

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 1015

Short Title: Sales Tax Certificate of Resale.

(Public)

Sponsors: Senators Winner, Carter, Plexico, Seymour, and Staton.

Referred to: Finance.

May 28, 1992

A BILL TO BE ENTITLED

1 AN ACT TO RELIEVE A SELLER WHO SELLS PROPERTY UNDER A
2 CERTIFICATE OF RESALE OF THE BURDEN OF PROVING THAT THE
3 SALE WAS FOR RESALE AND TO PROVIDE A PENALTY FOR A
4 PURCHASER WHO MISUSES A CERTIFICATE OF RESALE.
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6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-164.28 reads as rewritten:

8 "**§ 105-164.28. Resale certificate. Certificate of resale.**

9 A seller who accepts a certificate of resale from a purchaser of tangible personal
10 property has the burden of proving that the sale was not a retail sale unless all of the
11 following conditions are met:

12 (1) The seller acted in good faith in accepting the certificate of resale.

13 (2) The certificate is in the form required by the Secretary.

14 (3) The certificate is signed by the purchaser, states the purchaser's name,
15 address, and registration number, and describes the type of tangible
16 personal property generally sold by the purchaser in the regular course
17 of business.

18 (4) The purchaser is licensed under this Article or under the law of another
19 taxing jurisdiction.

20 (5) The purchaser is engaged in the business of selling tangible personal
21 property of the type sold.

22 A purchaser who does not resell property purchased under a certificate of resale is
23 liable for any tax subsequently determined to be due on the sale. A seller of property
24 sold under a certificate of resale is jointly liable with the purchaser of the property for

1 any tax subsequently determined to be due on the sale only if the Secretary proves that
2 the sale was a retail sale.

3 ~~The burden of proof that a sale of tangible personal property is not a sale at retail is~~
4 ~~upon the wholesale merchant or retailer who makes the sale unless he takes from the~~
5 ~~purchaser a certificate to the effect that the property is for resale. With respect to sales~~
6 ~~for resale the certificate relieves the wholesale merchant from the burden of proof only~~
7 ~~if taken in good faith from a person who is engaged in the business of selling tangible~~
8 ~~personal property and who holds the license provided for in this Article. The certificate~~
9 ~~shall be signed by and bear the name and address of the purchaser, shall indicate the~~
10 ~~registration number issued to the purchaser and shall indicate the general character of~~
11 ~~the tangible personal property generally sold by the purchaser in the regular course of~~
12 ~~business. The certificate of resale shall be in such form as the Secretary shall prescribe.~~
13 ~~It shall be the duty of every wholesale merchant selling tangible personal property to a~~
14 ~~retailer for resale to make reasonable and prudent inquiry concerning the type and~~
15 ~~character of the tangible personal property as it relates to the principal business of the~~
16 ~~retailer."~~

17 Sec. 2. G.S. 105-236 is amended by adding a new subdivision to read:

18 "(5a) Misuse of Certificate of Resale. – For misuse of a certificate of
19 resale by a purchaser, the Secretary shall assess an additional tax,
20 as a penalty, of two hundred fifty dollars (\$250.00)."

21 Sec. 3. This act is effective upon ratification and applies to sales made on or
22 after that date.