



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Emergency Rule 2002

Report to the Legislature Emergency Rule 2002 The Joint Committee for Review of Administrative Rules Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2002, promulgated by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), modifies current rules that regulate dealings involving residential renters and their landlords to temporarily suspend the ability of landlords to charge late fees or late rent penalties on residential renters.

Description of Problem

At the request of Representative Joan Ballweg, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Emergency Rule 2002, relating to residential rental practices, on June 25, 2020. Stakeholders raised concerns with the emergency rule's ban on late fees and penalties.

Arguments In Favor of Suspension

- *Barring landlords from charging late fees or late rent penalties substantially impairs the obligation of contracts and renders the rule unconstitutional. Late fees are an integral part of leasing contract language and a removal of such would deprive one party of a right in the contract entered into before the date of the emergency rule.*
- *DATCP does not have the statutory authority to promulgate the emergency rule, as, under § 704.95, Stats., it is expressly forbidden from promulgating any rule which changes any right or duty under the chapter. Specifically, "rent" is defined under § 704.17 to include any rent that is past due and any late fees owed for any rent that is past due.*

Arguments Against Suspension

- *Due to the state closing businesses, many lost their jobs or had wage decreases and the temporary restriction imposed on landlords would prevent further housing insecurity.*
- *Many unemployed citizens are having issues with receiving determinations for their unemployment insurance and may not be able to pay rent until they receive benefits and late fees would exacerbate the problem.*

Action by Joint Committee for Review of Administrative Rules

On June 25, 2020, the Joint Committee for Review of Administrative Rules held an executive session on Emergency Rule 2002. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; NO: Larson, Wirch, Hebl, Subeck):

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend Emergency Rule 2002, relating to residential rental practices (Department of Agriculture, Trade and Consumer Protection), on the grounds that the emergency rule, relating to residential rental practices, lacks statutory authority and is arbitrary and capricious.

On June 25, 2020, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; NO: Larson, Wirch, Hebl, Subeck) to introduce LRB 6314 and LRB 6311, which support the suspension of Emergency Rule 2002 by the joint committee. Pursuant to 227.26 (2) (j), the bills were not introduced during the 2019-20 legislative session, and need to be introduced in the next regular session of the legislature.

On January 21, 2021, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck) to introduce LRB 1187 and LRB 1423, which support the suspension of Emergency Rule 2002 by the joint committee. The bills were introduced as Senate Bill 33 and Assembly Bill 8 in the 2021-22 legislative session.

Passage of one of these bills in support of the JCRAR objection would permanently remove DATCP's ability to promulgate Emergency Rule 2002.