

SB0157S01 compared with SB0157

~~{deleted text}~~ shows text that was in SB0157 but was deleted in SB0157S01.

Inserted text shows text that was not in SB0157 but was inserted into SB0157S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

RESIDENTIAL SOLAR ENERGY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

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

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- ▶ 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

ENACTS:

~~{54-21-101}~~13-52-101, Utah Code Annotated 1953

~~{54-21-102}~~13-52-102, Utah Code Annotated 1953

~~{54-21-103}~~13-52-103, Utah Code Annotated 1953

~~{54-21-201}~~13-52-201, Utah Code Annotated 1953

~~{54-21-202}~~13-52-202, Utah Code Annotated 1953

~~{54-21-203}~~13-52-203, Utah Code Annotated 1953

~~{54-21-204}~~13-52-204, Utah Code Annotated 1953

~~{54-21-205}~~13-52-205, Utah Code Annotated 1953

~~{54-21-206}~~13-52-206, Utah Code Annotated 1953

~~{54-21-301}~~13-52-301, Utah Code Annotated 1953

~~{~~~~54-21-302, Utah Code Annotated 1953~~

~~54-21-303, Utah Code Annotated 1953~~

~~54-21-304, Utah Code Annotated 1953~~

~~54-21-401, Utah Code Annotated 1953~~

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

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

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

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

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

(a) Chapter 5, Unfair Practices Act;

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- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls During Emergencies Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act; ~~and~~
- (s) Chapter 51, Transportation Network Company Registration Act~~[-]; and~~
~~(3)t) The division shall enforce the provisions of Title 54,~~ Chapter ~~21~~52,

Residential Solar Energy Disclosure Act~~, as provided in Section 54-21-401~~.

Section 2. Section ~~54-21~~13-52-101 is enacted to read:

CHAPTER ~~21~~52. RESIDENTIAL SOLAR ENERGY DISCLOSURE ACT

Part 1. General Provisions

~~54-21-101~~13-52-101. **Title.**

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

Section 3. Section ~~54-21~~13-52-102 is enacted to read:

~~54-21-102~~13-52-102. **Definitions.**

As used in this chapter:

(1) "Customer" means a person who, for primarily personal, family, or household purposes:

(a) ~~(i)~~ purchases a residential solar energy system under a system purchase

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agreement;

(~~iii~~b) leases a residential solar energy system under a system lease agreement; or

(~~iii~~c) purchases electricity under a power purchase agreement~~;~~ and~~;~~.

~~{ (b) intends to use electricity that the person acquires under an agreement listed in Subsection (1)(a) for personal, family, or household purposes.~~

~~‡ (2) "Division" means the Division of Consumer Protection, established in Section 13-2-1.~~

(3) "Power purchase agreement" means an agreement:

(a) between a customer and a solar retailer;

(b) for the customer's purchase of electricity generated by a residential solar energy system owned by the solar retailer; and

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

(4) "Residential solar energy system":

(a) means a solar energy system that:

(i) is installed in the state;

(~~ii~~ii) generates electricity primarily for on-site consumption for personal, family, or household purposes;

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

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

(b) does not include a generator that:

(i) produces electricity; and

(ii) is intended for occasional use.

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

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

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

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

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

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

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

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

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

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

Section 4. Section ~~{54-21}~~13-52-103 is enacted to read:

~~{54-21-103}~~13-52-103. Applicability of chapter.

This chapter:

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

(2) does not apply to:

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

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

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

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

Section 5. Section ~~{54-21}~~13-52-201 is enacted to read:

Part 2. Disclosure Statement

~~{54-21-201}~~13-52-201. Disclosure statement required.

(1) (a) Before entering a solar agreement, a solar retailer shall provide to a potential customer a separate, written disclosure statement as provided in this section and, as applicable,

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Sections ~~{54-21-202}~~13-52-202, ~~{54-21-203}~~13-52-203, ~~{54-21-204}~~13-52-204, and ~~{54-21-205}~~13-52-205.

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

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

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

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

(b) contain:

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

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

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

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

(c) include applicable information and disclosures as provided in Sections ~~{54-21-202}~~13-52-202, ~~{54-21-203}~~13-52-203, ~~{54-21-204}~~13-52-204, and ~~{54-21-205}~~13-52-205.

Section 6. Section ~~{54-21}~~13-52-202 is enacted to read:

~~{54-21-202}~~13-52-202. **Contents of disclosure statement for any solar agreement.**

If a solar retailer is proposing to enter any solar agreement with a potential customer, the disclosure statement required in Subsection ~~{54-21-201}~~13-52-201(1) shall include:

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

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

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- (a) (i) the estimated projected savings over the life of the solar agreement; and
- (ii) at the discretion of the solar retailer, the estimated projected savings over any longer period not to exceed the anticipated useful life of the system;
- (b) any material assumptions used to calculate estimated projected savings and the source of those assumptions, including:
 - (i) if an annual electricity rate increase is assumed, the rate of the increase and the solar retailer's basis for the assumption of the rate increase;
 - (ii) the potential customer's eligibility for or receipt of tax credits or other governmental or utility incentives;
 - (iii) system production data, including production degradation;
 - (iv) the system's eligibility for interconnection under any net metering or similar program;
 - (v) electrical usage and the system's designed offset of the electrical usage;
 - (vi) historical utility costs paid by the potential customer;
 - (vii) any rate escalation affecting a payment between the potential customer and the solar retailer; and
 - (viii) the costs associated with replacing equipment making up part of the system, or, if those costs are not assumed, a statement indicating that those costs are not assumed; and
- (c) two separate statements in capital letters in close proximity to any written estimate of projected savings, with substantially the following form and content:
 - (i) "THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND ACTUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA ARE NOT NECESSARILY REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER INFORMATION REGARDING RATES, CONTACT YOUR LOCAL UTILITY OR THE STATE PUBLIC SERVICE COMMISSION."; and
 - (ii) "TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS ESTIMATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.";
 - (3) a notice with substantially the following form and content: "Legislative or regulatory action may affect or eliminate your ability to sell or get credit for any excess power

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generated by the system, and may affect the price or value of that power.";

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

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

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

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

(8) a statement indicating whether any warranty or maintenance obligations related to the system may be transferred by the solar retailer to a third party and, if so, a statement with substantially the following form and content: "The maintenance and repair obligations under your contract may be assigned or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified of any change to the address, email address, or phone number to use for questions or payments or to request system maintenance or repair.";

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

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

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

(12) a statement in capital letters with substantially the following form and content: "NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO MAKE ANY PROMISE TO YOU THAT IS NOT CONTAINED IN THIS DISCLOSURE

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STATEMENT CONCERNING COST SAVINGS, TAX BENEFITS, OR GOVERNMENT OR UTILITY INCENTIVES. YOU SHOULD NOT RELY UPON ANY PROMISE OR ESTIMATE THAT IS NOT INCLUDED IN THIS DISCLOSURE STATEMENT.";

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

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

Section 7. Section ~~{54-21}~~13-52-203 is enacted to read:

~~{54-21-203}~~13-52-203. **Contents of disclosure statement for system purchase agreement.**

If a solar retailer is proposing to enter a system purchase agreement with a potential customer, the disclosure statement required in Subsection ~~{54-21-201}~~13-52-201(1) shall include:

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

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

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

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

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

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

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

Section 8. Section ~~{54-21}~~13-52-204 is enacted to read:

~~{54-21-204}~~13-52-204. **Contents of disclosure statement for system lease agreement.**

If a solar retailer is proposing to enter a system lease agreement with a potential customer, the disclosure statement required in Subsection ~~{54-21-201}~~13-52-201(1) shall include:

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

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

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

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

Section 9. Section ~~{54-21}~~13-52-205 is enacted to read:

~~{54-21-205}~~13-52-205. **Contents of disclosure statement for power purchase agreement.**

If a solar retailer is proposing to enter a power purchase agreement with a potential customer, the disclosure statement required in Subsection ~~{54-21-201}~~13-52-201(1) shall

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include:

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

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

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

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

Section 10. Section ~~{54-21}~~13-52-206 is enacted to read:

~~{54-21-206}~~13-52-206. **Good faith estimate allowed.**

A solar retailer that does not, at the time of providing a disclosure statement required in Subsection ~~{54-21-201}~~13-52-201(1), have information required under Section ~~{54-21-202}~~13-52-202, ~~{54-21-203}~~13-52-203, ~~{54-21-204}~~13-52-204, or ~~{54-21-205}~~13-52-205 to be included in the disclosure statement may make a good faith estimate of that information, if the solar retailer clearly indicates that the information is an estimate and provides the basis for the estimate.

Section 11. Section ~~{54-21}~~13-52-301 is enacted to read:

Part 3. ~~{~~ Notices to be Recorded

~~54-21-301. Definitions:~~

As used in this part:

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

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

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

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

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- ~~(1) Within 30 days after the installation of a system under a system lease agreement or power purchase agreement, a solar retailer shall cause a notice to be submitted to the applicable recorder's office for recording:~~
- ~~(2) A notice under Subsection (1) shall:~~
- ~~(a) be titled prominently at the top in 12-point font "Notice of Independently Owned Solar Energy System";~~
- ~~(b) contain a statement with substantially the following form and content: "This real property is receiving part of its electricity from a solar retailer that has retained ownership of a solar energy system located on this real property. The current owner of this real property entered a long-term contract for the lease of the solar energy system or for the sale of power from the system. The solar retailer is required to provide a copy of the contract to a prospective buyer of the real property within 10 business days after receiving a written request from the current owner of this real property.";~~
- ~~(c) contain the address and tax identification number of the subject property;~~
- ~~(d) include the name, address, and telephone number of the solar retailer, and any other contact information that the solar retailer considers necessary;~~
- ~~(e) include a statement indicating the type of agreement the owner of the real property has entered, whether a system lease agreement or a power purchase agreement;~~
- ~~(f) provide the date the system lease agreement or power purchase agreement takes effect and the date it terminates; and~~
- ~~(g) include a plain language summary of any potential costs, consequences, and assignment of responsibilities that could result if the system lease agreement or power purchase agreement is terminated.~~
- ~~(3) A notice under this section is not a title defect on or a lien or encumbrance against the subject property.~~
- ~~(4) The solar retailer is solely responsible for the accuracy of the information provided in a notice under this section and for causing the notice to be submitted to the applicable recorder's office for recording.~~
- ~~(5) A notice under this section that is properly recorded in the applicable recorder's office is valid until extinguished under Section 54-21-303.~~

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

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~~54-21-303. Extinguishing a notice of independently owned solar energy system:~~

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

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

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

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

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

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

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

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

~~54-21-304. Notice upon transfer of obligation or change of contact information:~~

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

~~(2) A notice required under Subsection (1) shall:~~

~~(a) contain the address and tax identification number of the subject property; and~~

~~(b) as applicable:~~

~~(i) describe each obligation the solar retailer has transferred and provide the name, address, telephone number, and email address of each person to whom any obligation was transferred; and~~

~~(ii) provide the solar retailer's new contact information.~~

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

~~Part 4.} Enforcement~~

~~{54-21-401}13-52-301. Division enforcement authority -- Administrative fine.~~

~~(1) {(a)} Subject to Subsection (1)(b)2), the division may enforce the provisions of~~

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this chapter by:

- (~~fi~~)a conducting an investigation into an alleged violation of this chapter;
- (~~fi~~)b issuing a cease and desist order against a further violation of this chapter; and
- (~~fi~~)c imposing an administrative fine of no more than \$2,500 per ~~{occurrence}~~solar

agreement on a solar retailer that:

- (i) materially fails to comply with the disclosure requirements of this chapter; or
- (ii) violates ~~{a}~~any other provision of this chapter, if the division finds that the violation is a willful or intentional attempt to mislead or deceive a customer.

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

(~~f2~~)3 The division shall, in its discretion:

(a) deposit an administrative fine collected under Subsection (1)(~~fa~~)(~~fi~~)c ~~{into}~~in the Consumer Protection Education and Training Fund created in Section 13-2-8; or

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

(~~f3~~)4 Nothing in this ~~{section}~~chapter may be construed to affect:

- (a) a remedy a customer has independent of this ~~{section}~~chapter; or
- (b) the division's ability or authority to enforce any other law or regulation.

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Legislative Review Note

Office of Legislative Research and General Counsel