

Senator Lincoln Fillmore proposes the following substitute bill:

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;
 - ▶ 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
- ▶ provides for the enforcement of the disclosure requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **13-2-1**, as last amended by Laws of Utah 2017, Chapter 98

28 ENACTS:

29 **13-52-101**, Utah Code Annotated 1953

30 **13-52-102**, Utah Code Annotated 1953

31 **13-52-103**, Utah Code Annotated 1953

32 **13-52-201**, Utah Code Annotated 1953

33 **13-52-202**, Utah Code Annotated 1953

34 **13-52-203**, Utah Code Annotated 1953

35 **13-52-204**, Utah Code Annotated 1953

36 **13-52-205**, Utah Code Annotated 1953

37 **13-52-206**, Utah Code Annotated 1953

38 **13-52-301**, Utah Code Annotated 1953

39

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

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

42 **13-2-1. Consumer protection division established -- Functions.**

43 (1) There is established within the Department of Commerce the Division of Consumer
44 Protection.

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

46 (a) Chapter 5, Unfair Practices Act;

47 (b) Chapter 10a, Music Licensing Practices Act;

48 (c) Chapter 11, Utah Consumer Sales Practices Act;

49 (d) Chapter 15, Business Opportunity Disclosure Act;

50 (e) Chapter 20, New Motor Vehicle Warranties Act;

51 (f) Chapter 21, Credit Services Organizations Act;

52 (g) Chapter 22, Charitable Solicitations Act;

53 (h) Chapter 23, Health Spa Services Protection Act;

54 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

55 (j) Chapter 26, Telephone Fraud Prevention Act;

56 (k) Chapter 28, Prize Notices Regulation Act;

- 57 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 58 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 59 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 60 (o) Chapter 39, Child Protection Registry;
- 61 (p) Chapter 41, Price Controls During Emergencies Act;
- 62 (q) Chapter 42, Uniform Debt-Management Services Act;
- 63 (r) Chapter 49, Immigration Consultants Registration Act; ~~[and]~~
- 64 (s) Chapter 51, Transportation Network Company Registration Act[-]; and
- 65 (t) Chapter 52, Residential Solar Energy Disclosure Act.

66 Section 2. Section 13-52-101 is enacted to read:

67 **CHAPTER 52. RESIDENTIAL SOLAR ENERGY DISCLOSURE ACT**

68 **Part 1. General Provisions**

69 **13-52-101. Title.**

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

71 Section 3. Section 13-52-102 is enacted to read:

72 **13-52-102. Definitions.**

73 As used in this chapter:

- 74 (1) "Customer" means a person who, for primarily personal, family, or household
- 75 purposes:
 - 76 (a) purchases a residential solar energy system under a system purchase agreement;
 - 77 (b) leases a residential solar energy system under a system lease agreement; or
 - 78 (c) purchases electricity under a power purchase agreement.
- 79 (2) "Division" means the Division of Consumer Protection, established in Section
- 80 13-2-1.
- 81 (3) "Power purchase agreement" means an agreement:
 - 82 (a) between a customer and a solar retailer;
 - 83 (b) for the customer's purchase of electricity generated by a residential solar energy
 - 84 system owned by the solar retailer; and
 - 85 (c) that provides for the customer to make payments over a term of at least five years.
- 86 (4) "Residential solar energy system":
- 87 (a) means a solar energy system that:

- 88 (i) is installed in the state;
- 89 (ii) generates electricity primarily for on-site consumption for personal, family, or
- 90 household purposes;
- 91 (iii) is situated on no more than four units of residential real property; and
- 92 (iv) has an electricity delivery capacity that exceeds one kilowatt; and
- 93 (b) does not include a generator that:
 - 94 (i) produces electricity; and
 - 95 (ii) is intended for occasional use.
- 96 (5) "Solar agreement" means a system purchase agreement, a system lease agreement,
- 97 or a power purchase agreement.
- 98 (6) "Solar energy system" means a system or configuration of solar energy devices that
- 99 collects and uses solar energy to generate electricity.
- 100 (7) "Solar retailer" means a person who:
 - 101 (a) sells or proposes to sell a residential solar energy system to a customer under a
 - 102 system purchase agreement;
 - 103 (b) owns the residential solar energy system that is the subject of a system lease
 - 104 agreement or proposed system lease agreement; or
 - 105 (c) sells or proposes to sell electricity to a customer under a power purchase agreement.
- 106 (8) "System lease agreement" means an agreement:
 - 107 (a) under which a customer leases a residential solar energy system from a solar
 - 108 retailer; and
 - 109 (b) that provides for the customer to make payments over a term of at least five years
 - 110 for the lease of the residential solar energy system.
- 111 (9) "System purchase agreement" means an agreement under which a customer
- 112 purchases a residential solar energy system from a solar retailer.

113 Section 4. Section **13-52-103** is enacted to read:

114 **13-52-103. Applicability of chapter.**

115 This chapter:

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

119 (2) does not apply to:

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

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

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

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

131 Section 5. Section **13-52-201** is enacted to read:

132 **Part 2. Disclosure Statement**

133 **13-52-201. Disclosure statement required.**

134 (1) (a) Before entering a solar agreement, a solar retailer shall provide to a potential
135 customer a separate, written disclosure statement as provided in this section and, as applicable,
136 Sections [13-52-202](#), [13-52-203](#), [13-52-204](#), and [13-52-205](#).

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

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

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

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

144 (b) contain:

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

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

148 (iii) (A) the name, address, telephone number, email address, and state contractor
149 license number of the person who is expected to install the system that is the subject of the

150 solar agreement; and

151 (B) if the solar retailer selected the person who is expected to provide operations or
152 maintenance support to the potential customer or introduced that person to the potential
153 customer, the name, address, telephone number, email address, and state contractor license of
154 the operations or maintenance support person; and

155 (c) include applicable information and disclosures as provided in Sections [13-52-202](#),
156 [13-52-203](#), [13-52-204](#), and [13-52-205](#).

157 Section 6. Section **13-52-202** is enacted to read:

158 **13-52-202. Contents of disclosure statement for any solar agreement.**

159 If a solar retailer is proposing to enter any solar agreement with a potential customer,
160 the disclosure statement required in Subsection [13-52-201](#)(1) shall include:

161 (1) a statement indicating that operations or maintenance services are not included as
162 part of the solar agreement, if those services are not included as part of the solar agreement;

163 (2) if the solar retailer provides any written estimate of the savings the potential
164 customer is projected to realize from the system:

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

166 (ii) at the discretion of the solar retailer, the estimated projected savings over any
167 longer period not to exceed the anticipated useful life of the system;

168 (b) any material assumptions used to calculate estimated projected savings and the
169 source of those assumptions, including:

170 (i) if an annual electricity rate increase is assumed, the rate of the increase and the solar
171 retailer's basis for the assumption of the rate increase;

172 (ii) the potential customer's eligibility for or receipt of tax credits or other
173 governmental or utility incentives;

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

175 (iv) the system's eligibility for interconnection under any net metering or similar
176 program;

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

178 (vi) historical utility costs paid by the potential customer;

179 (vii) any rate escalation affecting a payment between the potential customer and the
180 solar retailer; and

181 (viii) the costs associated with replacing equipment making up part of the system, or, if
182 those costs are not assumed, a statement indicating that those costs are not assumed; and

183 (c) two separate statements in capital letters in close proximity to any written estimate
184 of projected savings, with substantially the following form and content:

185 (i) "THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND
186 ACTUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA ARE NOT
187 NECESSARILY REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER
188 INFORMATION REGARDING RATES, CONTACT YOUR LOCAL UTILITY OR THE
189 STATE PUBLIC SERVICE COMMISSION."; and

190 (ii) "TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY
191 AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY
192 LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS
193 ESTIMATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.";

194 (3) a notice with substantially the following form and content: "Legislative or
195 regulatory action may affect or eliminate your ability to sell or get credit for any excess power
196 generated by the system, and may affect the price or value of that power.";

197 (4) a notice describing any right a customer has under applicable law to cancel or
198 rescind a solar agreement;

199 (5) a statement describing the system and indicating the system design assumptions,
200 including the make and model of the solar panels and inverters, system size, positioning of the
201 panels on the customer's property, estimated first-year energy production, and estimated annual
202 energy production degradation, including the overall percentage degradation over the term of
203 the solar agreement or, at the solar retailer's option, over the estimated useful life of the system;

204 (6) a description of any warranty, representation, or guarantee of energy production of
205 the system;

206 (7) the approximate start and completion dates for the installation of the system;

207 (8) a statement indicating whether any warranty or maintenance obligations related to
208 the system may be transferred by the solar retailer to a third party and, if so, a statement with
209 substantially the following form and content: "The maintenance and repair obligations under
210 your contract may be assigned or transferred without your consent to a third party who will be
211 bound to all the terms of the contract. If a transfer occurs, you will be notified of any change to

212 the address, email address, or phone number to use for questions or payments or to request
213 system maintenance or repair.";

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

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

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

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

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

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

238 Section 7. Section **13-52-203** is enacted to read:

239 **13-52-203. Contents of disclosure statement for system purchase agreement.**

240 If a solar retailer is proposing to enter a system purchase agreement with a potential
241 customer, the disclosure statement required in Subsection [13-52-201](#)(1) shall include:

242 (1) a statement with substantially the following form and content: "You are entering an

243 agreement to purchase an energy generation system. You will own the system installed on your
244 property. You may be entitled to federal tax credits because of the purchase. You should
245 consult your tax advisor.";

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

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

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

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

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

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

265 Section 8. Section **13-52-204** is enacted to read:

266 **13-52-204. Contents of disclosure statement for system lease agreement.**

267 If a solar retailer is proposing to enter a system lease agreement with a potential
268 customer, the disclosure statement required in Subsection [13-52-201](#)(1) shall include:

269 (1) a statement with substantially the following form and content: "You are entering an
270 agreement to lease an energy generation system. You will lease (not own) the system installed
271 on your property. You will not be entitled to any federal tax credit associated with the lease.";

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

274 a transfer;

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

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

280 Section 9. Section **13-52-205** is enacted to read:

281 **13-52-205. Contents of disclosure statement for power purchase agreement.**

282 If a solar retailer is proposing to enter a power purchase agreement with a potential
283 customer, the disclosure statement required in Subsection [13-52-201](#)(1) shall include:

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

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

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

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

296 Section 10. Section **13-52-206** is enacted to read:

297 **13-52-206. Good faith estimate allowed.**

298 A solar retailer that does not, at the time of providing a disclosure statement required in
299 Subsection [13-52-201](#)(1), have information required under Section [13-52-202](#), [13-52-203](#),
300 [13-52-204](#), or [13-52-205](#) to be included in the disclosure statement may make a good faith
301 estimate of that information, if the solar retailer clearly indicates that the information is an
302 estimate and provides the basis for the estimate.

303 Section 11. Section **13-52-301** is enacted to read:

304 **Part 3. Enforcement**

305 13-52-301. Division enforcement authority -- Administrative fine.

306 (1) Subject to Subsection (2), the division may enforce the provisions of this chapter
307 by:

308 (a) conducting an investigation into an alleged violation of this chapter;

309 (b) issuing a cease and desist order against a further violation of this chapter; and

310 (c) imposing an administrative fine of no more than \$2,500 per solar agreement on a
311 solar retailer that:

312 (i) materially fails to comply with the disclosure requirements of this chapter; or

313 (ii) violates any other provision of this chapter, if the division finds that the violation is
314 a willful or intentional attempt to mislead or deceive a customer.

315 (2) The division may not commence any enforcement action under this section more
316 than four years after the date of execution of the solar agreement with respect to which a
317 violation is alleged to have occurred.

318 (3) The division shall, in its discretion:

319 (a) deposit an administrative fine collected under Subsection (1)(c) in the Consumer
320 Protection Education and Training Fund created in Section [13-2-8](#); or

321 (b) distribute an administrative fine collected under Subsection (1)(c) to a customer
322 adversely affected by the solar retailer's failure or violation resulting in a fine under Subsection
323 (1)(c), if the division has conducted an administrative proceeding resulting in a determination
324 of the appropriateness and amount of any distribution to a customer.

325 (4) Nothing in this chapter may be construed to affect:

326 (a) a remedy a customer has independent of this chapter; or

327 (b) the division's ability or authority to enforce any other law or regulation.