

# 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.

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(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.

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§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.

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**(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.