

Spring 1968

Consumer Protection: The Proposed Cooling-Off Provision

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Consumer Protection: The Proposed Cooling-Off Provision, 2 Val. U. L. Rev. 338 (1968).

Available at: <https://scholar.valpo.edu/vulr/vol2/iss2/6>

This Notes is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



CONSUMER PROTECTION: THE PROPOSED COOLING-OFF PERIOD

INTRODUCTION

Door-to-door salesmen¹ create a need to provide special protection for the consumer.² Of special concern are the fraudulent practices,³ financial irresponsibility,⁴ and questionable sales practices⁵ of these salesmen. In an effort to alleviate these problems, statutes specifically regulating door-to-door selling activities have been enacted.⁶ Detailed installment credit acts, while not specifically concerned with the in-home sale, provide additional protection for the consumer.⁷ Finally, the in-home buyer, deceived by a door-to-door salesman, is protected by the general remedies of sales law.⁸ Unfortunately, these laws, either for reasons inherent in the remedies or because of practical difficulties, fail to provide adequate consumer protection.⁹

The National Conference of Commissioners for Uniform State Laws, in accordance with the current trend emphasizing consumer protection,¹⁰ is preparing a uniform code which will provide additional protection.¹¹ The primary emphasis of the proposed Uniform Con-

1. For the purposes of this note, one who calls at private residences in order to sell or offer for sale goods or services is referred to as a door-to-door salesman.

2. The courts have interpreted the position of states and municipalities with respect to door-to-door salesmen in rather strong terms:

The dogged, tenacious, and sometimes pugnacious determination with which salesman have literally flung themselves through residential portals and at housekeepers, the transient nature of their principal place of business, their financial irresponsibility in many instances, and an early and very general tendency to defraud the unwary must have borne considerable weight upon the minds of those who have been instrumental in putting such regulatory legislation upon the statutes. . . .

Green v. Town of Gallup, 46 N.M. 71, 120 P.2d 619, 622 (1941).

3. Hall-Omar Baking Co. v. Commissioner of Labor and Ind., 334 Mass. 395, 184 N.E.2d 344 (1962).

4. Excelsior Baking Co. v. Northfield, 274 Minn. 387, 77 N.W. 188 (1956).

5. Questionable sales practices manifest themselves in various forms. See text accompanying notes 64-75 *infra*.

6. See notes 16-28 *infra* and accompanying text.

7. For a detailed analysis of retail installment legislation see B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION (1965).

8. See notes 29-35 *infra* and accompanying text.

9. See notes 49-52 *infra* and accompanying text.

10. Betty Furness. Ralph Nader. "Truth in lending." New meat and fish controls. Safer tires, cars, pipelines. "Truth in packaging." New auto insurance regulation. More mutual fund regulation. Better guarantees, warranties. The Year of the Consumer, it would seem, is shaping up.

Wall Street Journal, March 11, 1968, at 1, col. 5.

11. UNIFORM CONSUMER CREDIT CODE (Working draft No. 6, 1967) [hereinafter cited as U.C.C.C.].

sumer Credit Code is the problem of deceptive credit.¹² The declared purpose of the Code is to modernize the law of installment sales¹³ and to protect consumers from unfair practices by suppliers of consumer credit.¹⁴ However, in Article Two, Part Five, the proposed Code goes beyond the problem of deceptive credit, and accords the in-home buyer an extra measure of protection.

The buyer is allowed to cancel the contract of sale, without penalty, at any time during a three-day period immediately following the sale.¹⁵ This "cooling-off" period attempts to avoid the effects of high pressure sales practices by providing a short period in which the consumer may reconsider his purchase free from the effects of the high pressure tactics.

However, a cooling-off period is not necessarily a panacea. The desirability of such a provision must be investigated thoroughly. This note examines the need for a cooling-off provision and evaluates the impact of this approach on the problem of in-home sales. Also, certain suggested procedural modifications are examined as to their capacity to improve the effectiveness of the Code's proposal.

EXISTING REGULATION

Direct Control of Door-to-Door Selling

Direct regulation of door-to-door salesmen takes one of two forms: "hawker and peddler" statutes or a "Green River" ordinance. The basic thrust of these enactments is to restrict rather than to regulate door-to-door sellers' activity.

The earliest restraints on door-to-door sellers were regulations concerning hawkers and peddlers.¹⁶ Under authority of the police power,¹⁷ these enactments impose prohibitive licensing, bonding, or character tests upon door-to-door sellers.¹⁸ Earlier laws attempted to prohibit door-to-door selling entirely.¹⁹ Due to definitional limitations, however, hawker and peddler regulations no longer adequately protect consumers.²⁰ Typic-

12. The Code provides for regulation of maximum interest charges, Article 2, Part 2; disclosure, Article 2, Part 3; excludes negotiable promissory notes, Section 2.403; balloon payments, Section 2.405; assignment of wages to cover debt, Section 2.410; covers loans in Article 3; consumer insurance in Article 4; and proposes a council of advisors on consumer credit.

13. U.C.C.C. § 1.102 (a).

14. U.C.C.C. § 1.102 (c).

15. U.C.C.C. § 2.502.

16. "[T]he business of peddling has been regulated and deemed proper material for police power regulation as early as 1784. . . ." *Sayer Borough v. Phillips*, 148 Pa. St. 428, 33 Am. St. Rep. 842 (1892).

17. *Id.*

18. Comment, *Consumer Legislation and the Poor*, 76 YALE L.J. 745, 779 (1967).

19. *Id.*

20. Peddlers have been referred to as "Those deceitful fellows who went from place to place . . . and . . . persons that with hawks seize their game where they find it . . ." *Morril v. State*, 38 Wis. 428, 20 Am. Rep. 12 (1875).

ally, a peddler is defined as a small retailer, who carries his merchandise with him from place to place, selling goods and delivering them concurrently with his sale.²¹ Few contemporary door-to-door salesmen fit this definition. Common techniques such as solicitation of orders,²² executory contracts of sale,²³ and larger sales²⁴ do not fall within the purview of the hawker and peddler statutes. An additional difficulty is that, in many instances, local merchants are not regulated by such statutes.²⁵

The second method of direct control of door-to-door sellers, the "Green River" ordinance,²⁶ decrees *unrequested* solicitation at a private residence a nuisance.²⁷ The strength of this approach is that it applies equally to local merchants and to itinerants.²⁸ However, an apparent weakness is that the seller may avoid the prohibition of the ordinance by merely telephoning the consumer and obtaining an invitation to enter the consumer's home.

Indirect Control of Door-to-Door Sellers

Other legislation, not specifically directed at the door-to-door salesman, indirectly regulates his conduct. Included within this category are sales law, the law of negotiable instruments, and special statutes regulating installment sales.²⁹

21. 39 C. J. S. *Hawkers and Peddlers* § 1 (1955); *Case v. Comptroller*, 219 Md. 310, 149 A.2d 6 (1959); *Excelsior Baking Co. v. Northfield*, 274 Minn. 387, 77 N.W.2d 188 (1956).

22. *Excelsior Baking Co. v. Northfield*, 274 Minn. 387, 77 N.W.2d 188 (1956). The court described a peddler as one who (1) has no fixed place of business, (2) carries his wares with him, (3) sells his goods at the time he offers them for sale, (4) delivers concurrently with the sale, and (5) sells to consumers.

23. *Id.*

24. However in *Ravenna v. Ivec*, 95 Ohio Abs. 202, 202 N.E.2d 706 (1963), a peddler statute applied to encyclopedia sales.

25. *Excelsior Baking Co. v. Northfield*, 274 Minn. 387, 77 N.W.2d 188 (1956).

26. This type of statute derives its name from the town that first used it, Green River, Montana. A typical "Green River" ordinance reads:

The practice of going in and upon residences . . . by solicitors, peddlers, hawkers, itinerant merchants, and transient vendors of merchandise not having been requested or invited to do so by the owners or occupants of said private residence for the purpose of soliciting orders for sale of goods, wares, and merchandise and/or for the purpose of disposing and/or peddling or hawking the same, is . . . a nuisance. . . .

Green River v. Fuller Brush Co., 65 F.2d 112 (10th Cir. 1933).

27. *Id.*

28. *Phillips v. Bend*, 192 Ore. 143, 234 P.2d 572 (1951).

29. The subject of retail installment acts is beyond the scope of this note. These acts apply to consumer credit extended by the sellers of goods and services. The basic protective measure enacted by these statutes is disclosure. Generally these enactments require full disclosure of credit terms, prescribe and proscribe a number of those terms, and limit credit charges and security. See generally Willer, *Protection Instalment Buyers Didn't Get*, 2 B.C. IND. & COM. L. REV. 287 (1961); Hogan, *A Survey of State Retail Instalment Sales Legislation*, 44 CORN. L. Q. 38 (1958).

A disenchanted buyer may avoid a contract of sale by returning the goods if, upon inspection, they do not conform to the contract.³⁰ However, few consumers realize that they have this right. Moreover, many consumers may believe the seller's assertion that the goods can not be returned.³¹

An action for fraud may be available to a consumer who has been victimized by a deceptive salesman.³² However, the burden of establishing fraud, either as a remedy or as an affirmative defense, is difficult to sustain.³³

Finally, if the goods are defective the buyer may bring an action on an express or an implied warranty. However, this remedy is subject to the seller's use of disclaimer clauses in the contract.³⁴ Also, in establishing an express warranty, the buyer faces the difficult task of proving express affirmation as opposed to mere statements of opinion.³⁵

The buyer's ability to avoid a sales contract is complicated when the sale is a credit transaction. In such situations the buyer's obligation will be embodied in a promissory note or a contract for installment payments. Often a seller will discount the buyer's negotiable promissory note or sell the sales contract, thus involving a third party in the transaction.³⁶ Although the buyer may be able to avoid his contractual obligations as against the seller, he may be unable to avoid his obligation as against a holder in due course of his negotiable promissory note.³⁷ Likewise, he may be unable to withhold payment from an assignee of the sales contract

30. UNIFORM COMMERCIAL CODE § 2-601.

31. D. CAPLOVITZ, *THE POOR PAY MORE* 143 (1963).

32. F. WHITNEY, *THE LAW OF MODERN COMMERCIAL PRACTICES* § 55 (2d ed. 1965); *RESTATEMENT OF CONTRACTS* § 475.

33. Comment, *Products Liability—The Expansion of Fraud, Negligence and Strict Tort Liability*, 64 MICH. L. REV. 1350, 1351 (1966).

In a fraud action the plaintiff must prove:

1. that the defendant made a material representation of fact concerning the product
2. that the statement was false
3. that the defendant knew that the statement was false at the time he made it
4. that the defendant intended that plaintiff would rely on the false statement
5. that plaintiff did rely on it
6. that plaintiff suffered damage as a direct result.

Id.; *Lee v. Fisco Enterprises, Inc.*, A.2d 44, 45-46 (D.C. Mun. App. 1967)

34. UNIFORM COMMERCIAL CODE § 2-316.

35. Note, *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710, 713 (1967). The Uniform Commercial Code provides that "affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." UNIFORM COMMERCIAL CODE § 2-313(2).

36. Hogan, *A Survey of State Retail Instalment Sales Legislation*, 44 CORN. L. Q. 38, 42 (1958).

37. UNIFORM COMMERCIAL CODE § 3-305. This practice has been eliminated in states by making such notes non-negotiable. *E.g.*, MASS. CODE ANN., ch. 255, § 12c.

where the contract contains a waiver of defenses clause in favor of the assignee.³⁸

Certain courts have applied the Uniform Commercial Code's doctrine of unconscionability³⁹ to enable the consumer to avoid oppressive sales contracts. These courts have held that either fraud or undue high pressure may render an in-home contract unconscionable.⁴⁰ For example, in *State by Lefkowitz v. I.T.M., Incorporated*, the court held that a referral sales program,⁴¹ a frequently used sales device of in-home sellers, was unconscionable. The court concluded that "such a program without informing the buyer of his standing in a geometrical progression is tantamount to fraud."⁴² In *Williams v. Walker-Thomas Furniture Company*,⁴³ the court held that high pressure tactics could render a contract unenforceable.⁴⁴ The court reasoned that high pressure techniques give an in-home salesman a superior bargaining position, depriving the consumer of a meaningful choice.⁴⁵ The *Williams* decision is a departure from the traditional position. Other court's have denied that high pressure is sufficient to avoid a contract. For example, in *Lee v. Fisco Enterprises, Incorporated*,⁴⁶ the contract obligated the buyer to pay \$6,275.00 for dancing lessons. The court described the transaction as a "grim story of salesmanship and business methods designed to prey on the gullible. . . ."⁴⁷ However, the court held that high pressure will not negate a contract.⁴⁸

Practical Difficulties

In addition to the weaknesses inherent in existing regulation and in

38. Note, *The Pennsylvania Goods and Services Installment Sales Act*, 12 VILL. L. REV. 643, 650 (1967). This practice has been eliminated by states which outlaw a waiver of defenses clause in the sales contract. *E.g.*, CAL. CIV. CODE ANN. § 1804.1 (a).

39. UNIFORM COMMERCIAL CODE § 2-302.

40. *William v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965); *State by Lefkowitz v. I.T.M., Inc.* 52 Misc. 2d 39, 275 N.Y.S.2d 303 (Sup. Ct. 1966); *Frostifresh v. Reynoso*, 52 Misc. 2d 26, 274 N.Y.S.2d 757 (1966); *Schow v. Guardtone*, 18 Utah 2d 135, 417 P.2d 643 (1966).

41. *State by Lefkowitz v. I.T.M., Inc.*, 52 Misc. 2d 39, 275 N.Y.S.2d 303 (Sup. Ct. 1966).

42. 275 N.Y.S.2d at 315. The referral sales system is a method whereby the buyer may lower his purchase price by supplying the names of prospective customers to the seller. If one of the suggested customers buys from the seller or if a set number of suggested customers allow the seller to demonstrate his product in their home, the buyer receives a commission. On approximately the seventh level of sales millions of consumers are necessary to make the referral system operate in the manner that the seller claims it will.

43. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

44. *Id.*

45. *Id.*

46. *Lee v. Fisco Enterprises, Inc.*, 233 A.2d 44 (D. C. Mun. App. 1967).

47. *Id.* at 46.

48. *Id.*

the accompanying remedies, certain practical difficulties further restrict the effectiveness of existing law.

One difficulty is the expense of litigation. In many cases, especially those involving small sales, litigation expenses are an effective deterrent to the consumer.⁴⁹ In such situations, the relief sought may not be commensurate with the expenses involved. When this occurs, not only is relief denied, but the seller's methods remain uncontrolled.

Another difficulty is the lack of effective state power to combat deceptive practices.⁵⁰ Here the in-home buyer is at a disadvantage. Many door-to-door sellers are transient and difficult to control. Additionally, the in-home sale is conducive to widespread abuse of existing laws and individual law suits are ineffective as a deterrent.⁵¹

A further problem in attaining redress from door-to-door sellers results from their transient nature. It may be difficult to obtain jurisdiction over such a seller, if indeed he can be located.⁵²

THE COOLING-OFF PERIOD: AN ALTERNATIVE TO EXISTING REGULATION

The cooling-off period is not an idea unique to the drafters of the Uniform Consumer Credit Code. Cooling-off statutes are in effect in Great Britain⁵³ and Canada.⁵⁴ In the United States, Connecticut,⁵⁵ Georgia,⁵⁶ Hawaii,⁵⁷ Illinois,⁵⁸ and Massachusetts⁵⁹ have enacted such a provision. Pennsylvania has a cooling-off provision applicable to home improvement installment contracts.⁶⁰

Reasons For Enactment

The rationale of a cooling-off provision is two-fold. Initially it reflects an attempt to curtail the adverse effects of high pressure salesmen.⁶¹ Also, the provision seeks to allow the in-home consumer the

49. See Note, *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710 (1967).

50. *Id.*

51. Jordan & Warren, *A Proposed Uniform Code for Consumer Credit*, 8 B. C. IND. & COM. L. REV. 441, 456 (1967).

52. Cuming, *Consumer Protection—The Itinerant Seller*, 32 SASKATCHEWAN L. REV. 113, 116 (1967).

53. HIRE PURCHASE ACT 1964.

54. Stat. Man. 1966, c. 11, § 1 (Can.); Stat. Nfld. 1966, no. 86 §§ 2 (b), 23 (Can.); R.S.S. 1965, c. 331, §§ 2(b), 20 (Can.); Stat. B. C. 1967, c. 14, §§ 2, 3, (Can.); Stat. Ont., c. 23, § 2(f) (Can.); 15 Stat. Alta. 1966, c. 28, §§ 2 (e), 3 (Can.).

55. Conn. Public Act No. 749 (1967).

56. Also included is the state of Washington. Wall Street Journal, March 5, 1968, at 19, col. 3.

57. *Id.*

58. Ill. Acts 709 (1967).

59. MASS. RETAIL INSTALLMENT SALES AND SERVICES ACT § 9 (D) (6) (1966).

60. PA. STAT. ANN. tit. 73, § 500-203 (1) (1966).

61. B. C. IND. & COM. L. REV., *supra* note 51.

benefit of comparative shopping.⁶² Functionally the cooling-off period allows the buyer a short time in which he may reconsider his purchase without the pressure and persuasion of a salesman.⁶³

Whether or not cooling-off statutes can be justified on the basis of eliminating the harmful effects of high pressure tactics depends upon whether high pressure tactics exist to such an extent as to demand control. The term "high pressure sales tactics" does not lend itself to precise definition. However, it is clear that salesmen use "high pressure tactics" at least in the sense that the methods used are more aggressive than mere conversation. The nature and the extent of the practice are illustrated by the following examples. In Philadelphia various consumers complained that door-to-door salesmen had sold over-priced fire alarms by showing pictures of burned bodies.⁶⁴ In another instance a man who purchased a vacuum cleaner from a door-to-door salesman said: "He talked me into buying the vacuum cleaner even though the price was too high. I felt high pressured."⁶⁵ An 18 year old mother of three said that the door-to-door salesman was talking so "easily" that she was "taken in."⁶⁶ She paid \$624 for a couch valued at \$300. England in enacting its cooling-off statute found that high pressure practices were widespread and constituted a *serious* social evil.⁶⁷

Excessive prices are the concomitant of high pressure selling in the home.⁶⁸ An example of outrageous pricing in a home sales contract was given by the court in *State by Lefkowitz v. I.T.M., Incorporated*.⁶⁹ The prices are as follows:

62. YALE L. J., *supra* note 18.

63. B. C. IND. & COM. L. REV., *supra* note 51, at 457.

64. *Hearing on S. 750 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 88th Cong., 1st sess., pt. 1, 429 (1963). There are other examples of questionable sales practices. In *Frostifresh Corp. v. Reynoso*, 52 Misc. 2d 26, 274 N.Y.S. 2d 757 (Dist. Ct. 1966), the seller sold a refrigerator to a Spanish speaking customer by using an interpreter. The consumer was given a contract written in English.

65. D. CAPLOVITZ, *THE POOR PAY MORE* 145 (1963).

66. *Hearings on S. 750, supra* note 64, at 159.

67. BOARD OF TRADE, *FINAL REPORT OF THE COMMITTEE ON CONSUMER PROTECTION*, ch. 17, sec. 742 (1962).

68. *Some Notes on Selling (and Buying): In-the-Home Nuisances*, 20 CONSUMER REPORTS 435 (1955). Examples of high prices in home purchases:

1. In *Frostifresh Corp. v. Reynoso*, 52 Misc. 2d 26, 274 N.Y.S.2d 757 (Dist. Ct. 1966), the contract price including credit was \$1145 for a \$348 refrigerator.

2. In *Lundstrom v. R.C.A.*, 17 Utah 2d 114, 405 P.2d 339 (1966), the retail price was \$695 and contract price \$995 for a color T. V.

3. A 58 year old widow signed an installment contract totaling \$5880 for aluminum siding which had a market value of \$660. *Hearings Before the Special Committee on Aging*, 88th Cong., 1st sess., pt. 2, 167 (1963).

69. 52 Misc. 2d 39, 275 N.Y.S. 2d 303 (Sup. Ct. 1966).

<i>Product</i>	<i>Retail Market Price</i>	<i>Cash Price</i>	<i>Credit Price</i>
200 Broiler	\$199	\$499	\$658
300 Broiler	299	699	910
Vacuum Cleaner	350-400	749	920
Color T.V.	600-650	999	1292

Another typical effect of high pressure sales is that the consumer may purchase a product he does not need or want. Sellers, within the confines of the buyer's home, create an illusory need in the buyer for the product.⁷¹ The result is a purchase based upon an impulse.⁷² Or the seller may subject the consumer to an unrelenting "pitch"—the consumer finally buying the goods to rid himself of the seller.⁷³

Assuming that high pressure is involved to some extent, in any sale, it has been suggested that such tactics have a greater impact in the home.⁷⁴ A consumer can leave a high pressure salesman at the store, but when confronted with an aggressive salesman in his home the consumer can not walk out of his own living room.⁷⁵

Even in the absence of high pressure tactics, the home consumer is at a disadvantage.⁷⁶ The buyer, not having shopped around, may be unaware of the retail price of the article offered for sale.⁷⁷ Nor can he compare the article presented with competing products.⁷⁸ Finally a consumer at home may feel a host's obligation to the salesman.⁷⁹

The need to remedy the problems inherent in the in-home sale is clarified when it is realized that door-to-door selling is on the increase.⁸⁰ Industry estimated that direct selling produces an annual income of 28 billion dollars.⁸¹

Non-judicial Remedy

The most significant aspect of a cooling-off period is that it provides

70. *Id.* at 320.

71. SASKATCHEWAN L. REV., *supra* note 52, at 114-15.

72. *Id.* at 115.

73. *Id.*

74. YALE L. J., *supra* note 18, at 780.

75. *Id.*

76. CONSUMER REPORTS, *supra* note 68.

77. *Id.*

78. *Id.*

79. *Id.*

80. D. CAPLOVITZ, THE POOR PAY MORE 64 (1963). One reason for the increase is the recent migrations to the cities. Along with this, the high rise apartments in large cities provide the door-to-door seller with many potential customers in a small area. Nor must the seller brave the elements. *Id.* at 58.

81. 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.

the buyer with a non-judicial remedy.⁸² In essence this recognizes the disenchanted consumer's most practical remedy—refusal to honor the contract. Under the Uniform Consumer Credit Code's proposed cooling-off provision the right to cancel is unqualified and may even be exercised capriciously.⁸³ The non-judicial remedy thus provided obviates the expense and risk of litigation.⁸⁴ The right to cancel may remove the seller's reliance upon the expense of a lawsuit to preclude a consumer from seeking his proper remedy. This, in turn, may cause the seller to curtail his unlawful activities.⁸⁵ In this sense the cooling-off provision may restrict the evil rather than merely providing redress.

Opposition to the Cooling-Off Period

One argument against the cooling-off proposal is that it applies to the entire industry and is not restricted to the unethical salesman. Thousands of companies use direct door-to-door selling.⁸⁶ Many of these are large and reputable firms.⁸⁷ Some of these firms use direct selling to introduce their top quality merchandise.⁸⁸ Door-to-door selling is also a relatively inexpensive method of obtaining rapid distribution of worthwhile products.⁸⁹ Most of the door-to-door salesmen are competent and reputable.⁹⁰ Also, there is a National Association of Direct Selling Companies with a thorough Code of Ethics.⁹¹

The direct selling industry asserts that in-home selling is advantageous to the consumer.⁹² This assertion is based upon the claim that in-

82. Letter from Wm. P. Youngclaus, Jr., Managing Director of the National Remodelers Association, Dec. 7, 1967, with comments by Ira J. Lefton, General Counsel, National Remodelers Association.

83. In a proposed sales practice act, similar to Part Five, the author suggested that the right to cancel definitely created the possibility of capricious cancellation. *Model Retail Instalment Sales Act*, 3 B. C. IND. & COM. L. REV. 437, 446 (1962).

84. See Letter from Wm. P. Youngclaus, *supra* note 82.

This provision may aid the consumer who needs a remedy the most and is least able to obtain relief. Poorer consumers are often targets for questionable sales practices and higher prices. Unfortunately, those who are the most frequent targets of such practices have the least ability to obtain recovery. Poor consumers seldom have the time or money to press an action to recover for questionable practices. The obvious answer is that the poor now receive legal aid. However, legal aid to the poor is severely inadequate. See generally P. WALD, *LAW AND POVERTY: 1965 REPORT TO THE NATIONAL CONFERENCE ON LAW AND POVERTY* (1965); PRESIDENT'S COMM. ON CONSUMER INTEREST, *THE MOST FOR THEIR MONEY* (1965); Silverstein, *Eligibility for Free Legal Services in Civil Cases*, 44 JOURNAL OF URBAN LAW 549 (1967).

85. *Hearings on S. 750, supra* note 64, at 430.

86. Some of the largest firms include Avon, Fuller Brush, Wear-Ever Aluminum, Electrolux, and Home Decorators. Address by Albert Haring, *Boston Conference on Distribution*, Oct. 29, 1959.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Hearings on S. 750, supra* note 64.

91. Letter from H. A. Schatz, *supra* note 81.

92. *Id.*; Address by Albert Haring, *supra* note 86.

home selling involves less undue pressure than other methods of selling.⁹³ The convenience and comfort of buying in the home, the demonstration of the product under actual conditions, the ability to consult the entire family, and the availability of a salesman to give special service and answer pertinent questions are cited as benefits unique to in-home selling.⁹⁴

The industry also asserts that relatively few court actions involve direct sales.⁹⁵ In a survey of the Milwaukee County Small Claims Court in 1966 only 11 out of 6110 cases involved direct sales.⁹⁶ However, these figures may be misleading in that many small claims involving questionable sales practices go unlitigated.⁹⁷

It has been asserted that the cooling-off provision is unfair to the seller.⁹⁸ A consumer is able to enter into a \$5000 home improvement contract with X. The consumer may then "shop around" and obtain a contract with Z who will perform the job for \$4000. At this point the buyer can cancel the contract with X. On the other hand, assume that Z discovers that his cost will be \$4100. He can not cancel. A cooling-off statute protects the buyer from a making a "bad bargain," but it does not protect the seller.⁹⁹ This argument of fundamental unfairness has special import to sellers of service contracts in which the seller bases his price quotation on the labor and material needed for each contract, each estimate being peculiar to the purchaser's property. The argument has less impact when the sale involves a product with a set price.

In the above example the buyer in effect used his contract with X as a lever to induce Z to reduce his price in order to secure a sale. One of the functions of the cooling-off period is to encourage comparative shopping, thereby enabling the buyer to discover high prices. The line beyond which comparative shopping becomes a coercive tool is difficult to draw. However, if the choice is to eliminate a serious problem for the consumer, a minor burden on the seller may be necessary.

Opponents to a cooling-off provision also argue that the provision is violative of basic contract theories.¹⁰⁰ In the absence of the cancellation provision, persons of legal age and sound mind are free to contract, and

93. *Id.*

94. *Id.*

95. Letter from H. A. Schatz, *supra* note 81.

96. *Id.*

97. IOWA L. REV., *supra* note 34, at 710.

98. Letter from Wm. P. Youngclaus, *supra* note 84.

99. *Id.*

100. Letter from H. A. Schatz, *supra* note 81; Letter from Frederic Sherwood, Member of Panel of Advisors for Part Five of the Uniform Consumer Credit Code, Dec. 11, 1967.

absent a violation of public policy, their agreement is binding.¹⁰¹ The cooling-off provision creates a situation in which an offeror may withdraw his offer, even though it has been accepted and the acceptance is binding upon the offeree.¹⁰²

Practical Difficulties

The committee¹⁰³ studying the cooling-off provision considered the proposition that the provision may be the consumer's downfall. It is possible that the cooling-off period may increase home sales.¹⁰⁴ If a buyer realizes that he may cancel the contract, then he may rid himself of an over-ambitious salesman by signing the contract—intending to cancel at a later date.¹⁰⁵ But through inertia and forgetfulness he may neglect to cancel.¹⁰⁶

The impact of the proposed provision may be lessened in that poor and uninformed consumers may fail to utilize the cancellation provision.¹⁰⁷ The consumer may fail to read the contract or may not know that he may cancel. Yet there is evidence that many defrauded and dissatisfied consumers do wish to cancel their contract. Legal aid offices and fraud divisions receive many complaints from consumers who, in the absence of a cancellation provision, have tried to cancel and were not allowed to do so.¹⁰⁸

Another difficulty involves the fact that a door-to-door salesman may become a family friend.¹⁰⁹ In such a situation it is unlikely that the consumer will cancel the sales contract. Repeated purchases in this context indicate satisfaction with the method of selling.¹¹⁰

101. Letter from Frederic Sherwood, *supra* note 100.

102. *Id.*

103. Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury of the National Conference of Commissioners for Uniform State Law.

104. Letter from Allison Dunham, the Executive Director of the National Conference of Commissioners for Uniform State Law, October, 16, 1967. This issue was discussed merely on an undocumented level and therefore may carry little weight.

105. *Id.*

106. *Id.*

107. YALE L. J., *supra* note 18, at 782.

108. The Director of the Philadelphia Legal Aid Society in endorsing a cooling-off provision, stated:

Time after time I have interviewed people who have been pressurized into over-buying For many reason immediately after the salesman has left, his victim comes to his senses and decides he does not want the article he has purchased.

Hearings on S. 750, supra note 64, at 430. The files of the Pennsylvania Fraud Division are replete with calls from people who were refused cancellation by the seller. Note, *Translating Sympathy for Deceived Consumers into Effective Programs for Protection*, 114 U. PA. L. REV. 395, 422 (1966).

109. YALE L. J., *supra* note 18, at 782. This contention has some support in a study by Caplovitz, where it was found that the peddler achieves the status of a family friend. D. CAPLOVITZ, *THE POOR PAY MORE* 62 (1963).

110. D. CAPLOVITZ, *THE POOR PAY MORE* 62 (1963).

UNIFORM CONSUMER CREDIT CODE

Assuming *arguendo* the desirability of a cooling-off statute, the remainder of this note will consider the extent to which the proposal of the Uniform Consumer Credit Code provides the desired protection.

Scope of the Code's Coverage

The right to cancel a sales contract applies only to home solicitation sales. The Code defines a home solicitation sale as:

A consumer credit sale of goods or services in which (a) the purchase price is payable in instalments, (b) the seller, his representative, or a person acting for him engages in a personal solicitation of the sale at a place other than a place of business of the seller, and (c) the buyer's agreement or offer to purchase is given to the seller, his representative, or a person acting for him at a place other than a place of business of the seller.¹¹¹

This definition does not include sales based upon a pre-existing charge account, or sales made upon a pre-existing agreement which is substantially consummated at the seller's place of business.¹¹²

A consumer credit sale "is a transaction in which . . . credit is granted by a seller who regularly engages in credit transactions as a seller. . . ."¹¹³ Part Five then applies only to sales in which the seller provides the credit. On the other hand, the cooling-off statutes of Connecticut¹¹⁴ and Illinois¹¹⁵ extend the right of cancellation to sales

111. U. C. C. C. § 2.501.

112. *Id.*

113. U.C.C.C. § 2.104 (1) (a).

114. Conn. Public Act No. 749 (1967). Section 1 is as follows:

As used in this act, unless the context clearly requires a different meaning, "home solicitation sale" means a sale of goods or services in which the seller or his representative solicits the sale and the buyer's agreement or offer to purchase is made at a home other than that of the person soliciting the same, and all or any part of the purchase price is payable in installments, or a debt incurred for payment of the purchase price is payable in installments. A sale which in form is a cash sale shall be deemed a home solicitation sale if the seller makes or provides a loan to the buyer or obtains or assists in obtaining a loan for the buyer to pay the purchase price.

115. Ill. Act 709 (1967). Section 2 (B) is as follows:

Where merchandise having a cash sales of \$50 or more is sold or contracted to be sold whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact with or call on the consumer at his residence without the consumer's soliciting the contact or call, that consumer may avoid the contract or sale by notifying the seller within 3 full business days following that day on which the contract or sale was made and by returning to the seller, in its original condition, any merchandise delivered to him under the contract or sale. The 3 day period provided for in this section does not commence until the consumer is furnished the address or phone number at which such notice to the seller can be given.

in which the seller helps to obtain a loan for the buyer. Clearly, these latter provisions extend the scope of the right of cancellation to include the majority of in-home sales.

An earlier draft of the Code restricted the right of cancellation to sales exceeding \$100.¹¹⁶ The present draft of the Code contains no such limitation.¹¹⁷ This deletion seems to be desirable for several reasons. In a recent study of the poor consumer, only a small percentage of those having outstanding credit resulting from an in-home sale owed \$100 or more.¹¹⁸ Also, the \$100 limitation is inappropriate since in the smaller purchases the buyer pays less attention to the consequences of his actions. Finally, impulse or compulsion purchases are more likely to occur in the context of a smaller sale.

Method Used to Effectuate the Protection

Several procedural requirements necessary to effectuate the cancellation may effect the protection granted the consumer.

The Code provides that a home solicitation contract may be cancelled "at any time prior to midnight of the third calendar day after the day" on which the contract is signed.¹¹⁹ Cancellation is effective upon deposit of a letter of cancellation in the mail.¹²⁰ The three-day period is an enlargement of the two-day provision of the earlier draft.¹²¹ The original two-day period may have given the buyer less time to cancel than the time required for his order to be accepted by the seller's home office.¹²² The extended period allows more time for comparative shopping and verification of questionable representations concerning the product. However, further extension of the cancellation period encounters the objection that the seller should be able to operate his business with some amount of certainty.

Part Five requires that the contract of sale contain a section with the *conspicuous* caption: BUYER'S RIGHT TO CANCEL.¹²³ The state-

If those conditions are met, the seller must return to the consumer the full amount of any payment made or consideration given under the contract or for the merchandise. It is an unlawful practice within the meaning of this Act for a seller to refuse to make full refund as required by this Section or for a seller to use any undue influence, coercion, intentional misrepresentation or any other willful act or representation to interfere with the consumer's exercise of his rights under this Section.

116. U.C.C.C. § 2.501 (2d Tent. Draft 1967).

117. U.C.C.C. § 2.501.

118. D. CAPLOVITZ, *THE POOR PAY MORE* 77 (1963).

119. U.C.C.C. § 2.502 (1).

120. U.C.C.C. § 2.502 (3).

121. U.C.C.C. § 2.502 (1) (2d Tent. Draft 1967).

122. Letter from Allison Dunham, *supra* note 104.

123. U.C.C.C. § 2.503 (2) (a).

ment must include the name and mailing address of the seller,¹²⁴ and an enumeration of the buyer's right to cancel.¹²⁵ This requirement is a recognition of the fact that the effectiveness of the cancellation provision depends upon the buyer's knowledge of his rights.¹²⁶ In an earlier draft of the Code the buyer was given a more comprehensive statement of his rights.¹²⁷ The earlier provision seems more advisable. For example, the earlier statement was required to enumerate the responsibilities of the buyer concerning the return of delivered goods. This information would prevent confusion and possible inadvertant waiver of cancellation.

The Code attempts to compel compliance with Part Five by allowing the buyer to cancel the contract pending the seller's compliance with the provisions of Part Five.¹²⁸ This, in effect, gives the buyer a defense in any action by the seller to recover for a default in payments.¹²⁹

The Code provides that evidence of the debt can not be a negotiable promissory note.¹³⁰ Apparently, this eliminates the problem of a holder in due course of the note rendering ineffectual the buyer's cancellation of the sales contract. However, the Code further provides that "a pro-

124. U.C.C.C. § 2.503 (2) (b).

125. U.C.C.C. § 2.503 (2) (c). The statement of rights must say the following: If you do not want the goods or services you may cancel this agreement by mailing a notice to the seller. The notice should say that you do not want the goods or services and should be mailed before midnight on the third day after you sign the agreement. The notice should be mailed to the following address (*insert a mailing address of seller*). If you cancel, the seller may keep up to \$15 of your down payment.

126. Curran, *Legislative Controls as a Response to Consumer-Credit Problems*, 8 B. C. IND. & COM. L. REV. 409, 425 (1967).

127. U.C.C.C. § 2.503 (2) (c) (2d Tent. Draft 1967). Section 2.504 of the second tentative draft suggested a statement of buyer's rights. The statement was as follows:

You may cancel the agreement referred to above at any time prior to midnight of the second day after the day you signed the agreement. If you cancel and you have already made some payment to the seller, the seller is entitled to retain out of the payment, as a cancellation fee, 5% of the cash price of the goods or services but no event may the seller retain more than \$15.

You may give notice of cancellation by signing and dating this form and mailing it, postage prepaid, to the seller at the address indicated. It is recommended that, in the event you wish to cancel, you send the notice of cancellation by certified mail and that you retain the slip the post office gives you.

In the event you cancel, the seller must return to you (1) any payments made (less the cancellation fee) and (2) any goods or other property received as a trade-in (or a sum equal to the amount of the trade-in allowance given therefore), and (3) any note or other evidence of indebtedness, given by you to the seller pursuant to or in connection with the agreement. After cancellation the seller is entitled to receive back from you, at your address, any goods previously delivered by him to you, providing he has returned any payments and goods or other property received from you, to the extent indicated above. If the seller does not call for his goods at your address within 20 days after you give notice of cancellation, you may keep them as your own.

128. U.C.C.C. §§ 2.503 (3), 2.504 (4).

129. Letter from Barnett Levy, Assistant Attorney General of New York State, Member Panel of Advisors for Part 5, Oct. 30, 1967.

130. U.C.C.C. § 2.403.

missory note negotiable in form . . . may be enforced as a negotiable instrument by a holder in due course according to its terms."¹³¹ A seller is able, therefore, to nullify the statutory protection by negotiating the note.¹³² Even though the buyer may cancel the contract as between himself and the seller,¹³³ he must still answer to a holder in due course. The failure of the Code to protect the buyer as against a holder in due course is unfortunate. The seller who would negotiate the note is exactly the type of seller from whom the buyer needs the most protection.¹³⁴

In an effort to further protect the buyer from unlawful negotiation, the Code provides that upon cancellation the seller must return any evidence of indebtedness to the buyer.¹³⁵ Until the note is returned, the buyer is given a lien on the goods in his possession for any recovery to which he is entitled.¹³⁶ These protective measures are inadequate. The buyer may cancel the contract, but remain liable to a holder in due course if the seller refuses to return an illegally obtained negotiable note. Also, the lien given to the buyer presupposes that the goods have been delivered.

It has been suggested that the holder of a negotiable note resulting from a consumer credit sale be made subject to the defenses and claims of the buyer.¹³⁷ However, this total rejection of holder in due course status may make it difficult for a seller to discount the note. Connecticut's cooling-off provision offers an alternative. In Connecticut the consumer's debt may be embodied in a negotiable note.¹³⁸ This allows the seller to

131. *Id.*

132. Helstad, *Consumer-Credit Legislation: Limitations on Contractual Terms*, 8 B. C. IND. & COM. L. REV. 519, 532 (1967).

However, a finance company which continually takes notes from an unscrupulous seller may no longer be a holder in due course. In *Westfield Investment Co. v. Fellers*, 74 N.J. Super 575, 181 A.2d 809 (1962), the court held that a finance company could not be a holder in due course because it became an extricable part of the original transaction by its knowledge of similar transactions perpetrated by the seller in the past.

133. U.C.C.C. § 2.503 (3).

134. Helstad, 8 B. C. IND. & COM. L. REV., *supra* note 132, at 532.

135. U.C.C.C. § 2.504 (1).

136. U.C.C.C. § 2.504 (4).

137. Helstad, 8 B. C. IND. & COM. L. REV., *supra* note 132, at 532.

138. Conn. Public Act No. 74, Sec. 6 (1967). Section 6 is as follows:

(a) Any note or other evidence of indebtedness given by a buyer in respect of a home solicitation sale shall be dated not earlier than the date of the agreement and it shall not be negotiable before midnight of the fifth day following the date of its execution. Any transfer of an instrument within such time shall be deemed an assignment only and any right, title or interest which the transferee may acquire thereby shall be subject to all claims and defenses of the buyer against the seller arising under the provisions of this act.

(b) Each note or other evidence of indebtedness given by a buyer in respect of a home solicitation sale shall bear upon its face a conspicuous statement as follows: THIS INSTRUMENT IS BASED UPON A HOME SOLICITATION SALE, WHICH SALE IS SUBJECT TO THE PROVISIONS OF THE HOME SOLICITATION SALES ACT. THIS INSTRUMENT IS NOT NEGOTIABLE BEFORE MIDNIGHT OF THE FOURTH

finance his credit sales by negotiating the promissory notes. However, Connecticut protects the consumer from "wholesale" negotiation of the notes in disregard of the right of cancellation. The note is made non-negotiable for five days after the sale.¹³⁹ If it is transferred during this five-day period the transfer is an assignment.¹⁴⁰ The note must contain a statement that it is non-negotiable for "four days" after issuance.¹⁴¹ If the note is transferred before the allotted date, the statement puts a holder on notice, preventing him from becoming a holder in due course.

One difficulty with the Connecticut approach occurs when the note is negotiated four days after issuance, but also after buyer has cancelled the sales contract. In this context, is the purchaser of the note a holder in due course? This problem is alleviated by the fact that the consumer is given only two days to cancel.¹⁴² Also *any* person suing on the note must plead and prove compliance with the provision.¹⁴³ Further, if upon cancellation the seller does not return the note, the consumer has a lien on the goods, if delivered.¹⁴⁴

It would seem that the Connecticut approach offers a sound compromise between the protection of the consumer and the rights of the seller. The plan attempts to work within the existing negotiable instrument law and allows the seller to easily refinance his sales.

The Code includes other provisions which are necessary to effectuate the cooling-of provision, but which have little impact upon the consumer's protection. In the event of cancellation the seller must tender to the buyer any payments made¹⁴⁵ or any goods traded in.¹⁴⁶ The buyer in turn is obligated to tender to the seller, at buyer's home only, any goods delivered by the seller under the contract.¹⁴⁷ If the seller fails to demand possession of the delivered goods within 40 days after cancellation, the buyer becomes the owner of the goods without any obligation to pay for them.¹⁴⁸ In the event of cancellation, the seller may keep an amount equal to five per cent of the cash price, not to exceed \$15.

DAY FOLLOWING THE DATE HEREOF. (c) Compliance with the requirements of this section shall be a condition precedent to any right of action against the buyer upon such instrument and shall be pleaded and proved by any person who may institute action or suit against a buyer in respect thereof.

139. *Id.*

140. *Id.*

141. *Id.*

142. Conn. Public Act No. 749, § 2 (1967).

143. *Id.* at § 6 (c).

144. *Id.* at § 5(d).

145. U.C.C.C. § 2.504 (1).

146. U.C.C.C. § 2.504 (4).

147. U.C.C.C. § 2.505 (1).

148. U.C.C.C. § 2.505 (1).

149. U.C.C.C. § 2.504 (3).

CONCLUSION

The majority of door-to-door sellers are reputable. However, the reasons supporting enactment of a cooling-off period are well taken. High pressure, high prices, and fraudulent practices do occur in home sales. The cooling-off period combats these factors by allowing the harassed or "starry-eyed" buyer a moment of respite from the persuasive ability of a salesman. The cooling-off provision provides a relatively uncomplicated and inexpensive release for the disenchanted buyer. In addition the buyer's right to cancel may act as a deterrent for questionable sales practices.

The consumer's protection should be provided with a minimum amount of infringement on the seller's rights. To achieve this goal, proper selection of procedures is imperative. In order to provide full protection for the consumer it is essential that the buyer understand his rights and obligations under the cooling-off provision. A comprehensive statement of these rights should be included in the contract. On the other hand, the seller should be able to freely discount the contract. A system wherein negotiable notes are provided, with a short period of non-negotiability and adequate warning to the purchaser of such note, infringes least upon the law of negotiable instruments and allows the seller to refinance his sale.

APPENDIX*

PART 5. HOME SOLICITATION SALES

1 SECTION 2.501. [*Definition: "Home Solicitation Sale."*]

2 "Home solicitation sale" means a consumer credit sale of goods
3 or services in which (a) the purchase price is payable in instal-
4 ments, (b) the seller, his representative, or a person acting for him
5 engages in a personal solicitation of the sale at a place other than
6 a place of business of the seller, and (c) the buyer's agreement or
7 offer to purchase is given to the seller, his representative, or a
8 person acting for him at a place other than a place of business of
9 the seller. It does not include a sale made pursuant to a preexisting
10 revolving charge account, or a sale made pursuant to a preexisting
11 agreement between the parties substantially consummated at a busi-
12 ness establishment at fixed location where goods or services are
13 offered or exhibited for sale in the course of a business carried on by
14 the seller at that establishment.

15 SECTION 2.502. [*Buyer's Right to Cancel.*]

16 (1) In addition to any right otherwise to revoke an offer, the
17 buyer has the right to cancel a home solicitation sale until midnight
18 of the third calendar day after the day on which the buyer signs an
19 agreement or offer to purchase which complies with this Part.

20 (2) Cancellation occurs when the buyer gives written notice of
21 cancellation to the seller at the address stated in the agreement or
22 offer to purchase.

23 (3) Notice of cancellation, if given by mail, is given when it is
24 deposited in a mail box properly addressed and postage prepaid.

1 (4) Notice of cancellation given by the buyer need not take a
2 particular form and is sufficient if it indicates by any form of
3 written expression the intention of the buyer not to be bound by the
4 home solicitation sale.

5 SECTION 2.503. [*Form of Agreement or Offer; Statement*
6 *of Buyer's Rights.*]

7 (1) In home solicitation sale the seller must present to the
8 buyer and obtain his signature to a written agreement or offer to
9 purchase which designates as the date of the transaction the date on

*The ideas and conclusions herein set forth, including drafts of proposed legislation, if any, have not been passed upon by the Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Staff, Advisors or Commissioners. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated final law.

This draft has been prepared by the Reporters-Draftsmen to carry out the policy directives of the Special Committee reached in its meeting of November 3-6, 1967, in Chicago, but has not been reviewed by the Committee.

10 which the buyer actually signs and contains a statement of the buyer's
11 rights which complies with subsection (2).

12 (2) The statement must

13 (a) appear under the conspicuous caption: "BUYER'S
14 RIGHT TO CANCEL",

15 (b) contain the name and mailing address of the seller in
16 the place prescribed by paragraph (c), and

17 (c) say the following: "If you do not want the goods or
18 services you may cancel this agreement by mailing a notice to the
19 seller. The notice should say that you do not want the goods or
20 services and should be mailed before midnight on the third day
21 after you sign this agreement. The notice should be mailed to the
22 following address (*insert a mailing address of seller*). If you cancel,
23 the seller may keep up to \$15 of your down payment."

24 (3) Until the seller has complied with this section the buyer
25 may cancel the home solicitation sale by notifying the seller in any
26 manner and by any means of his intention to cancel.

1 SECTION 2.504. [*Restoration of Down Payment; Retention
2 of Cancellation Fee.*]

3 (1) Except as provided in this section, within 10 days after
4 a home solicitation sale has been cancelled or an offer to purchase
5 revoked the seller must tender to the buyer any payments made by
6 the buyer and any note or other evidence of indebtedness.

7 (2) If the down payment includes goods traded in, the goods
8 must be tendered in substantially as good condition as when received.
9 If the seller fails to tender the goods as provided by this section,
10 the buyer may elect to recover an amount equal to the trade-in
11 allowance stated in the agreement.

12 (3) The seller may retain as a cancellation fee 5 per cent of
13 the cash price but not exceeding \$15 or the amount of the cash down
14 payment, whichever is less. If the seller fails to comply with an
15 obligation imposed by this section, or if the buyer avoids the sale
16 on any ground independent of his right to cancel provided by the pro-
17 visions on the buyer's right to cancel (subsection (1) of Section
18 2.502), the seller is not entitled to retain a cancellation fee.

19 (4) Until the seller has complied with the obligations imposed
20 by this section the buyer may retain possession of goods delivered to
21 him by the seller and has a lien on the goods for any recovery to
22 which he is entitled.

23 (5) The amount of \$15 in subsection (3) is subject to change
24 pursuant to the provisions on adjustment of dollar amounts (Section
25 1.106).

1 SECTION 2.505. [*Duty of Buyer; No Compensation for*
2 *Services Prior to Cancellation.*]

3 (1) Except as provided by the provisions on retention of goods
4 by the buyer (subsection (4) of Section 2.504), within a reasonable
5 period after a home solicitation sale has been cancelled or an offer
6 to purchase revoked, the buyer upon demand must tender to the seller
7 any goods delivered by the seller pursuant to the sale but he is not
8 obligated to tender at any place other than his own address. If
9 the seller fails to demand possession of goods within a reasonable
10 period after cancellation or revocation, the goods become the prop-
11 erty of the buyer without obligation to pay for them. For the purpose
12 of this section, 40 days is presumed to be a reasonable period.

13 (2) The buyer has a duty to take reasonable care of the goods
14 in his possession both prior to cancellation or revocation and during
15 a reasonable period following. During a reasonable period after
16 cancellation or revocation, except for the buyer's duty of care, the
17 goods are at the seller's risk.

18 (3) If the seller has performed any services pursuant to a home
19 solicitation sale prior to its cancellation, the seller is entitled to
20 no compensation except the cancellation fee provided in this Part.
21 If the seller's services result in the alteration of property of the
22 buyer, the seller shall restore the property to substantially as good
23 condition as it was at the time the services were rendered.