



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2009 Senate Bill 190

**Senate Substitute Amendment 1
and Assembly Amendment 1 to
Senate Substitute Amendment 1**

Memo published: November 2, 2009

Contact: Mary Matthias, Senior Staff Attorney (266-0932)
or Pam Shannon, Senior Staff Attorney (266-2680)

SENATE SUBSTITUTE AMENDMENT 1

Overview

Senate Substitute Amendment 1 (SSA 1) creates requirements applicable to 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. Specifically, the bill regulates the use of automatic renewal or extension clauses in these contracts, and prohibits the use “right to match” provisions, which require 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.

1. Contracts for Lease of Business Equipment

The provisions of Senate Bill 190 (the bill) apply to all “business contracts.” The bill defines “business contract” to mean any contract that is entered into for the lease of business equipment or for providing business services, if the contract is for the direct benefit of the end user of the business equipment or business services. The bill also lists a number of specific types of contracts that are not included in the definition and are thereby exempt from the provisions of the bill.

SSA 1 changes the definition of “business contract” to specify that a contract for the lease of business equipment is included only if “any of the business equipment is used primarily in Wisconsin.”

2. Contracts for the Lease of Vehicles

Under the *bill*, “business contract” does not include a contract for the lease of a vehicle. *SSA 1* clarifies that this exclusion applies to a contract for the lease of a vehicle for which a certificate of title has been issued under ch. 342 of the statutes. This change clarifies that contracts for the lease of semitrailers and certain trailers are exempt from the provisions of the bill.

3. Contracts With Government Entities

SSA 1 provides that all contracts to which a federal, state, or local government entity is a party are exempt from the provisions of the bill.

4. Required Disclosure of Automatic Renewal or Extension Provisions

An automatic renewal or extension clause is a contract provision that states 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.

Under the *bill*, if a business contract contains an automatic renewal or extension clause, at the time the parties enter into the contract the seller must either: (a) provide the customer with a form containing certain disclosures; or (b) include the disclosures in the contract and obtain the customer's initials on the page of the contract on which the disclosures appear. The disclosures must include certain information regarding the automatic 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 the initiation of an additional contract period.

Under *SSA 1*, a contract that is already in effect when the bill goes into effect is exempt from the requirement to disclose an automatic renewal or extension clause through the use of a separate form or by including the information in the contract. Subsequent renewals or extensions of such a contract are also exempt from the requirement.

5. Written Reminder Notice of Upcoming Renewal or Extension

Under the *bill*, the seller must send the customer a written reminder before the deadline for the customer to notify the seller that they do not want to renew the contract. The reminder must be sent at least 15 days, but not more than 45 days, before the deadline.

Under *SSA 1*, the seller may send the reminder notice up to 60 days, rather than 45 days, before the deadline for the buyer to decline renewal or extension. Under both the bill and *SSA 1*, the notice may not be sent less than 15 days before the deadline.

Under the *bill*, the seller may send the reminder notice by any of the following methods:

- a. By regular U.S. mail, unless the contract requires the customer to notify the seller by certified mail of the customer's intent to cancel.
- b. By registered or certified mail.
- c. By giving a copy of the notice personally to an owner, officer, director, or managing agent of the customer's business.
- d. By including the notice on the first page of a monthly invoice sent to the customer.
- e. By FAX.

SSA 1 makes the following changes regarding the manner in which the seller may send the reminder notice to the customer:

- a. Specifies that the seller may send the notice by FAX or e-mail *only if* the contract permits the customer to use that method to notify the seller that the customer declines renewal or extension of the contract.
- b. Allows the seller to send the reminder notice by a recognized overnight courier service if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract.

6. Circumstances Under Which a Customer May Bring an Action Against a Seller; Seller's Responsibility to Make Refunds

The *bill* provides that, with certain exceptions, if a seller attempts to enforce an automatic renewal or extension provision without providing the required reminder notice, or attempts to enforce a right to match provision, the customer may commence an action or may file a counterclaim against the seller for damages.

SSA 1 clarifies the situations in which a buyer may bring an action or counterclaim for damages and specifies when a seller must provide a refund for payment made under an improperly renewed or extended contract.

Specifically, *SSA 1* provides that if the seller fails to give the customer the required reminder notice and the customer subsequently notifies the seller that the customer does not want to renew or extend the contract, the seller is not liable if the seller agrees to end the contract at that point. The customer must pay for any services or equipment received since the date of the “improper” renewal or extensions. The seller is not required to provide any refund and the customer may not take the seller to court. However, if the seller refuses to terminate the contract, the customer may bring suit and request damages, including attorney fees.

Under both the *bill* and *SSA 1*, if the customer does bring suit (because the seller refused to terminate the improperly renewed or extended contract), the seller is not liable if the court finds that the seller has written policies for compliance with the notice and reminder provisions of the bill, the seller's failure to comply with the notice and reminder provisions was not willful or malicious, and the seller refunded any amounts paid by the customer after the date of the improper renewal or extension until the date the contract is terminated.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 (AA 1) to SSA 1 makes the following changes to SSA 1:

1. Certain Types of Contracts Exempted

The provisions of SSA 1 apply to “business contracts.” SSA 1 defines “business contract” to mean any contract that is entered into for the lease of business equipment or for providing business services, if the contract is for the direct benefit of the end user of the business equipment or business

services. SSA 1 lists a number of specific types of contracts that are not included in the definition and are thereby exempt from the provisions of SSA 1.

AA 1 specifies that the following types of contracts are not included in the definition of “business contract” and therefore are not subject to the provisions of SSA 1:

- a. A contract between a cooperative association organized under ch. 185 and a member of the cooperative.
- b. A contract under which a cooperative association organized under ch. 185 is a seller. A seller is a provider of a business service or a lessor of business equipment under a business contract.
- c. A contract for the lease, maintenance, repair, service, or inspection of elevator or escalator systems, including mechanical and electrical components of such systems when built into real property.

2. Initial Applicability of Requirement to Provide Notice of Upcoming Renewal or Extension

Under SSA 1, the seller must send the customer a written reminder notice before the deadline for the customer to notify the seller that they do not want to renew the contract. The reminder notice must be sent at least 15 days, but not more than 60 days, before the deadline.

SSA 1 specifies that its provisions first apply to contracts for the lease of business equipment or for providing business services that are entered into, modified, or renewed on the effective date of SSA 1 (approximately one year after passage).

AA 1 specifies that for a contract already in place on the effective date of SSA 1 the seller does not have to send a reminder notice unless the deadline for the customer to decline renewal or extension of the contract is more than 60 days after the effective date of SSA 1. In other words, in no instance would a seller be required to send a reminder notice to a customer prior to the effective date of SSA 1.

3. Buyer’s Responsibility to Pay for Services Received When Contract is Terminated Due to Failure of Seller to Provide Reminder Notice

The bill provides that, with certain exceptions, if a seller attempts to enforce an automatic renewal or extension provision without providing the required reminder notice, the customer may commence an action or may file a counterclaim against the seller for damages.

SSA 1 provides that a customer may bring an action against a seller if a seller fails to provide the required reminder notice and the customer subsequently notifies the seller that the customer declines renewal or extension of the contract and the seller refuses to terminate the contract as requested by the customer.

AA 1 clarifies this provision by stating that if a seller who failed to give a customer the required reminder notice of upcoming renewal or extension agrees to terminate the contract as of the date the customer subsequently notifies the seller that they wish to terminate, the customer is responsible for

charges incurred by the customer under the contract before the date on which the customer notified the seller.

AA 1 further states that in this situation, the customer may not bring an action against the seller based on the seller's failure to provide the required reminder notice, unless the seller's failure to provide the required notice was willful or malicious.

Legislative History

On September 22, 2009, the Senate adopted SSA 1 and passed the bill, as amended, on voice votes. On October 28, 2009, Representative Molepske, Jr., offered AA 1 to SSA 1, and the Assembly Committee on Jobs, the Economy and Small Business adopted the amendment on a vote of Ayes, 12; Noes, 0; and Absent, 1. The committee voted to recommend passage of the bill, as amended, on a vote of Ayes, 11; Noes, 0; and Absent, 1.

MM:PS:ksm