



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

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

Emergency Rule 2009

Report to the Legislature Emergency Rule 2009

The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2009, promulgated by the Wisconsin Department of Children and Families (DCF), modifies current rules and creates temporary rules for responding to the COVID-19 pandemic.

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 2009, relating to DCF rule suspensions and modifications related to COVID-19, on June 25, 2020. Stakeholders raised concerns with the emergency rule's hold of lien docket entries.

Arguments In Favor of Suspension

- *Removing the code sections dealing with child support lien docket could place a burden on the custodial parent. Holding the lien docket entries could give a non-custodial parent the ability to sell real or titled property without the liens affecting the sale and therefore not helping the custodial parent and child/children.*
- *The lien docket is an automatic process and there is no risk for COVID transmission concerns, the purported reason for the repeal is for economic burdens during the pandemic. If the repeal stays in place, the burden on the custodial parent is enhanced and on the non-custodial it is relaxed – to the detriment of the child.*
- *The Department reached out to the Committee and stated they were willing to remove the section from the emergency rule.*

Arguments Against Suspension

- *Due to the state's closure of businesses, economic hardship expanded across Wisconsin and the lien docket placement could adversely harm an individual liable on the docket when there is a sale of titled or real property.*

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 2009. 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 Section 14. of Emergency Rule 2009, relating to DCF rule suspensions and modifications related to COVID-19 (Department of Children and Families), on the grounds that the emergency rule, relating to changes to the child support lien docket, fail to comply with legislative intent, are arbitrary and capricious, and impose an undue hardship on custodial parents.

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 6304 and LRB 6315, which support the partial suspension of Emergency Rule 2009 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 1170 and LRB 1200, which support the partial suspension of Emergency Rule 2009 by the joint committee. The bills were introduced as Senate Bill 36 and Assembly Bill 10 in the 2021-22 legislative session.

Passage of one of these bills in support of the JCRAR objection would permanently remove DCF's ability to promulgate Section 14. of Emergency Rule 2009.