

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.

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