

# 11

## Home Solicitation Sales Act (HSSA)

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### **I. Cause of Action**

§11.1 Statutory action for return of money paid for a product or service upon proper cancellation of a sale solicited and agreed upon at the buyer's residence. Failure of the seller to comply with the provisions of the Home Solicitation Sales Act (HSSA) requiring notice of the right to cancel and cancellation on timely demand is also a defense to any liability in a collection action brought by the seller. See MCL 445.111(a) for a definition of *home solicitation sale*. The HSSA also regulates telephonic solicitation of consumer contracts, and provides a cause of action for misrepresentations, failure to disclose information, and other violations by solicitors.

### **II. What Law Controls**

§11.2 MCL 445.111 et seq.

### **III. Elements**

§11.3 For violation of cancellation rights:

- The sale of goods or services was for more than \$25.

- The seller engaged in a personal, written, or telephonic solicitation of a sale that was received by the buyer at his or her residence. See §11.7, items 1, 6, 7, and 8.
- The buyer's agreement or offer to purchase was given at the residence.
- The seller refuses to comply with a written cancellation sent within three business days of the transaction. (However, if the seller has not provided complying notices of a right to cancel, the buyer can cancel at any time by giving notice in any manner. MCL 445.113(4).)

For violation of telephonic solicitation regulation:

- The seller engages in telephonic solicitation of sale, rental, or investment, urging decision by consumer during telephone communication.
- The solicitation uses recorded message; or
- The consumer is on state or federal do-not-call list; or
- The solicitor does not provide required identification information; or
- The seller misrepresents or fails to disclose material information in the solicitation.

#### IV. Relevant Model Civil Jury Instructions

§11.4 None.

#### V. Statute of Limitations

§11.5 The act contains no limitation period. The six-year period of MCL 600.5813 may be applied. See *Fagerberg v LeBlanc*, 164 Mich App 349, 353, 416 NW2d 438 (1987) (action for fraud). However, if the action is for equitable rescission (see §11.8), the action must be brought promptly or laches may be raised.

There is no limitation period for use of the act as a setoff against a seller's collection action. MCL 445.116.

#### VI. Parties

§11.6

*Proper plaintiff:* A buyer of goods or services or a cosigner for the buyer. (See generally *Ackron Contracting Co v Oakland County*, 108 Mich App 767, 310 NW2d 874 (1981), for a discussion of legal principles covering the rights of the cosigner/surety.)

*Proper defendant:* The seller. An assignee from the seller of a retail installment contract will also be liable under the Retail Installment Sales Act, MCL 445.865, and the Federal Trade Commission's Holder Rule, 16 CFR 433.1 et seq.

## VII. Special Considerations

### §11.7

1. The act does not apply if the buyer initiated entirely the presence of the seller at the buyer's residence. *Brown v Jacob*, 439 Mich 865, 476 NW2d 156 (1991), *rev'g* 183 Mich App 387, 454 NW2d 226 (1990). The act also does not apply if negotiations continue after the meeting at the residence and agreement is not given at the buyer's home. *Patrick v US Tangible Inv Corp*, 234 Mich App 541, 595 NW2d 162 (1999).
2. The statute has requirements for the number of copies of the cancellation notice form the seller must provide to the buyer (duplicate), the size of type notifying the buyer of the right to cancel (at least 10 point and at least 2 points larger than the contract), and the specific language of the notice. MCL 445.113(2), (3). These requirements may be strictly enforced. *See Kocsis v Pierce*, 192 Mich App 92, 480 NW2d 598 (1991) (applying Truth-in-Lending Act).
3. The seller must fill in the date of the transaction and the last date for cancellation in the blanks on the cancellation notice form. MCL 445.113(3). Failure to fill in both dates violates the act and extends the right to cancel beyond the three-business-day period. MCL 445.113(4). *Reynolds v D&N Bank*, 792 F Supp 1035 (ED Mich 1992).
4. Other consumer statutes and rules (such as the federal Truth-in-Lending Act and Federal Trade Commission rules) may provide cancellation rights in particular transactions with different notice requirements. HSSA notices should be given in addition to any required by other provisions of law. *See Reynolds* (HSSA and TILA cancellation forms do not substitute for each other). The HSSA allows the buyer to proceed under any applicable cancellation provision the buyer chooses. MCL 445.112(6).
5. If a sale comes within the act, the seller must prove compliance in any collection action brought against the buyer. MCL 445.117.
6. Under MCL 445.111(a), (f), a home solicitation sale includes a sale arising from a postcard or other written notice delivered to a buyer's residence asking the buyer to contact the seller or seller's agent by telephone to inquire about a good or service, unless the mailing concerns a previous purchase or order or specifies the price of and accurately describes the good or service.
7. Under MCL 445.111(a), a home solicitation sale does *not* include the following:
  - sale made pursuant to a preexisting revolving charge account
  - sale made pursuant to prior negotiations between the parties at a fixed business location where goods or services are offered or exhibited for sale
  - sale of insurance by a licensed agent
  - sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale

- sale made pursuant to a printed advertisement in a general circulation publication
  - sale of services by a licensed real estate broker or salesperson
  - sale of agricultural or horticultural equipment and machinery demonstrated to the consumer by the vendor at one or both parties' request
8. An initial discussion at a fixed business location is not enough to exempt the contract from the HSSA when the terms were worked out at the buyer's residence. *In re Bayless*, 326 BR 411 (Bankr ED Mich 2005).
  9. Consumer loans, including mortgage loans, sales of securities, and financed motor vehicle sales are not "goods or services" covered by the HSSA. MCL 445.111(e).
  10. Telephonic Solicitation Regulation
    - Telephonic solicitations are defined as calls urging that consumers purchase, rent, or invest in goods or services over the phone. Calls urging only a later face-to-face sales meeting are not covered. MCL 445.111(m).
    - Use of recorded messages in telephonic solicitations is barred. MCL 445.111a(1).
    - The HSSA creates a state do-not-call list for telephone solicitors.
    - Specified identification information must be provided by telephonic solicitors. MCL 445.111b. Misrepresentation or failure to disclose material information in telephone solicitations is prohibited. MCL 445.111c.
    - HSSA telephone solicitation requirements do not apply to charitable organizations, public safety organizations, or IRC 527 organizations. MCL 445.111e.

*Note:* You should carefully read the HSSA before considering bringing an action under it.

## VIII. Remedies—Special Issues

### §11.8

- The buyer is entitled to all payments made on contract but must make any goods received available to the seller for 20 days after cancellation. The seller has no right to compensation for services performed before cancellation.
- An action for cancellation may require equitable powers of the court. *Compare Henderson v Chrysler Corp*, 191 Mich App 337, 477 NW2d 505 (1991) (revocation under Uniform Commercial Code is at law), *with Rudisell v Fifth Third Bank*, 622 F2d 243 (6th Cir 1980) (effectuating cancellation under TILA requires equitable rescission). One bankruptcy court has applied *Rudisell* to the HSSA, requiring payment of the fair value of home improvements received as a condition to HSSA rescission under equitable principals. *In re Bayless*, 326 BR 411 (Bankr ED Mich 2005).

- Violation of telephone solicitation requirements gives rise to a cause of action for actual damages or \$250, whichever is greater, plus reasonable attorney fees.

## IX. Checklist for Complaint

### §11.9

- jurisdictional facts
- venue
- date of sale
- nature of the seller's initiation of the sale
- solicitation at the residence in person, in writing, or by phone
- notice defect regarding the right to cancel (if applicable)
- date and manner of the plaintiff's cancellation
- the defendant's failure to comply with cancellation
- request for relief

## X. Related Actions

### §11.10

- Failure to refund payments after valid cancellation under the HSSA may also be a violation of the Michigan Consumer Protection Act (MCPA), providing a right to attorney fees. MCL 445.903(1)(u). But note that regulated businesses may be exempt from the MCPA. *See Smith v Globe Life Ins*, 460 Mich 446, 597 NW2d 28 (1999).
- Cancellation rights, and cancellation notice requirements, for consumer contracts are also found in the Michigan statute governing solicitations promising free gifts, MCL 445.931; the federal Truth-in-Lending Act provisions covering credit transactions secured by a residence, 15 USC 1635; and the Federal Trade Commission rule concerning a cooling-off period for door-to-door sales, 16 CFR 429.0 et seq.
- Federal statutes and regulations also regulate telemarketing, and prohibit deceptive and abusive calls. *See* 16 CFR 310.1 et seq. and 47 CFR 64.1200. A private right of action can be found in the Telephone Consumer Protection Act, 47 USC 227.

**Form 11.1**  
**Complaint Under the Home Solicitation Sales Act**

*Note:* This complaint requests rescission to implement cancellation under HSSA. Cancellation provisions may also be used in defense, and compliance with HSSA is an element of any suit by the seller on a home solicitation contract. An action may also be filed for damages only under the telephone solicitation provisions of the Act.

STATE OF MICHIGAN  
 \_\_\_\_\_ CIRCUIT COURT

\_\_\_\_\_, Case No. \_\_\_\_\_  
 Plaintiff,

v Judge \_\_\_\_\_

\_\_\_\_\_,  
 Defendant.

\_\_\_\_\_, (P \_\_\_\_\_)  
 Attorney for Plaintiff  
 [Address, telephone]  
 \_\_\_\_\_/

COMPLAINT AND JURY DEMAND

[Either]

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

[Or]

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in [this court / \_\_\_\_\_ Court], where it was given docket number and was assigned to Judge \_\_\_\_\_. The action [remains / is no longer] pending.

COMPLAINT

Plaintiff states:

Common Allegations

1. Plaintiff is a resident of \_\_\_\_\_, Michigan.
2. On [date], Defendant solicited the sale of \_\_\_\_\_ at the residence of Plaintiff in the following manner: [specify].
3. On [date], Plaintiff agreed to the purchase of \_\_\_\_\_ from Defendant at Plaintiff's residence for \$ \_\_\_\_.