

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 796
HOUSE BILL 156

AN ACT TO REGULATE INSTALLMENT SALES AND SERVICES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are hereby amended by inserting therein a new Chapter, Chapter 25A, to read as follows:

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, 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).

"§ 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 \$25,000.

(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.

(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 25% of the voting stock in each corporation is a consumer credit sale within the terms of this Chapter.

"§ 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.

"§ 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.

"§ 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. 58-55 through G.S. 58-61.2; or (3) insurance provided by an insurer that is licensed to do business in this State.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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).

"§ 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.

"§ 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.

"§ 25A-14. Finance charge rates for revolving charge account contracts. — (a) The finance charge rate for a consumer credit sale made pursuant to a revolving charge account contract may not exceed the rates provided for revolving credit by G.S. 24-11(a).

(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(a).

"§ 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) 22% per annum where the amount financed is less than \$1,500,
- (2) 20% per annum where the amount financed is \$1,500 or greater, but less than \$2,000,
- (3) 18% per annum where the amount financed is \$2,000 or greater, but less than \$3,000,
- (4) 16% per annum where the amount financed is \$3,000 or greater, but less than \$5,000, and
- (5) 14% per annum where the amount financed is \$5,000 or greater, except that a minimum finance charge of \$5.00 may be imposed.

(c) Notwithstanding the provisions of subsection (b) of this section, a finance charge rate not to exceed 29% per annum may be imposed in a consumer credit installment sale

contract repayable in not less than 6 installments for a self-propelled motor vehicle which is three model years or older in age at the time of the sale and the amount financed does not exceed \$1,500, except that a minimum finance charge of \$15.00 may be imposed.

(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 12% 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.

"§ 25A-16. Transfer of equity. — If a buyer voluntarily transfers his rights in collateral pursuant to G.S. 25-9-311 and the seller agrees, the seller may impose a transfer fee not to exceed 10% of the unpaid balance of the debt or \$35.00, whichever is less.

"§ 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 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.

(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, 1026 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, accident, health or loss of income 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.

"§ 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.

"§ 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.

"§ 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.

"§ 25 A-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.

"§ 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. 25-9-404 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.

"§ 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 \$300.00,
- (4) real property to which the property sold is affixed, if the amount financed is more than \$1,000, and
- (5) a self-propelled motor vehicle to which repairs are made, if the amount financed exceeds \$100.00.

(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.

"§ 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 a 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.

"§ 25A-25. Defenses. — (a) In a consumer credit sale, if the debt is secured in whole or in part by a security interest in real property, a buyer may assert against the seller, assignee of the seller, or other holder of the instrument or instruments of indebtedness, any defenses available against the original seller, and the buyer may not waive these defenses in connection with a consumer credit sale transaction.

(b) 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 defenses available against the original seller, and the buyer may not waive these defenses in connection with a consumer credit sale transaction, EXCEPT that in a consumer credit sale of personal property, the buyer shall be considered to have waived his defenses against an assignee of the seller who acquires the instrument or instruments of indebtedness in good faith and for value, if the buyer, following delivery of the property and after receiving from the assignee separate written notice of the waiver and the assignment containing the name and address of the assignee, fails for 30 days to notify the assignee of any defense against the seller; PROVIDED, HOWEVER, a buyer may not waive defenses for fraud in the inducement or for failure of consideration.

"§ 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 10% of the unpaid balance of the debt or \$15.00, whichever is less.

"§ 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 entirely to such subsequent purchase, and
- (3) all subsequent payments shall be applied to the various purchases in the same proportion or ratio as the original cash prices of the various purchases bear to one another, except that, where the amount of the payments is increased after the subsequent purchase, the seller shall have the option to apply the amount of the increase to the subsequent sale and the balance of the subsequent payments to all sales on a cash price pro rata basis.

(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 to the various contracts in the same proportion or ratio as the original cash prices in the various contracts bear to one another, except that, where the amount of the installment payments is increased after the consolidation the seller shall have the option to apply the amount of the increase to the contract last executed and the balance of subsequent payments to all contracts on a cash price pro rata basis.

"§ 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.

"§ 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 h% of the installment past due or \$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.

"§ 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 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.

"§ 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.

"§ 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 10% of the unpaid balance, not to exceed \$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 \$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.

"§ 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) 42 months, if the amount financed is less than \$1,500, or
- (2) 64 months, if the amount financed is \$1,500 or greater, but less than \$2,500, or
- (3) 122 months, if the amount financed is \$2,500 or greater, but less than \$5,000, or

- (4) 182 months, if the amount financed is \$5,000 or greater, but less than \$10,000, or
- (5) as the contract provides, if the amount financed is \$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.

"§ 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 10% (except the final payment may be 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.

"§ 25A-35. Statement of account. — (a) One time during each twelve 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.

(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.

"§ 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 not yet due, 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.

"§ 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.

"§ 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 pre-existing 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 utilized in connection with funeral services.

"§ 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.

(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 ten 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.

"§ 25A-40. Form of agreement or offer, statement of buyer's rights. — (a) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an urgency or an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date

on which the buyer actually signs and contains a statement of the buyer's rights which complies with subsection (b) of this section.

- (b) The statement must
- (1) appear under the conspicuous caption: 'BUYER'S RIGHT TO CANCEL', and
 - (2) read as follows: 'If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that (i) you do not want the goods or services, (ii) must be mailed before midnight of the third business day after you sign this agreement and (iii) must state that you are prepared to return any goods received in substantially the same condition as received. The notice must be mailed to:

(Insert name and mailing address of seller)

If you cancel, the seller may keep all or part of your cash down payment.'

If the seller provides the buyer with a copy of the statement as provided herein, notice of cancellation by the buyer not in substantial compliance with the foregoing shall be of no effect.

"§ 25A-41. Restoration of down payment; retention of goods; cancellation fee. — (a) Except as provided in this section, within 10 days after a home solicitation sale has been cancelled 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) The seller may retain as a cancellation fee 1% of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer lawfully avoids the sale on any ground independent of his right to cancel or revoke his offer as provided by the provisions of G.S. 25A-39(a), the seller is not entitled to retain a cancellation fee.

(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.

"§ 25A-42. Duty of buyer, 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 cancelled or an offer to purchase revoked, the buyer, upon demand, must tender to the seller - any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence if the seller does not have a place of business within 25 miles of the residence of the buyer. If the seller fails to demand possession of goods within a reasonable time after proper cancellation or revocation, and tender, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

(b) The buyer has a 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 except the cancellation fee provided in G.S. 25A-41(c).

"§ 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.

"§ 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 ten 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."

Sec. 2. This act shall apply to contracts and transactions entered into on and after January 1, 1972.

Sec. 3. In all cases of irreconcilable conflict between the provisions of this act and the provisions of the Consumer Credit Protection Act, the provisions of the Consumer Credit Protection Act shall control.

Sec. 4. Except as herein otherwise provided, all laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 5. This act shall be effective on and after January 1, 1972.

In the General Assembly read three times and ratified, this the 8th day of July, 1971.