



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 212

**Assembly Substitute
Amendment 1 and Assembly
Amendments 1 and 2 to
Assembly Substitute
Amendment 1**

Memo published: February 22, 2008

Contact: Scott Grosz, Staff Attorney (266-1307)

Current law prohibits a landlord from enforcing an automatic renewal or extension clause in a residential lease unless the landlord provides advance written notice of the renewal or extension.

2007 Senate Bill 212 establishes similar requirements for certain contracts for the lease of business equipment and for the provision of business services, defined as *business contracts* in the bill. The bill excludes contracts for the lease or purchase of real property, certain contracts which require a 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 a period of more than 30 days unless the customer declines the renewal or extension, the seller must provide the customer with a disclosure form containing information regarding the renewal or extension. The disclosure form must contain the following:

- A statement that the contract will be renewed or extended unless the customer declines renewal or extension.
- A statement indicating the duration of the additional contract period that would result from an automatic renewal or extension period.
- A statement indicating whether an increase in charges to the customer will apply upon an automatic renewal or extension.
- A description of action the customer must take to decline renewal or extension.
- The date of the deadline for the customer to decline renewal or extension.

If a business contract provides that an automatic extension or renewal results in an additional contract period of more than one year, the seller must provide a notice to the customer at least 15 days but not more than 45 days before the deadline for the customer to decline the renewal or extension. The written notice must contain the following information:

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

The bill permits notice through registered or certified mail, in person, or as part of a monthly notice, subject to certain specific requirements.

If a seller fails to comply with the provisions of the bill, the contract extension or renewal is unenforceable and terminates at the end of the current contract term. The bill also permits the customer to bring an action or counterclaim for damages if the seller does not comply with the reminder notice provisions.

Generally, *Assembly Substitute Amendment 1* (“Substitute Amendment”) provides that an automatic renewal or extension of a business contract, for an additional period that is longer than one year, is unenforceable unless the seller or lessor does all of the following:

- Obtains, at the time the customer enters the contract, written or electronic acknowledgment that the customer is aware of the terms of the automatic renewal or extension provision.
- Provides the customer with a written or electronic notice that the contract will be renewed or extended.
 - This notice must be provided at least 15 days but not more than 180 days before the beginning of the period in which the customer must decline renewal or extension.
 - If a customer declines renewal or extension as required by the business contract before the seller or lessor provides the notice, the seller or lessor is not required to provide the notice.

Under the Substitute Amendment, the enforceability of a renewal or extension provision of a business contract does not affect the enforceability of the remainder of the contract provisions.

The Substitute Amendment defines “business contract” to mean a 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. “Business contract” does not include any of the following:

- A contract in which a customer agrees to predetermined minimum payments in a 12-month period specified in the contract, if the total of the payments is \$12,000 or more.
- A contract for the lease or purchase of real property.
- A contract for the lease of a motor 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 or for the purchase of services, if the equipment or services are for personal, family, or household purposes.
- A contract for the lease or purchase of access service.
- An interconnection agreement, or a contract or agreement offered by a telecommunications utility to meet an obligation imposed on the telecommunications utility under 47 U.S.C. ss. 151 to 276.
- A contract for the lease or purchase of telecommunications service, including commercial mobile service.
- A contract for the lease or purchase of goods or services, if the contract permits the lessee or purchaser to terminate the contract after an automatic renewal by giving written or electronic notice, permits the termination to take effect not more than one month after receipt of the written or electronic notice, and permits a termination without liability for fees or penalties other than a payment for equipment or services used during the period before the termination takes effect.
- A contract for the lease of agriculture equipment, construction equipment, forestry equipment, or commercial use lawn and grounds care equipment.

Under the Substitute Amendment, the bill would take effect on the first day of the 12th month beginning after publication.

Assembly Amendment 1 to Assembly Substitute Amendment 1 specifies that a business contract does not include a contract in which a customer agrees to predetermined minimum payments in a 12-month period specified in the contract, if the total of the payments is **\$60,000** or more.

Assembly Amendment 2 to Assembly Substitute Amendment 1 specifies that notice of an automatic renewal or extension must be provided to the customer at least 15 days, but not more than the **lesser of three billing cycles** or 180 days before the beginning of the period in which the customer must decline renewal or extension.

Legislative History

On February 19, 2008, Representative Moulton offered Assembly Substitute Amendment 1 to 2007 Senate Bill 212.

On February 19, 2008, the Assembly Committee on Small Business offered Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1.

The Assembly Committee on Small Business recommended adoption of Assembly Amendment 1 by a vote of Ayes, 9; Noes, 0; recommended adoption of Assembly Amendment 2 by a vote of Ayes, 9; Noes, 0; and recommended adoption of Assembly Substitute Amendment 1, as amended, by a vote of Ayes, 5; Noes, 4.

The Assembly Committee on Small Business recommended concurrence with Senate Bill 212, as amended, by a vote of Ayes, 5; Noes, 4, on February 19, 2008.

SG:ksm:jb;ksm