

**1999 DRAFTING REQUEST**

**Bill**

Received: 01/5/99

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Mark Meyer (608) 266-5780

By/Representing: Bryan

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Real Estate - landlord/tenant

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Excluding certain persons from the regulations related to tenants

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 02/5/99	jgeller 02/6/99		_____			
/P1			hhagen 02/8/99	_____	lrb_docadmin 02/8/99		
/1	kahlepj 02/17/99	jgeller 02/17/99	lpaasch 02/18/99	_____	lrb_docadmin 02/18/99	lrb_docadmin 03/2/99	

FE Sent For:

*Not Needed*

<END>

**1999 DRAFTING REQUEST**

**Bill**

Received: 01/5/99

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Mark Meyer (608) 266-5780

By/Representing: Bryan

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Real Estate - landlord/tenant

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Excluding certain persons from the regulations related to tenants

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 02/5/99	jgeller 02/6/99		_____			
/P1			hhagen 02/8/99	_____	lrb_docadmin 02/8/99		
/1	kahlepj 02/17/99	jgeller 02/17/99	lpaasch 02/18/99	_____	lrb_docadmin 02/18/99		

FE Sent For:

<END>

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/5/99**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Meyer (608) 266-5780**

By/Representing: **Bryan**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Real Estate - landlord/tenant**

Extra Copies:

**Topic:**

Excluding certain persons from the regulations related to tenants

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 02/5/99	jgeller 02/6/99		_____			
/P1		<i>1 2/7 jg</i>	hhagen 02/8/99	_____	lrb_docadmin 02/8/99		

FE Sent For:

*2-18LP.*

*2-18LP.*  
*CH*  
**<END>**

**1999 DRAFTING REQUEST**

**Bill**

Received: 01/5/99

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Mark Meyer (608) 266-5780

By/Representing: Bryan

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Real Estate - landlord/tenant

Extra Copies:

**Topic:**

Excluding certain persons from the regulations related to tenants

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	kahlepj	1/1 2/10 JLG	4/2/8	4/15 2/8			

FE Sent For:

<END>

*Do it  
submit  
P's*

---

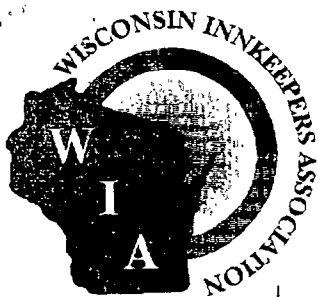
Mits - PJK

Please draft a bill  
based off of the  
info on this memo.

any questions .  
give me a call

Bryan  
6-5780

Rep. Meyer



Serving the  
Lodging Industry  
for Over 100 Years

September 21, 1998

MEMO TO: Barb Linton  
FROM: Trisha A. Pugal, CAE  
President, CEO

RE: "Overstay" Challenges and Proposed Change

You may recall that one of the issues WIA would like to pursue is clarification of the Landlord/Tenant Law to ensure that transient lodging is not included under the rights and obligations of landlords and tenants.

As requested by our Executive Committee I have talked further with WIA lodging Counsel Barry Chaet regarding "overstay" challenges some of our members have experienced.

Apparently both motels located primarily in small towns and extended stay properties, who have customers in the construction industry or other industry where employees have business assignments away from home for over 30 days, sometimes run into problems with the customers wishing to suddenly further extend their stay and the property having other guaranteed bookings immediately following.

According to Barry the current law has some gray areas that could be interpreted to require these properties to give lengthy advance notice, as landlords must, to get customers to leave.

Enclosed is an excerpt from the regulations revised in 1997, with a suggested clause to add under ATCP 134.02 (12) definitions regarding the definition of a "tenant".

This simple clause would clarify the intent of the law and protect innkeepers who wish to honor advance reservations from customers counting on their commitment.

Please advise your recommendation on the most timely manner to accomplish this change.

cc: WIA Executive Committee  
Cheryl Zaug  
Scott Smith  
Barry Chaet

1025 S. Moorland Rd.  
Suite 501  
Brookfield, WI 53005  
414/782-2851  
Fax# 414/782-0550  
wia@execpc.com  
<http://www.lodging-wi.com>



09/08/97 DRAFT

## RESIDENTIAL RENTAL PRACTICES

ATCP	134.01	Scope and application of rules
ATCP	134.02	Definitions
ATCP	134.03	Rental documents; deposit requirements
ATCP	134.04	Disclosure requirements
ATCP	134.05	Earnest money deposits
ATCP	134.06	Security deposits
ATCP	134.07	Promises to repair
ATCP	134.08	Prohibited rental agreement provisions
ATCP	134.09	Prohibited practices
ATCP	134.10	Effect of rules on local ordinances

---

Note:

Chapter Ag 134 was renumbered chapter ATCP 134 under s. 13.93 (2m) (b) 1. Stats., Register, April, 1993, No. 448

Note:

This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

**ATCP 134.01 Scope and application of rules.** This chapter is adopted under authority of s. 100.20, Stats., and applies to the rental of dwelling units located in this state. It does not apply to the rental or occupancy of dwelling units:

- (1) Operated by an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;
- (2) Operated by a fraternal or social organization for the benefit of its members only and the dwelling unit is occupied by a member of the organization;
- (3) Under a contract of sale, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;
- (4) On a tourist or transient basis in a hotel, motel, boarding house, lodging house, private residence hall or other similar premises ~~on a transient basis;~~
- (5) Furnished free of charge, or free of charge as consideration to employees conditioned upon employment ~~in and about~~ involved in the operations or maintenance of the premises;

09/08/97 DRAFT

(6) ~~Under a rental agreement covering premises used by the occupant primarily for agricultural purposes. Where the occupant is engaged in agriculture on the premises of the dwelling unit:~~

(7) Owned and operated by government, or a subdivision or agency of government.

Note: The exemption under sub. (4) is intended to apply to persons who stay away from home for extended periods while traveling on business, but it is not intended that student rental housing be exempted under this subsection.

Note: The exemption under sub. (5) applies only while the employment contract is in existence. Upon termination of employment, this chapter applies and the tenancy becomes a tenancy at will under ch. 704, Stats.

History

Cr. Register, February, 1980, No. 290, eff. 5-1-80.

**ATCP 134.02 Definitions.** (1) "Building and housing codes" means laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. ATCP 125.01 (1) and (7).

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental application considered by the landlord.

~~(4) ATCP 134.02(4) "Form provision" means a written rule, regulation, or rental or contract provision that has not been specifically and separately negotiated and agreed to by the tenant in writing. Any provision appearing as part of a preprinted form is rebuttably presumed to be a form provision.~~

(5) "Landlord" means the owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them.

(6) "Lease" means a lease as defined in s. 704.01 (1), Stats.

(7) "Owner" means one or more persons, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.



09/08/97 DRAFT

(8) "Person" means an individual, partnership, corporation, association, estate, trust, and any other legal or business entity.

(9) "Premises" means a dwelling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

(10) "Rental agreement" means ~~any oral or written agreement, whether written or oral,~~ for the rental or lease of a dwelling unit or premises, and . A rental agreement does not exist until the landlord accepts the tenant's application, notifies the tenant of acceptance and the tenant has an opportunity to review and accept all material terms and conditions of the agreement. "Rental agreement" includes contracts or rules, and regulations and supplemental provisions which are incidental to, or adopted pursuant to a rental agreement.

Note: "Material terms and conditions" includes all items necessary for a tenant to understand the scope of the rental agreement such as a description of the dwelling unit, amount of rent and all additional charges, and other tenant obligations under the agreement.

(11) "Security deposit" means the total of all payments and deposits given by a tenant to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of 1 month's prepaid rent.

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriff's execution of a judicial writ of restitution issued under s. 799.44, Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

"TENANT" DOES NOT INCLUDE A "TOURIST OR TRANSIENT"

(13) "Tenancy" means occupancy, or a right to present occupancy under a rental agreement, and includes periodic tenancies and tenancies at will. The term does not include the occupancy of a dwelling unit without consent of the landlord after expiration of a lease or termination of tenancy under ch. 704, Stats.

(14) "Supplemental provision" means a written rental provision in a separate document titled "Non-standard Lease or Rental Agreement Provision(s)" which is specifically and separately negotiated and signed by the tenant.

(15) "Tourist or transient" means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business, or employment.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1598 ✓ PI  
PJK.....  
↑  
JG

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

landlords and ✓  
general ✓  
1  
2

AN ACT ...; relating to: excluding certain persons from the requirements relating to tenants.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 704.01 (4m) <sup>x</sup> of the statutes is created to read:  
4 704.01 (4m) <sup>✓</sup> "Tenant" does not include any of the following:  
5 (a) A person holding possession of real property under a contract of purchase  
6 or an employment contract. <sup>✓</sup>  
7 (b) A person renting or occupying a dwelling unit in a hotel, motel, boarding  
8 house, lodging house, private residence hall or other similar premises, on a  
9 temporary or transient basis, while away from his or her permanent residence for  
10 vacation, pleasure, recreation, business or employment purposes.

1           **SECTION 2.** 704.01 (5) of the statutes is amended to read:

2           704.01 (5) "Tenant at will" means any tenant holding with the permission of  
3 the tenant's landlord without a valid lease and under circumstances not involving  
4 periodic payment of rent; ~~but a person holding possession of real property under a~~  
5 ~~contract of purchase or an employment contract is not a tenant under this chapter.~~

6           History: 1983 a. 189; 1993 a. 486.

(END)

*D-note*

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1598/dn P1  
PJK.....

↑  
jlg

#1.

This draft addresses only the definition of "tenant" in ch. 704<sup>✓</sup> of the statutes. It is intended to exclude from the definition those persons identified in the memo from Trisha A. Pugal of the Wisconsin Innkeepers Association. I'm not sure what the other suggested changes that were made to the administrative code are intended to do, therefore, I did not address them.

Since agencies draft their own rules, a bill cannot amend the administrative code except by requiring an agency to promulgate specific rules or rules that accomplish a specific result or by prohibiting an agency from promulgating specific rules or rules accomplishing a specific result. Any rules promulgated by an agency must, however, be consistent with the statutes. Therefore, if the statutory requirements related to notices that a landlord must give tenants do not apply to certain persons that might otherwise be considered "tenants", the rules cannot require a landlord to give the notices to those persons.

Let me know if you want this draft to address any other issues.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

#2. Is excluding certain persons from the definition of "tenant" too broad a treatment? Are there any provisions in ch. 704 that you do want to apply and that would not apply if those persons are excluded from the definition of "tenant" altogether?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1598/P1dn  
PJK:jlg:hmh

Monday, February 8, 1999

1. This draft addresses only the definition of "tenant" in ch. 704 of the statutes. It is intended to exclude from the definition those persons identified in the memo from Trisha A. Pugal of the Wisconsin Innkeepers Association. I'm not sure what the other suggested changes that were made to the administrative code are intended to do, therefore, I did not address them.

Since agencies draft their own rules, a bill cannot amend the administrative code except by requiring an agency to promulgate specific rules or rules that accomplish a specific result or by prohibiting an agency from promulgating specific rules or rules accomplishing a specific result. Any rules promulgated by an agency must, however, be consistent with the statutes. Therefore, if the statutory requirements related to notices that a landlord must give tenants do not apply to certain persons that might otherwise be considered "tenants", the rules cannot require a landlord to give the notices to those persons.

Let me know if you want this draft to address any other issues.

2. Is excluding certain persons from the definition of "tenant" too broad a treatment? Are there any provisions in ch. 704 that you *do* want to apply and that would not apply if those persons are excluded from the definition of "tenant" altogether?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1598/1  
PJK:jlh:hmh

*minimum*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*Regen*

1 **AN ACT to amend** 704.01 (5); and **to create** 704.01 (4m) of the statutes; **relating**  
2 **to:** excluding certain persons from the requirements relating to landlords and  
3 tenants.

*✓ Enact A →*

***Analysis by the Legislative Reference Bureau***

~~This is a preliminary draft. An analysis will be provided in a later version.~~

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 704.01 (4m) of the statutes is created to read:  
5 704.01 (4m) "Tenant" does not include any of the following:  
6 (a) A person holding possession of real property under a contract of purchase  
7 or an employment contract.  
8 (b) A person renting or occupying a dwelling unit in a hotel, motel, boarding  
9 house, ~~lodging house~~, private residence hall or other similar premises, on a  
10 temporary or transient basis, while away from his or her permanent residence for  
11 vacation, pleasure, recreation, business or employment purposes.

*tourist rooming house, bed and breakfast establishment*



**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1598/lins  
PJK;jlg:hmh

**INSERT A**

Current law contains numerous provisions that apply to rental property, landlords and tenants. For example, current law requires a landlord to give a periodic tenant or a tenant at will 28 days' notice to terminate the tenancy. A periodic tenancy may be terminated only at the end of a rental period, while a tenancy at will may be terminated at any time. A periodic tenant is a tenant who does not have a valid lease and who pays rent on a periodic basis, such as daily, weekly, monthly or annually. A tenant at will is a tenant who holds possession of property with the permission of the landlord, who does not have a valid lease and who pays rent on other than a periodic basis. Current law specifies, however, that a person who holds possession of property under a contract of purchase or an employment contract is not a tenant at will. Therefore, the notice requirements to terminate a tenancy at will, as well as other requirements that apply to landlords and tenants, do not apply to those two types of persons. This bill adds that persons renting or occupying a dwelling unit in a hotel, motel, boarding house, tourist rooming house, bed and breakfast establishment, private residence hall or other similar premises on a temporary or transient basis while away from home for such purposes as vacation, recreation, business or employment are not tenants. Therefore, the requirements under the statutes that relate to landlords and tenants do not apply to those persons.

**(END OF INSERT A)**