

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 125
Judiciary II Committee Substitute Adopted 4/5/93
Third Edition Engrossed 4/7/93

Short Title: Pur. Money Refi/FIFO Consum. Credit Sales.

(Public)

Sponsors:

Referred to:

February 11, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PURCHASE MONEY SECURITY INTEREST CONTINUES WHEN THE UNDERLYING AGREEMENT IS MODIFIED WITH SAME CREDITOR AND APPLICATION OF PAYMENTS IN A CONSUMER CREDIT SALE IS ON THE BASIS THAT THE FIRST PAYMENTS SHALL BE APPLIED TO THE FIRST PURCHASE TO SATISFY THAT AND OTHER DEBTS ACCORDINGLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-107 reads as rewritten:

"§ 25-9-107. Definitions: 'Purchase money security interest.'

A security interest is a 'purchase money security interest' to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price;

or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

A purchase money security interest under this section will continue in the collateral when the underlying security agreement is refinanced or modified with the same creditor."

Sec. 2. G.S. 25A-27 reads as rewritten:

"§ 25A-27. Application of payments.

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

6 (1) The entire amount of all payments made prior to such subsequent
7 purchase shall be deemed to have been applied to the previous
8 purchases, and

9 (2) Unless otherwise designated by the buyer, the amount of down
10 payment on such subsequent purchase shall be applied to the
11 subsequent purchase, and

12 ~~(3) All subsequent payments shall be applied to the various purchases in
13 the same proportion or ratio as the original cash prices of the various
14 purchases bear to one another, except that, where the amount of the
15 payments is increased after the subsequent purchase, the seller shall
16 have the option to apply the amount of the increase to the subsequent
17 sale and the balance of the subsequent payments to all sales on a cash
18 price pro rata basis.~~

19 (3) All subsequent payments shall be applied to the various purchases on
20 the basis that the first sums paid in shall be deemed applied to the
21 oldest purchase or obligation assumed to satisfy the original debt
22 secured by the purchase money security interest until payment is
23 received in full and other payments shall be applied accordingly to all
24 other purchases in the order that each obligation is assumed. At the
25 time any original debt would have been satisfied by subsequent
26 payments, the purchase money security interest in said purchase shall
27 be extinguished.

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

32 (1) The entire amount of all payments received prior to the consolidation
33 shall be applied to the respective contracts under which the payments
34 were made, and

35 ~~(2) All subsequent payments shall be applied to the various contracts in
36 the same proportion or ratio as the original cash prices in the various
37 contracts bear to one another, except that, where the amount of the
38 installment payments is increased after the consolidation the seller
39 shall have the option to apply the amount of the increase to the
40 contract last executed and the balance of subsequent payments to all
41 contracts on a cash price pro rata basis.~~

42 (2) All subsequent payments shall be applied to the various purchases on
43 the basis that the first sums paid in shall be deemed applied to the
44 oldest purchase or obligation assumed to satisfy the original debt

1 secured by the purchase money security interest until payment is
2 received in full and other payments shall be applied accordingly to all
3 other purchases in the order that each obligation is assumed. At the
4 time any original debt would have been satisfied by subsequent
5 payments, the purchase money security interest in said purchase shall
6 be extinguished."

7 Sec. 3. This act becomes effective July 1, 1993.