

2007 SENATE BILL 212

June 13, 2007 – Introduced by Senators WIRCH, LEHMAN, PLALE and BRESKE, cosponsored by Representatives KREUSER, GUNDERSON, PETROWSKI, SEIDEL, SCHNEIDER, TOWNSEND, A. WILLIAMS, FIELDS, KERKMAN, MUSSER, TURNER, HAHN and JESKEWITZ. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, 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). 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, and contracts for the lease of motor vehicles or medical equipment.

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 30 days unless the customer declines renewal or extension, the seller must provide the customer with a disclosure form. The form must contain 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.

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, or in a monthly invoice.

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

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

15 3. A contract for the lease of a motor vehicle.

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

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1 (b) “Customer” means a person who is authorized to do business in this state
2 and who is the lessee under a business contract that is entered into for the lease of
3 business equipment or the purchaser under a business contract that is entered into
4 for the purchase of business services.

5 (c) “Seller” means the provider of a business service or the lessor of business
6 equipment under a business contract.

7 **(2) DISCLOSURE REQUIRED.** (a) If a business contract provides that the contract
8 will be automatically renewed or extended for an additional period unless the
9 customer declines renewal or extension, and the duration of the additional period is
10 more than 30 days, the seller shall, at the time the customer enters into the contract,
11 present to the customer a copy of a disclosure form under par. (b) and obtain the
12 customer’s signature on the form.

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

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

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

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

20 4. A description of action the customer must take to decline renewal or
21 extension.

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

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

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1 **(3) NOTICE REQUIRED.** If a business contract that has an initial term of more
2 than one year provides that the contract will be automatically renewed or extended
3 for an additional term of more than one year, unless the customer declines renewal
4 or extension, the provision is not enforceable against the customer and the contract
5 will terminate at the end of the current contract term unless the seller provides to
6 the customer, at least 15 days but not more than 45 days before the deadline for the
7 customer to decline renewal or extension, a written notice containing all of the
8 following:

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

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

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

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

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

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

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

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

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1 **(5) REMEDIES.** (a) Subject to par. (b), if a seller attempts to enforce a provision
2 in a business contract to which subs. (3) and (4) apply and for which subs. (3) and (4)
3 have not been complied with, the customer may commence an action or may file a
4 counterclaim against the seller for either of the following:

5 1. An amount that equals twice the amount of the damages incurred by the
6 customer.

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

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

11 1. The seller has established and implemented written procedures for
12 complying with this section.

13 2. The seller's failure to comply with subs. (3) and (4) was not willful or
14 malicious.

15 3. The seller has refunded any amounts paid by the customer after the date of
16 the renewal or extension until the date on which the business contract is terminated
17 or until the date the seller provides a subsequent notice of renewal or extension,
18 whichever is earlier.

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

SECTION 2. Initial applicability.

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