



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 192
[2009 Senate Bill 190]

**Business Contract Renewals and
Extensions**

BACKGROUND

2009 Wisconsin Act 192 (the Act) creates requirements applicable to the renewal or extension of certain contracts for the lease of business equipment or for providing business services (business contracts). Under the Act, in general, a business contract may not be automatically renewed or extended unless certain disclosures are made to the customer at the time the contract is entered into and the seller provides a reminder notice to the customer near the end of the initial contract period. The Act also prohibits “right to match” provisions in business contracts. These requirements are described below.

TYPES OF CONTRACTS SUBJECT TO THE NEW LAW

The provisions of the Act apply to all “business contracts.” A “business contract” is either of the following:

- A contract that is entered into for the lease of business equipment if any of the business equipment is used primarily in Wisconsin and the contract is for the direct benefit of the end user of the business equipment.
- A contract for providing business services, if the contract is for the direct benefit of the end user of the business services.

The following types of contracts are exempt from the provisions of the Act:

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

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- A contract in which a customer agrees to purchase or lease an undetermined amount of business services or equipment, and agrees to pay an amount based on the services received or equipment leased, subject to a predetermined minimum payment \$250,000 or more in a 12-month period.
- A contract for the lease or purchase of real property.
- A contract for the lease of a vehicle.
- A contract for the lease of medical equipment.
- A contract derived from a tariff issued by an energy utility.
- A contract for the lease of equipment that is for personal, family, or household purposes.
- A contract for the purchase of services that are for personal, family, or household purposes.
- A contract for the lease or purchase of certain telecommunications service.
- A contract between a cooperative association, a member of the cooperative, or a contract under which a cooperative association is a seller.
- A contract for the lease, maintenance, repair, service, or inspection of elevator or escalator systems.
- A contract to which a federal, state, or local government entity is a party.

REQUIREMENT TO DISCLOSE AUTOMATIC RENEWAL OR EXTENSION PROVISIONS

Under the Act, if a business contract provides that the contract will be automatically renewed or extended for more than one month unless the customer declines renewal or extension, the seller must disclose this fact to the customer. The requirement to provide the disclosure applies to all business contracts regardless of the length of the initial term of the contract. The seller must provide the disclosure to the customer by doing one of the following:

1. At the time the customer enters into the contract, obtaining the customer's signature on a form that contains the disclosure information described below.
2. Ensuring that the disclosure information described below is included in the contract in a conspicuous manner and obtaining the customer's initials on each page on which the information appears.

In either case, the required disclosure information is all of the following:

1. A statement that the contract will be renewed or extended unless the customer declines renewal or extension.
2. A statement indicating the duration of the additional contract period that would result from an automatic renewal or extension period.

3. A statement indicating whether an increase in charges to the customer will apply upon an automatic renewal or extension.
4. A description of action the customer must take to decline renewal or extension.
5. The date of the deadline for the customer to decline renewal or extension.

If the seller fails to provide the required disclosure, an automatic renewal or extension provision is not enforceable and the contract expires at the end of the current contract term.

REQUIREMENT TO PROVIDE A REMINDER NOTICE OF UPCOMING RENEWAL OR EXTENSION

If a business contract has an initial term of more than one year and the contract provides that it will be automatically renewed or extended for a period of more than one year unless the customer declines the renewal or extension, the seller must give the customer a written reminder notice prior to renewal or extension. The seller must provide the notice at least 15 days, but not more than 60 days, before the deadline for the customer to decline the renewal or extension.

The reminder notice must contain all of the following:

1. A statement that the contract will be renewed or extended unless the customer declines renewal or extension.
2. The date of the deadline for the customer to decline renewal or extension.
3. A description of any increase in charges to the customer that will apply after renewal or extension.
4. A description of action that the customer must take to decline extension or renewal.

The seller must send the reminder notice to the customer by one of the following methods:

1. 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 the contract.
2. By registered or certified mail.
3. By giving a copy of the notice personally to an owner, officer, director, or managing agent of the customer's business.
4. By including the notice on the first page of a monthly invoice sent to the customer. In this case, the notice must be prominently displayed in bold face type in a type size no smaller than 12-point.
5. By FAX, e-mail, or 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.

If the seller fails to provide the required reminder notice, an automatic renewal or extension provision is not enforceable and the contract expires at the end of the current contract term, except as described below.

If a 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, and the seller agrees to terminate the contract as of the date the customer notifies the seller, the customer must pay for any services or equipment received until the date the customer notifies the seller. In this situation, the seller is not liable for damages unless the seller's failure to provide the required notice was willful or malicious. If the seller refuses to terminate the contract, the customer may bring an action or counterclaim for damages against the seller and request damages, including attorney fees, as described below.

RIGHT TO MATCH PROVISIONS PROHIBITED

The Act prohibits any business contract from including a provision that requires a customer to permit the seller to match any offer the customer receives from, or makes to, another seller for services to be provided after the end of the contract's stated term or renewal period of the contract. Any such provision is void and unenforceable. The prohibition applies to all business contracts regardless of the length of the initial term of the contract.

A customer may bring an action or counterclaim for damages and attorneys fees, as described below, against a seller who attempts to enforce a prohibited right to match provision against a customer.

LIABILITY, DAMAGES, AND ATTORNEYS FEES

A customer who prevails in an action or counterclaim against a seller is entitled to costs and attorneys fees and to damages in either of the following amounts:

1. An amount that equals twice the amount of the damages incurred by the customer.
2. An amount that equals twice the amount of the periodic payment specified in the contract or \$1,000, whichever is less.

A seller is not liable in an action or counterclaim brought by a customer if the court finds either of the following:

1. All of the following:
 - a. The seller has established and implemented written procedures for complying with the requirements of the Act.
 - b. The seller's failure to comply with the reminder notice requirement or the seller's attempt to enforce a prohibited right to match provision was not willful or malicious.
 - c. The seller has refunded any amounts paid by the customer after the date of the renewal or extension until the date on which the business contract is terminated.

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

APPLICABILITY TO EXISTING BUSINESS CONTRACTS

Disclosures

The disclosure requirements described above first apply to a business contract that is entered into on or after May 1, 2011. A business contract that is already in effect on that date is exempt from the disclosure requirement. Subsequent renewals of such a contract are also exempt from the requirement.

Reminder Notice

The requirement to provide a reminder notice first applies to a business contract that has a deadline for the customer to decline renewal or extension that is on or after July 1, 2011. For any business contract that has a deadline on or after that date, the seller must provide a reminder notice not more than 60 days or less than 15 days before the deadline. If the required notice is not provided, the automatic renewal or extension is not enforceable and the liability and damages provisions described above apply.

Right to Match Provisions

The prohibition against right to match provisions applies to a business contract that is entered into, modified or renewed after May 1, 2011. Any right to match provision that is included in a business contract that is entered into, modified, or renewed after May 1, 2011 is void and unenforceable. If a seller attempts to enforce such a provision, the customer may bring an action or counterclaim against the seller for damages as described above.

Effective date: May 1, 2011.

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