Home Solicitation Sales--The Legislative Response to a "Cooling-Off" Period

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HOME SOLICITATION SALES—THE LEGISLATIVE RESPONSE TO A “COOLING-OFF” PERIOD

I. INTRODUCTION

Door-to-door selling inherently creates many problems for the consumer who is solicited in his own home. The seller can exert greater pressure in his selling effort by his intrusion into the buyer's home environment. A consumer can leave an aggressive salesman in the store, but when the salesman is in the consumer's home, he is not afforded an easy escape route. In a home sale the consumer is further disadvantaged in not being able to shop around and compare other retail prices and competing products. Finally the consumer at home has the tendency to treat the salesman more as a guest than a vendor.

In addition to these inherent disadvantages to the consumer solicited in his home, the problem of the unethical salesman is of major concern and was well stated in the Senate Committee on Commerce's Report on S. 1599, the “Consumer Credit Protection Act.” “[N]o individual preys upon the elderly, the poor, the ignorant, the gullible, or the softhearted as much as the unscrupulous door-to-door salesman.” The Report classified these unscrupulous sellers into two categories: (1) the one shot, hit and run seller, which is the most common, and (2) the salesman whose goal is to cultivate a

2. 76 Yale L. J. 745, 780 (1967).
4. Id.
6. 15 U.S.C.A. §1601 et seq. This act is more commonly referred to as “Truth-in-Lending.” For a comment on the application of this act in the area of home solicitation sales, see note 31 infra.
8. Id.
9. The report explains the approach used by the hit-and-run salesman: His mission is to sell a story, not a product, so his pitch and approach are carefully rehearsed and perfected so as to disarm his
permanent customer, usually in a lower income area. The Senate Committee found that fifteen percent of the consumer complaints in Chicago and forty percent of those received by the Rhode Island Consumer's Council dealt with door-to-door sales. Likewise, officials at Project Moneywise in the Department of Health, Education and Welfare reported to the Senate Committee that in low income areas they had studied, door-to-door salesmen charge five to six times the amount that local merchants charge for the same consumer goods. Even though the majority of door-to-door salesmen perform a useful and constructive function, the report concluded that such techniques were common in home-solicited sales and consequently there was an urgent need for regulation.

Similarly, in a recent study of consumer credit problems in South Carolina, many of the common abuses which have faced the home buyer were catalogued: (1) high pressure; unsuspecting victim. He does not hesitate to ply on sympathy, shame, or the buyer's conscience, and to capitalize on the ignorance or lack of understanding of certain customers, the language difficulty of the newly arrived immigrant, the confusion of the harried housewife, or even the fear of the elderly lady or single girl living alone, in order to make his sale.

S. REP. NO. 1417 at 2.

10. The techniques of the salesman in the second group are well characterized in the report. He cultivates a permanent customer, [B]y instilling in the customer a feeling of personal loyalty subtly underscored by a sense of obligation, again rather than emphasizing the virtues of his product. His apparent concern with the customer's personal problems, his 'friendly' weekly calls, which oddly enough, are also convenient for collections, installments, and pushing new products, and his occasional favors, frequently merely delaying the collection of an installment, are all designed to establish this special rapport. Nevertheless, many purchasers come to regret these dealings when they subsequently realize how much his merchandise has actually cost them.

S. REP. NO. 1417 at 2.

11. S. REP. NO. 1417 at 3.

12. Id.

13. Id.

14. S.C. LEG. COMM. TO STUDY THE UNIFORM CONSUMER CREDIT CODE, SUMMARY REPORT OF FINDINGS OF CONSUMER CREDIT ABUSES, exhibit A, at 24-39 (1970). The report also dealt with consumer credit abuses in other than the home sales area, however a discussion of those findings are beyond the scope of this paper.
(2) outright fraud and deceit; (3) goods and services grossly overpriced in relation to their value; (4) goods and services contracted for, but never delivered; (5) free gift come on; (6) the bait and switch tactic; and (7) phony contests. Many variations of these tactics are used in the sale of a broad range of consumer goods, from aluminum siding to magazines.

The fact that door-to-door sales are on the increase makes the need to protect the consumer from such abuses even more apparent. It was estimated in 1967 that in-home sales produce an annual income of 28 billion dollars.

Thus recognizing the serious problems existent in "home solicitation sales," the question then arises as to what type of solution will best counteract the effects of abusive salesmanship and meet the needs of the home consumer. From the con-

15. Id. at 25. Some of the examples of the complaints of abuses the Committee received pertaining to sales solicited in the home are detailed in the report. In summary form here are several of the actual cases:

(1) A blind Columbia widow, a welfare recipient, was pressured into signing a contract for aluminum siding, after the salesman wormed his way into her home by offering $1,700.00 in aluminum siding free. This resulted in the widow signing a contract for $3,400.00 in aluminum siding, which she unknowingly secured by a mortgage on her home, and the value of the siding was later appraised at only $600.00.

(2) A salesman induced a policeman to sign a contract for a portable swimming pool, obligating him to pay $4,800.00 over the next eight years, only after a 3½ hour sales pitch. The policeman had originally only responded to a newspaper ad which offered a pool for only $799.00, however the salesman was unable to "locate" the advertised model once in the home.

(3) Under a pretense that a new law required indoor toilets, several rural consumers were induced to contract for complete bathrooms, unknowingly mortgaging their home and land. Some of the bathrooms were without the benefit of a septic tank, some were never installed.

16. Id. at 28.

Other complaints in Committee files and in the Better Business Bureau files indicate that there are many variations of the above fly-by-night selling schemes involving magazines, encyclopedias, sewing machines, vacuum cleaners, records, stereos, picture albums, etc., etc., etc. . . . Many involve valuable security interests—others mere contracts.


18. 2 VAL. U. L. REV. 338, 345 & n.7 (1968). This information is in a letter from H. A. Schatz, Marketing Manager of West Bend, Inc., Member of Panel of Advisors for Part 5 of the Uniform Consumer Credit Code, Nov. 2, 1967.
sumer's viewpoint, the obvious convenience of in-home buying coupled with the widespread acceptance of the technique apparent from the size of the industry, would seem to dictate against totally abolishing door-to-door selling. As an alternative to this, the generally accepted course has been toward regulation of the activity through legislative controls.

Early regulation of door-to-door sales amounted to either direct control through restrictive ordinances or indirect control from laws made in related areas. Direct regulation took the form of "Green River" ordinances and "hawker and peddler" statutes. These types of statutes were easily evaded. Legislation indirectly aimed at covering door-to-door salesmen's activities are sales law, the law of negotiable instruments and retail sales acts. Unfortunately, these types of regulation involve many practical difficulties which tend to make them ineffective in regulating door-to-door sales and protecting the home consumer from abuses.

To avoid these practical difficulties, an alternative approach was needed, something to neutralize the effects of high pressure salesmanship and fraudulent practices without abolishing door-to-door selling or greatly increasing the burden

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20. Green River v. Fuller Brush Co., 65 F.2d 112 (10th Cir. 1933). The name came from Green River, Montana. Such municipal ordinances make door-to-door selling of goods unrequested by the buyer a nuisance.


22. 2 Val. U. L. Rev. 338, 339 (1968). The "hawker and peddler" statutes generally exclude local merchants. Modern door-to-door salesmen would rarely come within the definition of a peddler, an itinerant salesman with no permanent place of business. Even though "Green River" ordinances include local merchants, the coverage of the statute can still be thwarted by the salesman giving the consumer a call prior to his visit.


24. See Cuming, Consumer Protection—the Itinerant Seller, 32 Saskatchewen L. Rev. 113, 116 (1967); Note, State Consumer Protection: a Proposal, 53 Iowa L. Rev. 710 (1967). The first article deals with the practical difficulty of jurisdiction and the second one points out the very real problem of litigation costs, being a definite deterrent for action by the consumer under this indirect control approach.
on local policing authorities. The duped home consumer usually does not discover his dilemma until he has had time to reflect on the transaction absent the persuasive pressure of the salesman, read the fine print more carefully, or obtain from friends or family an objective or more knowledgeable opinion about the transaction. Consequently, if the consumer could then rescind his transaction, he could extricate himself from his predicament and negate the effects of the unethical salesman. As a result, the idea of a "cooling-off" period evolved during which the consumer would have the right to rescind the transaction after the door-to-door salesman's departure. This alternative originated with recommendations from the English Committee on Consumer Protection, which Parliament later enacted.26

Similarly there has been a trend in the United States to adopt the alternative of a cooling-off period as a solution to the abuses in door-to-door selling. Our first legislative response to this idea limited the coverage of the "cooling-off" period to home improvement installment contracts. Massachusetts later adopted a more generalized "cooling-off" provision for door-to-door selling in its Retail Installment Sales Act of 1966.28

As the consumer protection trend gained momentum, the National Conference of Commissioners on Uniform State Laws29 drafted the Uniform Consumer Credit Code (UCC).30 Included among the many requirements and limitations in the field of retail credit sales, the proposed code provided for a "cooling-off" period in home solicitation sales.31 Since the

29. The Uniform Commercial Code (UCC) was also a product of this eminent group.
30. The Uniform Consumer Credit Code generally contains provisions of several kinds, aimed at protecting the interests of buyers, debtors and lessees.
31. The UCC has two separate areas in which a "cooling-off" period in home solicitation sales is provided. (1) Section 5.204 provides a right of cancellation in cases where the seller obtains a security interest in real property used as a residence by the buyer, however since this is virtually the same as section 125 of the Federal Consumer Credit Protection Act [see note 6 supra],
drafting of the U3C, several states have adopted it, adding to the general acceptance of a “cooling-off” period.\textsuperscript{32}

In addition, other states have responded affirmatively to the idea of a “cooling-off” period in door-to-door selling although without adopting the U3C. Some legislatures have passed special statutes called “Home Solicitation Sales” acts\textsuperscript{33} or “Consumer Fraud” acts\textsuperscript{34} aimed directly at the problem. Others have enacted retail installment sales acts which incorporate a provision for a cooling-off period in door-to-door selling.\textsuperscript{35}

\textsuperscript{32}section 5.204 will not be discussed herein. (2) Part 5 of article 2 [§§2.501-2.505] provides for a three-day “cooling-off” period, during which time buyer can give seller written notice of cancellation of the agreement. Part 5 of Article 2 of the U3C is the focus of this work.


34. ILL. REV. STAT. tit. 121½ §262B (Supp. 1972); LA. REV. STAT. §9:2711 (Supp. 1970) (this statute will be repealed by Louisiana’s adoption of the U3C provisions on “Home Solicitation Sales” effective Jan. 1, 1973); PA. STAT. ANN. tit. 73 §201-7 (1968); VT. STAT. ANN. tit. 9 §2454 (Supp. 1971); WASH. REV. CODE ANN. §§63.14.154 (Supp. 1971); D.C. CODE §28-3811 (2 CCH CONS. CRED. L. REP., D.C. §6161 (Dec. 17, 1971)).

35. GA. CODE ANN. §§96-906 (1972); HAWAII REV. STAT. §§476-1 to -5 (Supp. 1971); N.H. REV. STAT. ANN. §§361-B:3 (Supp. 1971); N.C. LAWS Ch. 796 (3 CCH CONS. CRED. L. REP., N.C. §6301 (Jan. 1, 1972)).
This recent legislative response and the current draft of the National Consumer Act have produced a variety of approaches to remedying the problem of the abused consumer in door-to-door sales. In evaluating protection for the home consumer, this comment will compare the variations in these legislative responses and attempt to determine which approaches provide greater protection. Special notice will be made of the coverage afforded the consumer in the recently proposed "South Carolina Consumer Credit Code."

II. LEGISLATIVE RESPONSE

In comparing the various legislative responses, the U3C offers a good starting point, because many of the recent statutes seem to be a variation on the theme suggested by the U3C "Home Solicitation Sales" provisions.

A. Scope of the Statutes

The U3C defines a "home solicitation sale" as a consumer credit transaction at the buyer's residence for goods and services. Since "credit sales" must be "payable in installments," cash sales are therefore excluded from coverage. Similarly, some states have followed this approach and limited coverage to only credit transactions. Previously, the U3C limited application of the definition to include only credit sales of $100.00 or more, however the final draft deleted this limitation. Nevertheless, two states followed the earlier U3C approach and included only those credit sales over a specified dollar figure. In addition several states have modi-
fied the credit sale limitation to include those cash sales in which seller extends buyer a loan or secures a loan for him, to enable him to purchase the goods solicited.43

At the same time an increasing number of states permit coverage of cash sales as well as credit sales,44 however restricting cash sales to those under a certain dollar limitation.46 Going one step further, some jurisdictions have abandoned even the pecuniary limitation in their coverage of cash and credit sales.46

Furthermore, the U3C definition of a “home solicitation sale” specifically excludes sales of farm equipment,47 a position other states have followed.48 In the same manner a variety of other goods and services have also been excluded by definition, i.e., insurance;49 motor vehicles;50 goods and services used in connection with funeral services;51 motor boats and accessories;52 horticultural equipment;53 and some professional services.54

In addition to these exclusions, the U3C further limits a “home solicitation sale” so as not to include a sale made “pursuant to a pre-existing revolving charge account”55 or one made “pursuant to prior negotiations between the parties

45. For example, California has a $50.00 limitation and Delaware a $25.00 one.
47. Uniform Consumer Credit Code §2.501.
50. N.C. Laws Ch. 796 (3 CCH Cons. Cred. L. Rep., N.C. §6301 (Jan. 1, 1972)).
51. Id.
at a business establishment at a fixed location where goods or services are offered or exhibited for sale."\textsuperscript{56} Virtually identical provisions have been incorporated into a few of the state statutes.\textsuperscript{57} Generally, however, most states acting in the area have not used this particular limitation.

Finally, if immediate performance is required by a buyer due to an emergency, the U3C prohibits the cancellation period if the seller has substantially performed in good faith.\textsuperscript{58} A similar provision has been adopted in some states\textsuperscript{59} and a few statutes additionally require the buyer to sign a separate statement, acknowledging his waiver of a right of cancellation, before such waiver will be recognized.\textsuperscript{60} On the other hand, New Jersey explicitly forbids buyer's waiver of any of his rights provided for in their statute.\textsuperscript{61}

\textbf{B. Length of "Cooling-Off" Period}

A three-day "cooling-off" period during which buyer can exercise his right to cancel seems to be the view of a majority of states and the U3C. Despite this general acceptance, four states have narrowed the cancellation period to only two days.\textsuperscript{62} As a variation on this theme, South Dakota provides for a fifteen business day "cooling-off" period for home study, correspondence, trade school, and self-improvement courses.\textsuperscript{63}

\textbf{C. Cancellation Fee}

Once the seller has decided to rescind the sale and does so within the permissible time, the U3C allows the seller to retain from buyer's downpayment as a "cancellation fee,"\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{56} Id.
\item \textsuperscript{57} \textit{E.g.}, N.Y. PERS. PROP. LAW §426 (McKinney Supp. 1972).
\item \textsuperscript{58} \textit{Uniform Consumer Credit Code} §2.502(5)(a).
\item \textsuperscript{59} \textit{E.g.}, Md. Code Ann. art. 83 §29 (Cum. Supp. 1972).
\item \textsuperscript{63} S.D. Laws H.B. No. 527 (3 CCH CONS. CRED. L. REP., S.D. ¶6151 (July 1, 1971)).
\item \textsuperscript{64} \textit{Uniform Consumer Credit Code} §2.504(3).
\end{itemize}
five percent of the cash price, however the fee cannot exceed the down payment itself. Likewise an identical proviso appears in a few of the statutes. It should be noted that in earlier drafts of the UCC, the cancellation fee was limited to a flat $15.00, however this was deleted in the final draft. Despite the deletion of this $15.00 ceiling, many legislatures adopted the idea. The ceiling on the cancellation fee now ranges from $25.00 to $15.00, $10.00 and even $5.00. With an eye to a similar purpose, North Carolina modified the cancellation fee provision to 1% of the cash price, not to exceed the down payment. On the other hand, many of the states adopted no cancellation fee provision and the District of Columbia expressly prohibits one.

D. Disclosure of Right to Cancel

A statement of the buyer's right to cancel must be included in the written agreement or offer to buy under the UCC, which must comply with the specifications of the UCC sample disclosure form. The text of this disclosure statement must also appear under the “conspicuous caption: ‘BUYER’S RIGHT TO CANCEL.” In addition, the UCC disclosure form not only requires buyer’s rights to be spelled out, but also provides a blank where seller must insert the address to which the cancellation notice may be mailed. Following this pattern, some of the legislatures have enacted provisions sim-

65. *See* Uniform Consumer Credit Code §2.110 for a definition of "cash price".


67. Uniform Consumer Credit Code §2.504(3) (tent. draft 1967). The provision stated that the fee would be 5% of the cash price or $15.00, whichever was less, however not to exceed the downpayment.


72. N.C. Laws Ch. 796 (3 CCH Cons. Cred. L. Rep., N.C. §6301 (Jan. 1, 1972)).


75. Uniform Consumer Credit Code §2.502(5) (a).

76. Id. at 2.503(2) (b).

77. Id. at 2.503(2) (a).
ilar to those of the U3C. On the other hand, where the legislative response has been generally more limited, the statutes do not provide any guidelines for disclosing buyer's rights or dictate in what manner buyer is to obtain seller's address for exercising the cancellation right.

In expanding upon the basic theme of the U3C, Hawaii specifies that the disclosure of the buyer's rights on the sales agreement be in ten point type and with the seller's address. In addition, their statute requires a "Notice of Cancellation" form which may be attached to the sales agreement or separate. This "Notice of Cancellation" repeats buyer's rights and may itself suffice as a cancellation form when returned by mail to seller. Along the same lines, New York requires a perforated card, the bottom half of which must have seller's name and cancellation address printed on it and which will act as a cancellation notice if mailed in the allotted time. Also in New York, in the interest of the Spanish-speaking consumer, disclosure of buyer's rights on the perforated card must be in both Spanish and English in cities with population in excess of one million. Besides requiring a lengthy articulation of buyer's rights in ten point type in the sales agreement, Rhode Island provides that "additionally the seller shall at the time of the sale give notice to the buyer of all the buyer's rights as stated in this chapter." This focus on the time of sale itself seems to be the strongest protection available analogous to other warnings before the fact seen in criminal law.

In addition to informing the consumer of the cancellation right pursuant to a home-solicited sale, the U3C disclosure statement warns the buyer that, "If you cancel, the seller may

78. See statutes cited note 32 supra.
81. Id.
83. In the report of the Senate Committee on Commerce, it was revealed that, in New York $400 sets of encyclopedias have been sold to Puerto Rican parents who cannot read English, by salesmen who have posed as school officials and told the parents that their children would be forced out of school if they did not buy.
keep all or part of your cash downpayment."85 On the other hand, several of the statutes fail to advise the buyer of the possible retention of a cancellation fee by the seller, even though making provision for one.86 Even where no cancellation fee may be retained at all, some states do not require the seller to notify the buyer of his rights.87 Following the more consistent approach of the U3C, the District of Columbia statute, which expressly denies a cancellation fee, requires this to be brought home to the consumer in the statement disclosing his rights.88

E. Innovations

Some legislative responses to the problem of the home consumer and the door-to-door salesman have no parallel in the provisions of the U3C. For example, Delaware expands the term "door-to-door" to not only include sales solicited in person but "[A]ny solicitations and consummations of sales via any telephone."89 As pointed out earlier, Delaware includes both cash and credit sales of goods and services, $25.00 and over.90 As a result, the protection of the three day right of rescission has been expanded to cover transactions that are also truly solicited whenever the consumer is in his home environment.

Even though limited to credit transactions, Hawaii's statute defines "house-to-house" to include:

[A] sale of goods or services solicited in person or by mail, telephone, or public or private notice or advertisement if the solicitation includes an offer of a gift, prize, premiums, stamps, coupons, tickets or other redeemable devices as an inducement for the person solicited or a member of his immediate family to go to the seller's place of business, whether the buyer signs at the seller's place of business or elsewhere.91

This covers the broadest spectrum of methods of solicitation by including not only face-to-face, but verbal and written

85. Uniform Consumer Credit Code §2.503(2) (b).
90. Id.
transactions likely to reach the home. It is also worth note that under the U3C and all the other state statutes,\textsuperscript{92} that a sale executed at the seller's place of business is excluded. The Hawaii statutory definition addresses itself to the whole area of home soliciting, by broadening the scope of the means used to solicit and where the sale may be consummated, whereas the other statutory definitions seem to have been greatly concerned with limiting these areas and thus the coverage of their statutory protection.

Also of interest is Virginia's statute, which approaches the "home solicitation sale" as a consumer sale of goods and services or a consumer \textit{lease of goods}, excluding cash transactions under $15.00 and farm equipment.\textsuperscript{93} Similarly, Rhode Island provides that the right to cancel extends to a sale or lease of merchandise which was solicited at the buyer's home.\textsuperscript{94} In an overview, it seems the statutes of Virginia and Rhode Island broaden their scope by further increasing the types of transactions covered, whereas the expansion of the statutory scope in Delaware and Hawaii results from enlarging the selling methods to be encompassed, i.e., telephone calling, bait advertising, and the like.

For additional protection of the home consumer, North Carolina provides in its coverage of "home solicitation sales" that,

\begin{quote}
A buyer, who has not received delivery of the goods and services from the seller \ldots within 30 days following the execution of the contract, shall have the right at anytime thereafter before acceptance \ldots to rescind the contract and to receive a refund of all payments made \ldots.\textsuperscript{95}
\end{quote}

This allows the buyer an additional opportunity to rescind the sales agreement, however it is inapplicable to cash sales as North Carolina confines a door-to-door sale to include only

\begin{itemize}
\item \textsuperscript{92} \textit{Uniform Consumer Credit Code} §2.501; R.I. Gen. Laws 56-28-2 (1968). The U3C limits coverage to sales transacted at buyer's residence, whereas other states such as Rhode Island have broadened this approach to cover sales made at "other than seller's place of business." Similarly, one of South Carolina's proposals, note 111 \textit{infra}, followed the latter approach.
\item \textsuperscript{94} R.I. Gen. Laws §6-28-2 (1968).
\item \textsuperscript{95} N.C. Laws ch. 796 (3 CCH Cons. Cred. L. Rep., N.C. §6301 (Jan. 1, 1972)).
\end{itemize}
credit transactions. The focus on delivery seems to be a valid protection in any event.

Finally, New Jersey allows its “door-to-door sales” provision to encompass credit sales in which,

[T]he retail buyer has requested the retail seller to conduct a demonstration or exhibition at a place other than the retail seller's place of business and has not also requested to enter a sale at that place at the time he has requested such demonstration or exhibition.96

This would cover buyer-requested home demonstrations. Some items by their nature must be demonstrated away from seller's place of business, such as motor boats or motor vehicles, however demonstrations of these two particular items have been expressly excluded.97

III. THE NATIONAL CONSUMER ACT—AN ALTERNATIVE PROPOSAL TO THE U3C

The National Consumer Law Center98 drafted as an alternative proposal to the U3C, the National Consumer Act (NCA),99 which goes beyond the U3C provisions by including cash as well as credit transactions.100 As already pointed out, the U3C provides for a three-day “cooling-off” period of consumer credit sales, excluding farm equipment, solicited and completed at the buyer's residence. In sharp contrast to the U3C, the N.C.A. permits rescission within three business days after consummation of all credit and non-credit transactions involving $50.00 or more, entered into by a merchant in his place of business.101 What is of even greater significance in the area of home solicitation sales, the N.C.A. requires affirmation within three business days of all credit and non-credit transactions executed anywhere outside of a merchant's place

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97. Id.
98. The National Consumer Law Center was established in 1968 and funded by a $200,000.00 grant from a federal organization. Prof. William Wiliwer was named director in 1968.
99. “[S]ome consumer groups felt the Uniform Consumer Credit Code did not go far enough in its provisions for consumer rights. The result was the drafting of the National Consumer Act.” Supplementary Information on Testimony by George Gordin on the National Consumer Act, to the S.C. COMMITTEE TO STUDY THE UNIFORM CONSUMER CREDIT CODE, exhibit C at 52 (1971).
100. NATIONAL CONSUMER ACT §§1.102(2) (a) & 1.102(1).
101. Id. at §2.505.
Finally, it expands coverage of the rescission period from strictly consumer transactions as in the U3C to include transactions where individual proprietors acquire business equipment and sales of insurance by insurers. From this brief comparison of the effects of the U3C and the N.C.A. in the area of door-to-door sales, it is quite apparent that the N.C.A. drastically expands upon the protection to the home consumer.

IV. THE PROPOSED "SOUTH CAROLINA CONSUMER CREDIT CODE"

A bill to regulate consumer credit was introduced in the South Carolina General Assembly, on January 26, 1972 and was subsequently referred to the Banking Committee. This was the second proposal to the General Assembly for a "South Carolina Consumer Credit Code." Among its provisions, this Act would address itself to the problem of the consumer and door-to-door sales.

In comparing the "home solicitation sales" sections of the U3C with those of the 1972 South Carolina proposal, it seems that they are virtually identical. However, instead of defining a "home solicitation sale" as a sale solicited and executed at the home of the buyer as the U3C prescribes, the 1972 South Carolina proposal only limits a "home solicitation sale" to exclude a sale transacted, "[A]t a place under the direct control or supervision of the seller." This broadens the scope of door-to-door sales coverage, by including those sales consummated when the buyer is away from his residence as well as those in his home. For example, this approach would appear to cover the familiar selling method of the neighborhood housewares "party." Additionally, this would thwart evasion of the statute by a seller establishing a temporary

102. Id. at §2.503.
106. This had the effect of killing this proposal unless reintroduced.
107. There was an earlier proposal in Jan. of 1971, see note 116 infra.
109a. The proposal to be introduced in 1973 follows the U3C prescription of defining a "home solicitation sale" as a sale solicited and executed at the home of the buyer.
110. Id. at §14.201.
neighborhood "office," and inducing the buyer to consummate the transactions there, away from his home.111

Prior to the introduction of the 1972 bill in South Carolina, a committee was created112 to study the problems associated with consumer credit and to evaluate the U3C. Consequently, a two year investigation was conducted with public hearings in several areas of the state, allowing consumers to voice their complaints and expert testimony to be heard.113

This study culminated in a proposal introduced in January, 1971 to adopt the provisions of the U3C with approved amendments.114 In this 1971 proposal, the Committee amended two of the U3C sections governing "home solicitation sales."115

Recall that the U3C provision for disclosure of the buyer's rights requires the statement that, "If you cancel, the seller may keep all or part of your cash downpayment" to be included116 and allows the seller to retain a cancellation fee from the downpayment.117 The South Carolina Committee rejected the U3C provision for the cancellation fee and substituted in the buyer's rights statement, the words, "If you cancel, the seller must refund all of your cash downpayment."118 The Committee reasoned in amending these sections,

[t]hat the "RIGHT TO CANCEL" ordinarily implies a right to return to the status quo. That being the case, a debtor can easily be induced to part with a downpayment when convinced that he may "Cancel" in three days if he changes his mind.119

In spite of this broad view, the drafters of the 1972 proposal apparently rejected the reasoning for the 1971 amendments, as the two sections were revised to conform strictly with the U3C approach of permitting the cancellation fee.120

111. These suggestions are similarly put forth in an article by Prof. Sher, cited note 122 infra.

112. This Committee to study the U3C was created by Concurrent Resolution H.1291 adopted by the 1969 General Assembly.


114. Id. at 150 et seq.

115. Id. at 191-2.


117. Id. at §2.504(3).


119. Id. at 145.

120. See bill cited note 109 supra §§14.203(2)(b) & 14.204(3).
V. Conclusion

From the consumer's viewpoint, 121 some legislative action aimed at remedying the very real abuses in door-to-door selling is obviously better than none at all. Equally true however, is the fact that some of the responses discussed above seem to accomplish the task of protecting the home consumer, while others seem to merely provide an illusion of that aim. 122

As we have seen, the scope of the statutory protection is governed from the outset by the conceptual definition of a "home solicitation sale." Under the U3C approach, the term has been limited to credit transactions. 123 South Carolina's several proposals aimed at the problems of door-to-door selling have all followed the more narrow view of the U3C albeit the physical locale is broader. 124 This approach is one that many states have rejected in favor of including cash sales, although in some cases only cash sales over a certain amount.125 By excluding cash sales as the U3C and the South Carolina proposals advocate, a large loophole for the unethical seller is created by which to defeat the intent of the statute. For example, New York's statute similarly limits coverage to only those transactions payable in four or more installments, essentially a credit emphasis.126 One recent New York decision 127 however, brought a "layaway sale," which was solicited at buyer's home and obligated buyer to only two payments, an initial deposit and a delayed balance, within their statute. The court was confronted with an attempt to evade the coverage of the statute by disguising the sale as something other than one encompassed by the statutory definition of an installment sale. Aside from simply broadening the statutory protection, inclusion of cash sales would preempt the possibility of this situation arising and also preclude the possibility of the con-

121. For an analysis from the creditor's viewpoint, see Kripke, Consumer Credit Regulation: A Creditor-Oriented Viewpoint, 68 Colum. L. Rev. 445 (1968).
122. For a summary of the rationale behind the approach of the U3C provisions for home solicitation sales, see Sher, The "Cooling-Off" Period in Door-to-Door Sales, 15 U.C.L.A. L. Rev. 717 (1968).
123. Uniform Consumer Credit Code §2.501.
124. See notes 109 and 110 supra.
125. See notes 44-46 supra.
126. See note 40 supra.
consumer having to seek judicial relief to remedy such an attempted evasion.

Additionally, the U3C approach prevents coverage of home-solicited sales that were made pursuant to a pre-existing revolving charge account or pursuant to prior negotiations between the buyer and seller.\textsuperscript{128} As pointed out, several states have adopted this approach\textsuperscript{129} as does the South Carolina proposal.\textsuperscript{130} On the other hand, some states have seen fit to avoid such a restrictive course. Again, by adopting this restrictive provision, a very real problem in home solicitation sales seems to have been disregarded. In many cases, the initial sale is transacted in seller’s place of business, with subsequent credit sales being consummated through seller’s representatives visiting buyer’s home. For example, purchases similar to those in \textit{Williams v. Walker-Thomas Furn. Co.},\textsuperscript{131} would not be covered by the states subscribing to this U3C approach. Although these sales were entered into in the home of the plaintiff, Ora Lee Williams, they were subsequent to prior dealings with the seller in his showroom. In \textit{Williams} this basis alone would have been sufficient to avoid the statutory provisions of the U3C. It would be unrealistic to conclude that this approach to door-to-door selling could not be easily manipulated by the unscrupulous seller to thwart the purpose of the whole enactment.

Along the same lines, the U3C idea of buyer waiving his right to recision in “emergency” situations where he has requested seller’s immediate performance,\textsuperscript{132} seems to further limit the applicability of the cooling-off period. As has been seen, some states have subscribed to this exclusion,\textsuperscript{133} as have the bills proposed in South Carolina.\textsuperscript{134} To insure the voluntariness of the waiver, the District of Columbia statute requires a separate, signed form, explaining the impact of the waiver on the buyer’s rights.\textsuperscript{135} In addition, this formalism

\textsuperscript{128} \textit{Uniform Consumer Credit Code} §2.501.
\textsuperscript{129} See note 57 supra.
\textsuperscript{130} See note 109 supra.
\textsuperscript{131} 350 F.2d 445 (1965). This case has been often cited to illustrate unconscionability in credit transactions.
\textsuperscript{132} See note 58 supra.
\textsuperscript{133} See note 59 supra.
\textsuperscript{134} See note 109 supra.
\textsuperscript{135} See note 60 & text supra.
in the District of Columbia statute seems aimed at making the buyer cognizant of what his waiver constitutes and also serving as some evidence of the seller informing the buyer that his waiver will preclude later cancellation. On the other hand, any waiver at all opens the door to the possibility of shoddy, inadequate performance by the unscrupulous seller and the possibility of the glib-tongued salesman manipulating the buyer into a "voluntary" loss of his rights. It would seem that if the buyer attempted to unjustly enrich himself in the absence of an emergency clause, by rescinding after seller's performance or if the seller pursued a like course in the presence of such a clause, there should be equitable redress for either injured party. The matter boils down to whether the burden of enforcement of rights should be on the buyer or the seller. In balancing these interests, it appears that seller should assume this responsibility, as the predominant theme in the problem of door-to-door selling seems to be characterized by the seller's abuse of the buyer and not the reverse. Therefore, the approach followed by New Jersey\(^{136}\) of not enforcing any waiver by the buyer of his right to a cooling-off period, would be more equitable and consonant with the overall policy.

Aside from the scope of the concepts of "home solicitation sale" and waiver, there are additional problems encountered in insuring that the right of rescission is a meaningful protective device. In effect, the questions of the length of the "cooling-off" period, disclosure of the buyer's rights and the merit of a cancellation fee should be considered.

As previously stated, there seems to be general accord in allowing a three-day period to rescind, exemplified by the U3C and the South Carolina proposals.\(^{137}\) At the same time, there does seem to be some validity to the argument that a longer period would be desirable in the case of an illiterate or ignorant buyer, who presumably would be slower to seek the advice of a more suspicious or knowledgeable person. This argument is bolstered by the suggestion\(^{138}\) that the cancellation fee, which statutes modeled on the U3C permit the seller

\(^{136}\) See note 61 supra.
\(^{137}\) See generally p. 888 supra.
\(^{138}\) Consumer Research Foundation, Critique of the Uniform Consumer Credit Code, vol. II at 198 (Jan. 1971). This was a suggestion put forth by Robert M. Berger in a comment on the U3C within this collection.
to retain, does provide a *quid pro quo* rationale for a longer period of rescission. The seller is merely paid for his uncertainty throughout the period.

More precisely, the impact of the cancellation fee itself seems of greater significance. The U3C approach adopted by some statutes, provides for 5% of the cash price, not to exceed the downpayment, to be retained. On the one hand, the response to this has ranged from modification, by setting a maximum on the amount of the fee, to the complete rejection of the idea of any fee at all. In South Carolina the first proposal of 1971 followed the course of total rejection of the fee, however the later proposal reinstated the U3C 5% formula. As pointed out, the rejection of the fee in the earlier South Carolina proposal was premised on the idea that such a fee was in conflict with the very idea of rescission, connoting a return to the status quo. Generally, one of the basic arguments against the fee has been aptly summarized:

Such a charge is a payment to the wrongdoer for the wrongdoing; he (seller) has all to gain (most buyers won't know enough to cancel) and nothing to lose (those that do cancel will still yield for him more than enough to pay a salesman and cover overhead) by practicing fraud & oppression.

Furthermore, the fee would appear to work the greatest hardship on low-income groups; the same group that the right of rescission should be primarily designed to protect. Consequently, the cancellation fee seems to render the right of rescission a less meaningful device for protecting the consumer from abusive home solicitation.

Although theoretically charged with knowledge of the law, the buyer as a practical matter may not know of his right of rescission, if he has one, and even if he does, will be less likely to know of the specific provisions involved. To summarize, there are states which fail to specify any particulars as to disclosure of the buyer’s rights. While on the other hand the formalism specified in some statutes ranges from separate disclosure forms and even disclosure of rights in

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139. See notes 64-66 supra.
140. See notes 68-74 supra.
141. See note 105 supra.
142. See note 118 supra.
144. See note 80 *supra*.
dual languages in large urban centers, to requiring in addition to a written disclosure, that the seller must communicate these rights to buyer at the time of sale.\textsuperscript{146} The U3C approach, which the South Carolina proposals have emulated,\textsuperscript{146} falls somewhere in between, as it does provide for a disclosure of the rights in the agreement, however goes no further. In evaluating these responses, it seems only too apparent that a meaningful exercise of the rescission right is dependent on the buyer being able to adequately assess the situation. Once again if the intent of the statute is to protect those most abused, in effect low-income groups, the requisite formality of disclosure should turn on what would be sufficient to alert the average member of that group.

Finally, the range of innovations that some statutes have introduced and which have no parallel in the U3C, evidence the existence of very real problems. Other areas of in-home selling for which the U3C provisions are inadequate include sales solicited by telephone, such as catalog sales,\textsuperscript{147} and mail and bait advertising.\textsuperscript{148} Some states in responding to these problems certainly realized that abuses exist in other areas than just those personally solicited. For example, allowing rescission if the goods have not been received thirty days after the transaction\textsuperscript{149} stresses the difficulties raised by delivery problems. In short, if the consumer is really to be protected from the abuses in in-home selling, these broader remedial and procedural provisions would seem to be essential.

In opening the area of door-to-door selling to legislative consideration in 1968, the U3C served a vital innovative function in allowing some protection to the home consumer. Using this proposal as a guide, a patchwork of legislative responses resulted through the development of variations and innovations. While the normative responses to the U3C suggest possible socio-economic stimuli as the causation for the differentials, it is apparent from the innovations that have arisen in a totally unrelated manner, that the initiative stems not from specific reactions to indigenous problems, but from a

\textsuperscript{145} See notes 81-84 supra.
\textsuperscript{146} See notes 109 & 115 supra.
\textsuperscript{147} See notes 89-91 supra.
\textsuperscript{148} See notes 92-93 supra.
\textsuperscript{149} See note 95 supra.
response to broader policy considerations inherent in the common problem.

For states like South Carolina which are in search of a legislative response, the key to a progressive and realistic solution seems not to be in the emulation of an approach that has been recognized as inadequately dealing with many of the problems in door-to-door selling, but to examine the innovative ideas and directions recent legislation has initiated as indicia of the current needs which must be meaningfully answered if the abuses in this area are to be adequately remedied. In looking into the future of consumer protection in “home solicitation sales,” to anticipate additional problems for which coverage should be provided, it is suggested that the proposed National Consumer Act supra is a guide for response, which seems to offer a progressive and realistic solution to the problem.

Beaufort J. B. Clarke

150. See notes 99-104 supra.