

AMENDED IN ASSEMBLY APRIL 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2699**

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**Introduced by Assembly Member Gonzalez  
(Coauthor: Assembly Member Weber)**

February 19, 2016

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An act to *amend Section 7159.5 of, and to add Chapter 2.4 (commencing with Section 18892) to Division 8 of Sections 7169, 7170, and 7171 to, the Business and Professions Code, relating to business.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, as amended, Gonzalez. ~~Department of Consumer Affairs: Contractors' State License Board: solar energy systems companies: solar energy systems: regulations.~~

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law requires licensed contractors to be classified and authorizes them to be classified as, among other things, a solar contractor. Under existing law, a solar contractor installs, modifies, maintains, and repairs thermal and photovoltaic solar energy systems. Existing law prohibits a solar contractor from performing building or construction trades, crafts, or skills, except when required to install a thermal or photovoltaic solar energy system.

This bill would, ~~among other things, require a solar company selling, financing, or leasing a solar energy system, as defined, to provide each customer with~~ *would require, on or before July 1, 2017, the board to develop and make available on its Internet Web site a specified "solar*

energy system disclosure document.” ~~The bill would also require the Department of Consumer Affairs to adopt a regulation that includes a specified “Department of Consumer Affairs solar energy system disclosure document” informing customers of the risks and rewards of solar energy system ownership and warranty issues, and protecting those customers from unscrupulous or unfair business practices. The bill would require these disclosures~~ *this disclosure document* to be provided by the solar *energy systems* company to the customer *consumer* prior to ~~the completion of a sale, finance, financing,~~ or lease of a solar energy system. The bill would make a violation of these provisions by a solar company punishable by an unspecified fine. The bill would also authorize a customer damaged by a willful violation of these provisions to bring a civil cause of action against a solar company for specified damages.

~~This bill would also declare the intent of the Legislature to enact legislation that would require the Department of Consumer Affairs to certify a solar company and establish an insurance pool for customers to access in order to obtain compensation for solar energy system claims, as provided.~~

*Existing law requires a home improvement contract to contain, as specified, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.*

*The bill would require the board to establish through regulation requirements for a contractor to maintain a blanket performance and payment bond for the purpose of solar installation.*

*Existing law prohibits the downpayment for a home improvement contract from exceeding \$1,000 or 10% of the contract amount, whichever is less. Existing law exempts from this restriction a contractor who, among other things, furnishes a blanket performance and payment bond.*

*The bill would subject a contractor for the installation of a solar energy system to the restriction despite having those performance and payment arrangements.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 7159.5 of the Business and Professions*
- 2 *Code is amended to read:*

1 7159.5. This section applies to all home improvement contracts,  
2 as defined in Section 7151.2, between an owner or tenant and a  
3 contractor, whether a general contractor or a specialty contractor,  
4 that is licensed or subject to be licensed pursuant to this chapter  
5 with regard to the transaction.

6 (a) Failure by the licensee or a person subject to be licensed  
7 under this chapter, or by his or her agent or salesperson, to comply  
8 with the following provisions is cause for discipline:

9 (1) The contract shall be in writing and shall include the agreed  
10 contract amount in dollars and cents. The contract amount shall  
11 include the entire cost of the contract, including profit, labor, and  
12 materials, but excluding finance charges.

13 (2) If there is a separate finance charge between the contractor  
14 and the person contracting for home improvement, the finance  
15 charge shall be set out separately from the contract amount.

16 (3) If a downpayment will be charged, the downpayment may  
17 not exceed one thousand dollars (\$1,000) or 10 percent of the  
18 contract amount, whichever is less.

19 (4) If, in addition to a downpayment, the contract provides for  
20 payments to be made prior to completion of the work, the contract  
21 shall include a schedule of payments in dollars and cents  
22 specifically referencing the amount of work or services to be  
23 performed and any materials and equipment to be supplied.

24 (5) Except for a downpayment, the contractor may neither  
25 request nor accept payment that exceeds the value of the work  
26 performed or material delivered.

27 (6) Upon any payment by the person contracting for home  
28 improvement, and prior to any further payment being made, the  
29 contractor shall, if requested, obtain and furnish to the person a  
30 full and unconditional release from any potential lien claimant  
31 claim or mechanics lien authorized pursuant to Sections 8400 and  
32 8404 of the Civil Code for any portion of the work for which  
33 payment has been made. The person contracting for home  
34 improvement may withhold all further payments until these releases  
35 are furnished.

36 (7) If the contract provides for a payment of a salesperson's  
37 commission out of the contract price, that payment shall be made  
38 on a pro rata basis in proportion to the schedule of payments made  
39 to the contractor by the disbursing party in accordance with  
40 paragraph (4).

1 (8) ~~A~~ Except as provided by Section 7171, a contractor  
 2 furnishing a performance and payment bond, lien and completion  
 3 bond, or a bond equivalent or joint control approved by the registrar  
 4 covering full performance and payment is exempt from paragraphs  
 5 (3), (4), and (5), and need not include, as part of the contract, the  
 6 statement regarding the downpayment specified in subparagraph  
 7 (C) of paragraph (8) of subdivision (d) of Section 7159, the details  
 8 and statement regarding progress payments specified in paragraph  
 9 (9) of subdivision (d) of Section 7159, or the Mechanics Lien  
 10 Warning specified in paragraph (4) of subdivision (e) of Section  
 11 7159. A contractor furnishing these bonds, bond equivalents, or a  
 12 joint control approved by the registrar may accept payment prior  
 13 to completion. If the contract provides for a contractor to furnish  
 14 joint control, the contractor shall not have any financial or other  
 15 interest in the joint control.

16 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)  
 17 by a licensee or a person subject to be licensed under this chapter,  
 18 or by his or her agent or salesperson, is a misdemeanor punishable  
 19 by a fine of not less than one hundred dollars (\$100) nor more than  
 20 five thousand dollars (\$5,000), or by imprisonment in a county  
 21 jail not exceeding one year, or by both that fine and imprisonment.

22 (1) An indictment or information against a person who is not  
 23 licensed but who is required to be licensed under this chapter shall  
 24 be brought, or a criminal complaint filed, for a violation of this  
 25 section, in accordance with paragraph (4) of subdivision (d) of  
 26 Section 802 of the Penal Code, within four years from the date of  
 27 the contract or, if the contract is not reduced to writing, from the  
 28 date the buyer makes the first payment to the contractor.

29 (2) An indictment or information against a person who is  
 30 licensed under this chapter shall be brought, or a criminal complaint  
 31 filed, for a violation of this section, in accordance with paragraph  
 32 (2) of subdivision (d) of Section 802 of the Penal Code, within  
 33 two years from the date of the contract or, if the contract is not  
 34 reduced to writing, from the date the buyer makes the first payment  
 35 to the contractor.

36 (3) The limitations on actions in this subdivision shall not apply  
 37 to any administrative action filed against a licensed contractor.

38 (c) Any person who violates this section as part of a plan or  
 39 scheme to defraud an owner or tenant of a residential or  
 40 nonresidential structure, including a mobilehome or manufactured

1 home, in connection with the offer or performance of repairs to  
2 the structure for damage caused by a natural disaster, shall be  
3 ordered by the court to make full restitution to the victim based  
4 on the person's ability to pay, as defined in subdivision (e) of  
5 Section 1203.1b of the Penal Code. In addition to full restitution,  
6 and imprisonment authorized by this section, the court may impose  
7 a fine of not less than five hundred dollars (\$500) nor more than  
8 twenty-five thousand dollars (\$25,000), based upon the defendant's  
9 ability to pay. This subdivision applies to natural disasters for  
10 which a state of emergency is proclaimed by the Governor pursuant  
11 to Section 8625 of the Government Code, or for which an  
12 emergency or major disaster is declared by the President of the  
13 United States.

14 *SEC. 2. Section 7169 is added to the Business and Professions*  
15 *Code, to read:*

16 *7169. On or before July 1, 2017, the board shall develop, and*  
17 *make available on its Internet Web site, a "solar energy system*  
18 *disclosure document" which a solar energy systems company must*  
19 *provide to a consumer prior to completion of a sale, financing, or*  
20 *lease of a solar energy system. The "solar energy system disclosure*  
21 *document" shall include the following information:*

22 *(a) The amounts and sources of financing obtained.*

23 *(b) The total cost and payments for the system, including*  
24 *financing costs.*

25 *(c) The calculations used by the home improvement salesperson*  
26 *to determine how many panels the homeowner needs to install.*

27 *(d) The calculations used by the home improvement salesperson*  
28 *to determine how much energy the panels will generate.*

29 *(e) Any additional monthly fees the homeowner's electric*  
30 *company may bill, any turn-on charges, and any fees added for*  
31 *the use of an Internet monitoring system of the panels or inverters.*

32 *(f) The terms and conditions of any guaranteed rebate.*

33 *(g) The final contract price, without the inclusion of possible*  
34 *rebates.*

35 *(h) The solar energy system company's contractor license*  
36 *number.*

37 *(i) The impacts of solar energy system installations not*  
38 *performed to code.*

39 *(j) Types of solar energy system malfunctions.*

1 (k) Information about the difference between a solar energy  
2 system lease and a solar energy system purchase.

3 (l) Information on how and to whom consumers may provide  
4 complaints.

5 SEC. 3. Section 7170 is added to the Business and Professions  
6 Code, to read:

7 7170. The board shall establish through regulation  
8 requirements for a contractor to maintain a blanket performance  
9 and payment bond for the purpose of solar energy systems  
10 installation.

11 SEC. 4. Section 7171 is added to the Business and Professions  
12 Code, to read:

13 7171. Notwithstanding paragraph (8) of subdivision (a) of  
14 Section 7159.5, a contractor installing a solar energy system shall  
15 be subject to the down payment restrictions in paragraph (3) of  
16 subdivision (a) of Section 7159.5.

17 SECTION 1. ~~(a) The Legislature finds and declares that the  
18 Governor set a goal of one million solar rooftop systems installed  
19 by 2018. As of November 2015, this state leads the nation in the  
20 installation of residential and business distributed solar projects  
21 with approximately 438,250 solar projects.~~

22 ~~(b) It is the intent of the Legislature to enact this act to ensure  
23 that prospective solar customers are provided accurate, clear, and  
24 concise information to make an informed decision about solar  
25 energy system installation, and to ensure that new solar energy  
26 systems continue to reliably provide clean power to millions of  
27 Californians for many years.~~

28 SEC. 2. ~~Chapter 2.4 (commencing with Section 18892) is added  
29 to Division 8 of the Business and Professions Code, to read:~~

30

31 CHAPTER 2.4. SOLAR COMPANIES

32

33 18892. ~~(a) As used in this section, the following terms have  
34 the following meanings:~~

35 (1) ~~“Customer” shall include any person, firm, corporation, or  
36 other entity that is solicited by, inquires about, or seeks the services  
37 of a solar company for the purchase, financing, or lease of a solar  
38 energy system.~~

39 (2) ~~“Department” means the Department of Consumer Affairs.~~

1 ~~(3) “Solar company” means any company and its broker,~~  
2 ~~brokers, or agents that sell, finance, or lease solar energy systems.~~

3 ~~(4) “Solar energy system” has the same meaning as set forth in~~  
4 ~~paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the~~  
5 ~~Civil Code.~~

6 ~~(b) (1) Prior to completion of a sale, financing, or lease of a~~  
7 ~~solar energy system to a customer, a solar company shall provide~~  
8 ~~each customer with a “solar energy system disclosure document,”~~  
9 ~~which shall include all of the following information:~~

10 ~~(A) A list of current residential or business electric rates by~~  
11 ~~kilowatthour, as established by the applicable Public Utilities~~  
12 ~~Commission tariff or other regulatory rate document.~~

13 ~~(B) If a payback calculation for the solar energy system is~~  
14 ~~provided, the calculation must be based on the customer’s current~~  
15 ~~electric rate, which shall be disclosed to the customer.~~

16 ~~(C) A notification that electric rates are subject to change in the~~  
17 ~~future and that estimates of savings are based on today’s electric~~  
18 ~~rates. If a payback calculation is included, the notification shall~~  
19 ~~be located immediately next to the payback calculation.~~

20 ~~(D) A link to a page on the customer’s electricity provider’s~~  
21 ~~Internet Web site that provides information about the electrical~~  
22 ~~provider’s filings regarding future rates.~~

23 ~~(E) A description of the solar company’s contractor’s license~~  
24 ~~issued pursuant to Chapter 9 (commencing with Section 7000) of~~  
25 ~~Division 3, license number, and name of the license qualifier for~~  
26 ~~each of the solar company’s licenses for solar system installation.~~

27 ~~(F) Valid, current certificates of insurance for the solar~~  
28 ~~company’s commercial general liability and workers’ compensation~~  
29 ~~insurance policies.~~

30 ~~(G) A description of the average level of electricity per month~~  
31 ~~that would be produced by the solar panels planned for installation~~  
32 ~~given the actual physical limitations and conditions specific to the~~  
33 ~~customer.~~

34 ~~(H) A notification that, when renewable energy attributes are~~  
35 ~~retained by the solar company, the customer is not buying solar~~  
36 ~~power, nor buying renewable energy.~~

37 ~~(I) A notification that the balance of any financing or lease~~  
38 ~~arrangement is payable to the solar company in the event of the~~  
39 ~~death of the customer during the term of the agreement.~~

1 ~~(J) An estimate of the cost of removing and reinstalling solar~~  
2 ~~panels in the event that the roof material beneath solar panels is~~  
3 ~~replaced.~~

4 ~~(K) An explanation of the potential change in electricity~~  
5 ~~production of a solar energy system if the panels become dirty or~~  
6 ~~covered with debris, and instructions on how to maintain the solar~~  
7 ~~energy system.~~

8 ~~(L) An explanation that if a solar system installation is financed~~  
9 ~~by a loan that requires a superpriority lien on the homeowner's~~  
10 ~~mortgage, the homeowner may be unable to refinance his or her~~  
11 ~~mortgage because of this financing.~~

12 ~~(M) A notification that customer bill credits are compensated~~  
13 ~~by other customers of the electricity provider.~~

14 ~~(2) A solar company that sells, finances, or leases a solar energy~~  
15 ~~system to a customer primarily in Spanish, Chinese, Tagalog,~~  
16 ~~Vietnamese, or Korean, whether orally or in writing, shall be~~  
17 ~~required to provide the disclosure document in paragraph (1) in~~  
18 ~~that same language.~~

19 ~~(e) Subject to the Administrative Procedure Act (Chapter 3.5~~  
20 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
21 ~~2 of the Government Code), the department shall adopt a regulation~~  
22 ~~that includes a "Department of Consumer Affairs solar energy~~  
23 ~~system disclosure document" informing customers of the risks and~~  
24 ~~rewards of solar energy system ownership and warranty issues,~~  
25 ~~and protecting those customers from unscrupulous or unfair~~  
26 ~~business practices. The solar company shall provide this disclosure~~  
27 ~~document developed by the department at the same time that the~~  
28 ~~disclosure document in subdivision (b) is provided to the customer.~~  
29 ~~The disclosure document developed by the department shall~~  
30 ~~include, but shall not be limited to, information about all of the~~  
31 ~~following:~~

32 ~~(1) Solar energy system malfunctions.~~

33 ~~(2) Installations not performed to code.~~

34 ~~(3) Roof intrusions and related structural concerns.~~

35 ~~(4) Bankruptcy, insolvency, default, takeover, or closure of a~~  
36 ~~solar company with existing customers, especially with respect to~~  
37 ~~solar companies who lease systems.~~

38 ~~(5) Loss of warranty on solar energy systems caused by~~  
39 ~~bankruptcy, insolvency, default, takeover, or closure of a solar~~  
40 ~~company or a solar manufacturer.~~

1 ~~(d) It is the intent of the Legislature to enact legislation that~~  
2 ~~would (1) require the department to certify a solar company and~~  
3 ~~(2) establish an insurance pool for customers to access in order to~~  
4 ~~obtain compensation for solar energy system claims, the funds for~~  
5 ~~which shall be raised yearly from all solar companies actively~~  
6 ~~doing business in this state at the time of assessment.~~

7 ~~(e) When marketing its services to customers, solar companies~~  
8 ~~shall not use the trade dress of other energy providers such that it~~  
9 ~~creates a likelihood of confusion that an affiliation or connection~~  
10 ~~exists between a solar company and the electrical corporation,~~  
11 ~~unless the solar company has express authorization from the~~  
12 ~~electrical corporation to do so.~~

13 ~~(f) A violation of this section by a solar company is punishable~~  
14 ~~by a fine of not less than \_\_\_\_ (\$\_\_\_\_) and not more than \_\_\_\_ (\$\_\_\_\_);~~  
15 ~~which shall be in addition to any other punishment imposed for a~~  
16 ~~violation of this section. All fines collected by the department~~  
17 ~~pursuant to this subdivision shall be deposited in the Professions~~  
18 ~~and Vocations Fund described in Section 205, and these fines shall~~  
19 ~~be subject to appropriation by the Legislature.~~

20 ~~(g) (1) In addition to the authority granted to the department~~  
21 ~~in subdivision (f), a customer damaged by a willful violation of~~  
22 ~~the provisions of this chapter may bring a civil cause of action~~  
23 ~~against a solar company for damages, including, but not limited~~  
24 ~~to, general damages, special damages, and punitive damages.~~

25 ~~(2) The court in an action pursuant to this section may award~~  
26 ~~equitable relief, including, but not limited to, an injunction, costs,~~  
27 ~~and any other relief the court deems proper.~~

28 ~~(3) The rights and remedies provided in this chapter are in~~  
29 ~~addition to any other rights and remedies provided by law.~~

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