

HB0215S02 compared with HB0215S01

~~{deleted text}~~ shows text that was in HB0215S01 but was deleted in HB0215S02.

inserted text shows text that was not in HB0215S01 but was inserted into HB0215S02.

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Representative Colin W. Jack proposes the following substitute bill:

HOME SOLAR ENERGY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: ~~{_____}~~ Scott D. Sandall

LONG TITLE

General Description:

This bill modifies provisions related to the Residential Solar Energy Disclosure Act.

Highlighted Provisions:

This bill:

▶ ~~{defines terms;~~

▶ ~~allows a customer to rescind or cancel;~~ requires a solar retailer to provide a disclosure statement to a potential customer at least 10 days before entering into a solar agreement ~~{ up to 15 days after receipt of the customer's second monthly electricity bill after installation of the solar equipment;~~

▶ ~~requires a solar company to notify a customer of the customer's right to cancel or rescind the contract};~~

▶ requires a solar retailer ~~{operating in the state to register with the state;~~

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- requires a solar retailer operating in the state to obtain and maintain bonding} to provide a copy of the signed agreement in paper form to the customer;
- ▶ prohibits beginning installation until 15 days after providing the signed copy of the solar agreement to the customer;
- ▶ provides the customer with a 15 day cancellation period after receiving the agreement;
- ▶ adds enforcement authority for the Division of Consumer Protection, including court action; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{13-52-102}~~ 13-52-201, as enacted by Laws of Utah 2018, Chapter 290

13-52-202, as enacted by Laws of Utah 2018, Chapter 290

13-52-301, as enacted by Laws of Utah 2018, Chapter 290

ENACTS:

13-52-207, Utah Code Annotated 1953

~~{13-52-208, Utah Code Annotated 1953~~

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

Section 1. Section ~~{13-52-102}~~ 13-52-201 is amended to read:

~~{13-52-102. Definitions:~~

~~As used in this chapter:~~

~~(1) "Affiliated person" means a solar retailer or a solar retailer's contractor, director, employee, officer, owner, or partner.~~

~~(2) "Customer" means a person who, for primarily personal, family, or household purposes:~~

~~(a) purchases a residential solar energy system under a system purchase agreement;~~

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- ~~_____ (b) leases a residential solar energy system under a system lease agreement, or~~
- ~~_____ (c) purchases electricity under a power purchase agreement.~~
- ~~_____ [(2)] (3) "Division" means the Division of Consumer Protection, established in Section 13-2-1.~~
- ~~_____ [(3)] (4) "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)] (5) "Residential solar energy system":~~
 - ~~_____ (a) means a solar energy system that:~~
 - ~~_____ (i) is installed in the state;~~
 - ~~_____ (ii) generates electricity primarily for on-site consumption for personal, family, or household purposes;~~
 - ~~_____ (iii) is situated on no more than four units of residential real property; and~~
 - ~~_____ (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)] (6) "Solar agreement" means a system purchase agreement, a system lease agreement, or a power purchase agreement.~~
- ~~_____ [(6)] (7) "Solar energy system" means a system or configuration of solar energy devices that collects and uses solar energy to generate electricity.~~
- ~~_____ [(7)] (8) "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~~
 - ~~_____ (c) sells or proposes to sell electricity to a customer under a power purchase agreement.~~
- ~~_____ [(8)] (9) "System lease agreement" means an agreement:~~
 - ~~_____ (a) under which a customer leases a residential solar energy system from a solar~~

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

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

(1) ~~[(a) Before]~~ At least 10 days 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, Sections 13-52-202, 13-52-203, 13-52-204, and 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 paper form;

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

~~(b)~~ (c) 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)~~ (d) include applicable information and disclosures as provided in Sections 13-52-202, 13-52-203, 13-52-204, and 13-52-205.

Section 2. Section **13-52-202** is amended to read:

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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 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:

(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

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

(4) a notice describing any right a customer has under Section 13-52-207, and any other 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 that the solar ~~company~~retailer may not begin installation of the system until at least ~~10~~15 days after the day on which the solar ~~company~~retailer and customer enter into a contract;

~~(8)~~ (9) 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)~~ (10) 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;

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~~[(10)]~~ (11) 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)]~~ (12) 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)]~~ (13) 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 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)]~~ (14) 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)]~~ (15) 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 3. Section **13-52-207** is enacted to read:

13-52-207. Customer ability to cancel solar agreement.

(1) A solar ~~company~~retailer shall provide to the customer a copy of the signed solar agreement, including any disclosures required under this chapter:

(a) in paper form; and

(b) if the solar ~~company~~retailer marketed services for residential solar energy systems to the customer in a language other than English, in that language.

(2) A solar agreement is not enforceable against the customer unless the requirements in Subsection (1) are met.

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(3) A solar retailer may not begin installation of any solar equipment until ~~10~~15 days after ~~providing a~~the day on which the solar retailer provides the customer ~~with a~~the solar agreement ~~as~~ described in Subsection (1).

(4) A customer may ~~cancel a solar agreement~~, without penalty or obligation, cancel a solar agreement for any reason, ~~up to~~within 15 days after the day on which the customer receives the ~~second monthly electricity bill following the date the customer's solar energy system installation is complete and the system is operational~~solar agreement described in Subsection (1).

(5) If a customer cancels a solar agreement under Subsection (4), the solar retailer shall ~~:~~

~~(a)~~ within 10 days:

~~(i)~~(a) return any check signed by the customer as payment under the terms of the solar agreement; and

~~(ii)~~(b) refund any money provided by the customer under the terms of the solar agreement ~~; and~~

~~(iii) notify the customer of any product or equipment installed under~~.

(6) A solar agreement described in Subsection (1) shall clearly:

(a) state the customer's right to cancel the solar agreement ~~that needs to be removed from the customer's residence; and~~

~~(b) within 20 days after the day on which the customer provides~~under this section;
and

(b) provide an email address and a mailing address where the customer can send the solar retailer a notice of cancellation~~, remove all products and equipment installed under~~ of the solar agreement ~~from the customer's residence or designate any such product or equipment remaining at the customer's residence as abandoned~~.

Section 4. Section ~~13-52-208~~13-52-301 is ~~enacted~~amended to read:

~~13-52-208~~13-52-301. ~~Solar retailer bonding and registration requirements:~~

~~(1) A solar retailer that engages in the retail sale, solicitation, or installation of solar equipment in this state shall register with the division before conducting business as a solar retailer in the state:~~

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~~(2) (a) A solar retailer shall renew the registration under this section annually.~~

~~(b) To renew a registration, a solar retailer shall submit a renewal application to the division at least 30 days before expiration of the current registration.~~

~~(3) The~~ **Division enforcement authority -- Administrative fine.**

(1) Subject to Subsection (2), the division may ~~{establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:~~

~~(a) the initial solar retailer registration process and content of forms;~~

~~(b) the solar retailer registration renewal process and content of forms; and~~

~~(c) a registration fee not to exceed \$200, set in accordance with Section 63J-1-504.~~

~~(4) (a) Each solar retailer in this state shall designate a registered agent for receiving service of process:~~

~~(b) A solar retailer's registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days:~~

~~(c) If a solar retailer fails to designate an agent to receive service or fails to appoint a successor to the agent, the division shall:~~

~~(i) deny the solar retailer's application for an initial or renewal registration; and~~

~~(ii) if the application is for a renewal registration, suspend the solar retailer's current registration until the solar retailer designates an agent.~~

~~(5) If information in an application for registration or for renewal of registration as a solar retailer materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which information changes or becomes incorrect or incomplete, submit the correct information to the division in a manner that the division establishes by rule under Subsection (3):~~

~~(6) A registered solar retailer shall obtain and maintain the following security:~~

~~(a) a performance bond issued by a surety authorized to transact surety business in this state;~~

~~(b) an irrevocable letter of credit issued by a financial institution authorized under the laws of this state or the United States doing business in this state; or~~

~~(c) a certificate of deposit held in this state in a financial institution authorized under the laws of this state or the United States to accept deposits from the public.~~

~~(7) The solar retailer shall post a bond, letter of credit, or certificate in the amount of:~~

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~~_____ (a) \$1,000,000 if neither the solar retailer nor any affiliated person has violated this chapter in the three-year period preceding registration or renewal;~~

~~_____ (b) \$2,000,000 if the solar retailer or any affiliated person has violated this chapter once in the three-year period preceding registration or renewal; or~~

~~_____ (c) \$5,000,000 if the solar retailer or any affiliated person has violated this chapter two or more times in the three-year period preceding registration or renewal.~~

~~_____ (8) The bond, letter of credit, or certificate of deposit described in Subsection (5) shall be payable to the division for the benefit of a customer for any of the following:~~

~~_____ (a) economic or financial damages resulting from the solar retailer violating } enforce the provisions of this chapter {, including:~~

~~_____ (i) damages related to solar equipment defects;~~

~~_____ (ii) improper installation;~~

~~_____ (iii) failure to properly maintain equipment; or~~

~~_____ (iv) failure of the equipment or installation to meet representations made} by:~~

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

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

~~(c) imposing an administrative fine of up to \$2,500 for each violation of this chapter;~~

and

~~(d) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.~~

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

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

~~[(ii) violates 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.]~~

~~(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.] In a court action by the division to enforce a provision of this chapter, the court may:~~

~~(a) declare that an act or practice violates a provision of this chapter;~~

~~(b) issue an injunction for a violation of this chapter;~~

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(c) order disgorgement of any money received in violation of this chapter;

(d) order payment of disgorged money to an injured purchaser or consumer;

(e) impose a fine of up to \$2,500 for each violation of this chapter; or

(f) award any other relief that the court deems reasonable and necessary.

(3) The division shall, in its discretion:

(a) deposit an administrative fine collected under Subsection (1)(c) 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 regarding equipment specifications, energy production, savings estimates, or other material contract terms;

~~_____ (b) damages resulting from the solar retailer going out of business during the term of the customer contract or while still obligated to maintain installed solar equipment or honor equipment or performance warranties or guarantees;~~

~~_____ (c) return of all payments made by the customer under the terms of a canceled or rescinded contract; and~~

~~_____ (d) removal of any equipment installed under a canceled or rescinded contract and restoration of the customer's property.~~

~~_____ (9) After each customer has fully recovered damages, the division may recover costs of distributing funds under this section up to 10% of the bond value.~~

~~_____ (10) A solar retailer shall maintain the bond, letter of credit, or certificate for one year after ceasing business in the state.~~

~~_____ (11) The division director may deny or revoke a registration under this section for any violation}~~ 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.

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

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

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

Section 5. Effective date.

This bill takes effect on May 1, 2024.