



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection

DATE: April 10, 2020

TO: Board of Agriculture, Trade and Consumer Protection

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

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

TO BE PRESENTED BY: David Woldseth

REQUESTED ACTION:

At the April 10, 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 016-20) for proposed emergency amendments to the current DATCP rule related to residential and 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 emergency rule changes on March 27, 2020, 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 March 30, 2020 *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, DATCP requested the Board authorize a public hearing on the scope statement at its own behest under Wis. Stat. § 227.136 (2). The Board approved the public hearing notice at its March 27, 2020 meeting. The Department held the hearing on Friday, April 3, and permitted public comments until Monday, April 6. DATCP did not receive any comments.

If the Board approves this scope statement, DATCP will prepare the emergency rule, and the rule and associated documents approved by the Secretary will be submitted to the Governor for approval. A copy of the emergency rule will be sent to the Board for informational purposes. If the Governor approves the emergency rule, it will be signed, docketed, published and then in effect for 150 days. The department will hold a hearing within 45 days of adopting the emergency rule and does not intend to make any temporary changes permanent.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: ATCP 134

Relating to: Residential Rental Practices

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Department of Agriculture, Trade and Consumer Protection (department) finds that an emergency exists and a rule change is necessary for the immediate preservation of the public peace, health, safety, or welfare as permissible under Wis. Stat. s. 227.24 (1) (a). A statement of facts constituting the emergency is:

Prohibiting the accumulation of late rent fees and penalties pursuant to the Department of Health Services (DHS) Emergency Order No. 8 by emergency rule will help reduce economic hardship and related health, safety, and welfare risks to tenants impacted by the COVID-19 pandemic.

2. Detailed description of the objective of the proposed rule:

In response to DHS Emergency Order No. 8, the department proposes to amend ATCP 134.09 (8) to restrict the accumulation of late rent fees and penalties for a duration of time.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing Policies Relevant to the Rule:

The current policies for ATCP 134.09 (8), regarding late rent fees and penalties are as follows:

- (a) No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.
- (b) Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant.
- (c) No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

New Policies Proposed to be Included in the Rule:

The department proposes to give tenants who are impacted by the COVID-19 pandemic additional time to accumulate resources to make timely rental payments.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. s. 93.07 (1) directs the department to make such regulations as are necessary for the discharge of all the powers and duties of the department.

Wis. Stat. s. 227.24 allows the department to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under Wis. Stat. ch. 227.

Under Wis. Stat. s. 100.20 (2) the department has authority to regulate unfair competition and trade practices.

100.20 (2) Methods of competition and trade practices.

- (a) The department, 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.
- (b) Notwithstanding par. (a), the department may not issue any order or promulgate any rule that regulates the provision of water or sewer service by a manufactured home community operator, as defined in s. 101.91 (8), or manufactured home community contractor, as defined in s. 101.91 (6m), or enforce any rule to the extent that the rule regulates the provision of such water or sewer service.

Furthermore under Wis. Stat. s. 704.95, the department has specific authority over prohibited rental agreement provisions, retaliatory evictions, self-evictions, and returning security deposits.

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.

Wis. Adm. Code ATCP ch. 134, currently provides policies related to late rent fees and penalties that the department is authorized to enforce.

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

The department estimates that it will take approximately 80 hours to develop this emergency rule. That calculation includes time required for investigation and analysis, drafting the emergency rule, preparing related documents, coordinating meetings, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

This rule will impact tenants and landlords for a limited duration to the extent that landlord's will be unable to charge tenants with accrued late fees and penalties during the emergency.

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

Not applicable.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Indeterminate. The economic impact depends on how many landlords would have added late fees and penalties during the time period covered by this emergency rule and the amount of those fees.

Contact Person:

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Randy Romanski, Interim Secretary

23 March 2020
Date Submitted