
OLR Bill Analysis

HB 5326

AN ACT CONCERNING RESIDENTIAL SOLAR PHOTOVOLTAIC SYSTEMS SOLICITATIONS AND REAL ESTATE TRANSACTIONS INVOLVING SOLAR.

SUMMARY

This bill establishes various requirements for sales and solicitations of residential solar photovoltaic (PV) systems. Among other things, it requires that:

1. third-party agents selling the systems for a residential PV system provider be trained by the provider;
2. providers annually submit a list of their agents to the Public Utilities Regulatory Authority (PURA); and
3. providers and their agents, among other things, (a) identify themselves when making the sale or solicitation, (b) explain all rates, fees, and charges for the system being sold, and (c) generally their limit door-to-door sales to between 10:00 a.m. and 6:00 p.m.

The bill makes a violation of its provisions on residential PV sales and solicitations an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA, see BACKGROUND). It also subjects a violation or failure to comply with these provisions to civil penalties imposed by PURA.

Under the bill, whenever someone buying or selling a residential property with a leased PV system on it contacts the solar company (presumably, the company that owns the system) to discuss the buyer's assumption of the lease, the company must respond within one week after receiving the contact. If the company does not do so, the bill reduces the term of the lease by five years at the buyer's option. (To the

extent this provision applies to existing contracts, it may implicate the Contracts Clause of the U.S. Constitution (see BACKGROUND.)

EFFECTIVE DATE: October 1, 2022

RESIDENTIAL SOLAR PV SALES AND SOLICITATIONS

This bill establishes various requirements for sales and solicitations of residential PV systems and for their providers. Under the bill, these systems are the equipment and devices that (1) are primarily meant to collect solar energy and generate electricity by photovoltaic effect, (2) have a nameplate capacity rating of 12 kilowatts or less, and (3) are installed on the roof of a single-family home and conform to the state building code. A provider is any individual, partnership, limited liability company, corporation, or other legal entity that provides residential PV systems.

Third-Party Agents

The bill makes a third-party agent the legal agent of a residential PV system provider if the agent contracts with, or is compensated by, the provider to sell residential PV systems. It prohibits third-party agents from selling the systems for these providers unless they (1) are the provider's employee or independent contractor and (2) have received training directly from the provider.

The bill also requires the providers to annually file with PURA a list with the names of any agents working on their behalf.

Sales and Solicitations Requirements

The bill requires each provider to develop and implement standards and qualifications for the employees and third-party agents engaged in selling or soliciting residential PV systems for the provider. (It does not specify any additional criteria for these standards and qualifications.)

It also establishes requirements for all sales and solicitations of residential PV systems by the providers or their agents when they are conducted entirely by mail; door-to-door sale; telephone or other electronic means; during a scheduled appointment at the customer's premises; or at a fair, trade or business show, or exposition. These

require that the sale or solicitation (1) identify the person making the sale or solicitation and the provider he or she represents; (2) explain the purpose of the sale or solicitation; and (3) explain all rates, fees, variable charges, and terms and conditions for the system.

For door-to-door sales, the bill also requires that the sale be conducted (1) according to any municipal and local ordinances for door-to-door sales; (2) between 10:00 a.m. and 6:00 p.m., unless the customer schedules a different appointment; and (3) with written materials available in both English and Spanish. In addition, the provider's representative or agent must prominently display or wear a photo identification badge stating the name of his or her employer or the provider that he or she represents.

The bill also requires that each provider and its agents comply with telemarketing rules adopted by the Federal Trade Commission.

Enforcement

The bill makes a violation of its provisions on residential PV sales and solicitations an unfair or deceptive trade practice under CUTPA. It also (1) subjects a violation or failure to comply with these provisions to civil penalties imposed by PURA, which by law may range up to \$10,000, and (2) requires a provider to deem a customer's waiver of any of these provisions void and unenforceable.

The bill further specifies that any contract for residential solar PV systems is void and unenforceable if PURA finds it to be the product of unfair or deceptive marketing practices or in material violation of these provisions. (PURA's authority to determine whether a contract is an unfair or deceptive marketing practice is unclear, as this authority lies with consumer protection commissioner under CUTPA. In addition, to the extent this provision applies to existing contracts, it may implicate the Contracts Clause of the U.S. Constitution (see BACKGROUND).)

BACKGROUND

CUTPA

The law prohibits businesses from engaging in unfair and deceptive

acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order (CGS § 42-110a et seq.).

Contracts Clause

The contracts clause of the U.S. Constitution bars states from passing any law that impairs the obligation of contracts. However, the U.S. Supreme Court has held that claims of a contract clause violation must undergo a three-step analysis to be found unconstitutional. Courts must determine whether (1) there is a contractual relationship, (2) a change in a law has impaired that relationship, and (3) the impairment is substantial (*General Motors Corp. v. Romein*, 503 U.S. 181 (1992)).

If the court determines that the contract has been substantially impaired, it must then determine whether the law at issue has a legitimate and important public purpose and whether the adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose. A challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411-412 (1983)).

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable

Yea 22 Nay 4 (03/22/2022)