



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0097/1
CTS:nwn:rs

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 190**

August 25, 2009 – Offered by Senator WIRCH.

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

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

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

4 **134.49 Renewals and extensions of business contracts. (1) DEFINITIONS.**

5 In this section:

6 (a) “Business contract” means a contract that is entered into for the lease of
7 business equipment, if any of the business equipment is used primarily in this state,
8 or for providing business services, but only if the contract is for the direct benefit of
9 the end user of the business equipment or business services. “Business contract”
10 does not include any of the following:

11 1. A contract in which a customer agrees to purchase from a seller an
12 undetermined amount of business services or lease from the seller an undetermined

1 amount of business equipment, and agrees to pay the seller based on the amount of
2 business services received or business equipment leased, subject to a predetermined
3 minimum payment in a 12-month period specified in the contract, if the
4 predetermined minimum payment is \$250,000 or more.

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

6 3. A contract for the lease of a vehicle for which a certificate of title has been
7 issued under ch. 342.

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

9 5. A contract derived from a tariff issued by an energy utility, as defined in s.
10 196.027 (1) (c).

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

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

15 8. A contract for the lease or purchase of access service, as defined in s. 196.01
16 (1b).

17 9. An interconnection agreement, as defined in s. 196.01 (3b), or a contract or
18 agreement offered by a telecommunications utility, as defined in s. 196.01 (10), to
19 meet obligations imposed on the telecommunications utility under 47 USC 151 to
20 276.

21 10. A contract for the lease or purchase of telecommunications service, as
22 defined in s. 196.01 (9m), including commercial mobile service, as defined in s. 196.01
23 (2i), if the contract is derived from a tariff issued by a telecommunications provider,
24 as defined in s. 196.01 (8p), or if the contract permits the lessee or purchaser to
25 terminate the contract after an automatic renewal by giving written notice, permits

1 the termination to take effect not more than one month after receipt of the written
2 notice, and permits a termination without liability for fees or penalties other than
3 a payment for services or equipment used during the period before the termination
4 takes effect, if the amount of the payment is one of the following:

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

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

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

16 12. A contract to which a federal, state, or local government entity is a party.

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

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

23 **(2) DISCLOSURE REQUIRED.** (a) Subject to par. (d), if a business contract provides
24 that the contract will be automatically renewed or extended for an additional period

1 unless the customer declines renewal or extension, and the duration of the additional
2 period is more than one month, the seller shall do one of the following:

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

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

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

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

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

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

16 4. A description of action the customer must take to decline renewal or
17 extension.

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

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

22 (d) Paragraph (a) does not apply to a contract in effect on the effective date of
23 this paragraph [LRB inserts date], or to subsequent renewals of such a contract.

24 **(3) NOTICE REQUIRED.** If a business contract that has an initial term of more
25 than one year provides that the contract will be automatically renewed or extended

1 for an additional term of more than one year, unless the customer declines renewal
2 or extension, the provision is not enforceable against the customer and the contract
3 will terminate at the end of the current contract term unless the seller provides to
4 the customer, at least 15 days but not more than 60 days before the deadline for the
5 customer to decline renewal or extension, a written notice containing all of the
6 following:

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

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

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

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

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

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

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

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

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

1 (e) By sending a facsimile to the customer to the customer's last-known
2 facsimile number, if the contract permits the customer to use this method to notify
3 the seller that the customer declines renewal or extension of the contract.

4 (f) By sending an electronic mail message to the customer at the customer's
5 last-known electronic mail address, if the contract permits the customer to use this
6 method to notify the seller that the customer declines renewal or extension of the
7 contract.

8 (g) By sending the notice via a recognized overnight courier service, if the
9 contract permits the customer to use this method to notify the seller that the
10 customer declines renewal or extension of the contract.

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

17 **(6) REMEDIES.** (a) Any of the following customers may bring an action or
18 counterclaim for damages against a seller:

19 1. A customer who has notified a seller that the customer declines renewal or
20 extension of a business contract to which sub. (3) applies, if the seller has failed to
21 give notice as required under subs. (3) and (4) and the seller has refused to terminate
22 the contract as requested by the customer.

23 2. A customer against whom a seller has attempted to enforce a provision in a
24 business contract that is unenforceable under sub. (5).

1 (b) A customer who prevails in an action or counterclaim under par. (a) is
2 entitled to damages in either of the following amounts:

3 1. An amount that equals twice the amount of the damages incurred by the
4 customer.

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

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

10 (d) A seller is not liable in an action or counterclaim under this subsection if
11 the court finds either of the following:

12 1. All of the following:

13 a. The seller has established and implemented written procedures for
14 complying with this section.

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

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

20 2. The customer requested, in writing, renewal or extension of the contract that
21 is the basis for the customer's action or counterclaim against the seller, and the
22 customer was aware of the terms under which the contract would be renewed or
23 extended.

24 **SECTION 2. Initial applicability.**

