



House Committee on Climate, Energy & Environment

Testimony in Support of HB 4029

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AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50+ to choose how they live as they age. AARP Oregon advocates on issues important to our more than 500,000 Oregon members with a focus on health security, financial resilience and livable communities.

Financial security for older Oregonians is a priority issue for us. We want to add our voice here in support of putting in place consumer protections to regulate solar energy contractors. Solar panels have become more popular for homeowners in recent years because of price decreases and new financing models. However, homeowners' investment in solar energy may have been premised in part on the promise of full retail rate payments or credits from their utility.

"Free electricity" and "no more electric bills" are among the claims made in some solar system marketing materials and made by some agents of solar companies. By deterring misleading and deceptive sales and marketing practices, we will encourage consumers' well-informed purchase of sustainable energy and benefit those solar companies and agents that engage in honest and accurate sales of solar systems.

I am providing testimony today, going into some details because AARP is working to develop strong policies against solar energy fraud and among our resources of experts is a consumer protection law professor who previously was Manager of Consumer Protection at the Minnesota Attorney General's Office. He was kind enough to provide feedback on Oregon's proposal consistent with AARP policy.

First, we want to recognize some important protections for consumers provided in this bill.

- Adds three-day right-to-cancel after signing a solar contract.
- Requires specific disclosure of key information about 1) terms and conditions of the sale and the systems installed; 2) projected energy and dollar savings; and 3) the "exact amount" of any dealer fee paid to the lender for a loan to purchase the solar system.
- Requires contract terms that include most, but not all, of the information in required disclosures.
- Gives consumers meaningful access to remedy any violations.

However, we would be remiss if we did not highlight some of the important protections we think could and should be added. And we also do have some drafting concerns.

1. Section 3 (2) (t) (page 5): Adequate performance protection. Advocates in other states have identified the failure of the installer to produce a functioning system before loan or lease payments are due as a major concern. But we only anticipate that possibility, requiring disclosure rather than prohibiting such loan payments before its operational. Page 5, subsection (t).
2. Section 5 (5) (page 11) Financing consumer protections. There are no protections for solar financing abuses other than the required disclosure of dealer fees paid. One example of this omission is in this section where it imposes assignee liability on the purchase of an installment contract. This provision does not include the assignment of a loan contract or liability of a lender for the conduct of an affiliated solar system seller, which is the situation where problems with assignees disclaiming liability typically arises.

In addition, we need to point out some concerns we have in Section 1, the definition section.

- “Customer” does not include a customer for a contract for a power purchasing agreement although a power purchase agreement seller is a solar energy contractor. This disconnect could lead to ambiguity. (The same problem appears under Installation contract.)
- The definitions include “customer” and “resident” and there is a back-and-forth reference to both. This could create confusion.
- The legislation refers to “residential real property” (section 1, subsections 1, 4, 9 & 12) but that term is not defined, and it raises the scope of what is covered, for example, a 50-unit apartment building.
- The term “resident” excludes someone living in another state who owns property in Oregon and buys a solar energy system. Is that intended?
- The definition of “Solar Energy Contractor” excludes “a person from which a resident may purchase a solar energy system at retail that the resident may install or have a third party install on residential real property the residents owns or leases.” We are concerned by this language because a solar system seller could circumvent the requirements of the law by arranging for a consumer to purchase a solar system directly from the manufacturer and then charging only for the installation.
- Under subsection 13 the definition of “solar energy system” introduces the familiar limitation of “use for personal family or household purpose” but that limitation is tied to the resident definition and not the customer definition and it is included in the provision defining the wiring, equipment, devices and components that constitutes a solar energy system rather than the definition of the contract between the consumer and the energy seller.

This bill is also lengthy because it requires a lengthy set of disclosures and then a lengthy set of contract provisions that repeat many, but not all, of the disclosures. We would recommend putting all the disclosures in the contract and would make failures to disclose or inaccurate disclosure a potential breach of contract.

We worry with the 4 pages of 10 point font disclosures (which is small) in which a resident may acknowledge reading and understanding each element by initializing that sellers will simply adopt an i-pad type technology that allows for “sign here” by hitting a button to simply add one’s signature multipole times, requiring no reading by the customer. We also worry about the right to cancel provision is buried among the other disclosures. With only a few days, if the customer isn’t aware of it, they might not realize that right within the cancellation period.

We appreciate that this is a short session and we are thankful for the advancement of these important protections in Oregon law. At the same time, we would be remiss if we did not share our concerns and the importance of making Oregon’s consumer protection law against solar energy fraud the best it can be.