

1 **RESIDENTIAL SOLAR ENERGY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lincoln Fillmore**

5 House Sponsor: Mike Winder

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions relating to residential solar energy systems.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires a solar retailer to provide a written disclosure statement to a potential
- 13 customer and specifies the timing and content of the disclosure statement; and
- 14 ▶ provides for the enforcement of the disclosure requirements.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **13-2-1**, as last amended by Laws of Utah 2017, Chapter 98

22 ENACTS:

23 **13-52-101**, Utah Code Annotated 1953

24 **13-52-102**, Utah Code Annotated 1953

25 **13-52-103**, Utah Code Annotated 1953

26 **13-52-201**, Utah Code Annotated 1953

27 **13-52-202**, Utah Code Annotated 1953

28 **13-52-203**, Utah Code Annotated 1953

- 29 **13-52-204**, Utah Code Annotated 1953
- 30 **13-52-205**, Utah Code Annotated 1953
- 31 **13-52-206**, Utah Code Annotated 1953
- 32 **13-52-301**, Utah Code Annotated 1953



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

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

36 **13-2-1. Consumer protection division established -- Functions.**

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

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

- 40 (a) Chapter 5, Unfair Practices Act;
- 41 (b) Chapter 10a, Music Licensing Practices Act;
- 42 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 43 (d) Chapter 15, Business Opportunity Disclosure Act;
- 44 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 45 (f) Chapter 21, Credit Services Organizations Act;
- 46 (g) Chapter 22, Charitable Solicitations Act;
- 47 (h) Chapter 23, Health Spa Services Protection Act;
- 48 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 49 (j) Chapter 26, Telephone Fraud Prevention Act;
- 50 (k) Chapter 28, Prize Notices Regulation Act;
- 51 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 52 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 53 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 54 (o) Chapter 39, Child Protection Registry;
- 55 (p) Chapter 41, Price Controls During Emergencies Act;

- 56 (q) Chapter 42, Uniform Debt-Management Services Act;
- 57 (r) Chapter 49, Immigration Consultants Registration Act; [~~and~~]
- 58 (s) Chapter 51, Transportation Network Company Registration Act[~~;~~]; and
- 59 (t) Chapter 52, Residential Solar Energy Disclosure Act.

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

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

62 **Part 1. General Provisions**

63 **13-52-101. Title.**

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

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

66 **13-52-102. Definitions.**

67 As used in this chapter:

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

- 70 (a) purchases a residential solar energy system under a system purchase agreement;
- 71 (b) leases a residential solar energy system under a system lease agreement; or
- 72 (c) purchases electricity under a power purchase agreement.

73 (2) "Division" means the Division of Consumer Protection, established in Section
74 13-2-1.

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

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

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

80 (4) "Residential solar energy system":

81 (a) means a solar energy system that:

82 (i) is installed in the state;

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

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

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

87 (b) does not include a generator that:

88 (i) produces electricity; and

89 (ii) is intended for occasional use.

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

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

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

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

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

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

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

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

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

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

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

108 **13-52-103. Applicability of chapter.**

109 This chapter:

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

113 (2) does not apply to:

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

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

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

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

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

126 **Part 2. Disclosure Statement**

127 **13-52-201. Disclosure statement required.**

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

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

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

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

- 137 (a) be in at least 12-point font;
- 138 (b) contain:
- 139 (i) the name, address, telephone number, and any email address of the potential
- 140 customer;
- 141 (ii) the name, address, telephone number, and email address of the solar retailer; and
- 142 (iii) (A) the name, address, telephone number, email address, and state contractor
- 143 license number of the person who is expected to install the system that is the subject of the
- 144 solar agreement; and
- 145 (B) if the solar retailer selected the person who is expected to provide operations or
- 146 maintenance support to the potential customer or introduced that person to the potential
- 147 customer, the name, address, telephone number, email address, and state contractor license of
- 148 the operations or maintenance support person; and
- 149 (c) include applicable information and disclosures as provided in Sections [13-52-202](#),
- 150 [13-52-203](#), [13-52-204](#), and [13-52-205](#).

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

152 **13-52-202. Contents of disclosure statement for any solar agreement.**

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

154 the disclosure statement required in Subsection [13-52-201](#)(1) shall include:

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

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

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

158 customer is projected to realize from the system:

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

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

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

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

163 source of those assumptions, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

233 **13-52-203. Contents of disclosure statement for system purchase agreement.**

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

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

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

241 (3) (a) the schedule of required and anticipated payments from the customer to the
242 solar retailer and third parties over the term of the system purchase agreement, including
243 application fees, up-front charges, down payment, scheduled payments under the system
244 purchase agreement, payments at the end of the term of the system purchase agreement,

245 payments for any operations or maintenance contract offered by or through the solar retailer in
246 connection with the system purchase agreement, and payments for replacement of system
247 components likely to require replacement before the end of the useful life of the system as a
248 whole; and

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

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

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

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

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

260 **13-52-204. Contents of disclosure statement for system lease agreement.**

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

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

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

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

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

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

275 **13-52-205. Contents of disclosure statement for power purchase agreement.**

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

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

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

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

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

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

291 **13-52-206. Good faith estimate allowed.**

292 A solar retailer that does not, at the time of providing a disclosure statement required in
293 Subsection 13-52-201(1), have information required under Section 13-52-202, 13-52-203,
294 13-52-204, or 13-52-205 to be included in the disclosure statement may make a good faith
295 estimate of that information, if the solar retailer clearly indicates that the information is an
296 estimate and provides the basis for the estimate.

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

298 **Part 3. Enforcement**

299 **13-52-301. Division enforcement authority -- Administrative fine.**

300 (1) Subject to Subsection (2), the division may enforce the provisions of this chapter

301 by:

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

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

304 (c) imposing an administrative fine of no more than \$2,500 per solar agreement on a

305 solar retailer that:

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

307 (ii) violates any other provision of this chapter, if the division finds that the violation is

308 a willful or intentional attempt to mislead or deceive a customer.

309 (2) The division may not commence any enforcement action under this section more

310 than four years after the date of execution of the solar agreement with respect to which a

311 violation is alleged to have occurred.

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

313 (a) deposit an administrative fine collected under Subsection (1)(c) in the Consumer

314 Protection Education and Training Fund created in Section [13-2-8](#); or

315 (b) distribute an administrative fine collected under Subsection (1)(c) to a customer

316 adversely affected by the solar retailer's failure or violation resulting in a fine under Subsection

317 (1)(c), if the division has conducted an administrative proceeding resulting in a determination

318 of the appropriateness and amount of any distribution to a customer.

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

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

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