



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary-designee Randy Romanski

DATE: November 6, 2020

TO: Board of Agriculture, Trade and Consumer Protection

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

SUBJECT: ATCP 134: Residential Rental Practices; Final Rule

TO BE PRESENTED BY: David Woldseth

REQUESTED ACTION:

At the November 19, 2020 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve the attached final draft rule for a proposed amendment to the current DATCP rule related to residential rental practices.

BACKGROUND:

This proposed rule, if adopted, will 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. Because of an 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.

This rule changes the maximum amount that a landlord may charge a prospective tenant for a consumer credit report from \$20 to \$25.

NEXT STEPS:

If the Board approves, DATCP will transmit the rule to the Governor for his written approval. After the Governor approves the final draft rule, DATCP will send the final draft rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

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DATCP Docket No. 19-R-02
Rules Clearinghouse No. 20-033

Final Draft Rule
November 19, 2020

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to amend* ATCP 134.05 (4) (a) *relating to* residential rental practices.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule harmonizes Wis. Admin. Code s. ATCP 134.05 (4) (a), a rule related to landlord/tenant law, with Wis. Stat. s. 704.085 (1) (a).

Statutes Interpreted

Statutes Interpreted: Wis. Stat. ss. 93.07 (1) and 100.20 (2) (a). *See also* Wis. Stat. s. 704.95.

Statutory Authority

Wis. Stat. s. 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. s. 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. s. 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.

Related Statutes and Rules

2017 Wisconsin Act 317, s. 41.

Plain Language Analysis

Background

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 an addition to ch. 704, Stats., by 2017 Wis. Act 317, s. 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.

In April 2018, then-Governor Walker signed AB 771 into law as 2017 Wisconsin Act 317. Section 41 of the new law, which created Wis. Stat. s. 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 Wis. Admin. Code s. ATCP 134.05 (4) (a) and Wis. Stat. s. 704.085 (1) (a).

Rule Content

General

This rule changes the maximum amount that a landlord may charge a prospective tenant for a consumer credit report from \$20 to the amount specified by statute.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal Programs

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

Surrounding State Programs

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

Summary of Factual Data and Analytical Methodologies

DATCP received comments from the Wisconsin Legislative Council Rules Clearinghouse and considered them. It adopted the suggestion to change ATCP 134.05 (4) (a) from "... to pay the landlord's actual cost, up to \$20 ~~\$25~~..." to read "... to pay the landlord's actual cost, up to \$20 the amount specified in s. 704.085 (1) (a), Stats.,..." The Clearinghouse suggested the change to reduce the need to conduct rulemaking in the future should the Legislature change the amount again.

DATCP held a Web Ex public hearing on September 17, 2020, and no one attended.

After the hearing, DATCP accepted formal written comments until September 25, 2020. DATCP received no comments. An internal committee approved the Clearinghouse recommendation.

Analysis and Supporting Documents used to Determine Effect on Small Business

No analysis has been conducted. The statute mandates the change to the rules. Therefore, the rule will not have any effects that the existing law would not already impose.

Effect on Small Business

Many of the landlords affected by this rule are “small businesses.” However, because the change permits landlords to charge, at present, prospective tenants \$5 more for credit reports, the rule change will not adversely affect landlords. In addition, the change is mandated by statute, so the rule must be changed.

A complete *regulatory flexibility analysis* is attached.

DATCP Contact

David A. Woldseth
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: DavidA.Woldseth@wisconsin.gov

Where Comments May Be Submitted

David A. Woldseth
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: DavidA.Woldseth@wisconsin.gov

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- 1 **SECTION 1.** ATCP 134.05 (4) (a) is amended to read:
- 2 ATCP 134.05 (4) (a) Except as provided under par. (b), a landlord may require a prospective
- 3 tenant to pay the landlord's actual cost, ~~up to \$20~~ the amount specified in s. 704.085 (1) (a),
- 4 Stats., to obtain a consumer credit report on the prospective tenant from a consumer reporting
- 5 agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall

1 notify the prospective tenant of the charge before requesting the consumer credit report, and shall
2 provide the prospective tenant with a copy of the report.

3 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
4 following publication as provided in Wis. Stat. s. 227.22 (2).

Dated this 5th day of November, 2020.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski

Randy Romanski
Secretary-designee

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 1, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 134	
4. Subject Residential Rental Practices	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$Unknown-- costs would be borne by tenants at time of application	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The rule aligns ATCP 134 with Wis Stat. 704.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) 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 2017 session. The inconsistency between the existing rule and the new statute was identified during the routine rules review required by 2017 Wisconsin Act 108.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The rule will harmonize with statute.	
16. Long Range Implications of Implementing the Rule The rule and statute will not disagree.	
17. Compare With Approaches Being Used by Federal Government No existing or proposed federal regulations have an impact on this rule.	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

19. Contact Name David A. Woldseth	20. Contact Phone Number 608-224-5164
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134
Rules Clearinghouse #: CR 20-033
DATCP Docket #: 19-R-02

Rule Summary

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 Wis. Stat. § ch. 704. This rulemaking will eliminate that inconsistency.

Summary of Changes

This rule changes the maximum amount that a landlord may charge a prospective tenant for a consumer credit report from \$20 to the amount specified in Wis. Stat. § 704.085 (1) (a). Currently, that would be \$25.

Small Business Affected

Many of the landlords affected by this rule will qualify as “small businesses.”

Reporting, Bookkeeping and other Procedures

There is no mandatory reporting or bookkeeping tied to this amendment to the rule.

Professional Skills Required

Since the rule merely changes the fee that may be collected from \$20 to the amount specified in Wis. Stat. § 704.085 (1) (a), no additional professional skills will be required. Currently, that fee would be \$25.

Accommodation for Small Business

Many of the landlords affected by this rule are “small businesses.” However, because the change permits landlords to charge prospective tenants \$5 more for consumer credit reports, the rule will not adversely affect landlords. In addition, the rule change is required due to a change in state statute, so no accommodations or special exceptions can be made.

Conclusion

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in Wis. Stat. § 227.22 (2) (e).

Dated this 3 day of November, 2020.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Lara Sutherlin

Lara Sutherlin, Administrator
Division of Trade and Consumer Protection