

Companies Doing Any Business in Wisconsin Subject to New Law Regulating Automatic Renewal Clauses in Business Contracts

Hinshaw Alert

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Companies that do *any* business in Wisconsin should be mindful of a recently passed statute, Wis. Stat. § 134.49, so as to ensure compliance with its provisions. Section 134.49 creates new requirements applicable to the automatic renewal or extension of a wide range of business-to-business contracts for the lease of business equipment and for the provision of business services. The law becomes effective on May 1, 2011.

Section 134.49 defines a “business contract” as: (1) 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; or (2) a contract for providing business services, if the contract is for the direct benefit of the end-user of the business services. Several types of contracts are expressly exempted from the statute’s provisions. These include contracts for the lease or purchase of real property and vehicles, and contracts that allow a customer to terminate an automatically renewed contract period by giving the seller a one-month notice of the customer’s intention to terminate the contract period.

In general, compliance with Section 134.49 requires sellers to: (1) disclose an automatic renewal clause or extension provision in a business contract at the time the customer enters into the contract; and (2) provide a formal advance reminder notice to a customer whose contract will otherwise be renewed or extended for an additional term of more than one year. The statute also prohibits any business contract from including a provision that requires the customer to permit the seller to match any offer that the customer obtains from another seller at the end of the contract’s stated term.

Disclosure Requirements for Automatic Renewal or Extension Provisions

Where a business contract provides that it will be automatically renewed or extended for more than one month unless the customer declines renewal or extension, the seller must expressly disclose this renewal provision to the customer up front. The form of the required disclosure is set forth in detail in Section 134.49 and includes the information that must be included in the disclosure. Where the seller fails to comply with the disclosure requirement, the automatic renewal provision is not enforceable and the contract terminates at the end of the then current term.

Reminder Notices for Renewal or Extension

Sellers must give their customers a written reminder notice prior to the automatic renewal or extension of business contracts that have an initial term of more than one year and provide that the contract will be automatically renewed or extended for a period of more than one year unless the customer declines the renewal or extension. The reminder notice must be provided at least 15 days, but not more than 60 days, before the deadline so that the customer may decline the renewal or extension. The requisite content and method of delivering the reminder notice is set forth in Section 134.49. The automatic renewal clause will not be enforceable, except as set forth in the statute, if the seller fails to provide the reminder notice.

Prohibition of Right to Match Provisions

Section 134.49 expressly prohibits “right to match” provisions in business contracts. A “right to match” provision is a clause whereby the customer is required to allow a supplier or lessor to match any offer that the customer obtains from another seller for services to be provided after the end of the contract’s stated term. Such provisions in business contracts will be void and unenforceable.

Applicability to Existing Business Contracts

Various provisions of Section 134.49 will apply to business contracts that were entered into on or after May 1, 2011. The requirement to provide a reminder notice will apply to business contracts that have a deadline for the customer to decline renewal or extension that is on or after July 1, 2011. The prohibition against “right to match” provisions applies to business contracts entered into, modified or renewed after May 1, 2011. The disclosure requirement first applies to business contracts that are entered into on or after May 1, 2011.

Customers may bring actions or counterclaims for damages and attorneys’ fees against sellers that attempt to enforce provisions in business contracts that are unenforceable under the terms of Section 134.49. In addition, suppliers that do not comply with the law may not be able to collect amounts due for the use of leased equipment or services provided during the renewal term.

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