



House of Representatives

General Assembly

File No. 329

February Session, 2022

House Bill No. 5326

House of Representatives, April 6, 2022

The Committee on Energy and Technology reported through REP. ARCONTI of the 109th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) (a) For purposes of this
2 section:

3 (1) "Residential solar photovoltaic systems" has the same meaning as
4 provided in section 16-245nn of the general statutes; and

5 (2) "Residential solar photovoltaic systems provider" means any
6 individual, partnership, limited liability company, corporation or other
7 legal entity which provides residential solar photovoltaic systems.

8 (b) (1) Any third-party agent who contracts with or is otherwise
9 compensated by a residential solar photovoltaic systems provider to sell
10 residential solar photovoltaic systems shall be a legal agent of such
11 provider. No third-party agent may sell residential solar photovoltaic
12 systems on behalf of such provider unless (A) the third-party agent is
13 an employee or independent contractor of such provider, and (B) the

14 third-party agent has received training directly from such provider.

15 (2) All sales and solicitations of residential solar photovoltaic systems
16 by a residential solar photovoltaic systems provider or agent of such
17 provider to a customer conducted and consummated entirely by mail,
18 door-to-door sale, telephone or other electronic means, during a
19 scheduled appointment at the premises of a customer or at a fair, trade
20 or business show, convention or exposition shall:

21 (A) For any sale or solicitation, (i) identify the person making such
22 sale or solicitation and the residential solar photovoltaic systems
23 provider or providers the person represents; (ii) explain the purpose of
24 the solicitation; and (iii) explain all rates, fees, variable charges and
25 terms and conditions for the residential solar photovoltaic systems
26 provided; and

27 (B) For door-to-door sales to customers, be conducted (i) in
28 accordance with any municipal and local ordinances regarding door-to-
29 door solicitations; (ii) between the hours of ten o'clock a.m. and six
30 o'clock p.m. unless the customer schedules an earlier or later
31 appointment; and (iii) with both English and Spanish written materials
32 available. Any representative of a residential solar photovoltaic systems
33 provider or agent of such provider shall prominently display or wear a
34 photo identification badge stating the name of such person's employer
35 or the residential solar photovoltaic systems provider the person
36 represents.

37 (3) Each residential solar photovoltaic systems provider shall file
38 annually with the Public Utilities Regulatory Authority a list that
39 contains the name of any agent working on behalf of such provider.

40 (4) Each residential solar photovoltaic systems provider shall develop
41 and implement standards and qualifications for employees and third-
42 party agents who are engaged in the sale or solicitation of residential
43 solar photovoltaic systems by such provider.

44 (c) Each residential solar photovoltaic systems provider or agent of

45 such provider shall comply with the provisions of the telemarketing
46 rules adopted pursuant to 15 USC 6102.

47 (d) Any violation of this section shall be deemed an unfair or
48 deceptive trade practice under subsection (a) of section 42-110b of the
49 general statutes. Any contract for the residential solar photovoltaic
50 systems that the authority finds to be the product of unfair or deceptive
51 marketing practices or in material violation of the provisions of this
52 section shall be void and unenforceable. Any waiver of the provisions
53 of this section by a customer of residential solar photovoltaic systems
54 shall be deemed void and unenforceable by the residential solar
55 photovoltaic systems provider.

56 (e) Any violation or failure to comply with any provision of this
57 section shall be subject to civil penalties by the Public Utilities
58 Regulatory Authority in accordance with section 16-41 of the general
59 statutes.

60 Sec. 2. (NEW) (*Effective October 1, 2022*) Notwithstanding any
61 provision of the general statutes, whenever any purchaser or seller of
62 any residential property with a leased solar photovoltaic system
63 installed on such property contacts such solar company for the purpose
64 of discussing the assumption of such lease by the purchaser and any
65 other matter pertaining to such system, such solar company shall
66 respond to such purchaser or seller, as applicable, not later than one
67 week after receipt of such contact. In the event such solar company does
68 not contact such purchaser or seller as required by this section, the term
69 for any such lease shall be reduced by a period of five years, at the option
70 of such purchaser.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2022</i>	New section
Sec. 2	<i>October 1, 2022</i>	New section

ET *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Consumer Protection, Dept.	GF - Cost	149,484	144,484
State Comptroller - Fringe Benefits ¹	GF - Cost	58,316	58,316

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill creates a new unfair or deceptive trade practice resulting in a total cost to the state of \$207,800 in FY 23 and \$202,800 in FY 24 (cost includes salary, fringe benefits, and other expenses). The Department of Consumer Protection (DCP) will have to hire one special investigator and one attorney to investigate complaints, obtain testimony from consumers, obtain records through civil investigative demands, engage in settlement negotiations, and present at administrative hearings. It is anticipated this will result in a significant number of complaints for DCP to investigate.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

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)