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**SENATE BILL 6437**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senator Zeiger

Read first time 01/16/20. Referred to Committee on Law & Justice.

1 AN ACT Relating to the use of automatic renewal provisions in  
2 business contracts; and adding a new chapter to Title 19 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires  
6 otherwise.

7 (1) "Business contract" means a contract that is entered into for  
8 the lease of business equipment, if any of the business equipment is  
9 used primarily in this state, or for providing business services, but  
10 only if the contract is for the direct benefit of the end user of the  
11 business equipment or business services. "Business contract" does not  
12 include any of the following:

13 (a) A contract that permits a customer to terminate an  
14 automatically renewed or extended contract period by giving the  
15 seller notice of the customer's intention to terminate the contract  
16 period, if the contract does not require the customer to give notice  
17 to the seller more than one month before the date of the customer's  
18 intended termination;

19 (b) A contract in which a customer agrees to purchase from a  
20 seller an undetermined amount of business services or lease from the  
21 seller an undetermined amount of business equipment, and agrees to

1 pay the seller based on the amount of business services received or  
2 business equipment leased, subject to a predetermined minimum payment  
3 in a twelve-month period specified in the contract, if the  
4 predetermined minimum payment is two hundred fifty thousand dollars  
5 or more;

6 (c) A contract for the lease or purchase of real property;

7 (d) A contract for the lease of a vehicle for which a certificate  
8 of title has been issued under chapter 46.12 RCW;

9 (e) A contract for the lease of medical equipment;

10 (f) A contract for the lease of equipment that is for personal,  
11 family, or household purposes;

12 (g) A contract for the purchase of services that are for  
13 personal, family, or household purposes;

14 (h) A contract for electrical or gas service to which an electric  
15 utility, as defined in RCW 19.280.020, or a gas company, as defined  
16 in RCW 80.04.010, is a party;

17 (i) A contract for the lease or purchase of telecommunications  
18 service that is subject to regulation under Title 80 RCW;

19 (j) A contract to which a federal, state, or local government  
20 entity is a party;

21 (k) A contract between a cooperative association organized under  
22 or subject to chapter 23.86 RCW and a member of the cooperative  
23 association, or a contract under which a cooperative association  
24 organized under or subject to chapter 23.86 RCW is a seller; and

25 (1) A contract for the lease, maintenance, repair, service, or  
26 inspection of elevator or escalator systems, including mechanical and  
27 electrical components of such systems when built into real property.

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

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

34 NEW SECTION. **Sec. 2.** (1) If a business contract that is entered  
35 into after May 1, 2021, provides that the contract will be  
36 automatically renewed or extended for an additional period unless the  
37 customer declines renewal or extension, and the duration of the  
38 additional period is more than one month, the seller must do one of  
39 the following:

1 (a) At the time the customer enters into the contract, present to  
2 the customer a form that includes the disclosures required under  
3 subsection (2) of this section and obtain the customer's signature on  
4 the form; or

5 (b) Include the disclosures required under subsection (2) of this  
6 section in the contract in a conspicuous manner and obtain the  
7 customer's initials on the contract on a page on which a disclosure  
8 appears.

9 (2) A disclosure required under subsection (1) of this section  
10 must contain all of the following:

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

13 (b) A statement indicating the duration of the additional  
14 contract period that would result from an automatic renewal or  
15 extension period;

16 (c) A statement indicating whether an increase in charges to the  
17 customer will apply upon an automatic renewal or extension;

18 (d) A description of action the customer must take to decline  
19 renewal or extension; and

20 (e) The date of the deadline for the customer to decline renewal  
21 or extension.

22 (3) If a seller fails to comply with this section, an automatic  
23 renewal or extension provision in the contract is not enforceable and  
24 the contract terminates at the end of the current contract term.

25 (4) This section does not apply to a contract in effect on May 1,  
26 2021, or to subsequent renewals of such a contract.

27 NEW SECTION. **Sec. 3.** If a business contract that has an initial  
28 term of more than one year provides that the contract will be  
29 automatically renewed or extended for an additional term of more than  
30 one year unless the customer declines renewal or extension, and the  
31 deadline for the customer to decline renewal or extension of the  
32 contract is more than sixty days after May 1, 2021, the provision is  
33 not enforceable against the customer and the contract will terminate  
34 at the end of the current contract term unless the seller provides to  
35 the customer, at least fifteen days but not more than sixty days  
36 before the deadline for the customer to decline renewal or extension,  
37 a written notice containing all of the following:

38 (1) A statement that the contract will be renewed or extended  
39 unless the customer declines renewal or extension;

1 (2) The deadline for the customer to decline renewal or  
2 extension;

3 (3) A description of any increase in charges to the customer that  
4 will apply after renewal or extension; and

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

7 NEW SECTION. **Sec. 4.** A seller or a person acting on behalf of  
8 the seller must give the written notice required under section 3 of  
9 this act by one of the following methods:

10 (1) Mailing a copy of the notice by United States mail, first-  
11 class, to the customer at the customer's last known business address,  
12 unless the contract requires the customer to notify the seller by  
13 certified mail of the customer's intent to cancel;

14 (2) Mailing a copy of the notice by registered or certified mail  
15 to the customer at the customer's last known business address;

16 (3) Giving a copy of the notice personally to an owner, officer,  
17 director, or managing agent of the customer's business;

18 (4) Including the notice on the first page of a monthly invoice  
19 sent to the customer. Notice under this subsection (4) must be  
20 prominently displayed in bold face type and in a type size no smaller  
21 than twelve-point;

22 (5) Sending a facsimile to the customer to the customer's last  
23 known facsimile number, if the contract permits the customer to use  
24 this method to notify the seller that the customer declines renewal  
25 or extension of the contract;

26 (6) Sending an email message to the customer at the customer's  
27 last known email address, if the contract permits the customer to use  
28 this method to notify the seller that the customer declines renewal  
29 or extension of the contract; or

30 (7) Sending the notice via a recognized overnight courier  
31 service, if the contract permits the customer to use this method to  
32 notify the seller that the customer declines renewal or extension of  
33 the contract.

34 NEW SECTION. **Sec. 5.** (1) No business contract between a seller  
35 and a customer that is entered into, modified, or renewed after May  
36 1, 2021, may require that the customer permit the seller to match any  
37 offer the customer receives from or makes to another seller for

1 services to be provided after the end of the stated term of the  
2 contract or renewal period of the contract.

3 (2) A provision in a business contract that violates this section  
4 is void and unenforceable.

5 NEW SECTION. **Sec. 6.** (1) The following customers may bring an  
6 action or counterclaim for damages against a seller:

7 (a) A customer who has notified a seller that the customer  
8 declines renewal or extension of a business contract to which section  
9 3 of this act applies, if the seller has failed to give notice as  
10 required under sections 3 and 4 of this act and the seller has  
11 refused to terminate the contract as requested by the customer; or

12 (b) A customer against whom a seller has attempted to enforce a  
13 provision in a business contract that is unenforceable under section  
14 5 of this act.

15 (2) Notwithstanding subsection (1)(a) of this section, if a  
16 seller who fails to give a customer a notice required under section 3  
17 of this act subsequently receives notice that the customer declines  
18 renewal or extension and agrees to terminate the contract as of the  
19 date the customer notified the seller, the customer is responsible  
20 for charges incurred by the customer under the contract before the  
21 date on which the customer notified the seller and the customer may  
22 not bring an action against the seller based on the seller's failure  
23 to provide the required notice, unless the seller's failure to  
24 provide the required notice was willful or malicious.

25 (3) A customer who prevails in an action or counterclaim under  
26 this section is entitled to damages in either of the following  
27 amounts:

28 (a) An amount that equals twice the amount of the damages  
29 incurred by the customer; or

30 (b) An amount that equals twice the amount of the periodic  
31 payment specified in the contract or one thousand dollars, whichever  
32 is less.

33 (4) The court shall award a customer who prevails in an action or  
34 counterclaim under this section costs, including reasonable  
35 attorneys' fees.

36 (5) A seller is not liable in an action or counterclaim under  
37 this section if the court finds either of the following:

38 (a) All of the following:

1 (i) The seller has established and implemented written procedures  
2 for complying with this chapter;

3 (ii) The seller's failure to comply with sections 3 and 4 of this  
4 act, or the seller's attempt to enforce a provision that is void and  
5 unenforceable under section 5 of this act, was not willful or  
6 malicious; and

7 (iii) The seller has refunded any amounts paid by the customer  
8 after the date of the renewal or extension until the date on which  
9 the business contract is terminated; or

10 (b) The customer requested, in writing, renewal or extension of  
11 the contract that is the basis for the customer's action or  
12 counterclaim against the seller, and the customer was aware of the  
13 terms under which the contract would be renewed or extended.

14 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act  
15 constitute a new chapter in Title 19 RCW.

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