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## **OLR Bill Analysis**

### **SB 297**

#### ***AN ACT CONCERNING CONSUMER PROTECTION FOR CUSTOMERS OF SOLAR POWER COMPANIES.***

#### **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 solar 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 limit their 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 solar PV sales and solicitations an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA, see BACKGROUND).

Lastly, the bill creates a 16-member task force to study ways to improve solar PV system sales for customers. The task force must report its findings and recommendations to the Energy and Technology and General Law committees by January 1, 2025.

**EFFECTIVE DATE:** October 1, 2024, except the task force provision takes effect upon passage.

#### **RESIDENTIAL SOLAR PV SYSTEM SALES AND SOLICITATIONS**

### ***Application***

By law, and under the bill, a “residential solar photovoltaic system” is 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,
3. are installed on the roof of a single-family home, and
4. conform to the State Building Code.

A “residential solar PV systems provider” is any individual, partnership, limited liability company, corporation, or other legal entity that provides residential solar PV systems.

### ***Third-Party Agents***

The bill makes a third-party agent the legal agent of a residential solar PV system provider if the agent contracts with, or is compensated by, the provider to sell residential solar 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 of the names of any agents working on their behalf.

### ***Sales and Solicitations Requirements***

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

It also establishes requirements for all sales and solicitations of residential solar PV systems by the providers and their agents to a customer. They apply to those conducted and completed 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, convention, 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 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 done (1) according to any municipal and local ordinances for door-to-door solicitations; (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 providers and their agents comply with the Federal Trade Commission's telemarketing sales rules, which, among other things, restricts when and who they can call (16 C.F.R. § 310.1 et seq.).

### ***Enforcement***

In addition to making violations of its provisions an unfair or deceptive trade practice under CUTPA, the bill also makes a customer's waiver of any of its provisions void and unenforceable by the residential solar PV systems provider.

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 the bill's provisions. (PURA's authority to determine whether a contract is an unfair or deceptive marketing practice is unclear, as this authority generally lies with the consumer protection commissioner under CUTPA. In addition, to the extent this provision applies to existing contracts, it may implicate the Contract Clause of the U.S. Constitution (see BACKGROUND).)

## **SOLAR PV SYSTEM TASK FORCE**

The bill requires the task force to study policy, regulations, and legislation to improve disclosure requirements and consumer protection for consumers who purchase, lease, or enter into power purchase agreements for solar PV systems. The study must also examine whether special protections are needed for consumers who are low-income or senior citizens.

The task force must report its findings and recommendations to the Energy and Technology and General Law committees by January 1, 2025. The task force terminates when it submits the report, or January 1, 2025, whichever is later.

### ***Membership***

Under the bill, the task force has 16 members: five ex-officio members, one gubernatorial appointee, and ten legislative appointees. The ex-officio members are the environmental protection commissioner, PURA chairperson, consumer counsel, consumer protection commissioner, and Connecticut Green Bank president, or their respective designees. The appointees are as follows:

1. one appointed by the governor, who must be a member of an association that represents retailers of solar PV systems in Connecticut;
2. two appointed by the House speaker, one of whom must have experience representing senior citizens in matters related to consumer protection or utilities;
3. two appointed by the Senate president pro tempore, one of whom must have experience representing consumer groups, especially in underserved communities;
4. one appointed by the House majority leader;
5. one appointed by the Senate majority leader;
6. two appointed by the House minority leader; and

7. two appointed by the Senate minority leader.

All initial appointments to the task force must be made within 30 days after the bill's passage. The appointing authority must fill any vacancies.

### ***Meetings and Administration***

Under the bill, the House speaker and Senate president pro tempore must select the chairperson from among the task force's members. The chairperson must schedule the task force's first meeting, which must be held within 60 days after the bill's passage. The Energy and Technology Committee's administrative staff must serve as the task force's administrative staff.

## **BACKGROUND**

### ***CUTPA***

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It 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.).

### ***Contract Clause***

The U.S. Constitution's Contract Clause (art. I, § 10) prohibits states from passing laws that impair the obligation of contracts. In a 2017 opinion (2017-06), Connecticut's attorney general noted that when a litigant raises a Contract Clause challenge against a legislative act, courts ask three questions to determine whether the act violates the clause: (1) is the impairment substantial; (2) if so, does the law serve a legitimate public purpose; and (3) if so, are the means of accomplishing this purpose reasonable and necessary (*Buffalo Teachers Fed'n v. Tobe*, 464

F.3d 362 (2d Cir. 2006)).

***Related Bill***

sHB 5236 (File 103), § 25, favorably reported by the General Law Committee, among other things, allows DCP to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing.

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable

Yea 14 Nay 4 (03/21/2024)