



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection

DATE: March 5, 2020

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy J. Romanski, Interim Secretary
Lara Sutherlin, Administrator, Division of Trade and Consumer Protection

SUBJECT: ATCP 134: Residential Rental Practices; Rulemaking Scope Statement

TO BE PRESENTED BY: David Woldseth

REQUESTED ACTION:

At the March 5, 2020 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve the attached Statement of Scope (SS 001-20) for proposed amendments to the current DATCP rule related to residential rental practices.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with Wis. Stat. § 227.135 (2), the Governor approved this scope statement for permanent rule changes on December 20, 2019, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP formally published this draft scope statement in the January 6, 2020 *Wisconsin Administrative Register* and filed a copy with the Department of Administration (DOA) at least 10 days before the Board could approve the scope statement. After publication, the Joint Committee for the Review of Administrative Rules required DATCP to hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). The Board approved the public hearing notice at its January 30, 2020 meeting as required by Wis. Stat. § 227.136 (2). The Department held the hearing on Monday, February 17, 2020, and permitted public comments until Tuesday, February 18, 2020. DATCP only received the one attached comment on the scope statement. DATCP did not act upon the comment since the comment simply agreed the rule should be changed.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Ch. ATCP 134

Relating
to: Residential Rental Practices (Permanent)

1. Description of the objective of the rule:

This proposed rule would modify a current rule related to residential rental practices. Existing ch. ATCP 134 (Residential Rental Practices) and existing ch. 704, Stats. (Landlord and Tenant) both regulate dealings involving residential renters and their landlords. However, because of a recent addition to ch. 704, Stats., by 2017 Wis. Act 317, § 41, there is now a specific matter – namely, the maximum actual cost amount that a landlord may require a prospective tenant to pay for a consumer credit report – where ch. ATCP 134 is inconsistent with ch. 704, Stats. This rulemaking will eliminate that inconsistency.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background, and justification for the proposed rule:

In April 2018, then-Governor Walker signed AB 771 into law as 2017 Wisconsin Act 317. Section 41 of the new law created Wis. Stat. § 704.085 and took effect on April 18, 2018, reads (emphasis added):

704.085 Credit and background checks. (1) (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, *up to \$25*, to obtain a consumer credit report on the prospective tenant from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests a consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis, that is less than 30 days old.

(2) A landlord may require a prospective tenant who is not a resident of this state to pay the landlord's actual cost, *up to \$25*, to obtain a background check on the prospective tenant. The landlord shall notify the prospective tenant of the charge

before requesting the background check and shall provide the prospective tenant with a copy of the report.

This new statute conflicts with ATCP 134.05 (4) (a), which states (emphasis added):

(4) CREDIT CHECK FEE

(a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, *up to \$20*, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the report.

Because the Administrative Code is inconsistent with the new statute, the Department must engage in rulemaking to harmonize the two. Failure to do so would lead to continued inconsistency between s. ATCP 134.05 (4) (a) and s. 704.085 (1) (a), Stats.

3. Statutory authority for the rule (including the statutory citation and language):

Wis. Stat. §§ 93.07 (1) and 100.20 (2) (a). *See also* Wis. Stat. § 704.95.

Wis. Stat. § 93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

Wis. Stat. § 100.20 (2) (a)

The department [of Agriculture, Trade, and Consumer Protection], after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

Wis. Stat. § 704.95 Practices regulated by the department of agriculture, trade and consumer protection

Practices in violation of s. 704.28 or 704.44 may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, and holding public hearings. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This existing rule affects residential tenants, residential rental property owners, and those who manage such properties.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

No existing or proposed federal regulations have an impact on this rule.

7. Anticipated economic impact

The proposed rule will have minimal impact on the state. Potential tenants may need to pay more, but the statute authorized and required this. The rule merely harmonizes an existing rule with 2017 Wisconsin Act 317, § 41, which passed in the last session. The inconsistency between the existing rule and the new statute was identified during the routine rules review required by 2017 Wisconsin Act 108.

Contact Person: David A. Woldseth (DavidA.Woldseth@wisconsin.gov); phone (608) 224-5164.



Randy Romanski
Interim Secretary
Department of Agriculture, Trade and Consumer Protection

12-16-19
Date Submitted



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FACILITATING RELATIONSHIPS WHICH EDUCATE,
SUPPORT AND PROMOTE THE INDUSTRY**

February 20, 2020

Division of Trade and Consumer Protection, Department of Agriculture, Trade and Consumer Protection
ATTN: David Woldseth
P.O. Box 8911
Madison, WI 53708-8911

RE: Scope Statement **SS 001-20**

Dear Mr. Woldseth:

Although I am unable to attend in person to speak in favor of the proposed changes to ATCP 134, I am writing to let you know that the Wisconsin Housing Alliance supports your efforts to fully implement Wisconsin Act 317 so that chapter 704 stats will be reflected in ATCP 134.

Thank you and feel free to contact me if you have any question for me.

Sincerely,

Amy Bliss
Executive Director
Amy@housingalliance.us