

Chapter 25A.
Retail Installment Sales Act.

§ 25A-1. Scope of act.

This Chapter applies only to consumer credit sales as hereinafter defined, except that G.S. 25A-37, referral sales, applies to all sales of goods or services as provided therein. This Chapter does not apply to a bona fide direct loan transaction in which a lender makes a direct loan to a borrower, and such lender is not regularly engaged, directly or indirectly, in the sale of goods or the furnishing of services as defined in this Chapter.

Except for G.S. 25A-37, referral sales, those sales defined in G.S. 25A-2(b), and those sales with amounts financed in excess of twenty-five thousand dollars (\$25,000) under G.S. 25A-2(a)(5), this Chapter does not apply to any party or transaction that is not also subject to the provisions of the Consumer Credit Protection Act (Federal Truth-in-Lending Act). (1971, c. 796, s. 1; 1983, c. 686, s. 1; 2005-338, s. 1.)

§ 25A-2. "Consumer credit sale" defined.

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

- (1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,
- (2) The buyer is a natural person,
- (3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,
- (4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and
- (5) The amount financed does not exceed seventy-five thousand dollars (\$75,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

(b) "Sale" includes but is not limited to any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods and services involved, and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration, has the option to become, the owner of the goods and services upon full compliance with his obligations under such contract.

The term also includes a contract in the form of a terminable bailment or lease of goods or services in which the bailee or lessee can renew the bailment or lease contract periodically by making the payment or payments specified in the contract if:

- (1) The contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration (no more than ten percent (10%) of the cash price of the property at the time the bailor or lessor initially enters into the contract with the bailee or lessee) upon the making of a specified number of payments by the bailee or lessee; and
- (2) The dollar total of the specified number of payments necessary to exercise the purchase option is more than ten percent (10%) in excess of the aggregate value of the property and services involved. For the purposes of this subsection, the value of goods shall be the average cash retail value of the goods. The value of services shall be the average retail value, if any, of such services, as determined by substantial cash sales of such services. If a

1 contract is found to be a sale under this subsection, these values shall be
2 used to determine the amount financed for purposes of G.S. 25A-15.

3 (c) A sale in which the seller allows the buyer to purchase goods or services pursuant to
4 a credit card issued by someone other than a seller that is engaged in part or entirely in the
5 business of selling goods or services or similar arrangement is not a consumer credit sale. A
6 sale in which the seller allows the buyer to purchase goods or services pursuant to a credit card
7 issued by the seller, a subsidiary or a parent corporation of the seller, a principal supplier of the
8 seller or any corporation having shareholders in common with the seller holding over
9 twenty-five percent (25%) of the voting stock in each corporation is a consumer credit sale
10 within the terms of this Chapter.

11 (d) For the purposes of this Chapter, a consumer credit sale shall be deemed to have
12 been made in this State, and therefore subject to the provisions of this Chapter, if the seller
13 offers or agrees in this State to sell to a buyer who is a resident of this State, or if such buyer
14 accepts or makes the offer in this State to buy, regardless of the situs of the contract as
15 specified therein.

16 Any solicitation or communication to sell, oral or written, originating outside of this State,
17 but forwarded to and received in this State by a buyer who is a resident of this State, shall be
18 deemed to be an offer or agreement to sell in this State.

19 Any solicitation or communication to buy, oral or written, originating within this State,
20 from a buyer who is a resident of this State, but forwarded to and received by a retail seller
21 outside of this State, shall be deemed to be an acceptance or offer to buy in this State.

22 (e) If an advertisement for a terminable bailment or lease defined as a sale in subsection
23 (b) above states the amount of any payment, the advertisement must also clearly and
24 conspicuously state the following items, as applicable:

- 25 (1) A statement that the transaction advertised is a lease;
- 26 (2) The total amount of periodic payments necessary to acquire ownership or a
27 statement that the consumer has the option to purchase the property and at
28 what time;
- 29 (3) That the consumer acquires no ownership rights if either the property is not
30 leased for the term required for ownership to transfer or the terms of
31 purchase are not otherwise satisfied.

32 If an advertisement for a terminable bailment or lease defined as a sale in subsection (b)
33 above refers to the right to acquire ownership, the advertisement must clearly and
34 conspicuously state whether or not the consumer may terminate the lease at any time without
35 penalty and that the consumer acquires no ownership rights if either the property is not leased
36 for the term required for ownership to transfer or the terms of purchase are not otherwise
37 satisfied.

38 No one shall advertise in connection with any terminable bailment or lease defined as a sale
39 in subsection (b) above the ownership option as a means of deceiving any lessee into believing
40 that he is purchasing the item of personal property. (1971, c. 796, s. 1; 1979, c. 706, s. 1; 1981,
41 c. 970, s. 2; 1983, c. 686, ss. 2, 3; 1987, c. 282, s. 5; 1991, c. 602, s. 1; 2005-338, s. 2.)
42

43 **§ 25A-3. "Payable in installments" defined.**

44 A debt is "payable in installments" when the buyer is required or permitted by agreement to
45 make payment in more than four installments, excluding a down payment, and whether or not a
46 finance charge is imposed by the seller. (1971, c. 796, s. 1.)
47

48 **§ 25A-4. "Goods" defined.**

49 (a) "Goods" means all things which are moveable at the time of the sale or at the time
50 the buyer takes possession, including goods not in existence at the time the transaction is
51 entered into and goods which are furnished or used at the time of sale or subsequently in

1 modernization, rehabilitation, repair, alteration, improvement or construction on real property
2 so as to become a part thereof whether or not they are severable therefrom. "Goods" also
3 includes merchandise certificates.

4 (b) "Merchandise certificate" means a writing issued by a seller not redeemable in cash
5 and usable in its face amount in lieu of cash in exchange for goods and services. (1971, c. 796,
6 s. 1.)
7

8 **§ 25A-5. "Services" defined.**

9 (a) "Services" includes:

- 10 (1) Work, labor, and other personal services; and
11 (2) Privileges with respect to transportation, hotel and restaurant
12 accommodations, education, entertainment, recreation, physical culture,
13 hospital accommodations, funerals and other similar services.

14 (b) "Services" does not include:

- 15 (1) Services for which the cost is by law fixed or approved by or filed with or
16 subject to approval or disapproval by the United States or the State of North
17 Carolina or any agency, instrumentality or subdivision thereof;
18 (2) Insurance premiums financing covered by G.S. 58-35-1 through G.S.
19 58-35-95 and 58-3-145; or
20 (3) Insurance provided by an insurer that is licensed to do business in this State.
21 (1971, c. 796, s. 1.)
22

23 **§ 25A-6. "Seller" defined.**

24 "Seller" means one regularly engaged in the business of selling goods or services. Unless
25 otherwise provided, "seller" also means and includes an assignee of the seller's right to payment
26 but use of the term does not itself impose on an assignee any obligation of the seller with
27 respect to events occurring before the assignment. (1971, c. 796, s. 1.)
28

29 **§ 25A-7. "Cash price" defined.**

30 "Cash price" of goods and services means the price at which the goods or services are
31 offered for sale by the seller to cash buyers in the ordinary course of business and may include:

- 32 (1) Applicable sales, use, and excise and documentary stamp taxes; and
33 (2) The cash price of accessories or related services such as installation,
34 delivery, servicing, repairs or alterations. (1971, c. 796, s. 1.)
35

36 **§ 25A-8. "Finance charge" defined.**

37 (a) "Finance charge" means the sum of all charges payable directly or indirectly by the
38 buyer and imposed by the seller as an incident to the extension of credit, including any of the
39 following types of charges which are applicable:

- 40 (1) Interest, time price differential, service, carrying or other similar charge
41 however denominated;
42 (2) Premium or other charges for any guarantee or insurance protecting the
43 seller against the buyer's default or other credit loss;
44 (3) Loan fee, finder's fee or similar charge; and
45 (4) Fee for an appraisal, investigation or credit report.

46 (b) Finance charge does not include transfer of equity fees, substitution of collateral
47 fees, default or deferment charges, or additional charges for insurance as permitted by G.S.
48 25A-17 or charges for insurance excluded by Section 226.4(a) of Regulation Z promulgated
49 pursuant to section 105 of the Consumer Credit Protection Act.

50 (c) With respect to a transaction in which the seller acquires a security interest in real
51 property, finance charge does not include charges excluded by section 226.4(e) of Regulation Z

1 promulgated pursuant to section 105 of the Consumer Credit Protection Act. (1971, c. 796, s.
2 1.)

3
4 **§ 25A-9. "Amount financed" defined.**

5 (a) "Amount financed" means the total of the following to the extent that payment is
6 deferred by the seller:

- 7 (1) The cash price of the goods or services less the amount of any down
8 payment whether made in cash or property traded in,
- 9 (2) The amount actually paid or to be paid by the seller pursuant to an
10 agreement with the buyer to discharge a security interest or lien on property
11 traded in,
- 12 (3) Additional charges for insurance described in G.S. 25A-8(b) and charges
13 referred to in G.S. 25A-8(c), and
- 14 (4) Official fees as described in G.S. 25A-10, to the extent they are itemized and
15 disclosed to the buyer.

16 (b) If not included in the cash price, the amount financed includes any applicable sales,
17 use or documentary stamp taxes and any amount actually paid or to be paid by the seller for
18 registration, certificate of title or license fees. (1971, c. 796, s. 1.)

19
20 **§ 25A-10. "Official fees" defined.**

21 "Official fees" means:

- 22 (1) Fees and charges prescribed by law which actually are or will be paid to
23 public officials for determining the existence of or for perfecting, releasing,
24 or satisfying a security interest related to a consumer credit sale; or
- 25 (2) Premiums payable for insurance in lieu of perfecting a security interest
26 otherwise required by the seller in connection with a consumer credit sale if
27 the premium does not exceed the fees or charges described in subdivision (1)
28 of this section which would otherwise be payable. (1971, c. 796, s. 1.)

29
30 **§ 25A-11. "Revolving charge account contract" defined.**

31 "Revolving charge account contract" means an agreement or understanding between a seller
32 and a buyer under which consumer credit sales may be made from time to time, under the terms
33 of which a finance charge or service charge is to be computed in relation to the buyer's unpaid
34 balance from time to time, and under which the buyer has the privilege of paying the balance in
35 full or in installments. This definition shall not affect the meaning of the term "revolving charge
36 account" appearing in G.S. 24-11(a). (1971, c. 796, s. 1.)

37
38 **§ 25A-12. "Consumer credit installment sale contract" defined.**

39 "Consumer credit installment sale contract" means the agreement between a buyer and a
40 seller in a consumer credit sale other than a sale made pursuant to a revolving charge account.
41 (1971, c. 796, s. 1.)

42
43 **§ 25A-13. "Consumer Credit Protection Act" defined.**

44 "Consumer Credit Protection Act" means the Consumer Credit Protection Act, an act of
45 Congress of May 29, 1968, as amended (Public Law 90-321; 82 Stat. 146; 15 U.S.C. 1601 et
46 seq.), and regulations and rulings promulgated thereunder. (1971, c. 796, s. 1.)

47
48 **§ 25A-14. Finance charge rates and service charge for revolving charge account**
49 **contracts.**

1 (a) The finance-charge rate and either the annual charge or the monthly service charge
2 for a consumer credit sale made under a revolving charge account contract may not exceed the
3 rates and charge provided for revolving credit by G.S. 24-11.

4 (b) In the event the revolving charge account contract is secured in whole or in part by a
5 security interest in real property, then the finance-charge rate shall not exceed the rate set out in
6 G.S. 25A-15(d).

7 (c) No default or deferral charge shall be imposed by the seller in connection with a
8 revolving charge-account contract, except as specifically provided for in G.S. 24-11(d1). (1971,
9 c. 796, s. 1; 1983, c. 126, s. 7; 1991, c. 506, s. 7.)

10
11 **§ 25A-15. Finance charge rates for consumer credit installment sale contracts.**

12 (a) With respect to a consumer credit installment sale contract, a seller may contract for
13 and receive a finance charge not exceeding that permitted by this section. For the purposes of
14 this section, the finance charge rates are the rates that are required to be disclosed by the
15 Consumer Credit Protection Act.

16 (b) Except as hereinafter provided, the finance charge rate for a consumer credit
17 installment sales contract may not exceed:

- 18 (1) Twenty-four percent (24%) per annum where the amount financed is less
19 than one thousand five hundred dollars (\$1,500);
- 20 (2) Twenty-two percent (22%) per annum where the amount financed is one
21 thousand five hundred dollars (\$1,500) or greater, but less than two thousand
22 dollars (\$2,000);
- 23 (3) Twenty percent (20%) where the amount financed is two thousand (\$2,000)
24 or greater, but less than three thousand dollars (\$3,000);
- 25 (4) Eighteen percent (18%) per annum where the amount financed is three
26 thousand dollars (\$3,000) or greater,

27 except that a minimum finance charge of five dollars (\$5.00) may be imposed.

28 (c) A finance charge rate not to exceed the higher of the rate established in subsection
29 (b) or the rate set forth below may be imposed in a consumer credit installment sale contract
30 repayable in not less than six installments for a self-propelled motor vehicle:

- 31 (1) Eighteen percent (18%) per annum for vehicles one and two model years
32 old;
- 33 (2) Twenty percent (20%) per annum for vehicles three model years old;
- 34 (3) Twenty-two percent (22%) per annum for vehicles four model years old; and
- 35 (4) Twenty-nine percent (29%) per annum for vehicles five model years old and
36 older.

37 A motor vehicle is one model year old on January 1 of the year following the designated year
38 model of the vehicle.

39 (d) Notwithstanding the provisions of subsections (b) and (c), above, in the event that
40 the amount financed in a consumer credit sale contract is secured in whole or in part by a
41 security interest in real property, the finance charge rate may not exceed sixteen percent (16%)
42 per annum.

43 (e) A seller may not divide a single credit sale transaction into two or more sales to
44 avoid the limitations as to maximum finance charges imposed by this section.

45 (f) Notwithstanding the provisions of subsections (b) or (d), the parties to a consumer
46 credit installment sale contract for the sale of a residential manufactured home which is secured
47 by a first lien on that home or on the land on which such home is located may contract in
48 writing for the payment of a finance charge as agreed upon by the parties. Provided, this
49 subsection shall only apply if the parties would have been entitled to so contract by the
50 provisions of section 501 of United States Public Law 96-221, and have complied with the
51 regulations promulgated thereto.

1 For the purposes of this subsection (f), a "residential manufactured home" means a mobile
2 home as defined in G.S. 143-145(7) which is used as a dwelling. (1971, c. 796, s. 1; 1979, 2nd
3 Sess., c. 1330, ss. 1, 2; 1981, c. 446, ss. 1-3; 1983, c. 126, s. 2.)
4

5 **§ 25A-16. Transfer of equity.**

6 If a buyer voluntarily transfers his rights in collateral pursuant to applicable law and the
7 seller agrees, the seller may impose a transfer fee not to exceed ten percent (10%) of the unpaid
8 balance of the debt or thirty-five dollars (\$35.00), whichever is less. (1971, c. 796, s. 1;
9 2000-169, s. 31.)
10

11 **§ 25A-17. Additional charges for insurance.**

12 (a) As to revolving charge account contracts defined in G.S. 25A-11, in addition to the
13 finance charges permitted in G.S. 24-11(a), a seller in a consumer credit sale may contract for
14 and receive additional charges or premiums (i) for insurance written in connection with any
15 consumer credit sale, against loss of or damage to property securing the debt pursuant to G.S.
16 25A-23, provided a clear, conspicuous and specific statement in writing is furnished by the
17 seller to the buyer setting forth the cost of the insurance if obtained from or through the seller
18 and stating that the buyer may choose the insurer through which the insurance is obtained; (ii)
19 for credit life, credit accident and health, or credit unemployment insurance, written in
20 connection with any consumer credit sale, provided the insurance coverage is not required by
21 the seller and this fact is clearly disclosed to the buyer, and any buyer desiring such insurance
22 coverage gives affirmative indication of such desire after disclosure of the cost of such
23 insurance.

24 (b) As to revolving charge account contracts defined in G.S. 25A-11, insurance that is
25 required by a seller and is not an additional charge permitted by subsection (a) of this section,
26 shall be included in the finance charge as computed according to G.S. 24-11(a).

27 (c) As to consumer credit installment sale contracts defined in G.S. 25A-12, in addition
28 to the finance charges permitted in G.S. 25A-15, a seller in a consumer credit sale may contract
29 for and receive additional charges or premiums (i) for insurance written in connection with any
30 consumer credit sale, for loss of or damage to property or against liability arising out of the
31 ownership or use of property, provided a clear, conspicuous and specific statement in writing is
32 furnished by the seller to the buyer setting forth the cost of the insurance if obtained from or
33 through the seller and stating that the buyer may choose the person through which the insurance
34 is to be obtained; (ii) for credit life, credit accident and health, or credit unemployment
35 insurance, written in connection with any consumer credit sale, provided the insurance
36 coverage is not required by the seller and this fact is clearly and conspicuously disclosed in
37 writing to the buyer; and any buyer desiring such insurance coverage gives specific dated and
38 separately signed affirmative written indication of such desire after receiving written disclosure
39 to him of the cost of such insurance. (1971, c. 796, s. 1; 1993, c. 226, s. 15.)
40

41 **§ 25A-18. Confession of judgment.**

42 A buyer may not authorize any person to confess judgment on a claim arising out of a
43 consumer credit sale. An authorization in violation of this section is void. (1971, c. 796, s. 1.)
44

45 **§ 25A-19. Acceleration.**

46 With respect to a consumer credit sale, the agreement may not provide for repossession of
47 any goods or acceleration of the time when any part or all of the time balance becomes payable
48 other than for breach by the buyer of any promise or condition clearly set forth in the
49 agreement. (1971, c. 796, s. 1.)
50

51 **§ 25A-20. Disclaimer of warranty.**

1 With respect to any consumer credit sale, the agreement may not contain any provision
2 limiting, excluding, modifying or in any manner altering the terms of any express warranty
3 given by any seller (excluding assignees) to any buyer and made a part of the basis of the
4 bargain between the original parties. (1971, c. 796, s. 1.)
5

6 **§ 25A-21. Attorneys' fees.**

7 With respect to a consumer credit sale:

- 8 (1) In the event that the seller institutes a suit and prevails in the litigation and
9 obtains a money judgment, the presiding judge shall allow a reasonable
10 attorney's fee to the duly licensed attorney representing the seller in such
11 suit, said attorney's fee to be taxed to the buyer as part of the court costs.
12 (2) In the event that a seller instituting suit does not prevail in the litigation, the
13 presiding judge shall allow a reasonable attorney's fee to the duly licensed
14 attorney representing the buyer in such suit, said attorney's fee to be taxed to
15 the seller as a part of the court costs. (1971, c. 796, s. 1.)
16

17 **§ 25A-22. Receipts for payments; return of title documents upon full payment.**

18 (a) When any payment is made under any consumer credit sale transaction, the person
19 receiving such payment shall, if the payment is made in cash, give the buyer a written receipt
20 therefor. If the buyer specifies that the payment is made on one of several obligations, the
21 receipt shall so state.

22 (b) Upon the payment of all sums for which the buyer is obligated under a consumer
23 credit sale, the seller shall promptly release any security interest in accordance with the terms
24 of G.S. 25-9-513 or G.S. 20-58.4, whichever is applicable. In the event a security interest in
25 real property is involved, the seller shall take such action as is necessary to enable the lien to be
26 discharged of record under the provisions of G.S. 45-37. (1971, c. 796, s. 1; 2000-169, s. 32.)
27

28 **§ 25A-23. Collateral taken by the seller.**

29 (a) The seller in a consumer credit sale may take a security interest only in the
30 following property of the buyer to secure the debt arising from the sale:

- 31 (1) The property sold,
32 (2) Property previously sold by the seller to the buyer and in which the seller has
33 an existing security interest,
34 (3) Personal property to which the property sold is installed, if the amount
35 financed is more than three hundred dollars (\$300.00),
36 (4) Real property to which the property sold is affixed, if the amount financed is
37 more than one thousand dollars (\$1,000), and
38 (5) A self-propelled motor vehicle to which repairs are made, if the amount
39 financed exceeds one hundred dollars (\$100.00).
40 (6) Any property which is used for agricultural purposes, if the property sold is
41 to be used in the operation of an agricultural business.

42 (b) A security interest taken in property other than that permitted in subsection (a) of
43 this section shall be void and not enforceable.

44 (c) Nothing in this section shall affect any right or liens granted by Chapter 44A of the
45 General Statutes.

46 (d) The provisions of G.S. 24-11(a), limiting the taking of a security interest in property
47 under an open end credit or similar plan, shall not apply to revolving charge account contracts
48 regulated by this Chapter; provided, however, the application of payments rule set out in G.S.
49 25A-27 shall apply to such contracts; provided further, that in any action initiated by the seller
50 for the possession of such property, a judgment for the possession thereof shall be restricted to

1 commercial units (as defined in G.S. 25-2-105(6)) for which the cash price was one hundred
2 dollars (\$100.00) or more. (1971, c. 796, s. 1; 1977, c. 508; c. 789, s. 1.)

3
4 **§ 25A-24. Identification of instruments of indebtedness.**

5 With respect to consumer credit sales, each instrument of indebtedness shall be identified
6 on the face of the instrument as a consumer credit document, or otherwise clearly indicate on
7 its face that it arises out of a consumer credit sale, provided, that such designation of an
8 instrument of indebtedness regarding as sale which is not by definition a "consumer credit
9 sale," shall not solely because of such designation cause the transaction to be a consumer credit
10 sale. (1971, c. 796, s. 1.)

11
12 **§ 25A-25. Preservation of consumers' claims and defenses.**

13 (a) In a consumer credit sale, a buyer may assert against the seller, assignee of the
14 seller, or other holder of the instrument or instruments of indebtedness, any claims or defenses
15 available against the original seller, and the buyer may not waive the right to assert these claims
16 or defenses in connection with a consumer credit sales transaction. Affirmative recovery by the
17 buyer on a claim asserted against an assignee of the seller or other holder of the instrument of
18 indebtedness shall not exceed amounts paid by the buyer under the contract.

19 (b) Every consumer credit sale contract shall contain the following provision in at least
20 ten-point boldface type:

21
22 **NOTICE**

23
24 ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL
25 CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE
26 SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE
27 PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT
28 EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

29 (c) Compliance with the requirements of the Federal Trade Commission rule on
30 preservation of consumer claims and defenses is considered full compliance with this act.
31 (1971, c. 796, s. 1; 1977, c. 921.)

32
33 **§ 25A-26. Substitution of collateral.**

34 Subject to the provisions of G.S. 25A-23, if all involved parties agree, there may be a
35 substitution of collateral under a security instrument in a consumer credit sale. For such
36 substitution, the seller may impose a fee not to exceed ten percent (10%) of the unpaid balance
37 of the debt or fifteen dollars (\$15.00), whichever is less. (1971, c. 796, s. 1.)

38
39 **§ 25A-27. Application of payments.**

40 (a) Where a seller in a consumer credit sale makes a subsequent sale to a buyer and
41 takes a security interest pursuant to G.S. 25A-23 in goods previously purchased by the buyer
42 from the seller, the seller shall make application of payments received, for the purpose of
43 determining the amount of the debt secured by the various security interests, as follows:

- 44 (1) The entire amount of all payments made prior to such subsequent purchase
45 shall be deemed to have been applied to the previous purchases, and
46 (2) Unless otherwise designated by the buyer, the amount of down payment on
47 such subsequent purchase shall be applied to the subsequent purchase, and
48 (3) All subsequent payments shall be applied first to finance charges and then to
49 principal. The application of payments to principal shall be applied to the
50 various purchases on the basis that the first sums paid in shall be deemed
51 applied to the oldest purchase or obligation assumed to satisfy the original

1 debt secured by the purchase money security interest until payment is
2 received in full and other payments shall be applied accordingly to all other
3 purchases in the order that each obligation is assumed. At the time any
4 original debt would have been satisfied by subsequent payments, the
5 purchase money security interest in said purchase shall be extinguished.

6 (b) Where a seller and a buyer agree to consolidate two or more consumer credit
7 installment sale contracts pursuant to G.S. 25A-31, the seller shall apply payments received, for
8 the purpose of determining the amount of the debt secured by the various security interests, as
9 follows:

- 10 (1) The entire amount of all payments received prior to the consolidation shall
11 be applied to the respective contracts under which the payments were made,
12 and
13 (2) All subsequent payments shall be applied first to finance charges and then to
14 principal. The application of payments to principal shall be applied to the
15 various purchases on the basis that the first sums paid in shall be deemed
16 applied to the oldest purchase or obligation assumed to satisfy the original
17 debt secured by the purchase money security interest until payment is
18 received in full and other payments shall be applied accordingly to all other
19 purchases in the order that each obligation is assumed. At the time any
20 original debt would have been satisfied by subsequent payments, the
21 purchase money security interest in said purchase shall be extinguished.

22 (c) For payments received by a seller on or after October 1, 1988, but before October 1,
23 1993, a seller may elect to apply the provisions of this section as the section read October 1,
24 1993, or as the section read September 30, 1993. A seller made this election when the seller
25 determined, and disclosed to the buyer, how payments received on a consumer credit sale
26 would be applied: either on a proportional basis or on a "first in – first out" basis with the
27 payments applied first to finance charges and then to principal in the order that each obligation
28 is assumed.

29 (d) The exclusive remedy for failure of a seller to apply payments of a buyer as required
30 by subdivision (a)(3) or (b)(2) of this section during the period October 1, 1993, through
31 October 1, 1996, is an order that the seller apply the payments as required by those provisions.
32 (1971, c. 796, s. 1; 1993, c. 370, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 38.3(a).)
33

34 **§ 25A-28. Form of consumer credit installment sale contract.**

35 Every consumer credit installment sale contract shall be in writing, dated and signed by the
36 buyer. (1971, c. 796, s. 1.)
37

38 **§ 25A-29. Default charges.**

39 If any installment is past due for 10 days or more according to the original terms of the
40 consumer credit installment sale contract, a default charge may be made in an amount not to
41 exceed five percent (5%) of the installment past due or six dollars (\$6.00), whichever is the
42 lesser. A default charge may be imposed only one time for each default.

43 If a default charge is deducted from a payment made on the contract and such deduction
44 results in a subsequent default on a subsequent payment, no default charge may be imposed for
45 such default.

46 If a default charge has been once imposed with respect to a particular default in payment,
47 no default charge shall be imposed with respect to any future payments which would not have
48 been in default except for the previous default.

49 A default charge for any particular default shall be deemed to have been waived by the
50 seller unless, within 45 days following the default, (i) the charge is collected or (ii) written
51 notice of the charge is sent to the buyer. (1971, c. 796, s. 1.)

1
2 **§ 25A-30. Deferral charges.**

3 (a) A seller may, by agreement with the buyer, defer the due date of all or any part of
4 one or more installments under an existing consumer credit installment sale contract.

5 (b) Except as provided by subsections (e) and (f) of this section, a deferral agreement
6 must be in writing, dated and signed by the parties.

7 (c) A deferral agreement may provide for a deferral charge not to exceed the rate of one
8 and one-half percent (1 1/2%) of each installment for each month from the date which such
9 installment or part thereof would otherwise have been payable to the date when such
10 installment or part thereof is made payable under the deferral agreement.

11 (d) If a deferral charge is made pursuant to a deferral agreement, a default charge
12 provided in G.S. 25A-29 may be imposed only if the installment as deferred is not paid when
13 due and no new deferral agreement is entered into with respect to that installment.

14 (e) If the deferral agreement extends the due date of only one installment, the
15 agreement need not be in writing.

16 (f) A deferral agreement for which no charge is made shall not be subject to
17 subsections (b), (c) or (d) of this section. (1971, c. 796, s. 1.)
18

19 **§ 25A-31. Consolidation and refinancing.**

20 (a) A seller and a buyer may agree at any time to refinance an existing consumer credit
21 installment sale contract or to consolidate into a single debt repayable on a single schedule of
22 payments, two or more consumer credit installment sale contracts.

23 (b) A refinancing or consolidation agreement must be in writing, dated and signed by
24 the parties.

25 (c) The refinancing or consolidation agreement may provide for a finance charge which
26 shall not exceed the rates provided in G.S. 25A-15, with the amount financed being the unpaid
27 time balance of the contract or contracts refinanced or consolidated, less the rebate provided by
28 G.S. 25A-32. In computing the rebate to be credited to the previous time balances for purposes
29 of this section, no prepayment charge shall be imposed. (1971, c. 796, s. 1.)
30

31 **§ 25A-32. Rebates on prepayment.**

32 Notwithstanding any provision in a consumer credit installment sale contract to the
33 contrary, any buyer may satisfy the debt in full at any time before maturity, and in so satisfying
34 such debt, shall receive a rebate, the amount of which shall be computed under the "rule of
35 78's," as follows:

36 "The amount of such rebate shall represent as great a proportion of the finance charge (less
37 a prepayment charge of ten percent (10%) of the unpaid balance, not to exceed twenty-five
38 dollars (\$25.00)) as the sum of the periodical time balances after the date of prepayment in full
39 bears to the sum of all the periodical time balances under the schedule of payments in the
40 original contract." No rebate is required if the amount thereof is less than one dollar (\$1.00).

41 If the prepayment is made otherwise than on the due date of an installment, it shall be
42 deemed to have been made on the installment due date nearest in time to the actual date of
43 payment.

44 If a seller obtains a judgment on a debt arising out of a consumer credit installment sale or
45 the seller repossesses the collateral securing the debt, the seller shall credit the buyer with a
46 rebate as if the payment in full had been made on the date the judgment was obtained or 15
47 days after the repossession occurred. If the seller obtains a judgment and repossesses the
48 collateral, the seller shall credit the buyer with a rebate as if payment in full had been made on
49 the date of the judgment or 15 days after the repossession, whichever occurs earlier. (1971, c.
50 796, s. 1.)
51

1 **§ 25A-32.1. Unearned finance charge credits on prepayment of loans secured by real**
2 **property and mobile home loans.**

3 (a) Notwithstanding any statutory or contractual provision to the contrary, in a
4 consumer credit installment sale contract with an amount financed of five thousand dollars
5 (\$5000.00) or more secured by real estate or by a residential manufactured home as defined in
6 G.S. 143-145(7), any buyer may satisfy the debt in full at any time before maturity, and in so
7 satisfying the debt, shall be credited with all unearned finance charges as computed on the
8 simple interest or actuarial method.

9 (b) If a seller obtains a judgment on a debt arising out of a consumer credit installment
10 sale described in subsection (a) of this section, or if the seller forecloses or repossesses the
11 collateral securing the debt, the seller shall credit the buyer with all unearned finance charges as
12 computed on the simple interest or actuarial method as if the payment in full had been made on
13 the date the judgment was obtained or 15 days after the foreclosure or repossession occurred,
14 whichever is earlier. If the seller obtains a judgment and repossesses the collateral, the seller
15 shall credit the buyer with all unearned finance charges as if payment in full had been made on
16 the date of the judgment or 15 days after the repossession, whichever occurs earlier. (1991, c.
17 602, s. 2.)
18

19 **§ 25A-33. Terms of payments.**

20 A consumer credit installment sale contract shall provide for complete payment of all
21 charges due under the contract, including the amount financed, the finance charge, and
22 additional insurance charges, if any, within a period from the time of the sale of

- 23 (1) Forty-two months, if the amount financed is less than one thousand five
24 hundred dollars (\$1,500), or
- 25 (2) Sixty-four months, if the amount financed is one thousand five hundred
26 dollars (\$1,500) or greater, but less than two thousand five hundred dollars
27 (\$2,500), or
- 28 (3) One hundred and twenty-two months, if the amount financed is two
29 thousand five hundred dollars (\$2,500) or greater, but less than five thousand
30 dollars (\$5,000), or
- 31 (4) One hundred and eighty-two months, if the amount financed is five thousand
32 dollars (\$5,000) or greater, but less than ten thousand dollars (\$10,000), or
- 33 (5) As the contract provides, if the amount financed is ten thousand dollars
34 (\$10,000) or greater.

35 The provisions of this section shall not apply to a consumer credit installment sale contract
36 executed in connection with any financing which is insured under regulations of the Federal
37 Housing Administration or the Veterans Administration. (1971, c. 796, s. 1; 1973, c. 1446, s.
38 3.)
39

40 **§ 25A-34. Balloon payments.**

41 With respect to a consumer credit sale, other than one pursuant to a revolving charge
42 account, no scheduled payment may be more than ten percent (10%) (except the final payment
43 may be twenty-five percent (25%)) larger than the average of earlier scheduled payments. This
44 provision does not apply when the payment schedule is adjusted to the seasonal or irregular
45 income of the buyer. (1971, c. 796, s. 1.)
46

47 **§ 25A-35. Statement of account.**

48 (a) One time during each 12-month period following execution of a consumer credit
49 installment sale contract and when the buyer repays the debt early, the buyer shall be entitled
50 upon request and without charge to a statement of account from the seller. The statement of
51 account shall contain the following information identified as such in the statement:

- 1 (1) The itemized amounts paid by or on behalf of the buyer to the date of the
2 statement of account, except that upon early termination of the contract by
3 prepayment or otherwise, the statement shall include itemized charges for
4 expenses of repossession, storage and legal expenses;
- 5 (2) The itemized amounts, if any, which have become due but remain unpaid,
6 including any charges for defaults, expenses of repossession and deferral
7 charges;
- 8 (3) The number of installment payments and the dollar amount of each
9 installment not due but still to be paid and the remaining period the contract
10 is to run.

11 (b) The buyer may request and shall be entitled to additional statements of account but
12 for such additional statements the seller may impose a charge of one dollar (\$1.00).

13 (c) If the buyer requests information for income tax purposes as to the amount of the
14 finance charges, the seller shall provide such information within 30 days without charge but
15 only once in each calendar year. (1971, c. 796, s. 1.)
16

17 **§ 25A-36. Certificates of insurance and rebates.**

18 (a) Within 45 days following the purchase of insurance by the buyer from or through
19 the seller, the seller shall deliver, send or cause to be sent to the buyer a policy or policies of
20 such insurance or a certificate or certificates thereof. If such insurance is cancelled, or the
21 premium adjusted, any rebate received by the seller shall be promptly applied to the purchase
22 of other similar insurance, credited to the buyer's account, or rebated to the buyer. Unless
23 otherwise required by law or the provisions of the policy, rebates of cancelled insurance shall
24 be computed under the rule of 78's, without the deduction of a prepayment charge.

25 (b) In those cases where the insurance premium is added in the contract, and the buyer
26 did not actually pay the premium, the return premium plus unearned finance charge on the
27 amount of returned premium (at the same rate as used in the contract) shall be credited to the
28 unpaid balance of the contract. If the required insurance premium is adjusted upward by the
29 insurance company or is added in accordance with the contract, the buyer, after 10 days' notice,

- 30 (1) May pay the additional premium, or
- 31 (2) Have the additional premium plus finance charge (at the same rate as used in
32 the contract) added to the unpaid balance and spread equally over the
33 remaining installments unpaid, provided, the seller may require a buyer who
34 wishes to finance such additional premium to be financed by the seller in
35 accordance with North Carolina insurance regulations. (1971, c. 796, s. 1;
36 1977, c. 650.)
37

38 **§ 25A-37. Referral sales.**

39 The advertisement for sale or the actual sale of any goods or services (whether or not a
40 consumer credit sale) at a price or with a rebate or payment or other consideration to the
41 purchaser that is contingent upon the procurement of prospective customers provided by the
42 purchaser, or the procurement of sales to persons suggested by the purchaser, is declared to be
43 unlawful. Any obligation of a buyer arising under such a sale shall be void and a nullity and a
44 buyer shall be entitled to recover from the seller any consideration paid to the seller upon
45 tender to the seller of any tangible consumer goods made the basis of the sale. (1971, c. 796, s.
46 1.)
47

48 **§ 25A-38. "Home-solicitation sale" defined.**

49 "Home-solicitation sale" means a consumer credit sale of goods or services in which the
50 seller or a person acting for him engages in a personal solicitation of the sale at a residence of

1 the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person
2 acting for him. It does not include

- 3 (1) A sale made to a buyer who has previously engaged in a similar business
4 transaction with the seller;
- 5 (2) A sale made pursuant to a preexisting revolving charge account;
- 6 (3) A sale made pursuant to negotiations between the parties on the premises of
7 a business establishment at a fixed location where such goods or services are
8 offered or exhibited for sale;
- 9 (4) A sale which is regulated by the provisions of Section 226.9 of Regulation Z
10 promulgated pursuant to Section 105 of the Consumer Credit Protection Act;
11 or
- 12 (5) Sales of personal wearing apparel, motor vehicles defined in G.S.
13 20-286(10), farm equipment and goods and services to be utilized within 10
14 days in connection with funeral services. (1971, c. 796, s. 1; 1973, c. 672.)
15

16 **§ 25A-39. Buyer's right to cancel.**

17 (a) Except as provided in subsection (e) of this section, in addition to any right
18 otherwise to revoke an offer, the buyer has the right to cancel a home-solicitation sale until
19 midnight of the third business day after the day on which the buyer signs an agreement or offer
20 to purchase which complies with G.S. 25A-40, or which complies with the requirements of the
21 Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for
22 Door-to-Door Sales.

23 (b) Cancellation occurs when the buyer gives written notice of cancellation to the seller
24 at the address stated in the agreement or offer to purchase.

25 (c) Notice of cancellation, if given by mail, is given when it is deposited in the United
26 States mail properly addressed and postage prepaid.

27 (d) Unless the seller complies with G.S. 25A-40(b), notice of cancellation given by the
28 buyer need not take a particular form and is sufficient if it indicates by any form of written
29 expression the intention of the buyer not to be bound by the home-solicitation sale.

30 (e) The buyer may not cancel a home-solicitation sale if the buyer requests the seller in
31 a separate writing to provide goods or services without delay because of an urgency or an
32 emergency, and

- 33 (1) The seller in good faith makes a substantial beginning of performance of the
34 contract before the buyer gives notification of cancellation,
- 35 (2) In the case of goods, the goods cannot be returned to the seller in
36 substantially as good condition as when received by the buyer, and
- 37 (3) Unless the buyer returns the goods, if any, to the seller at his expense.

38 (f) A buyer, who has not received delivery of the goods and services from the seller in a
39 home-solicitation sale within 30 days following the execution of the contract (and such delay is
40 the fault of the seller), shall have the right at any time thereafter before acceptance of the goods
41 and services to rescind the contract and to receive a refund of all payments made and to a return
42 of all goods traded in to the seller on account of or in contemplation of such contract, or if the
43 goods traded in cannot or are not returned to the buyer within 10 days after cancellation, the
44 buyer may elect to recover an amount equal to the trade-in allowance stated in the contract. By
45 written agreement, the buyer may agree to a later time for the delivery of goods and services.
46 (1971, c. 796, s. 1; 1975, c. 805, s. 1.)
47

48 **§ 25A-40. Form of agreement or offer; statement of buyer's rights.**

49 (a) In a home-solicitation sale the seller must present to the buyer and obtain his
50 signature to a fully completed written agreement or offer to purchase which is in the same
51 language as that principally used in the oral sales presentation and which designates as the date

1 of the transaction the date on which the buyer actually signs and which contains the name and
2 address of the seller, and which contains in immediate proximity to the space reserved for the
3 signature of the buyer in bold face type of a minimum size of 10 points, a statement in
4 substantially the following form:

5 "You, the buyer, may cancel this transaction at any time prior to midnight of the
6 third business day after the date of this transaction. See the attached Notice of
7 Cancellation form for an explanation of this right."

8 (b) The seller must, in addition to furnishing the buyer with a copy of the contract or
9 offer to purchase, furnish to the buyer at the time he signs the home-solicitation sale contract or
10 otherwise agrees to buy consumer goods or services from the seller, a completed form in
11 duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily
12 detachable, and which shall contain in 10 point bold face type the following information and
13 statements in the same language as that used in the contract:

14
15 **"NOTICE OF CANCELLATION**

16
17 (enter date of transaction)

18 _____
19 (date)

20 You may cancel this transaction, without any penalty or obligation, within
21 three business days from the above date.

22 If you cancel, any property traded in, and payments made by you under the
23 contract or sale, and any negotiable instrument executed by you will be returned
24 within 10 business days following receipt by the seller of your cancellation
25 notice, and any security interest arising out of the transaction will be canceled.

26 If you cancel, you must make available to the seller at your residence, in
27 substantially as good condition as when received, any goods delivered to you
28 under this contract or sale; or you may, if you wish, comply with the instructions
29 of the seller regarding the return shipment of the goods at the seller's expense
30 and risk.

31 If you do make the goods available to the seller and the seller does not pick
32 them up within 20 days of the date of your notice of cancellation, you may retain
33 or dispose of the goods without any further obligation. If you fail to make the
34 goods available to the seller, or if you agree to return the goods to the seller and
35 fail to do so, then you remain liable for performance of all obligations under the
36 contract.

37 To cancel this transaction, mail or deliver a signed and dated copy of this
38 cancellation notice or any other written notice, or send a telegram to

39 _____
40 (name of seller)

41 at _____,

42 (address of seller's place of business)

43 not later than midnight of _____

44 (date)

45 I hereby cancel this transaction.

46 _____
47 (date)

48 _____
49 (Buyer's Signature)"

1 **§ 25A-41. Restoration of down payment; retention of goods.**

2 (a) Except as provided in this section, within 10 business days after a home-solicitation
3 sale has been canceled or an offer to purchase revoked in accordance with G.S. 25A-40, the
4 seller must tender to the buyer any payments made by the buyer and any note or other evidence
5 of indebtedness.

6 (b) If the down payment includes goods traded in, the goods must be tendered at the
7 buyer's residence in substantially as good condition as when received by the seller. If the seller
8 fails to tender the goods as provided by this section, the buyer may elect to recover an amount
9 equal to the trade-in allowance stated in the agreement.

10 (c) Repealed by Session Laws 1975, c. 805, s. 3.

11 (d) Until the seller has complied with the obligations imposed by this section, the buyer
12 may retain possession of goods delivered to him by the seller and has a lien on the goods in his
13 possession or control for any recovery to which he is entitled. (1971, c. 796, s. 1; 1975, c. 805,
14 s. 3.)
15

16 **§ 25A-42. Duties as to care and return of goods; no compensation for services prior to**
17 **cancellation.**

18 (a) Except as provided by the provisions on retention of goods by the buyer (G.S.
19 25A-41(d)), within a reasonable time after a home-solicitation sale has been canceled, the
20 buyer must make available to the seller at the buyer's residence in substantially as good
21 condition as received, any goods delivered under the contract or sale, or in the alternative, the
22 buyer may comply with the instructions of the seller regarding the return shipment of the goods
23 at the seller's expense and risk. The seller shall within 10 business days of receipt of the buyer's
24 notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any
25 shipped or delivered goods. If the buyer makes the goods available to the seller and the seller
26 does not pick them up within 20 days of the date of the notice of cancellation, the buyer may
27 retain or dispose of the goods without any further obligation. If the buyer fails to make the
28 goods available to the seller, or agrees to return the goods to the seller and fails to do so, then
29 the buyer shall remain liable for performance of all obligations under the contract.

30 (b) The buyer has the duty of a bailee to take reasonable care of the goods in his
31 possession before cancellation or revocation and for a reasonable time thereafter, during which
32 time the goods are otherwise at the seller's risk.

33 (c) If the seller has performed any services pursuant to a home-solicitation sale prior to
34 its cancellation, the seller is entitled to no compensation therefor.

35 (d) The seller shall not negotiate, transfer, sell, or assign any note, contract, or other
36 evidence of indebtedness arising out of a home-solicitation sale to a finance company or other
37 third party prior to midnight of the fifth business day following the day the contract was signed
38 or the goods or services were purchased. (1971, c. 796, s. 1; 1975, c. 805, s. 4.)
39

40 **§ 25A-43. Unconscionability.**

41 (a) With respect to a consumer credit sale, if the court finds the agreement or any clause
42 of the agreement to have been unconscionable at the time it was made, the court may refuse to
43 enforce the agreement, or it may enforce the remainder of the agreement without the
44 unconscionable clause, or it may so limit the application of any unconscionable clause as to
45 avoid any unconscionable result.

46 (b) If it is claimed or appears to the court that the agreement or any clause thereof may
47 be unconscionable, all parties shall be afforded a reasonable opportunity to present evidence as
48 to its setting, purpose and effect to aid the court in making its determination.

49 (c) As used in this section, "unconscionable" shall mean totally unreasonable under all
50 of the circumstances. (1971, c. 796, s. 1.)
51

1 **§ 25A-44. Remedies and penalties.**

2 In addition to remedies hereinbefore provided, the following remedies shall apply to
3 consumer credit sales:

- 4 (1) In the event that a consumer credit sale contract requires the payment of a
5 finance charge not more than two times in excess of that permitted by this
6 Chapter, the seller or an assignee of the seller shall not be permitted to
7 recover any finance charge under that contract and, in addition, the seller
8 shall be liable to the buyer in an amount that is two times the amount of any
9 finance charge that has been received by the seller, plus reasonable attorney's
10 fees incurred by the buyer as determined by the court. However, if the
11 requirement of an excess charge results from an accidental or good faith
12 error, the seller shall be liable only for the amount by which the finance
13 charge exceeds the rates permitted by this Chapter.
- 14 (2) In the event that a consumer credit sale contract requires the payment of a
15 finance charge more than two times that permitted by this Chapter, the
16 contract shall be void. The buyer may, at his option, retain without any
17 liability any goods delivered under such a contract and the seller or an
18 assignee of the rights shall not be entitled to recover anything under such
19 contract.
- 20 (3) In the event the seller or an assignee of the seller (i) shall fail to make any
21 rebate required by G.S. 25A-32 or G.S. 25A-36, (ii) shall charge and receive
22 fees or charges in excess of those specifically authorized by this Chapter, or
23 (iii) shall charge and receive sums not authorized by this Chapter, the buyer
24 shall be entitled to demand and receive the rebate due and excessive or
25 unauthorized charges. Ten days after receiving written request therefor, the
26 seller shall be liable to the buyer for an amount equal to three times the sum
27 of any rebate due and all improper charges which have not been rebated or
28 refunded within the 10-day period.
- 29 (4) The knowing and willful violation of any provision of this Chapter shall
30 constitute an unfair trade practice under G.S. 75-1.1.
- 31 (5) Any buyer injured by any violation of G.S. 25A-2(e) may bring an action for
32 recovery of damages, including reasonable attorney's fees. (1971, c. 796, s.
33 1; 1983, c. 686, s. 4.)

34
35 **§ 25A-45. Conflict with Consumer Credit Protection Act.**

36 In all cases of irreconcilable conflict between the provisions of this Chapter and the
37 provisions of the Consumer Credit Protection Act, the provisions of the Consumer Credit
38 Protection Act shall control. (1971, c. 796, s. 3.)