



---

# JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

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

Administrative Code Chapter ATCP 76.02 (1) (a), Wis. Adm. Code

## Report to the Legislature Ch. ATCP 76.02 (1) (a) The Joint Committee for Review of Administrative Rules

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

Administrative Code Chapter ATCP 76.02 (1) (a), promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP), relates to the applicability of certain pools under this chapter for purposes of the department's regulation of safety, maintenance, and operation of public pools and water attractions.

### Description of Problem

The Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Chapter ATCP 76, relating to regulation of the safety, maintenance, and operation of public pools and water attractions, on April 26, 2022, to review concerns raised by stakeholders and homeowners that the rule was being applied and enforced by the DATCP in manner that is arbitrary and capricious and imposes an undue hardship, is in conflict with state law, fails to comply with legislative intent, and is inconsistent with a change in circumstances since promulgation of the administrative rule.

Particularly at issue is DATCP's application of the phrase "a tourist rooming house" in this chapter to include and regulate private pools and hot tubs in private residences that may also be made available through short-term rental entities such as VRBO and Airbnb.

### Arguments In Favor of Suspension

- *DATCP's application of this rule conflicts with both state statute and DSPS commercial pool code, by defining a pool or hot tub at a private residence as a "commercial pool" if the residence is at any time made available as a short-term rental.*
- *DATCP's interpretation of this chapter effectively bans pools and hot tubs in vacation homes, which is a power not delegated nor intended to the department by the Legislature. It is either impossible, or cost prohibitive, for home owners to retrofit compliance with the commercial pool code. Some cost estimates reached into the hundreds of thousands of dollars for single residence.*
- *DATCP's interpretation is arbitrary in that it imposes a much stricter standard on short-term rentals than longer-term rentals. A pool or hot tub in a long-term rental residence (30 days or longer) is treated as a private pool, but under the department's interpretation, a pool or hot tub in residence rented for 29 days would be regulated as a public commercial pool.*

- *The term “tourist rooming house” was established in code long before the advent of short-term rental websites like VRBO and Airbnb. Therefore it is impossible to imagine that is the category of establishments the Legislature intended for DATCP to regulate under this chapter.*

### **Arguments Against Suspension**

- *DATCP staff believe that the administrative code definition of “tourist rooming house” broadly includes these types of vacation homes or short-term rental residences, whether it is explicitly allowed in state or conflicts with DSPS code or not, and therefore they are required to enforce it unless the code is changed or updated.*
- *They viewed it has providing an additional level of consumer protection for patrons of these types of establishments.*

### **Action by Joint Committee for Review of Administrative Rules**

On April 26, 2022, the Joint Committee for Review of Administrative Rules held an executive session on ATCP Chapter 76. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule in part (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck):

*Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend the phrase “a tourist rooming house,” in s. ATCP 76.02 (1) (a), relating to the applicability of ch. ATCP 76, Safety, Maintenance, and Operation of Public Pools and Water Attractions, on the grounds that the phrase results in the application of the chapter in a manner that is arbitrary and capricious and imposes an undue hardship, fails to comply with legislative intent, is in conflict with state law, and is inconsistent with a change in circumstances since promulgation of the administrative rule.*

On April 26, 2022, 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-6305/1 and LRB-6311/1, which support the partial suspension of ATCP Ch. 76.02 (1) (a), Wis. Adm. Code, by the joint committee. Pursuant to 227.26 (2) (j), the bills were not introduced during the 2021-22 legislative session, and need to be introduced in the next regular session of the legislature.

On January 12, 2023, the Joint Committee for Review of Administrative Rules voted 9-1 (YES: Nass, Neylon, Stroebel, Bradley, Roys, Petersen, Spiros, Conley, Baldeh; NO: Larson) to introduce LRB-1196 and LRB-1383, which support the partial suspension of ATCP Ch. 76.02 (1) (a), Wis. Adm. Code, by the joint committee. The bills were introduced as Senate Bill 3 and Assembly Bill 5 in the 2022-23 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove DATCP’s ability to apply ATCP Ch. 76 to private pools and hot tubs in short-term rentals.