

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 340
SENATE BILL 709

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE TO CLARIFY AND
MODIFY THE LAW ON LAYAWAY CONTRACTS.

The General Assembly of North Carolina enacts:

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

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

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

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

(3) 'Termination' occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On 'termination' all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

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

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

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

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

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

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

Sec. 3. This act becomes effective October 1, 1993.

In the General Assembly read three times and ratified this the 14th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives