

# SENATE BILL REPORT

## SB 6437

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As of February 5, 2020

**Title:** An act relating to the use of automatic renewal provisions in business contracts.

**Brief Description:** Concerning the use of automatic renewal provisions in business contracts.

**Sponsors:** Senator Zeiger.

**Brief History:**

**Committee Activity:** Law & Justice: 2/04/20.

### Brief Summary of Bill

- Regulates certain business contracts entered into after May 1, 2021, for the lease of business equipment or providing business services.
- Requires disclosure of automatic renewal periods if the renewal period exceeds one month.
- Makes unenforceable an automatic renewal provision where the renewal period exceeds one year and the deadline to cancel the contract exceeds 60 days prior to the renewal date.
- Prohibits a requirement in a contract that a seller be permitted to match another's offer for business contracts.
- Allows a customer of a business contract to file a lawsuit for violations and recover damages, costs, and fees.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Some contracts may contain an automatic renewal clause providing at the end of the term of the contract, the contract term automatically renews for a subsequent time period, often for the same length of time as the initial term, unless either party gives the other party notice of termination within a certain time period before the end of the current term. These automatic renewal clauses are often included in service, distribution, and supply business contracts. Customers cancelling a contract with a renewal period may not be able to

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obtain a refund for payments made unless they provide notice of cancellation within the time frame required by the contract.

The Consumer Protection Act does not expressly regulate automatic renewal clauses in business contracts for the lease of business equipment or providing business services.

**Summary of Bill:** Renewal for More than One Month. If a business contract is automatically renewed or extended for an additional period, unless the customer declines renewal or extension, the seller must do one of the following:

- at the time the customer enters into the contract, present to the customer a form including certain disclosures and obtain the customer's signature on the form; or
- include these disclosures in the contract in a conspicuous manner, and obtain the customer's initials on the contract on a page where a disclosure appears.

The required disclosure must contain:

- 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 renewal period;
- a statement indicating whether an increase in charges to the customer will apply upon renewal;
- a description of action the customer must take to decline renewal or extension; and
- the deadline for the customer to decline renewal or extension.

If a seller fails to comply with the required disclosure, the automatic renewal or extension provision is unenforceable and the contract terminates at the end of the current contract term.

Renewal for More than One Year. A business contract with an initial and renewal term of more than one year is void and unenforceable where the customer is required to decline renewal more than 60 days prior to the renewal date. Such a contract terminates at the renewal date unless the seller provides to the customer a written notice containing:

- 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; and
- a description of action that the customer must take to decline renewal or extension.

The written notice must be provided by the seller—at least 15 days, but not more than 60 days—before the deadline for the customer to decline renewal.

Restriction on Required Offer Matching. No business contract between a seller and a customer may require 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 violating this restriction is void and unenforceable.

Action for Damages. An action or counterclaim for damages against a seller may be brought by a customer:

- who has notified a seller they decline renewal or extension of a business contract if the seller has failed to give the required notice and the seller has refused to terminate the contract; or
- where a seller has attempted to enforce an unenforceable provision.

A customer who prevails in an action or counterclaim is entitled to damages in either an amount equaling twice the amount of damages incurred by the customer; or an amount equaling twice the amount of the periodic payment specified in the contract or \$1,000, whichever is less. The court must award a prevailing customer costs, including reasonable attorneys' fees.

Applicability. The act applies to business contracts entered into after May 1, 2021. Business contracts is a defined term in the act with stated exceptions.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is based on Wisconsin's model legislation regulating contracts with automatic renewal clauses. There are at least six states that restrict these contracts in business contracts.

I tried to cancel a contract because the company providing the services was not very good and not ADA compliant. We sent a written cancellation within the time frame required but the company said we could not cancel. There was no option to cancel because of the automatic renewal language. I was able to get out of part of the contract because of the company's failure to perform.

**Persons Testifying:** PRO: Senator Hans Zeiger, Prime Sponsor; Lori Curtis, White River School District/Director of Digital Learning Services.

**Persons Signed In To Testify But Not Testifying:** No one.