

RESIDENTIAL SOLAR ENERGY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Mike Winder

LONG TITLE

General Description:

This bill enacts provisions relating to residential solar energy systems.

Highlighted Provisions:

This bill:

- ▶ requires a solar retailer to provide a written disclosure statement to a potential customer and specifies the timing and content of the disclosure statement; ~~Ŝ→~~ **and** ~~←Ŝ~~ ~~Ŝ→ [→→ requires a notice to be submitted for recording relating to certain property affected by certain agreements related to a residential solar energy system installed on the property;~~
- ~~→→ requires a notice of extinguishment to be submitted for recording as to property on which a residential solar energy system was installed, under certain circumstances;~~
- ~~and] ←Ŝ~~

- ▶ provides for the enforcement of the disclosure requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Laws of Utah 2017, Chapter 98



28 ENACTS:

- 29 **54-21-101**, Utah Code Annotated 1953
- 30 **54-21-102**, Utah Code Annotated 1953
- 31 **54-21-103**, Utah Code Annotated 1953
- 32 **54-21-201**, Utah Code Annotated 1953
- 33 **54-21-202**, Utah Code Annotated 1953
- 34 **54-21-203**, Utah Code Annotated 1953
- 35 **54-21-204**, Utah Code Annotated 1953
- 36 **54-21-205**, Utah Code Annotated 1953
- 37 **54-21-206**, Utah Code Annotated 1953
- 38 **54-21-301**, Utah Code Annotated 1953
- 39 **54-21-302**, Utah Code Annotated 1953
- 40 **54-21-303**, Utah Code Annotated 1953
- 41 **54-21-304**, Utah Code Annotated 1953
- 42 **54-21-401**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **13-2-1** is amended to read:

46 **13-2-1. Consumer protection division established -- Functions.**

47 (1) There is established within the Department of Commerce the Division of Consumer
48 Protection.

49 (2) The division shall administer and enforce the following:

- 50 (a) Chapter 5, Unfair Practices Act;
- 51 (b) Chapter 10a, Music Licensing Practices Act;
- 52 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 53 (d) Chapter 15, Business Opportunity Disclosure Act;
- 54 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 55 (f) Chapter 21, Credit Services Organizations Act;
- 56 (g) Chapter 22, Charitable Solicitations Act;
- 57 (h) Chapter 23, Health Spa Services Protection Act;
- 58 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

- 59 (j) Chapter 26, Telephone Fraud Prevention Act;
- 60 (k) Chapter 28, Prize Notices Regulation Act;
- 61 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 62 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 63 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 64 (o) Chapter 39, Child Protection Registry;
- 65 (p) Chapter 41, Price Controls During Emergencies Act;
- 66 (q) Chapter 42, Uniform Debt-Management Services Act;
- 67 (r) Chapter 49, Immigration Consultants Registration Act; and
- 68 (s) Chapter 51, Transportation Network Company Registration Act.

69 (3) The division shall enforce the provisions of Title 54, Chapter 21, Residential Solar
 70 Energy Disclosure Act, as provided in Section [54-21-401](#).

71 Section 2. Section **54-21-101** is enacted to read:

72 **CHAPTER 21. RESIDENTIAL SOLAR ENERGY DISCLOSURE ACT**

73 **Part 1. General Provisions**

74 **54-21-101. Title.**

75 This chapter is known as the "Residential Solar Energy Disclosure Act."

76 Section 3. Section **54-21-102** is enacted to read:

77 **54-21-102. Definitions.**

78 As used in this chapter:

- 79 (1) "Customer" means a person who:
 - 80 (a) (i) purchases a residential solar energy system under a system purchase agreement;
 - 81 (ii) leases a residential solar energy system under a system lease agreement; or
 - 82 (iii) purchases electricity under a power purchase agreement; and
 - 83 (b) intends to use electricity that the person acquires under an agreement listed in
 84 Subsection (1)(a) for personal, family, or household purposes.

85 (2) "Division" means the Division of Consumer Protection, established in Section
 86 [13-2-1](#).

- 87 (3) "Power purchase agreement" means an agreement:
 - 88 (a) between a customer and a solar retailer;
 - 89 (b) for the customer's purchase of electricity generated by a residential solar energy

90 system owned by the solar retailer; and

91 (c) that provides for the customer to make payments over a term of at least five years.

92 (4) "Residential solar energy system":

93 (a) means a solar energy system that:

94 (i) generates electricity primarily for on-site consumption for personal, family, or
95 household purposes;

96 (ii) is situated on no more than four units of residential real property; and

97 (iii) has an electricity delivery capacity that exceeds one kilowatt; and

98 (b) does not include a generator that:

99 (i) produces electricity; and

100 (ii) is intended for occasional use.

101 (5) "Solar agreement" means a system purchase agreement, a system lease agreement,
102 or a power purchase agreement.

103 (6) "Solar energy system" means a system or configuration of solar energy devices that
104 collects and uses solar energy to generate electricity.

105 (7) "Solar retailer" means a person who:

106 (a) sells or proposes to sell a residential solar energy system to a customer under a
107 system purchase agreement;

108 (b) owns the residential solar energy system that is the subject of a system lease
109 agreement or proposed system lease agreement; or

110 (c) sells or proposes to sell electricity to a customer under a power purchase agreement.

111 (8) "System lease agreement" means an agreement:

112 (a) under which a customer leases a residential solar energy system from a solar
113 retailer; and

114 (b) that provides for the customer to make payments over a term of at least five years
115 for the lease of the residential solar energy system.

116 (9) "System purchase agreement" means an agreement under which a customer
117 purchases a residential solar energy system from a solar retailer.

118 Section 4. Section **54-21-103** is enacted to read:

119 **54-21-103. Applicability of chapter.**

120 This chapter:

121 (1) applies to each solar agreement entered into on or after September 3, 2018,
122 including a solar agreement that accompanies the transfer of ownership or lease of real
123 property; and

124 (2) does not apply to:

125 (a) the transfer of title or rental of real property on which a residential solar energy
126 system is or is expected to be located, if the presence of the residential solar energy system is
127 incidental to the transfer of title or rental;

128 (b) a lender, governmental entity, or other third party that enters into an agreement with
129 a customer to finance a residential solar energy system but is not a party to a system purchase
130 agreement, power purchase agreement, or lease agreement;

131 (c) a sale or lease of, or the purchase of electricity from, a solar energy system that is
132 not a residential solar energy system; or

133 (d) the lease of a residential solar energy system or the purchase of power from a
134 residential solar energy system under an agreement providing for payments over a term of less
135 than five years.

136 Section 5. Section **54-21-201** is enacted to read:

137 **Part 2. Disclosure Statement**

138 **54-21-201. Disclosure statement required.**

139 (1) (a) Before entering a solar agreement, a solar retailer shall provide to a potential
140 customer a separate, written disclosure statement as provided in this section and, as applicable,
141 Sections [54-21-202](#), [54-21-203](#), [54-21-204](#), and [54-21-205](#).

142 (b) (i) The requirement under Subsection (1)(a) may be satisfied by the electronic
143 delivery of a disclosure statement to the potential customer.

144 (ii) An electronic document under Subsection (1)(a) satisfies the font-size standard
145 under Subsection (2)(a) if the required disclosures are displayed in a clear and conspicuous
146 manner.

147 (2) A disclosure statement under Subsection (1) shall:

148 (a) be in at least 12-point font;

149 (b) contain:

150 (i) the name, address, telephone number, and any email address of the potential
151 customer;

152 (ii) the name, address, telephone number, and email address of the solar retailer; and

153 (iii) (A) the name, address, telephone number, email address, and state contractor

154 license number of the person who is expected to install the system that is the subject of the

155 solar agreement; and

156 (B) if the solar retailer selected the person who is expected to provide operations or

157 maintenance support to the potential customer or introduced that person to the potential

158 customer, the name, address, telephone number, email address, and state contractor license of

159 the operations or maintenance support person; and

160 (c) include applicable information and disclosures as provided in Sections [54-21-202](#),

161 [54-21-203](#), [54-21-204](#), and [54-21-205](#).

162 Section 6. Section **54-21-202** is enacted to read:

163 **54-21-202. Contents of disclosure statement for any solar agreement.**

164 If a solar retailer is proposing to enter any solar agreement with a potential customer,

165 the disclosure statement required in Subsection [54-21-201](#)(1) shall include:

166 (1) a statement indicating that operations or maintenance services are not included as

167 part of the solar agreement, if those services are not included as part of the solar agreement;

168 (2) if the solar retailer provides any written estimate of the savings the potential

169 customer is projected to realize from the system:

170 (a) (i) the estimated projected savings over the life of the solar agreement; and

171 (ii) at the discretion of the solar retailer, the estimated projected savings over any

172 longer period not to exceed the anticipated useful life of the system;

173 (b) any material assumptions used to calculate estimated projected savings and the

174 source of those assumptions, including:

175 (i) if an annual electricity rate increase is assumed, the rate of the increase and the solar

176 retailer's basis for the assumption of the rate increase;

177 (ii) the potential customer's eligibility for or receipt of tax credits or other

178 governmental or utility incentives;

179 (iii) system production data, including production degradation;

180 (iv) the system's eligibility for interconnection under any net metering or similar

181 program;

182 (v) electrical usage and the system's designed offset of the electrical usage;

- 183 (vi) historical utility costs paid by the potential customer;
184 (vii) any rate escalation affecting a payment between the potential customer and the
185 solar retailer; and
186 (viii) the costs associated with replacing equipment making up part of the system, or, if
187 those costs are not assumed, a statement indicating that those costs are not assumed; and
188 (c) two separate statements in capital letters in close proximity to any written estimate
189 of projected savings, with substantially the following form and content:
190 (i) "THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND
191 ACTUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA ARE NOT
192 NECESSARILY REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER
193 INFORMATION REGARDING RATES, CONTACT YOUR LOCAL UTILITY OR THE
194 STATE PUBLIC SERVICE COMMISSION."; and
195 (ii) "TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY
196 AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY
197 LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS
198 ESTIMATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.";
199 (3) a notice with substantially the following form and content: "Legislative or
200 regulatory action may affect or eliminate your ability to sell or get credit for any excess power
201 generated by the system, and may affect the price or value of that power.";
202 (4) a notice describing any right a customer has under applicable law to cancel or
203 rescind a solar agreement;
204 (5) a statement describing the system and indicating the system design assumptions,
205 including the make and model of the solar panels and inverters, system size, positioning of the
206 panels on the customer's property, estimated first-year energy production, and estimated annual
207 energy production degradation, including the overall percentage degradation over the term of
208 the solar agreement or, at the solar retailer's option, over the estimated useful life of the system;
209 (6) a description of any warranty, representation, or guarantee of energy production of
210 the system;
211 (7) the approximate start and completion dates for the installation of the system;
212 (8) a statement indicating whether any warranty or maintenance obligations related to
213 the system may be transferred by the solar retailer to a third party and, if so, a statement with

214 substantially the following form and content: "The maintenance and repair obligations under
215 your contract may be assigned or transferred without your consent to a third party who will be
216 bound to all the terms of the contract. If a transfer occurs, you will be notified of any change to
217 the address, email address, or phone number to use for questions or payments or to request
218 system maintenance or repair.";

219 (9) if the solar retailer will not obtain customer approval to connect the system to the
220 customer's utility, a statement to that effect and a description of what the customer must do to
221 interconnect the system to the utility;

222 (10) a description of any roof penetration warranty or other warranty that the solar
223 retailer provides the customer or a statement, in bold capital letters, that the solar retailer does
224 not provide any warranty;

225 (11) a statement indicating whether the solar retailer will make a fixture filing or other
226 notice in the county real property records covering the system, including a Notice of
227 Independently Owned Solar Energy System, and any fees or other costs associated with the
228 filing that may be charged to the customer;

229 (12) a statement in capital letters with substantially the following form and content:
230 "NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO
231 MAKE ANY PROMISE TO YOU THAT IS NOT CONTAINED IN THIS DISCLOSURE
232 STATEMENT CONCERNING COST SAVINGS, TAX BENEFITS, OR GOVERNMENT
233 OR UTILITY INCENTIVES. YOU SHOULD NOT RELY UPON ANY PROMISE OR
234 ESTIMATE THAT IS NOT INCLUDED IN THIS DISCLOSURE STATEMENT.";

235 (13) a statement in capital letters with substantially the following form and content:
236 "[name of solar retailer] IS NOT AFFILIATED WITH ANY UTILITY COMPANY OR
237 GOVERNMENT AGENCY. NO EMPLOYEE OR REPRESENTATIVE OF [name of solar
238 retailer] IS AUTHORIZED TO CLAIM AFFILIATION WITH A UTILITY COMPANY OR
239 GOVERNMENT AGENCY."; and

240 (14) any additional information, statement, or disclosure the solar retailer considers
241 appropriate, as long as the additional information, statement, or disclosure does not have the
242 purpose or effect of obscuring the disclosures required under this part.

243 Section 7. Section **54-21-203** is enacted to read:

244 **54-21-203. Contents of disclosure statement for system purchase agreement.**

245 If a solar retailer is proposing to enter a system purchase agreement with a potential
246 customer, the disclosure statement required in Subsection 54-21-201(1) shall include:

247 (1) a statement with substantially the following form and content: "You are entering an
248 agreement to purchase an energy generation system. You will own the system installed on your
249 property. You may be entitled to federal tax credits because of the purchase. You should
250 consult your tax advisor.";

251 (2) the price quoted to the potential customer for a cash purchase of the system;

252 (3) (a) the schedule of required and anticipated payments from the customer to the
253 solar retailer and third parties over the term of the system purchase agreement, including
254 application fees, up-front charges, down payment, scheduled payments under the system
255 purchase agreement, payments at the end of the term of the system purchase agreement,
256 payments for any operations or maintenance contract offered by or through the solar retailer in
257 connection with the system purchase agreement, and payments for replacement of system
258 components likely to require replacement before the end of the useful life of the system as a
259 whole; and

260 (b) the total of all payments referred to in Subsection (3)(a);

261 (4) a statement indicating that the cost of insuring the system is not included within the
262 schedule of payments under Subsection (3);

263 (5) a statement, if applicable, with substantially the following form and content: "You
264 are responsible for obtaining insurance coverage for any loss or damage to the system. You
265 should consult an insurance professional to understand how to protect against the risk of loss or
266 damage to the system. You should also consult your home insurer about the potential impact of
267 installing a system."; and

268 (6) information about whether the system may be transferred to a purchaser of the
269 home or real property where the system is located and any conditions for a transfer.

270 Section 8. Section **54-21-204** is enacted to read:

271 **54-21-204. Contents of disclosure statement for system lease agreement.**

272 If a solar retailer is proposing to enter a system lease agreement with a potential
273 customer, the disclosure statement required in Subsection 54-21-201(1) shall include:

274 (1) a statement with substantially the following form and content: "You are entering an
275 agreement to lease an energy generation system. You will lease (not own) the system installed

276 on your property. You will not be entitled to any federal tax credit associated with the lease.";

277 (2) information about whether the system lease agreement may be transferred to a
278 purchaser of the home or real property where the system is located and, if so, any conditions for
279 a transfer;

280 (3) if the solar retailer will not obtain insurance against damage or loss to the system, a
281 statement to that effect and a description of the consequences to the customer if there is
282 damage or loss to the system; and

283 (4) information about what will happen to the system at the end of the term of the
284 system lease agreement.

285 Section 9. Section **54-21-205** is enacted to read:

286 **54-21-205. Contents of disclosure statement for power purchase agreement.**

287 If a solar retailer is proposing to enter a power purchase agreement with a potential
288 customer, the disclosure statement required in Subsection [54-21-201](#)(1) shall include:

289 (1) a statement with substantially the following form and content: "You are entering an
290 agreement to purchase power from an energy generation system. You will not own the system
291 installed on your property. You will not be entitled to any federal tax credit associated with the
292 purchase.";

293 (2) information about whether the power purchase agreement may be transferred to a
294 purchaser of the home or real property where the system is located and, if so, any conditions for
295 a transfer;

296 (3) if the solar retailer will not obtain insurance against damage or loss to the system, a
297 statement to that effect and a description of the consequences to the customer if there is
298 damage or loss to the system; and

299 (4) information about what will happen to the system at the end of the term of the
300 power purchase agreement.

301 Section 10. Section **54-21-206** is enacted to read:

302 **54-21-206. Good faith estimate allowed.**

303 A solar retailer that does not, at the time of providing a disclosure statement required in
304 Subsection [54-21-201](#)(1), have information required under Section [54-21-202](#), [54-21-203](#),
305 [54-21-204](#), or [54-21-205](#) to be included in the disclosure statement may make a good faith
306 estimate of that information, if the solar retailer clearly indicates that the information is an

307 estimate.

308 Section 11. Section **54-21-301** is enacted to read:

309 **Part 3. Notices to be Recorded**

310 **54-21-301. Definitions.**

311 As used in this part:

312 (1) "Applicable recorder's office" means the office of the recorder of the county in
313 which the subject property is located.

314 (2) "Subject property" means the real property on which a system that is the subject of
315 a system lease agreement or power purchase agreement is installed.

316 Section 12. Section **54-21-302** is enacted to read:

317 **54-21-302. Notice of independently owned solar energy system.**

318 (1) Within 30 days after the installation of a system under a system lease agreement or
319 power purchase agreement, a solar retailer shall cause a notice to be submitted to the applicable
320 recorder's office for recording.

321 (2) A notice under Subsection (1) shall:

322 (a) be titled prominently at the top in 12-point font "Notice of Independently Owned
323 Solar Energy System";

324 (b) contain a statement with substantially the following form and content: "This real
325 property is receiving part of its electricity from a solar retailer that has retained ownership of a
326 solar energy system located on this real property. The current owner of this real property
327 entered a long-term contract for the lease of the solar energy system or for the sale of power
328 from the system. The solar retailer is required to provide a copy of the contract to a prospective
329 buyer of the real property within 10 business days afer receiving a written request from the
330 current owner of this real property.";

331 (c) contain the address and tax identification number of the subject property;

332 (d) include the name, address, and telephone number of the solar retailer, and any other
333 contact information that the solar retailer considers necessary;

334 (e) include a statement indicating the type of agreement the owner of the real property
335 has entered, whether a system lease agreement or a power purchase agreement;

336 (f) provide the date the system lease agreement or power purchase agreement takes
337 effect and the date it terminates; and

338 (g) include a plain language summary of any potential costs, consequences, and
339 assignment of responsibilities that could result if the system lease agreement or power purchase
340 agreement is terminated.

341 (3) A notice under this section is not a title defect on or a lien or encumbrance against
342 the subject property.

343 (4) The solar retailer is solely responsible for the accuracy of the information provided
344 in a notice under this section and for causing the notice to be submitted to the applicable
345 recorder's office for recording.

346 (5) A notice under this section that is properly recorded in the applicable recorder's
347 office is valid until extinguished under Section [54-21-303](#).

348 Section 13. Section **54-21-303** is enacted to read:

349 **54-21-303. Extinguishing a notice of independently owned solar energy system.**

350 (1) Within 30 days after a system lease agreement or power purchase agreement is
351 voided, terminated, sold, assigned, or transferred, the solar retailer shall submit a notice of
352 extinguishment to the applicable recorder's office for recording.

353 (2) A notice under Subsection (1) shall:

354 (a) be titled prominently at the top in 12-point font "Notice of Extinguishment of the
355 Notice of Independently Owned Solar Energy System";

356 (b) contain the address and tax identification number of the subject property;

357 (c) contain a statement indicating that the previously recorded notice of independently
358 owned solar energy system is extinguished; and

359 (d) include the name, address, and telephone number of the solar retailer, and any other
360 contact information that the solar retailer considers necessary.

361 (3) Upon the recording of a notice under Subsection (1), the notice of independently
362 owned solar energy system recorded under Section [54-21-302](#) is extinguished as to the subject
363 property.

364 Section 14. Section **54-21-304** is enacted to read:

365 **54-21-304. Notice upon transfer of obligation or change of contact information.**

366 (1) A solar retailer that transfers its obligation or changes its contact information under
367 a system lease agreement or power purchase agreement shall, within 30 days after the transfer
368 or change, submit a notice to the applicable recorder's office for recording.

- 369 (2) A notice required under Subsection (1) shall:
- 370 (a) contain the address and tax identification number of the subject property; and
- 371 (b) as applicable:
- 372 (i) describe each obligation the solar retailer has transferred and provide the name,
- 373 address, telephone number, and email address of each person to whom any obligation was
- 374 transferred; and
- 375 (ii) provide the solar retailer's new contact information.

376 Section 15. Section **54-21-401** is enacted to read:

377 **Part 4. Enforcement**

378 **54-21-401. Division enforcement authority -- Administrative fine.**

- 379 (1) (a) Subject to Subsection (1)(b), the division may enforce the provisions of this
 - 380 chapter by:
 - 381 (i) conducting an investigation into an alleged violation of this chapter;
 - 382 (ii) issuing a cease and desist order against a further violation of this chapter; and
 - 383 (iii) imposing an administrative fine of no more than \$2,500 per occurrence on a solar
 - 384 retailer that violates a provision of this chapter, if the division finds that the violation is willful
 - 385 or intentional.
 - 386 (b) The division may not commence any enforcement action under this section more
 - 387 than four years after the date of execution of the solar agreement with respect to which a
 - 388 violation is alleged to have occurred.
 - 389 (2) The division shall deposit an administrative fine collected under Subsection
 - 390 (1)(a)(iii) into the Consumer Protection Education and Training Fund created in Section
 - 391 [13-2-8](#).
 - 392 (3) Nothing in this section may be construed to affect:
 - 393 (a) a remedy a customer has independent of this section; or
 - 394 (b) the division's ability or authority to enforce any other law or regulation.
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