



2009 SENATE BILL 190

May 4, 2009 - Introduced by Senators WIRCH, LEHMAN, TAYLOR, HOLPERIN, LASSA and ERPENBACH, cosponsored by Representatives TURNER, HUBLER, TOWNSEND, VOS, KAUFERT, SPANBAUER, BIES, KESSLER, HILGENBERG and ZEPNICK. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

1 **AN ACT to create** 134.49 of the statutes; **relating to:** renewals and extensions
2 of business contracts.

Analysis by the Legislative Reference Bureau

Under current law, a landlord may not enforce an automatic renewal or extension clause in a residential lease unless the landlord provides advance written notice of the renewal or extension. This bill creates similar requirements for certain contracts for the lease of business equipment or for providing business services (business contracts), if the contracts have an initial term of more than one year. The bill exempts contracts for the lease or purchase of real property, certain contracts that require the customer to make minimum annual payments of \$250,000 or more, contracts for the lease of vehicles or medical equipment, certain energy and telecommunications contracts, and contracts that permit a customer to cancel an automatically renewed or extended contract period by giving notice up to 30 days in advance.

Under the bill, if a business contract provides that the contract will be automatically renewed or extended for an additional contract period of more than one month unless the customer declines renewal or extension, the seller must provide the customer with a form containing certain disclosures or include the disclosures in the contract and obtain the customer's initials. The disclosures include certain information regarding a renewal or extension, including the duration of an additional contract period, whether increased charges to the customer would apply, and the deadline for the customer to act to prevent an additional contract period.

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Also under the bill, if a business contract provides that an automatic renewal or extension results in an additional contract period of more than one year, the seller must give the customer a reminder notice prior to renewal or extension. The reminder notice must contain specified information regarding a renewal or extension and generally must be provided by mail, by personal delivery, in a monthly invoice, by a facsimile, or by electronic mail. The bill also voids a business contract provision that requires a customer to permit the seller to match any offer the customer receives from, or makes to, another seller after the end of the contract's stated term (right to match provision).

If a seller fails to comply with the bill's disclosure or reminder notice requirements, the automatic renewal or extension provision is unenforceable and the contract terminates at the end of the current contract term. Also, if a seller fails to comply with the reminder notice requirements or attempts to enforce a right to match provision, the bill allows a customer to bring an action or counterclaim for damages. In such an action or counterclaim, a seller is not liable if: 1) the seller has established and implemented written procedures for complying with the reminder notice requirements and the prohibition against right to match provisions; 2) the seller's conduct was not willful or malicious; and 3) the seller refunds amounts the customer paid after the contract was renewed or extended.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.49 of the statutes is created to read:

2 **134.49 Renewals and extensions of business contracts. (1) DEFINITIONS.**

3 In this section:

4 (a) "Business contract" means a contract that is entered into for the lease of
5 business equipment or for providing business services, if the contract is for the direct
6 benefit of the end user of the business equipment or business services. "Business
7 contract" does not include any of the following:

8 1. A contract in which a customer agrees to purchase from a seller an
9 undetermined amount of business services or lease from the seller an undetermined
10 amount of business equipment, and agrees to pay the seller based on the amount of
11 business services received or business equipment leased, subject to a predetermined

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1 minimum payment in a 12-month period specified in the contract, if the
2 predetermined minimum payment is \$250,000 or more.

3 2. A contract for the lease or purchase of real property.

4 3. A contract for the lease of a vehicle.

5 4. A contract for the lease of medical equipment.

6 5. A contract derived from a tariff issued by an energy utility, as defined in s.
7 196.027 (1) (c).

8 6. A contract for the lease of equipment that is for personal, family, or household
9 purposes.

10 7. A contract for the purchase of services that are for personal, family, or
11 household purposes.

12 8. A contract for the lease or purchase of access service, as defined in s. 196.01
13 (1b).

14 9. An interconnection agreement, as defined in s. 196.01 (3b), or a contract or
15 agreement offered by a telecommunications utility, as defined in s. 196.01 (10), to
16 meet obligations imposed on the telecommunications utility under 47 USC 151 to
17 276.

18 10. A contract for the lease or purchase of telecommunications service, as
19 defined in s. 196.01 (9m), including commercial mobile service, as defined in s. 196.01
20 (2i), if the contract is derived from a tariff issued by a telecommunications provider,
21 as defined in s. 196.01 (8p), or if the contract permits the lessee or purchaser to
22 terminate the contract after an automatic renewal by giving written notice, permits
23 the termination to take effect not more than one month after receipt of the written
24 notice, and permits a termination without liability for fees or penalties other than

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1 a payment for services or equipment used during the period before the termination
2 takes effect, if the amount of the payment is one of the following:

3 a. The amount of the periodic payment due under the contract multiplied by
4 the number of periods during which the services or equipment are provided before
5 the termination takes effect.

6 b. If the contract does not provide for periodic payments, a portion of the
7 amount due under the contract that is proportional to the portion of the renewed
8 contract term that elapsed before the termination takes effect.

9 11. A contract that permits a customer to terminate an automatically renewed
10 or extended contract period by giving the seller notice of the customer's intention to
11 terminate the contract period, if the contract does not require the customer to give
12 notice to the seller more than 30 days before the date of the customer's intended
13 termination.

14 (b) "Customer" means a person who conducts business in this state and who is
15 the lessee under a business contract that is entered into for the lease of business
16 equipment or the purchaser under a business contract that is entered into for the
17 purchase of business services.

18 (c) "Seller" means the provider of a business service or the lessor of business
19 equipment under a business contract.

20 **(2) DISCLOSURE REQUIRED.** (a) If a business contract provides that the contract
21 will be automatically renewed or extended for an additional period unless the
22 customer declines renewal or extension, and the duration of the additional period is
23 more than one month, the seller shall do one of the following:

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1 1. At the time the customer enters into the contract, present to the customer
2 a copy of a form including the disclosures required under par. (b) and obtain the
3 customer's signature on the form.

4 2. Include the disclosures required under par. (b) in the contract in a
5 conspicuous manner and obtain the customer's initials on the contract on a page on
6 which a disclosure appears.

7 (b) A disclosure required under par. (a) shall contain all of the following:

8 1. A statement that the contract will be renewed or extended unless the
9 customer declines renewal or extension.

10 2. A statement indicating the duration of the additional contract period that
11 would result from an automatic renewal or extension period.

12 3. A statement indicating whether an increase in charges to the customer will
13 apply upon an automatic renewal or extension.

14 4. A description of action the customer must take to decline renewal or
15 extension.

16 5. The date of the deadline for the customer to decline renewal or extension.

17 (c) If a seller fails to comply with par. (a), an automatic renewal or extension
18 provision in the contract is not enforceable, and the contract terminates at the end
19 of the current contract term.

20 **(3) NOTICE REQUIRED.** If a business contract that has an initial term of more
21 than one year provides that the contract will be automatically renewed or extended
22 for an additional term of more than one year, unless the customer declines renewal
23 or extension, the provision is not enforceable against the customer and the contract
24 will terminate at the end of the current contract term unless the seller provides to
25 the customer, at least 15 days but not more than 45 days before the deadline for the

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1 customer to decline renewal or extension, a written notice containing all of the
2 following:

3 (a) A statement that the contract will be renewed or extended unless the
4 customer declines renewal or extension.

5 (b) The deadline for the customer to decline renewal or extension.

6 (c) A description of any increase in charges to the customer that will apply after
7 renewal or extension.

8 (d) A description of action that the customer must take to decline extension or
9 renewal.

10 **(4) MANNER OF GIVING NOTICE.** A seller or a person acting on behalf of the seller
11 shall give the written notice required under sub. (3) by any of the following methods:

12 (a) By mailing a copy of the notice by regular U.S. mail to the customer at the
13 customer's last-known business address, unless the contract requires the customer
14 to notify the seller by certified mail of the customer's intent to cancel.

15 (b) By mailing a copy of the notice by registered or certified mail to the customer
16 at the customer's last-known business address.

17 (c) By giving a copy of the notice personally to an owner, officer, director, or
18 managing agent of the customer's business.

19 (d) By including the notice on the first page of a monthly invoice sent to the
20 customer. Notice under this paragraph shall be prominently displayed in bold face
21 type and in a type size no smaller than 12-point.

22 (e) By sending a facsimile to the customer to the customer's last-known
23 facsimile number.

24 (f) By sending an electronic mail message to the customer at the customer's
25 last-known electronic mail address.

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1 **(5) UNENFORCEABLE TERMS.** No business contract between a seller and a
2 customer may require that the customer permit the seller to match any offer the
3 customer receives from or makes to another seller for services to be provided after
4 the end of the stated term of the contract or renewal period of the contract. A
5 provision in a business contract that violates this subsection is void and
6 unenforceable.

7 **(6) REMEDIES.** (a) Subject to par. (b), if a seller attempts to enforce a provision
8 in a business contract that is void and unenforceable under sub. (5), or to which subs.
9 (3) and (4) apply and for which subs. (3) and (4) have not been complied with, the
10 customer may commence an action or may file a counterclaim against the seller for
11 either of the following:

12 1. An amount that equals twice the amount of the damages incurred by the
13 customer.

14 2. An amount that equals twice the amount of the periodic payment specified
15 in the contract or \$1,000, whichever is less.

16 (b) A seller is not liable in an action or counterclaim under par. (a) if the court
17 finds all of the following:

18 1. The seller has established and implemented written procedures for
19 complying with this section.

20 2. The seller's failure to comply with subs. (3) and (4), or the seller's attempt
21 to enforce a provision that is void and unenforceable under sub. (5), was not willful
22 or malicious.

23 3. The seller has refunded any amounts paid by the customer after the date of
24 the renewal or extension until the date on which the business contract is terminated

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1 or until the date the seller provides a subsequent notice of renewal or extension,
2 whichever is earlier.

3 (c) Notwithstanding the limitations in s. 814.04 (1), the court shall award a
4 customer who prevails in an action or counterclaim under this subsection costs,
5 including reasonable attorney fees.

6 **SECTION 2. Initial applicability.**

7 (1) This act first applies to contracts for the lease of business equipment or for
8 providing business services that are entered into, modified, or renewed on the
9 effective date of this subsection.

10 **SECTION 3. Effective date.**

11 (1) This act takes effect on the first day of the 12th month beginning after
12 publication.

13 (END)