

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 709
Judiciary II Committee Substitute Adopted 5/5/93

Short Title: Layaway Contracts.

(Public)

Sponsors:

Referred to:

April 6, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE TO CLARIFY AND
3 MODIFY THE LAW ON LAYAWAY CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 25-2-106 reads as rewritten:

6 "§ 25-2-106. Definitions: 'Contract'; 'agreement'; 'contract for sale'; 'sale';
7 'present sale'; 'layaway contract'; 'conforming' to contract;
8 'termination'; 'cancellation.'

9 (1) In this article unless the context otherwise requires 'contract' and 'agreement'
10 are limited to those relating to the present or future sale of ~~goods~~goods, including
11 layaway contracts. 'Contract for sale' includes both a present sale of goods and a
12 contract to sell goods at a future time. A 'sale' consists in the passing of title from the
13 seller to the buyer for a price (G.S. 25-2-401). A 'present sale' means a sale which is
14 accomplished by the making of the contract. A 'layaway contract' means any contract
15 for the sale of goods in which the seller agrees with the purchaser, in consideration for
16 the purchaser's payment of a deposit, down payment, or similar initial payment, to hold
17 identified goods for future delivery upon the purchaser's payment of a specified
18 additional amount, whether in installments or otherwise.

19 (2) Goods or conduct including any part of a performance are 'conforming' or
20 conform to the contract when they are in accordance with the obligations under the
21 contract.

22 (3) 'Termination' occurs when either party pursuant to a power created by
23 agreement or law puts an end to the contract otherwise than for its breach. On

1 'termination' all obligations which are still executory on both sides are discharged but
2 any right based on prior breach or performance survives.

3 (4) 'Cancellation' occurs when either party puts an end to the contract for breach
4 by the other and its effect is the same as that of 'termination' except that the cancelling
5 party also retains any remedy for breach of the whole contract or any unperformed
6 balance."

7 Sec. 2. G.S. 25-2-718 (2) reads as rewritten:

8 "(2) Where the seller justifiably withholds delivery of goods because of the
9 buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his
10 payments exceeds

11 (a) the amount to which the seller is entitled by virtue of terms liquidating the
12 seller's damages in accordance with subsection (1), or

13 (b) in the absence of such terms, twenty per cent (20%) of the value of the total
14 performance for which the buyer is obligated under the contract or five hundred dollars
15 (\$500.00), whichever is ~~smaller.~~ smaller, or

16 (c) at the election of the seller in the case of a layaway contract, the aggregate
17 payments received by seller from buyer under the contract or fifty dollars (\$50.00),
18 whichever is smaller."

19 Sec. 3. This act is effective upon ratification.