means the sun used as the sole source of energy for producing
- 1758 electricity.
- 1759 (120) (a) "Sports or recreational equipment" means an item:
- 1760 (i) designed for human use; and
- 1761 (ii) that is:

- 1762 (A) worn in conjunction with:
- 1763 (I) an athletic activity; or
- 1764 (II) a recreational activity; and
- 1765 (B) not suitable for general use.
- 1766 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1767 commission shall make rules:
- 1768 (i) listing the items that constitute "sports or recreational equipment"; and
- 1769 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1770 equipment" under the agreement.
- 1771 (121) "State" means the state of Utah, its departments, and agencies.
- 1772 (122) "Storage" means any keeping or retention of tangible personal property or any
- 1773 other taxable transaction under Subsection [59-12-103\(1\)](#), in this state for any purpose except
- 1774 sale in the regular course of business.
- 1775 (123) (a) Except as provided in Subsection (123)(d) or (e), "tangible personal property"
- 1776 means personal property that:
- 1777 (i) may be:
- 1778 (A) seen;
- 1779 (B) weighed;
- 1780 (C) measured;
- 1781 (D) felt; or
- 1782 (E) touched; or
- 1783 (ii) is in any manner perceptible to the senses.
- 1784 (b) "Tangible personal property" includes:
- 1785 (i) electricity;
- 1786 (ii) water;
- 1787 (iii) gas;
- 1788 (iv) steam; or
- 1789 (v) prewritten computer software, regardless of the manner in which the prewritten
- 1790 computer software is transferred.
- 1791 (c) "Tangible personal property" includes the following regardless of whether the item
- 1792 is attached to real property:

1793 (i) a dishwasher;
1794 (ii) a dryer;
1795 (iii) a freezer;
1796 (iv) a microwave;
1797 (v) a refrigerator;
1798 (vi) a stove;
1799 (vii) a washer; or
1800 (viii) an item similar to Subsections (123)(c)(i) through (vii) as determined by the
1801 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1802 Rulemaking Act.

1803 (d) "Tangible personal property" does not include a product that is transferred
1804 electronically.

1805 (e) "Tangible personal property" does not include the following if attached to real
1806 property, regardless of whether the attachment to real property is only through a line that
1807 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1808 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1809 Rulemaking Act:

1810 (i) a hot water heater;
1811 (ii) a water filtration system; or
1812 (iii) a water softener system.

1813 (124) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1814 software" means an item listed in Subsection (124)(b) if that item is purchased or leased
1815 primarily to enable or facilitate one or more of the following to function:

1816 (i) telecommunications switching or routing equipment, machinery, or software; or
1817 (ii) telecommunications transmission equipment, machinery, or software.

1818 (b) The following apply to Subsection (124)(a):

1819 (i) a pole;
1820 (ii) software;
1821 (iii) a supplementary power supply;
1822 (iv) temperature or environmental equipment or machinery;
1823 (v) test equipment;

1824 (vi) a tower; or

1825 (vii) equipment, machinery, or software that functions similarly to an item listed in
1826 Subsections (124)(b)(i) through (vi) as determined by the commission by rule made in
1827 accordance with Subsection (124)(c).

1828 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1829 commission may by rule define what constitutes equipment, machinery, or software that
1830 functions similarly to an item listed in Subsections (124)(b)(i) through (vi).

1831 (125) "Telecommunications equipment, machinery, or software required for 911
1832 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1833 Sec. 20.18.

1834 (126) "Telecommunications maintenance or repair equipment, machinery, or software"
1835 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1836 one or more of the following, regardless of whether the equipment, machinery, or software is
1837 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1838 following:

1839 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1840 (b) telecommunications switching or routing equipment, machinery, or software; or

1841 (c) telecommunications transmission equipment, machinery, or software.

1842 (127) (a) "Telecommunications service" means the electronic conveyance, routing, or
1843 transmission of audio, data, video, voice, or any other information or signal to a point, or
1844 among or between points.

1845 (b) "Telecommunications service" includes:

1846 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1847 processing application is used to act:

1848 (A) on the code, form, or protocol of the content;

1849 (B) for the purpose of electronic conveyance, routing, or transmission; and

1850 (C) regardless of whether the service:

1851 (I) is referred to as voice over Internet protocol service; or

1852 (II) is classified by the Federal Communications Commission as enhanced or value
1853 added;

1854 (ii) an 800 service;

- 1855 (iii) a 900 service;
- 1856 (iv) a fixed wireless service;
- 1857 (v) a mobile wireless service;
- 1858 (vi) a postpaid calling service;
- 1859 (vii) a prepaid calling service;
- 1860 (viii) a prepaid wireless calling service; or
- 1861 (ix) a private communications service.
- 1862 (c) "Telecommunications service" does not include:
- 1863 (i) advertising, including directory advertising;
- 1864 (ii) an ancillary service;
- 1865 (iii) a billing and collection service provided to a third party;
- 1866 (iv) a data processing and information service if:
- 1867 (A) the data processing and information service allows data to be:
- 1868 (I) (Aa) acquired;
- 1869 (Bb) generated;
- 1870 (Cc) processed;
- 1871 (Dd) retrieved; or
- 1872 (Ee) stored; and
- 1873 (II) delivered by an electronic transmission to a purchaser; and
- 1874 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1875 or information;
- 1876 (v) installation or maintenance of the following on a customer's premises:
- 1877 (A) equipment; or
- 1878 (B) wiring;
- 1879 (vi) Internet access service;
- 1880 (vii) a paging service;
- 1881 (viii) a product transferred electronically, including:
- 1882 (A) music;
- 1883 (B) reading material;
- 1884 (C) a ring tone;
- 1885 (D) software; or

- 1886 (E) video;
- 1887 (ix) a radio and television audio and video programming service:
- 1888 (A) regardless of the medium; and
- 1889 (B) including:
- 1890 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1891 programming service by a programming service provider;
- 1892 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1893 (III) audio and video programming services delivered by a commercial mobile radio
- 1894 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1895 (x) a value-added nonvoice data service; or
- 1896 (xi) tangible personal property.
- 1897 (128) (a) "Telecommunications service provider" means a person that:
- 1898 (i) owns, controls, operates, or manages a telecommunications service; and
- 1899 (ii) engages in an activity described in Subsection (128)(a)(i) for the shared use with or
- 1900 resale to any person of the telecommunications service.
- 1901 (b) A person described in Subsection (128)(a) is a telecommunications service provider
- 1902 whether or not the Public Service Commission of Utah regulates:
- 1903 (i) that person; or
- 1904 (ii) the telecommunications service that the person owns, controls, operates, or
- 1905 manages.
- 1906 (129) (a) "Telecommunications switching or routing equipment, machinery, or
- 1907 software" means an item listed in Subsection (129)(b) if that item is purchased or leased
- 1908 primarily for switching or routing:
- 1909 (i) an ancillary service;
- 1910 (ii) data communications;
- 1911 (iii) voice communications; or
- 1912 (iv) telecommunications service.
- 1913 (b) The following apply to Subsection (129)(a):
- 1914 (i) a bridge;
- 1915 (ii) a computer;
- 1916 (iii) a cross connect;

- 1917 (iv) a modem;
- 1918 (v) a multiplexer;
- 1919 (vi) plug in circuitry;
- 1920 (vii) a router;
- 1921 (viii) software;
- 1922 (ix) a switch; or
- 1923 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1924 Subsections (129)(b)(i) through (ix) as determined by the commission by rule made in
- 1925 accordance with Subsection (129)(c).

1926 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1927 commission may by rule define what constitutes equipment, machinery, or software that

1928 functions similarly to an item listed in Subsections (129)(b)(i) through (ix).

1929 (130) (a) "Telecommunications transmission equipment, machinery, or software"

1930 means an item listed in Subsection (130)(b) if that item is purchased or leased primarily for

1931 sending, receiving, or transporting:

- 1932 (i) an ancillary service;
 - 1933 (ii) data communications;
 - 1934 (iii) voice communications; or
 - 1935 (iv) telecommunications service.
- 1936 (b) The following apply to Subsection (130)(a):
- 1937 (i) an amplifier;
 - 1938 (ii) a cable;
 - 1939 (iii) a closure;
 - 1940 (iv) a conduit;
 - 1941 (v) a controller;
 - 1942 (vi) a duplexer;
 - 1943 (vii) a filter;
 - 1944 (viii) an input device;
 - 1945 (ix) an input/output device;
 - 1946 (x) an insulator;
 - 1947 (xi) microwave machinery or equipment;

- 1948 (xii) an oscillator;
- 1949 (xiii) an output device;
- 1950 (xiv) a pedestal;
- 1951 (xv) a power converter;
- 1952 (xvi) a power supply;
- 1953 (xvii) a radio channel;
- 1954 (xviii) a radio receiver;
- 1955 (xix) a radio transmitter;
- 1956 (xx) a repeater;
- 1957 (xxi) software;
- 1958 (xxii) a terminal;
- 1959 (xxiii) a timing unit;
- 1960 (xxiv) a transformer;
- 1961 (xxv) a wire; or
- 1962 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1963 Subsections (130)(b)(i) through (xxv) as determined by the commission by rule made in
- 1964 accordance with Subsection (130)(c).
- 1965 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1966 commission may by rule define what constitutes equipment, machinery, or software that
- 1967 functions similarly to an item listed in Subsections (130)(b)(i) through (xxv).
- 1968 (131) (a) "Textbook for a higher education course" means a textbook or other printed
- 1969 material that is required for a course:
- 1970 (i) offered by an institution of higher education; and
- 1971 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1972 (b) "Textbook for a higher education course" includes a textbook in electronic format.
- 1973 (132) "Tobacco" means:
- 1974 (a) a cigarette;
- 1975 (b) a cigar;
- 1976 (c) chewing tobacco;
- 1977 (d) pipe tobacco; or
- 1978 (e) any other item that contains tobacco.

1979 (133) "Unassisted amusement device" means an amusement device, skill device, or
1980 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1981 the amusement device, skill device, or ride device.

1982 (134) (a) "Use" means the exercise of any right or power over tangible personal
1983 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1984 incident to the ownership or the leasing of that tangible personal property, product transferred
1985 electronically, or service.

1986 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1987 property, a product transferred electronically, or a service in the regular course of business and
1988 held for resale.

1989 (135) "Value-added nonvoice data service" means a service:

1990 (a) that otherwise meets the definition of a telecommunications service except that a
1991 computer processing application is used to act primarily for a purpose other than conveyance,
1992 routing, or transmission; and

1993 (b) with respect to which a computer processing application is used to act on data or
1994 information:

- 1995 (i) code;
- 1996 (ii) content;
- 1997 (iii) form; or
- 1998 (iv) protocol.

1999 (136) (a) Subject to Subsection (136)(b), "vehicle" means the following that are
2000 required to be titled, registered, or titled and registered:

- 2001 (i) an aircraft as defined in Section 72-10-102;
- 2002 (ii) a vehicle as defined in Section 41-1a-102;
- 2003 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 2004 (iv) a vessel as defined in Section 41-1a-102.

2005 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 2006 (i) a vehicle described in Subsection (136)(a); or
- 2007 (ii) (A) a locomotive;
- 2008 (B) a freight car;
- 2009 (C) railroad work equipment; or

- 2010 (D) other railroad rolling stock.
- 2011 (137) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 2012 exchanging a vehicle as defined in Subsection (136).
- 2013 (138) (a) "Vertical service" means an ancillary service that:
- 2014 (i) is offered in connection with one or more telecommunications services; and
- 2015 (ii) offers an advanced calling feature that allows a customer to:
- 2016 (A) identify a caller; and
- 2017 (B) manage multiple calls and call connections.
- 2018 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 2019 conference bridging service.
- 2020 (139) (a) "Voice mail service" means an ancillary service that enables a customer to
- 2021 receive, send, or store a recorded message.
- 2022 (b) "Voice mail service" does not include a vertical service that a customer is required
- 2023 to have in order to utilize a voice mail service.
- 2024 (140) (a) Except as provided in Subsection (140)(b), "waste energy facility" means a
- 2025 facility that generates electricity:
- 2026 (i) using as the primary source of energy waste materials that would be placed in a
- 2027 landfill or refuse pit if it were not used to generate electricity, including:
- 2028 (A) tires;
- 2029 (B) waste coal;
- 2030 (C) oil shale; or
- 2031 (D) municipal solid waste; and
- 2032 (ii) in amounts greater than actually required for the operation of the facility.
- 2033 (b) "Waste energy facility" does not include a facility that incinerates:
- 2034 (i) hospital waste as defined in 40 C.F.R. 60.51c; or
- 2035 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 2036 (141) "Watercraft" means a vessel as defined in Section [73-18-2](#).
- 2037 (142) "Wind energy" means wind used as the sole source of energy to produce
- 2038 electricity.
- 2039 (143) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 2040 location by the United States Postal Service.