

State of Wisconsin



2009 Senate Bill 242

Date of enactment: **February 11, 2010**
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2009 WISCONSIN ACT 115

AN ACT *to amend* 136.10 (1) and 136.10 (2); and *to create* 136.02 (7) and 136.10 (3) of the statutes; **relating to:** creating separate regulatory requirements for certain future service contracts.

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

SECTION 1. 136.02 (7) of the statutes is created to read:

136.02 (7) Subsections (1) to (6) do not apply to a future service contract if all of the following are true:

(a) The future service contract is in writing and provides for a term not longer than 3 years, except that a future service contract under this subsection may be extended if the customer affirmatively agrees to an extension in writing at the time of the extension.

(b) The future service contract provides that assignees, purchasers, or other transferees of the rights of the contractor are subject to all claims and defenses of the customer against the contractor arising out of the future service contract.

(c) The future service contract permits the customer to cancel the future service contract by mailing or hand delivering to the contractor written notice before midnight of the 3rd day after the date on which the customer signed the future service contract and the future service contract imposes no liability on the customer for such a cancellation and entitles the customer to receive, not more than 20 days after such a cancellation, a refund of the entire customer fee paid for the future service contract.

(d) The future service contract contains an attached separate page that contains all of the following:

1. A caption printed in boldface, uppercase type of not less than 10-point size entitled "CANCELLATION AND REFUNDS."

2. A provision under the caption stating: "RIGHT TO CANCEL. You are permitted to cancel this contract until midnight of the 3rd day after the date on which you signed the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying (the seller) by any writing mailed or delivered to (the seller) at the address shown on the contract within the previously described time period. If you do so cancel, any payments made by you will be refunded within 20 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

(e) The future service contract provides that a purchase order must specify a date and address of delivery for each item purchased and that the customer may cancel an order and demand refund of any payment the customer made for that order if the goods that the customer ordered are not delivered on or before the delivery date specified in the purchase order or not delivered to the address where the customer requested delivery of the goods, unless the future service contract specifies otherwise.

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(f) The future service contract permits the seller to change the date or address of delivery specified in the purchase order only if the customer consents in writing to the change.

(g) The future service contract provides that a contract must return to a customer the full amount of a refund due to the customer under par. (e) without penalty not more than 20 days after the customer has demanded such a refund.

SECTION 2. 136.10 (1) of the statutes is amended to read:

136.10 (1) Every contractor shall maintain a bond issued by a surety company licensed to do business in this state. The principal sum of the bond shall at all times be \$25,000, except that if a contractor enters into a contract described in s. 136.02 (7), the principal sum of the bond shall be \$250,000.

SECTION 3. 136.10 (2) of the statutes is amended to read:

136.10 (2) The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayments made pursuant to a contract ~~entered into after July 1, 1976,~~ due to insolvency of the contractor ~~or,~~ the cessation of business by the plan, or the failure of a contractor to make a refund under a provision

in a future service contract described in s. 136.02 (7) (e). A copy of the bond shall be filed with the department. Any person claiming against the bond may maintain an action at law against the contractor and the surety.

SECTION 4. 136.10 (3) of the statutes is created to read:

136.10 (3) In addition to other means for the enforcement of the surety's liability on the bond required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against a contractor. The notice of motion, the motion, and a copy of the judgment shall be served on the surety as provided under s. 801.14. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the division of trade and consumer protection of the department of agriculture, trade and consumer protection. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the department of agriculture, trade and consumer protection that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest. The court may, in the interest of justice, order a proportional or other equitable distribution of the bond proceeds.