

Special Topics in Small Claims

Contracts

Module 5: Common Defenses

Objectives --By the end of this session, you will be able to:

- Recognize and respond appropriately to violations of the Retail Installment Sales Act; and
- Correctly detect and evaluate the most common potential defenses in a breach of contract action.

Resource Materials—The following resource materials will be used for this section:

- A Basic Introduction to Contract Law (Module 1)
- *Small Claims Law*, pp. 67 – 81
- Revision of Table 1, p. 96, of *Small Claims Law*
- GS Ch. 25A: The Retail Installment Sales Act
- A Magistrate’s Guide to GS Ch. 25A: The Retail Installment Sales Act
- Common Defenses in Contracts Cases: A Notetaking Outline

MAXIMUM ALLOWABLE INTEREST RATES ON LOANS IN NORTH CAROLINA

Type of Lender	Amount Lent	Security	Interest Rate	Other Allowable Charges
Bank, credit union, savings and loans, and individual (G.S. 24-1.1, -10.1)	\$25,000 or less	Any property (but not home loan secured by first deed of trust)	Greater of 16% or noncompetitive rate for U.S. Treasury bills with six-month maturity plus 6%. Rate will be set monthly by Comm'r of Banks.	Late payment charge up to 4% of outstanding balance. Prepayment fee of 2% if prepaid within 3 years of 1st payment for contract loan. Fee of ¼% of 1% of balance for modification of loan.
Bank, credit union, savings and loans, and individual (G.S. 24-11)	Extension of credit on open-end credit or revolving credit charges.	Any property if charge 1¼% or less. No property if over 1¼%	1½% per month (18% per year) on unpaid balance	Annual charge of no more than \$24. Late pyt fee of \$5 for unpaid balance less than \$100 and \$10 for balance of \$100 or more
Finance company-- (G.S. 53-176, -177, -180, -189, G.S. 25A-30)*	\$15,000 or less	Any personal property	Prejudgment: Loan of \$10,000 or less--30% per year on unpaid principal to \$4,000, 24% on unpaid principal between \$4,000 & \$8,000, and 18% per year on the remainder. Loan of more than \$10,000, 18% per year. Postjudgment: 8%	Processing fee not to exceed \$25 for loans up to \$2,500 and 1% for loans over \$2,500, but max. of \$40. \$15 late fee. Deferral charge of 1 ½ % of amount deferred. Fee for purchase of insurance policy in lieu of recording.

PENALTIES:

Banks, credit union, individuals: Knowingly charging greater rate of interest than allowable forfeits entire interest on loan and borrower may recover twice the amount of interest actually paid. (G.S. 24-2)

Finance companies: Misdemeanor with punishment of \$500 to \$2,500 fine and/or imprisonment for 4 months to 2 years. Also contract is void unless violation result of accidental or bona fide error of computation. Lender has no right to collect or retain any principal or interest with respect to the loan. Borrower would have an action against the lender to recover any principal or interest paid. (G.S. 153-166)

Note additional requirements for loans to certain military service members. (G.S. 53-180.1)

A Magistrate's Guide to GS Ch. 25A:

The Retail Installment Sales Act

This guide is intended to assist a magistrate in navigating GS Ch. 25A; it is not intended as a substitute for the statute or as a stand-alone resource.

Part 1: §§ 25A-1 to 25A-13

The first sections of the RISA address what sorts of contracts the statute does and does not cover, and provides important definitions for terms used throughout the Act. Essentially, RISA regulates consumer purchases of goods or services which are financed by the seller.

RISA does not apply to

- Direct loans
- Purchases made with a major credit card
- Installment purchases financed by a seller outside of the regular course of business
- Purchases by business entities not a natural person
- Contracts involving 4 or fewer installment payments and no finance charge
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RISA does apply to

- Some rent-to-own” contracts, provided the requirements of GS 25A-2(b) are satisfied
- Service contracts, including funeral services, education, and hospital accommodations. GS 25A-5(a).

A *finance charge* includes loan fees, fees for credit reports, carrying charges, and other charges related to the seller's provision of credit, in addition to charges denominated as interest. GS 25A-8.

The Act distinguishes between a *revolving charge account contract* (GS 25A-11) and a *consumer credit installment sale contract* (GS 25A-12).

Part 2: §§ 25A-14 to 25A-23

These sections relate to the terms of an agreement subject to RISA: some terms are required, while others are prohibited. The most important sections are:

- Limitations on finance charges, depending on the kind of contract and the amount of money financed. GS 25A-14, -15.
- Authorization of higher charges for motor vehicles, depending on the age of the vehicle. GS 25A-15.
- Specific rules about credit life insurance and similar insurance coverage; GS 25A-17, -36
- Prohibition of confessions of judgment and warranty disclaimers. GS 25A-18, -20
- Restrictions on the seller's right to accelerate the debt. GS 25A-19
- Requirements for attorneys' fees. GS 25A-21
- Restrictions on types of collateral in which seller may take security interest. GS 25A-23.

Part 3: §§ 25A-27 to 25A-37.

These sections regulate business practices that have sometimes historically been used to exploit unwary or unsophisticated purchasers.

- FIFO rule applies to application of payments in multiple-sale situation. GS 25A-27
- Requirement that contracts be written, dated, and signed by buyer. GS 25A-28.
- Restrictions on fees for late payment and deferral of payment date, GS 25A-29, -30.
- Requirements related to buyer's early payment. GS 25A-32, 32.1.
- Establishing maximum term of agreement, depending on amount financed. GS 25A-33.
- Prohibiting balloon payments. GS 25A-34.
- Requiring seller to provide statements of account. GS 25A-35.
- Prohibiting referral sales (in which price is reduced if buyer procures other customers) in all consumer contracts. GS 25A-37.

Part 4: §§ 25A-38 to 25A-42.

These sections of the Act contain specific rules and regulations pertaining to home solicitation sales, with particular emphasis on "honeymoon period" in which buyer has the right to cancel.

Part 5: §§ 25A-43 to 25A-44.

The last part of the Act addresses the consequences of RISA violations and gives a court substantial discretion in determining whether to enforce an agreement which is extremely unfair.

- If a court determines that a portion of a consumer credit sale is "totally unreasonable under all of the circumstances" after giving all parties an opportunity to present relevant evidence on the point, the court may refuse to enforce the entire agreement or that portion of the agreement, or may rewrite the clause to avoid an unconscionable result. GS 25A-43.
- Finance charge too high (but less than twice the maximum), but seller was acting in good faith, charge reduced to allowable amount. GS 25A-44(1).
- Finance charge too high (but less than twice the maximum), and seller was not acting in good faith, no charge allowed, and seller may be required to pay double amount of finance charged paid by buyer plus attorney fees. GS 25A-44(1).
- Finance charge more than twice allowable maximum, contract is void, and buyer can retain goods. GS 25A-44(2).
- Failure to provide pre-payment rebate or charging unauthorized fees allows buyer to demand amount from seller. Ten days after seller receives demand, buyer entitled to recover three times amount not refunded within ten day period. GS 25A-44(3)
- Knowing violation of RISA is unfair practice under GS 75-1.1, allowing treble damages and attorney fees. GS 25A-44(4).

What Small Claims Magistrates Need to Know about RISA's Rules: The Big Ten

1. Contract must be written, dated, and signed by the buyer.
2. Amount of finance charge (defined broadly) limited, depending on amount of purchase.
3. Duration of obligation limited, depending on amount of purchase.
4. Fees for default or payment deferral limited.
5. Prepayment of obligation always permitted, and entitles buyer to rebate.
6. Seller is required to provide buyer with receipts for payment and regular complete statements of account.
7. A buyer's claims and/or defenses apply to assignees of seller
8. Written modification or disclaimer of express warranty made by seller and relied on by buyer prohibited.
9. FIFO requirement applies to allocation of payments in case of subsequent financed purchases.
10. Reasonable attorney's fee allowed to prevailing party.

NC Consumer Finance Act

GS Ch. 53, Art. 15, the North Carolina Consumer Finance Act, governs loans made by finance companies for \$15,000 or less. These companies are required to be licensed by the Commissioner of Banks. The CFA regulates the practices of these companies, including the interest rates and other fees which may be imposed on borrowers.

Violation of the CFA by an officer, agent, or employee of a covered finance company is a Class 1 misdemeanor. In addition, a violation which is not an accidental or “bona fide error of computation” results in the associated contract being void, with the borrower entitled to recover all money paid to the company.

GS 53-173 contains the following rules about Ch. 53 loans:

1. The borrower may not be required to pay interest in advance. In general, interest may not be compounded.
2. Payments must be allocated as follows:
 - a. First, to late fees and other permissible charges;
 - b. Second, to accrued interest.
 - c. Finally to principal
3. Prepayment must be permitted without penalty.
4. Post-judgment interest is limited to 8%.
5. Interest after maturity date of a loan is limited to 8%.

GS 53-176 contains the following rules about Ch. 53 loans:

1. Loans must not exceed \$15,000;
2. The term of the loan must be between 12-96 months;
3. Must not be secured by real property;
4. Must be repayable in substantially equal consecutive monthly payments;
5. Interest for a loan up to \$10,000:
 - a. 30% of unpaid principal up to \$4,000;
 - b. 24% of unpaid principal between \$4,000 and \$8,000;
 - c. 18% on remainder.
 - d. But lender must determine single simple interest rate that will yield this amount, equalized over the life of the loan.
6. 18% interest on a loan exceeding \$10,000.

Other allowable fees:

1. Borrower may also be charged processing fee, no more than twice in a 12-month period, of
 - a. \$25 for loan up to \$2500;
 - b. 1% (maximum \$40) for loans exceeding \$2500,
2. Late fee, if
 - a. Payment is at least 10 days late;
 - b. Up to \$15
 - c. One time per late payment
 - d. Not for payment which “would have been timely and sufficient” but for allocation to previous late fee
3. Deferral charges
4. Lender entitled to recover court costs “and other bona fide costs incurred in the course of bringing the action.”
5. Attorney fees not allowed.

NOTE: The Act imposes additional requirements for loans made to members of the military. In addition, this brief summary does not address portions of the Act related to multiple loans made over time, or those regulating treatment of payments made pursuant to an insurance policy payable in the event of borrower’s default.

16 CFR 444: Credit Practices

§444.1—Definitions

- (a) **Lender.** A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.
- (b) **Retail installment seller.** A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.
- (c) **Person.** An individual, corporation, or other business organization.
- (d) **Consumer.** A natural person who seeks or acquires goods, services, or money for personal, family, or household use.
- (e) **Obligation.** An agreement between a consumer and a lender or retail installment seller.
- (f) **Creditor.** A lender or a retail installment seller.
- (g) **Debt.** Money that is due or alleged to be due from one to another.

. . .

(i) **Household goods.** Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term *household goods*:

- (1) Works of art;
- (2) Electronic entertainment equipment (except one television and one radio);
- (3) Items acquired as antiques; and
- (4) Jewelry (except wedding rings).

(j) **Antique.** Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

. . .

§444.2—Unfair credit practices

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

- (1) Constitutes or contains a . . . confession of judgment . . . or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.
- (2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held,

owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

. . .

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

§444.3 [Relates to unfair or deceptive cosigner practices.]

§ 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, *collecting a debt* means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

Common Defenses in Contracts Cases:

A Notetaking Outline

Defenses to Contract Formation

- ❖ Lack of consideration

- ❖ Lack of consent

- Fraud
- Duress
- Mistake
- Lack of capacity to contract
 - Minors
 - Incompetents
 - Dissolved corporation (sometimes)

Defenses to Contract Enforcement

- ❖ Illegality
- ❖ Statute of Frauds
- ❖ Statute of Limitations
- ❖ Unconscionability
- ❖ Violation of certain consumer protection statutes

Defenses for Nonperformance

- ❖ Impossibility
- ❖ Frustration of Purpose

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

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

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

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

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

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

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

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

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

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

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

§ 25A-4. "Goods" defined.

(a) "Goods" means all things which are moveable at the time of the sale or at the time the buyer takes possession, including goods not in existence at the time the transaction is entered into and goods which are furnished or used at the time of sale or subsequently in modernization, rehabilitation, repair, alteration, improvement or construction on real property so as to become a part thereof whether or not they are severable therefrom. "Goods" also includes merchandise certificates.

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

§ 25A-5. "Services" defined.

(a) "Services" includes:

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

(b) "Services" does not include:

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

§ 25A-6. "Seller" defined.

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

§ 25A-7. "Cash price" defined.

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

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

§ 25A-8. "Finance charge" defined.

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

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

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

(c) With respect to a transaction in which the seller acquires a security interest in real property, finance charge does not include charges excluded by section 226.4(e) of Regulation Z promulgated pursuant to section 105 of the Consumer Credit Protection Act. (1971, c. 796, s. 1.)

§ 25A-9. "Amount financed" defined.

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

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

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

§ 25A-10. "Official fees" defined.

"Official fees" means:

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

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

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

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

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

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

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

§ 25A-14. Finance charge rates and service charge for revolving charge account contracts.

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

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

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

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

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

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

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

(4) Eighteen percent (18%) per annum where the amount financed is three thousand dollars (\$3,000) or greater, except that a minimum finance charge of five dollars (\$5.00) may be imposed.

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

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

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

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

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

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

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

§ 25A-16. Transfer of equity.

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

§ 25A-17. Additional charges for insurance.

(a) As to revolving charge account contracts defined in G.S. 25A-11, in addition to the finance charges permitted in G.S. 24-11(a), a seller in a consumer credit sale may contract for and receive additional charges or premiums (i) for insurance written in connection with any consumer credit sale, against loss of or damage to property securing the debt pursuant to G.S. 25A-23, provided a clear, conspicuous and specific statement in writing is furnished by the seller to the buyer setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the insurer through which the insurance is obtained; (ii) for credit life, credit accident and health, or credit unemployment insurance, written in connection

with any consumer credit sale, provided the insurance coverage is not required by the seller and this fact is clearly disclosed to the buyer, and any buyer desiring such insurance coverage gives affirmative indication of such desire after disclosure of the cost of such insurance.

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

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

§ 25A-18. Confession of judgment.

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

§ 25A-19. Acceleration.

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

§ 25A-20. Disclaimer of warranty.

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

§ 25A-21. Attorneys' fees.

With respect to a consumer credit sale:

- (1) In the event that the seller institutes a suit and prevails in the litigation and obtains a money judgment, the presiding judge shall allow a reasonable attorney's fee to the duly licensed attorney representing the seller in such suit, said attorney's fee to be taxed to the buyer as part of the court costs.

- (2) In the event that a seller instituting suit does not prevail in the litigation, the presiding judge shall allow a reasonable attorney's fee to the duly licensed attorney representing the buyer in such suit, said attorney's fee to be taxed to the seller as a part of the court costs. (1971, c. 796, s. 1.)

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

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

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

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

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

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

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

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

(d) The provisions of G.S. 24-11(a), limiting the taking of a security interest in property under an open end credit or similar plan, shall not apply to revolving charge account contracts regulated by this Chapter; provided, however, the application of payments rule set out in G.S. 25A-27 shall apply to such contracts; provided further, that in any action initiated by the seller for the possession of such property, a judgment for the possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-105(6)) for which the cash price was one hundred dollars (\$100.00) or more. (1971, c. 796, s. 1; 1977, c. 508; c. 789, s. 1.)

§ 25A-24. Identification of instruments of indebtedness.

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

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

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

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

NOTICE

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

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

§ 25A-26. Substitution of collateral.

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

§ 25A-27. Application of payments.

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

- (1) The entire amount of all payments made prior to such subsequent purchase shall be deemed to have been applied to the previous purchases, and
- (2) Unless otherwise designated by the buyer, the amount of down payment on such subsequent purchase shall be applied to the subsequent purchase, and

- (3) All subsequent payments shall be applied first to finance charges and then to principal. The application of payments to principal shall be applied to the various purchases on the basis that the first sums paid in shall be deemed applied to the oldest purchase or obligation assumed to satisfy the original debt secured by the purchase money security interest until payment is received in full and other payments shall be applied accordingly to all other purchases in the order that each obligation is assumed. At the time any original debt would have been satisfied by subsequent payments, the purchase money security interest in said purchase shall be extinguished.

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

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

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

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

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

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

§ 25A-29. Default charges.

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

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

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

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

§ 25A-30. Deferral charges.

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

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

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

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

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

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

§ 25A-31. Consolidation and refinancing.

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

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

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

§ 25A-32. Rebates on prepayment.

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

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

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

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

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

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

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

§ 25A-33. Terms of payments.

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

- (1) Forty-two months, if the amount financed is less than one thousand five hundred dollars (\$1,500), or
- (2) Sixty-four months, if the amount financed is one thousand five hundred dollars (\$1,500) or greater, but less than two thousand five hundred dollars (\$2,500), or
- (3) One hundred and twenty-two months, if the amount financed is two thousand five hundred dollars (\$2,500) or greater, but less than five thousand dollars (\$5,000), or

- (4) One hundred and eighty-two months, if the amount financed is five thousand dollars (\$5,000) or greater, but less than ten thousand dollars (\$10,000), or
- (5) As the contract provides, if the amount financed is ten thousand dollars (\$10,000) or greater.

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

§ 25A-34. Balloon payments.

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

§ 25A-35. Statement of account.

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

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

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

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

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

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

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

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

§ 25A-37. Referral sales.

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

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

"Home-solicitation sale" means a consumer credit sale of goods or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include

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

§ 25A-39. Buyer's right to cancel.

(a) Except as provided in subsection (e) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home-solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase

which complies with G.S. 25A-40, or which complies with the requirements of the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales.

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

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

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

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

(1) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notification of cancellation,

(2) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(3) Unless the buyer returns the goods, if any, to the seller at his expense.

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

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

(a) In a home-solicitation sale the seller must present to the buyer and obtain his signature to a fully completed written agreement or offer to purchase which is in the same language as that principally used in the oral sales presentation and which designates as the date of the transaction the date on which the buyer actually signs and which contains the name and address of the seller, and which contains in immediate proximity to the space reserved for the signature of the buyer in bold face type of a minimum size of 10 points, a statement in substantially the following form:

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

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

"Notice of Cancellation

(enter date of transaction)

(date)

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

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

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

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

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

(name of seller)

at _____,
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction.

(date)

(Buyer's Signature)"

(1971, c. 796, s. 1; 1975, c. 805, s. 2.)

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

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

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

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

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

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

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

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

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

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

§ 25A-43. Unconscionability.

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

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

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

§ 25A-44. Remedies and penalties.

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

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

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

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

Is It RISA?

Put a check next to the contracts below if they fall within the scope of the Retail Installment Sales Act:

- You accept the kind invitation of your child's college to pay this semester's tuition in four easy installment payments for a \$35 fee.
- You buy a used car from Fast Eddie's Used Cars, and you accept Fast Eddie's kind invitation to finance your purchase through Fast Eddie's Financing, which is right next door.
- You borrow \$5000 from the Credit Union.
- You borrow \$5000 from the Credit Union as part of its "Used Vehicle Purchase Plan" and spend the money on a used vehicle from Fast Eddie's.
- You charge TicketMaster tickets to your VISA card.
- You take out a loan from Friendly Finance Company.
- As part of your small, on-the-side business, you buy 6 boxes of widgets, financed through the seller, for resale at the flea market.
- Tommy's Tires LLC. finances new furniture for the customer waiting room through the seller, Friendly Furniture.
- You use your Sears charge card to buy a new washing machine at Sears.
- You delay paying for your new computer by qualifying for a same-as-cash financing deal offered by the seller—no financing charge!
- You rent a really nice TV and living room furniture through Rent-It-Here. After 36 months, the stuff will belong to you, upon payment of a small fee.
- You buy a washing machine at Sears, but instead of using your Sears charge card, you take advantage of Sears' offer to help arranging credit through General Credit Co.