

Wisconsin Automatic Renewal Law

Wisconsin Statutes 134.49: Renewals and extensions of business contracts

134.49 Renewals and extensions of business contracts.

(1) Definitions. In this section:

(a) "Business contract" means a contract that is entered into for the lease of business equipment, if any of the business equipment is used primarily in this state, or for providing business services, but only 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:

1. A contract in which a customer agrees to purchase from a seller an undetermined amount of business services or lease from the seller an undetermined amount of business equipment, and agrees to pay the seller based on the amount of business services received or business equipment leased, subject to a predetermined minimum payment in a 12-month period specified in the contract, if the predetermined minimum payment is \$250,000 or more.
2. A contract for the lease or purchase of real property.
3. A contract for the lease of a vehicle for which a certificate of title has been issued under ch. 342.
4. A contract for the lease of medical equipment.
5. A contract derived from a tariff issued by an energy utility, as defined in s. 196.027 (1) (c).
6. A contract for the lease of equipment that is for personal, family, or household purposes.
7. A contract for the purchase of services that are for personal, family, or household purposes.
8. A contract for the lease or purchase of access service, as defined in s. 196.01 (1b).
9. An interconnection agreement, as defined in s. 196.01 (3b), or a contract or agreement offered by a telecommunications utility, as defined in s. 196.01 (10), to meet obligations imposed on the telecommunications utility under 47 USC 151 to 276.
10. A contract for the lease or purchase of telecommunications service, as defined in s. 196.01 (9m), including commercial mobile service, as defined in s. 196.01 (2i), if the contract is derived from a tariff issued by a telecommunications provider, as defined in s. 196.01 (8p), or if the contract permits the lessee or purchaser to terminate the contract after an automatic renewal by giving written notice, permits the termination to take effect not more than one month after receipt of the written notice, and permits a termination without liability for fees or penalties other than a payment for services or equipment used during the period before the termination takes effect, if the amount of the payment is one of the following:

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

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

11. 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.

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

13. A contract between a cooperative association organized under ch. 185 and a member of the cooperative, or a contract under which a cooperative association organized under ch. 185 is a seller.

14. 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.

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

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

(2) Disclosure required.

(a) Subject to par. (d), if a business contract that is entered into, modified, or renewed after May 1, 2011, provides that the contract will be automatically renewed or extended for an additional period unless the customer declines renewal or extension, and the duration of the additional period is more than one month, the seller shall do one of the following:

1. At the time the customer enters into the contract, present to the customer a copy of a form including the disclosures required under par. (b) and obtain the customer's signature on the form.
2. Include the disclosures required under par. (b) in the contract in a conspicuous manner and obtain the customer's initials on the contract on a page on which a disclosure appears.

(b) A disclosure required under par. (a) shall contain 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.

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

(d) Paragraph (a) does not apply to a contract in effect on May 1, 2011, or to subsequent renewals of such a contract.

(3) Notice required. If a business contract that has an initial term of more than one year provides that the contract will be automatically renewed or extended for an additional term of more than one year, unless the customer declines renewal or extension, and the deadline for the customer to decline renewal or extension of the contract is more than 60 days after May 1, 2011, the provision is not enforceable against the customer and the contract will terminate at the end of the current contract term unless the seller provides to the customer, at least 15 days but not more than 60 days before the deadline for the customer to decline renewal or extension, a written notice containing all of the following:

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

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

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

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

(4) Manner of giving notice. A seller or a person acting on behalf of the seller shall give the written notice required under sub. (3) by any of the following methods:

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

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

(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. Notice under this paragraph shall be prominently displayed in bold face type and in a type size no smaller than 12-point.

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

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

(g) By sending the notice via 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.

(5) Unenforceable terms. No business contract between a seller and a customer that is entered into, modified, or renewed after May 1, 2011, may require that the customer 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 stated term of the contract or renewal period of the contract. A provision in a business contract that violates this subsection is void and unenforceable.

(6) Remedies.

(a) Any of the following customers may bring an action or counterclaim for damages against a seller:

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

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

(am) Notwithstanding par. (a) 1., if a seller who fails to give to a customer a notice required under sub. (3) subsequently receives notice that the customer declines renewal or extension and agrees to terminate the contract as of the date the customer notified the seller, the customer is responsible for charges incurred by the customer under the contract before the date on which the customer notified the seller and the customer may not bring an action against the seller based on the seller's failure to provide the required notice, unless the seller's failure to provide the required notice was willful or malicious.

(b) A customer who prevails in an action or counterclaim under par. (a) is entitled 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.

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

(d) A seller is not liable in an action or counterclaim under this subsection 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 this section.
 - b. The seller's failure to comply with subs. (3) and (4), or the seller's attempt to enforce a provision that is void and unenforceable under sub. (5), 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 customer's action or counterclaim against the seller, and the customer was aware of the terms under which the contract would be renewed or extended.

Are evergreen provisions enforceable in Wisconsin?

STATUTES/CASES:

Wisconsin Statutes Section 134.49 regulates evergreen provisions in business contracts. Under the statute, a "business contract" is defined as "a contract that is entered into for the lease of business equipment, if any of the business equipment is used primarily in this state, or for providing business services, but only if the contract is for the direct benefit of the end user of the business equipment or business services." Wis. Stat. § 134.49(1)(a). Wisconsin's law includes 14 exemptions, including (i) leases with total annual rents of \$250,000 or more, (ii) leases of real property, (iii) leases of titled vehicles, (iv) leases of medical equipment, (v) leases of equipment or for the purchase of personal services that are for personal, family, or household purposes, (vi) leases permitting cancellation by lessee upon one month's notice, and (vii) leases to governmental entities. Wis. Stat. § 134.49(1)(a)(1)-(14). Renewals of More Than One Month If a business contract is entered into, modified or renewed after May 1, 2011, and has an evergreen provision that renews or extends the contract for more than a one-month term, the seller is required to either: (a) present the customer with the required disclosures and obtain the

customer's signature on the form at the time the customer enters into the contract; or (b) include the required disclosures in the contract in a conspicuous manner and obtain the customer's initials on the contract on the page on which the disclosure appears. Wis. Stat. §134.49(2)(a). The required disclosures must include: (1) a statement that the contract will be renewed or extended automatically unless the customer declines renewal or extension; (2) the duration of the renewal or extension; (3) a statement indicating whether the renewal or extension will result in an increase in charges; (4) a description of how to decline renewal or extension; and (5) the deadline for declining renewal or extension. Wis. Stat. §134.49(2)(b). If a seller fails to comply with these requirements, an automatic renewal or extension provision in the contract is not enforceable, and the contract terminates at the end of the current contract term. Wis. Stat. §134.49(2)(c). These requirements do not apply to a contract in effect on May 1, 2011, or to subsequent renewals of such a contract. Wis. Stat. §134.49(2)(d). Renewals of More Than One Year for Contracts of More Than One Year If a business contract has an initial term of more than one year and an evergreen provision that renews the contract for more than one year, and the deadline for the customer to decline renewal or extension of the contract is more than 60 days after May 1, 2011, then the customer must be given written notice that the contract will be renewed automatically at least 15 days, but not more than 60 days, before the deadline to decline renewal or extension. Wis. Stat. §134.49(3). The written notice must include: (1) a statement that the contract will be renewed or extended unless the customer declines renewal or extension; (2) 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; and (4) a description of action that the customer must take to decline renewal or extension. Wis. Stat. §134.49(3)(a)-(d). A seller or a person acting on behalf of the seller can give the required written notice by any of the following methods: (a) by mailing a copy of the notice by regular U.S. mail to the customer at the customer's last-known business address, unless the contract requires the customer to notify the seller by certified mail of the customer's intent to cancel; (b) by mailing a copy of the notice by registered or certified mail to the customer at the customer's last-known business address; (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. Notice under this paragraph shall be prominently displayed in bold face type and in a type size no smaller than 12-point; (e) by sending a facsimile to the customer to the customer's last-known facsimile number, if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract; (f) by sending an electronic mail message to the customer at the customer's last-known electronic mail address, if the contract permits the customer to use this method to notify the seller that the customer declines renewal or extension of the contract; (g) by sending the notice via 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. Wis. Stat. §134.49(4). If a seller fails to comply with these requirements, an automatic renewal or extension provision in the contract is not enforceable, and the contract terminates at the end of the current contract term. Wis. Stat. §134.49(3). Customers who have notified a seller that the customer declines renewal or extension of a business contract may bring an action or counterclaim for damages against a seller if the seller has failed to give the required notice or has failed to serve the required notice in the required way and the seller has refused to terminate the contract as requested by the customer. Wis. Stat. §134.49(6)(a)(1). A customer who prevails in an action or counterclaim is entitled to damages in either of the following amounts: (1) an amount that equals twice the

amount of the damages incurred by the customer; or (2) an amount that equals twice the amount of the periodic payment specified in the contract or \$1,000, whichever is less. Wis. Stat. §134.49(6)(b). The customer can also recover costs, including reasonable attorney fees. Wis. Stat. §134.49(6)(c). If a seller who fails to give to a customer the required written notice subsequently receives notice that the customer declines renewal or extension and agrees to terminate the contract as of the date the customer notified the seller, the customer is responsible for charges incurred by the customer under the contract before the date on which the customer notified the seller and the customer may not bring an action against the seller based on the seller's failure to provide the required notice, unless the seller's failure to provide the required notice was willful or malicious. Wis. Stat. §134.49(6)(am). Unenforceable Terms No business contract between a seller and a customer that is entered into, modified, or renewed after May 1, 2011, may require that the customer 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 stated term of the contract or renewal period of the contract. Wis. Stat. §134.49(5). A provision in a business contract that violates this subsection is void and unenforceable. *Id.* A customer against whom a seller has attempted to enforce such a provision in a business contract may bring an action or counterclaim for damages against the seller. Wis. Stat. §134.49(6)(a)(2). A customer who prevails in such an action or counterclaim is entitled to damages in either of the following amounts: (1) an amount that equals twice the amount of the damages incurred by the customer; or (2) an amount that equals twice the amount of the periodic payment specified in the contract or \$1,000, whichever is less. Wis. Stat. §134.49(6)(b). The customer can also recover costs, including reasonable attorney fees. Wis. Stat. §134.49(6)(c). Safe Harbor A seller is not liable in an action or counterclaim 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 Wisconsin's evergreen law; (b) the seller's failure to comply with the required written notice or the seller's failure to send the required notice in the required way or the seller's attempt to enforce a provision that is void and unenforceable 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; or (2) the customer requested, in writing, renewal or extension of the contract that is the basis for the customer's action or counterclaim against the seller, and the customer was aware of the terms under which the contract would be renewed or extended. Wis. Stat. §134.49(6)(d).