

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 715

Short Title: Use of Printer/No Nexus.

(Public)

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Sponsors: Senators Kerr and Allran.

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Referred to: Judiciary II.

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April 7, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PROMOTE THE USE OF PRINTING FACILITIES IN NORTH  
2 CAROLINA BY PROVIDING THAT AN OUT-OF-STATE ENTITY WHO  
3 CONTRACTS WITH A NORTH CAROLINA PRINTER IS NOT DOING  
4 BUSINESS IN NORTH CAROLINA FOR TAX PURPOSES INCIDENT TO  
5 PRINTING.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-114(b)(3) reads as rewritten:

9 "(3) The term 'doing business' shall mean and include each and every act,  
10 power or privilege exercised or enjoyed in this State, as an incident to,  
11 or by virtue of the powers and privileges acquired by the nature of  
12 such organizations whether the form of existence be corporate,  
13 associate, joint-stock company or common-law trust. The following  
14 business contacts with the State shall not, however, be considered in  
15 determining whether a corporation is doing business within the State;  
16 the corporation contracts with an unrelated commercial printer for  
17 printing in this State and, in connection with the contract,

18 a. The printer conducts activities at the printer's premises on  
19 behalf of the corporation relating to the production or  
20 distribution of the printed product; and

21 b. The corporation has the following on or at the premises of the  
22 printer:

23 1. Personal property that consists of printed product,  
24 property that becomes part of printed product, or

1 property, other than property leased to the printer, with  
2 which printed product is produced; and

- 3 2. An agent or employee who is in this State temporarily  
4 and periodically to inspect the printing process or printed  
5 product.

6 A corporation's delivery, by mail or otherwise, of printed product to  
7 final destinations within the State, or making of mail-order sales, as  
8 defined in G.S. 105-164.3, shall, however, be considered in  
9 determining whether the corporation is doing business in this State."

10 Sec. 2. G.S. 105-130.2 is amended by adding a new subdivision to read:

11 "(1d) Doing business. – The operation of a business enterprise or business  
12 activity in this State for economic gain. The following business  
13 contacts with the State shall not, however, be considered in  
14 determining whether a corporation is doing business within the State;  
15 the corporation contracts with an unrelated commercial printer for  
16 printing in this State and, in connection with the contract,

17 a. The printer conducts activities at the printer's premises on  
18 behalf of the corporation relating to the production or  
19 distribution of the printed product; and

20 b. The corporation has the following on or at the premises of the  
21 printer:

22 1. Personal property that consists of printed product,  
23 property that becomes part of printed product, or  
24 property, other than property leased to the printer, with  
25 which printed product is produced; and

26 2. An agent or employee who is in this State temporarily  
27 and periodically to inspect the printing process or printed  
28 product.

29 A corporation's delivery, by mail or otherwise, of printed product to  
30 final destinations within the State, or making of mail-order sales, as  
31 defined in G.S. 105-164.3, shall, however, be considered in  
32 determining whether the corporation is doing business in this State."

33 Sec. 3. G.S. 105-164.3(5) reads as rewritten:

34 "(5) 'Engaged in business' means maintaining, occupying or using  
35 permanently or temporarily, directly or indirectly, or through a  
36 subsidiary or agent, by whatever name called, any office, place of  
37 distribution, sales or sample room or place, warehouse or storage  
38 place, or other place of business, for the selling or delivering of  
39 tangible personal property for storage, use or consumption in this  
40 State, or permanently or temporarily, directly or through a subsidiary,  
41 having any representative, agent, salesman, canvasser or solicitor  
42 operating in this State in such selling or delivering, and the fact that  
43 any corporate retailer, agent or subsidiary engaged in business in this  
44 State may not be legally domesticated or qualified to do business in

1 this State is immaterial. It also means maintaining in this State, either  
2 permanently or temporarily, directly or through a subsidiary, tangible  
3 personal property for the purpose of lease or rental. It also means  
4 making a mail order sale, as defined in this section, if one of the  
5 conditions listed in G.S. 105-164.8(b) is met. The following business  
6 contacts with the State shall not, however, be considered in  
7 determining whether a person is engaged in business in this State; the  
8 person contracts with an unrelated commercial printer for printing in  
9 this State and, in connection with the contract,

10 a. The printer conducts activities at the printer's premises on  
11 behalf of the person relating to the production or distribution of  
12 the printed product; and

13 b. The person has the following on or at the premises of the  
14 printer:

15 1. Personal property that consists of printed product,  
16 property that becomes part of printed product, or  
17 property, other than property leased to the printer, with  
18 which printed product is produced; and

19 2. An agent or employee who is in this State temporarily  
20 and periodically to inspect the printing process or printed  
21 product.

22 A person's delivery, by mail or otherwise, of printed product to final  
23 destinations within the State, or making of mail-order sales, as defined  
24 in G.S. 105-164.3, shall, however, be considered in determining  
25 whether the person is engaged in business in this State."

26 Sec. 4. G.S. 105-164.3(14) reads as rewritten:

27 "(14) 'Retailer' means and includes every person engaged in the business of  
28 making sales of tangible personal property at retail, either within or  
29 without this State, or peddling the same or soliciting or taking orders  
30 for sales, whether for immediate or future delivery, for storage, use or  
31 consumption in this State and every manufacturer, producer or  
32 contractor engaged in business in this State and selling, delivering,  
33 erecting, installing or applying tangible personal property for use in  
34 this State notwithstanding that said property may be permanently  
35 affixed to a building or realty or other tangible personal property.  
36 'Retailer' also means a person who makes a mail order sale, as defined  
37 in this section, if one of the conditions listed in G.S. 105-164.8(b) is  
38 met. Provided, however, that when in the opinion of the Secretary it is  
39 necessary for the efficient administration of this Article to regard any  
40 salesmen, solicitors, representatives, consignees, peddlers, truckers or  
41 canvassers as agents of the dealers, distributors, consignors,  
42 supervisors, employers or persons under whom they operate or from  
43 whom they obtain the tangible personal property sold by them  
44 regardless of whether they are making sales on their own behalf or on

1                   behalf of such dealers, distributors, consignors, supervisors, employers  
2                   or persons, the Secretary may so regard them and may regard the  
3                   dealers, distributors, consignors, supervisors, employers or persons as  
4                   'retailers' for the purpose of this Article. If a printer produces and  
5                   distributes printed material at or from its facility for an unrelated  
6                   customer and the customer incurs liability under this Article for  
7                   activity not related to the printing, the printer may not be regarded as  
8                   the customer's agent for the purpose of collecting the tax due from the  
9                   customer."

10                Sec. 5. This act is effective for taxable periods beginning on or after January  
11                1, 1993.