

2003 DRAFTING REQUEST

Bill

Received: 04/03/2003

Received By: mglass

Wanted: As time permits

Identical to LRB:

For: Thomas Reynolds (608) 266-2512

By/Representing: Les Wakefield

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Renewal clauses in business equipment contracts

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mglass 07/23/2003	csicilia 08/05/2003	jfrantze 08/05/2003	_____	sbasford 08/05/2003		
/2	mglass 12/04/2003	csicilia 01/05/2004	pgreensl 01/05/2004	_____	Inorthro 01/05/2004	lemery 01/22/2004	

FE Sent For:

None needed

<END>

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FE Sent For:

1/2 cjs 1/5
03 PG PS/RS
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/?	mglass	1 ijs 7/30 03	68/5	6/8/5 8/5			

FE Sent For:

<END>



WISCONSIN INDEPENDENT BUSINESSES, INC.

111 South Hamilton Street, P.O. Box 2135

Madison, WI 53701 • (608) 255-0373

March 27, 2003

Senator Tom Reynolds, Chair
Committee on Labor, Small Business Development & Consumer Affairs
P.O. Box 7882
Madison, WI 53707

Dear Senator Reynolds,

We have discussed the problems endured by Wisconsin businesses when they are confronted with an automatic contract renewal they had no reason to anticipate. Various types of leased business machines and business uniforms are among the products and services that have these types of hidden clauses.

Wisconsin Independent Businesses hopes to create legislation that brings these hidden clauses into the open. WIB does not seek to ban automatic renewal clauses from business contracts. We do want to create a situation, however, in which the lessor or service provider is required to carefully and openly advise the customer of the automatic renewal clause and the steps that must be taken to cancel the contract.

The proposed language that is attached is taken directly from Chapter 704 of the Wisconsin Statutes. This section of the statutes deals with landlord/tenant relations. Gary L. Antoniewicz of The Boardman Law Firm, corporate counsel to WIB, has reviewed the proposed language. Both Gary and I believe the language could be made more understandable when redrafted by the Legislative Reference Bureau.

We hope you continue to have interest in introducing this legislation. WIB will be able to provide contract excerpts that give glaring examples of the need for reform. We also have business owners who will be willing to publicly discuss the impact these hidden clauses have had on their ability to run their businesses effectively.

I greatly appreciate your interest in this area and look forward to working with you and your committee to create important legislation that will truly help Wisconsin businesses.

Cordially,

Wayne Corey
Executive Director

AUTOMATIC BUSINESS CONTRACT RENEWAL CLAUSE

The proposed statutory language to regulate the use of an automatic business equipment or service contract renewal clause is based on language from Chapter 704 of the Wisconsin Statutes.

Requirement that business equipment lessor notify lessee of automatic renewal clause. A provision in a lease of business equipment that the lease shall be automatically renewed or expanded for a specified period unless either party gives notice to the contrary prior to the end of the lease is not enforceable against the lessee unless the lessor, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to the lessor, gives the lessee written notice in the same manner as specified in _____ calling the attention of the lessee to the existence of the provision in the lease for automatic renewal or extension.

Requirement that business service provider notify service purchaser of automatic renewal clause. A provision in a contract for business services that the contract shall be automatically renewed or expanded for a specified period unless either party gives notice to the contrary prior to the end of the contract is not enforceable against the service purchaser unless the business service provider, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to the business service provider, gives the service purchaser written notice in the same manner as specified in _____ calling the attention of the service purchaser to the existence of the provision in the contract for automatic renewal or extension.

Manner of giving notice by lessor.

Notice by the lessor or a person in the lessor's behalf must be given under this chapter by one of the following methods:

By giving a notice personally to the lessee or by leaving a copy at the lessee's usual place of ^{business} ~~abode~~ in the presence of some competent employee of the lessee's business who is informed of the contents of the notice;

By leaving a copy with any competent person [?] apparently responsible for the leased equipment, and by mailing a copy by regular mail or other mail to the lessee's address;

By mailing a copy by registered or certified mail to the lessee at the lessee's business address.

Manner of giving notice by business service provider.

Notice by the business service provider or a person in the business service provider's behalf must be given under this chapter by one of the following methods:

By giving a notice personally to the business service purchaser or by leaving a copy at the business service purchaser's usual place of business in the presence of some competent employee of the business service purchaser's business who is informed of the contents of the notice;

By leaving a copy with any competent person apparently responsible for the use of the purchased business service, and by mailing a copy by regular mail or other mail to the address of the business service purchaser;

By mailing a copy by registered or certified mail to the business service purchaser at the business service purchaser's business address.

Wayne Corey
Wisconsin Independent Businesses



State of Wisconsin

2003 - 2004 LEGISLATURE

(in 7/23) soon

D-Note

EMR LRB-2474/1 MGG:..... cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



AN ACT ...; relating to: the renewal and extensions of business contracts.

in Analysis by the Legislative Reference Bureau

Under current law, a provision in a landlord-tenant lease that states that the lease will be automatically renewed or extended unless the tenant or landlord gives notice to the contrary is not enforceable against the tenant unless the landlord gives the tenant a written reminder of that provision at least 15 but not more than 30 days before the notice to terminate the lease is due. Current law limits what methods may be used to give the reminder notice. This bill creates the same requirements for provisions for leases of business equipment and contracts providing business services.

Current law also specifies the methods a landlord may use in providing the reminder notice. This bill creates similar methods for lessors of business equipment and providers of business services. These methods consist of giving a copy of the notice personally to the lessee of the equipment or the recipient of the services or mailing a copy to the lessee's or recipient's last-known business address or by giving a copy of the notice to any competent person who is apparently responsible for the business equipment or for the use of the business services.

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

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

134.49 ⁵Renewal² and extensions of business contracts. (1) DEFINITIONS.

In this section:

(a) "Business contract" means contract entered into for the lease of business equipment or for providing ^gbusiness services.

(c) "Customer" means the lessee under a business contract that is entered into for the lease of business equipment or the purchaser under a business contract that is entered into for the purchase of business services.

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

(2) NOTICE REQUIRED. A provision in a business contract that the business contract shall be automatically renewed or extended for a specified period unless either party gives notice to the contrary before the end of the business contract is not enforceable against the customer unless the seller^{delete extra space}, at least 15 days but not more than 30 days before the time specified for the giving of such notice to the ~~lessor or seller~~ ^{customer}, gives to the customer written notice that calls the attention of the customer to the existence of the provision in the business contract for automatic renewal or extension.

(3) MANNER OF GIVING NOTICE. A seller or a person acting on behalf of the seller shall give the written notice required under sub. (2) by one of the following methods:

(a) By giving a copy of the notice personally to the customer or ^gor by leaving a copy at the customer's usual place of business in the presence of a competent employee of the customer's business and by informing the employee of the contents of the notice [↓]

(b) By giving a copy of the notice to any competent person who is apparently responsible for the business equipment or for the use of the business service that is

mail

subject to the business contract and mailing a copy of the notice by regular ~~mail~~ to the customer's last-known business address.

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

SECTION 2. Initial applicability.

(1) This act first applies to contracts for the lease of business equipment or for providing ^g business services that are entered into on the effective date of this subsection.

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 7th month beginning after publication.

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2474/?dn

MGG:f:....

gjs

terms

The terms "business service" and "business equipment" are vague terms. As drafted, no state agency has authority for promulgating rules to define these rules or to interpret the other provisions created in this bill. Do you want to designate a state agency for the purpose of administering and interpreting these statutes?

I created a delayed effective date for this bill to give the public time to become aware of its provisions. Please let me know if you want the date changed.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2474/1dn
MGG:cjs:jf

August 5, 2003

The terms "business service" and "business equipment" are vague. As drafted, no state agency has authority for promulgating rules to define these terms or to interpret the other provisions created in this bill. Do you want to designate a state agency for the purpose of administering and interpreting these statutes?

I created a delayed effective date for this bill to give the public time to become aware of its provisions. Please let me know if you want the date changed.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Gibson-Glass, Mary

From: Wakefield, Les
Sent: Tuesday, November 18, 2003 2:52 PM
To: Gibson-Glass, Mary
Cc: Krieser, Steve; Sen.Reynolds; Peer, Adam
Subject: LRB 2474/1-Business Contracts

Senator Reynolds asked to have this language included for a "2474/2" version of this bill. It is a section dealing with the topic of remedies.

Thank you in advance for your prompt attention to this drafting request

(4) Remedies. In the event a seller attempts to enforce a business contract without meeting the requirements of this section,

the customer may sue the seller in any court of competent jurisdiction and shall recover twice the amount of any pecuniary loss

or twice the amount of periodic payment provided in the business contract, not to exceed \$1,000.00, whichever is greater,

together with costs including a reasonable attorney's fee.

**WISCONSIN INDEPENDENT BUSINESSES, INC.**

P.O. Box 2135 • Madison, WI 53701-2135

(608) 255-0373

November 17, 2004

Mary Gibson-Glass, Senior Legislative Attorney
Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701

Dear Ms. Glass,

Attached are documents related to LRB-2474, a bill on business contracts. LRB-2474 is legislation requested by Senator Reynolds. His office asked Wisconsin Independent Businesses to provide you with information you requested in a note dated August 5, 2003. Please contact Les Wakefield in Senator Reynold's office if you have any questions about WIB's involvement in the development of this legislation.

Gary L. Antoniewicz, partner at the Boardman Law Firm, has been corporate counsel to WIB for 22 years. Because Gary and I deal directly daily with problems confronting individual WIB members, we have become increasingly aware of the serious problem we seek to resolve through LRB-2474.

I appreciate the burdens faced by LRB at this time and I look forward to assisting you on this matter in any way possible.

Very truly yours,

Wayne Corey
Executive Director

Cc: Les Wakefield
Gary L. Antoniewicz



Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Phone • (608) 257-9521
Fax • (608) 283-1709

Gary L. Antoniewicz
Direct Dial Number • (608) 283-1759
gantoni@boardmanlawfirm.com

October 13, 2003

Mr. Wayne Corey
Executive Director
Wisconsin Independent Businesses
122 West Washington Avenue
Madison, WI 53703

**via facsimile no.: 608/255-6600
and first-class mail**

Re: LRB 2474/1

Dear Wayne:

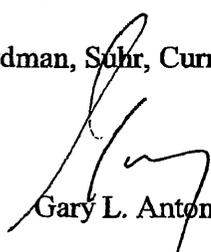
Enclosed is my recommendation for an addition to the "business contract" draft legislation. While the draft as currently set forth provides that a contract is not "enforceable" if notice is not provided, there is really no remedy except having the business go to court and have the contract declared unenforceable. By adding a "Remedies" section, the customer could get a statutory penalty and recover attorney fees, but only in the event the seller attempts to enforce the agreement. I think this addition would give the law more teeth.

As to the drafter's comments about the terms "business service" and "business equipment" being vague, I think this is something we should live with. The courts are certainly capable of providing some definition on a case-by-case basis. If we try to get too specific, I'm sure something will fall through the cracks along the way. Personally, I prefer the broad language. The only place I would foresee a problem with the broad language would be potentially with large corporations. For instance, General Motors could have a contract with a supplier for goods and services. Would this bill change that agreement or cause problems in a situation where the terms were, in fact, freely negotiated by the parties. My reply would be that there is nothing in the proposal that limits the parties from freely negotiating terms. It simply requires one side to give notice to the other in order to enforce the terms.

Please let me know if I can provide you anything further.

Sincerely,

Boardman, Suhr, Curry & Field LLP
By

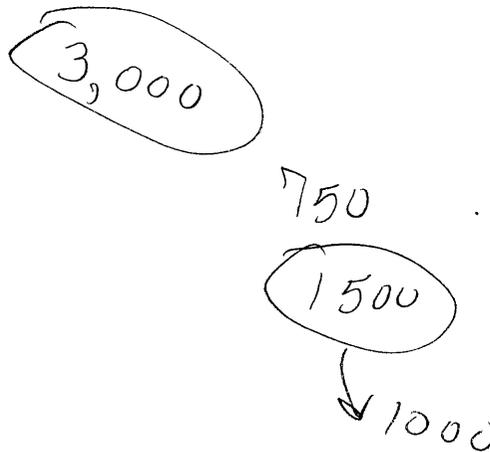

Gary L. Antoniewicz

GLA/jh
Enclosure

@PFDesktop\::ODMA\WORLD\OX\F\DOCS\WD\25158\0\A0223837.WPD

**ADDITION TO LRB 2474/1
on Business Contracts**

(4) Remedies. In the event a seller attempts to enforce a business contract without meeting the requirements of this section, the customer may sue the seller in any court of competent jurisdiction and shall recover twice the amount of any pecuniary loss or twice the amount of any periodic payment provided in the business contract, not to exceed \$1,000.00, whichever is greater, together with costs, including a reasonable attorney's fee.



Gibson-Glass, Mary

From: Wakefield, Les
Sent: Tuesday, November 18, 2003 2:52 PM
To: Gibson-Glass, Mary
Cc: Krieser, Steve; Sen.Reynolds; Peer, Adam
Subject: LRB 2474/1-Business Contracts

Senator Reynolds asked to have this language included for a "2474/2" version of this bill. It is a section dealing with the topic of remedies.

Thank you in advance for your prompt attention to this drafting request

(4) Remedies. In the event a seller attempts to enforce a business contract without meeting the requirements of this section, *commence an action against*

the customer may ~~see~~ *for* the seller in any court of competent jurisdiction and shall recover *for* twice the amount of any pecuniary loss, *damages*

or twice the amount of periodic payment provided in the business contract, not to exceed \$1,000.00, whichever is greater.

Notwithstanding the limitations in 5.814.04(1), the court shall award a customer who prevails

together with costs, including a reasonable attorney's fee

in an action under this subsection his or her



State of Wisconsin
2003 - 2004 LEGISLATURE

SOON

RMR
LRB-2474/r2
MGG:cjs: [initials]
stays

2003 BILL

Reyer J.

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

for

for

Analysis by the Legislative Reference Bureau

Under current law, a provision in a landlord-tenant lease that states that the lease will be automatically renewed or extended unless the tenant or landlord gives notice to the contrary is not enforceable against the tenant unless the landlord gives the tenant a written reminder of that provision at least 15 but not more than 30 days before the notice to terminate the lease is due. This bill creates the same requirements for provisions in leases of business equipment and in contracts providing business services.

Current law also specifies the methods a landlord may use in providing the reminder notice. This bill creates similar methods for lessors of business equipment and providers of business services to use. These methods include giving a copy of the notice personally to the lessee of the equipment or the recipient of the services and mailing by registered or certified mail a copy of the notice to the lessee's or recipient's last-known business address.

ANL

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

LA

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

BILL

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

In this section:

(a) "Business contract" means ^a contract entered into for the lease of business equipment or for providing business services.

(c) "Customer" means the lessee under a business contract that is entered into for the lease of business equipment or the purchaser under a business contract that is entered into for the purchase of business services.

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

(2) NOTICE REQUIRED. A provision in a business contract that the business contract shall be automatically renewed or extended for a specified period unless either party gives notice to the contrary before the end of the business contract is not enforceable against the customer unless the seller, at least 15 days but not more than 30 days before the time specified for the giving of such notice to the customer, gives to the customer written notice that ^{e calls} ~~calls~~ the attention of the customer to the existence of the provision in the business contract for automatic renewal or extension.

(3) MANNER OF GIVING NOTICE. A seller or a person acting on behalf of the seller shall give the written notice required under sub. (2) by one of the following methods:

(a) By giving a copy of the notice personally to the customer or by leaving a copy at the customer's usual place of business in the presence of a competent employee of the customer's business and by informing the employee of the contents of the notice.

(b) By giving a copy of the notice to any competent person who is apparently responsible for the business equipment or for the use of the business service that is subject to the business contract and mailing a copy of the notice by regular mail to the customer's last-known business address.

BILL

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

← (INS 3-2)

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to contracts for the lease of business equipment or for
5 providing business services that are entered into on the effective date of this
6 subsection.

7 **SECTION 3. Effective date.**

8 (1) This act takes effect on the first day of the 7th month beginning after
9 publication.

10 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2474/lins
MGG:cjs:jf

the business contract

attempts to enforce a contract
does not comply with the

ANL

The bill also specifies remedies that are available to a customer if the business contract does not contain the required provisions or if the lessor or provider has not followed the required methods for giving the reminder notice. ~~Created in this bill~~

a provision in

INS

(4) REMEDIES. (a) If a seller attempts to enforce a business contract for which 3-2

subs. (2) and (3) have not been complied with, the customer may commence an action or may file a counterclaim against the seller for either of the following:

1. (a) An amount that equals twice of the amount of the damages incurred by the customer.

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

(b) Notwithstanding the limitations in s. 814.04 (1), the court shall award a customer who prevails in an action or counterclaim under this subsection the costs ~~incurred by the customer~~, including reasonable attorney fees.

to which subs. (2) and (3) apply
and for which

Basford, Sarah

From: Gibson-Glass, Mary
Sent: Thursday, January 22, 2004 8:12 AM
To: Basford, Sarah
Subject: FW: Contract - Please Jacket - LRB 2474/2

Could you please jacket this for Senator Reynolds?

Thanks,

MGG

-----Original Message-----

From: Wakefield, Les
Sent: Wednesday, January 21, 2004 5:12 PM
To: Gibson-Glass, Mary
Subject: Contract - Please Jacket - LRB 2474/2

If you could jacket LRB 2474/2