



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-038

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

In the rule summary, the agency should more clearly explain its statutory authority to promulgate the proposed rule following the changes made to s. 704.95, Stats., by 2013 Wisconsin Act 76. The agency states that it has authority to promulgate rules relating to unfair methods of competition and unfair trade practices under ss. 93.07 (1) and 100.20 (2) (a), Stats., and cites s. 704.95, Stats., which contains the following two sentences:

- “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.” [Prior to Act 76, s. 704.95, Stats., stated: “Practices in violation of [**ch. 704**] 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 [ch. 704].”

The proposed rule makes changes to ch. ATPC 134 to reconcile that chapter with changes to ch. 704, Stats. However, the proposed rule reconciles ch. ATPC 134 with changes to sections other than ss. 704.28 and 704.44, Stats. The agency should explain its authority to promulgate rules on landlord-tenant matters not contained in ss. 704.28 and 704.44, Stats.

2. Form, Style and Placement in Administrative Code

a. In SECTION 2, the comma after “tenancy” in s. ATCP 134.02 (10) should be underscored because it is new material. [s. 1.06 (1), Manual.]

b. In SECTION 4, the note after s. ATCP 134.06 (2) (c) appears to contain substantive material. Substantive material should be placed in the text of the rule, rather than in a note. [s. 1.09 (1), Manual.]

c. In SECTION 11, s. ATCP 134.08 contains two subsections numbered (3). The second sub. (3) should have a different number.

d. In SECTION 11, replace “assumed by” with “of” in s. ATCP 134.08 (6) (b). Also in that paragraph, no strike-throughs should appear because the paragraph is a newly created provision. [s. 1.055, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the Explanation of Statutory Authority, the first sentence of the last paragraph on page 1 describes s. 704.95, Stats., as providing that a violation of ch. 704, Stats., may also be a violation of ch. ATCP 134. This sentence should be revised to state that practices in violation of s. 704.28 or 704.44, Stats., may also constitute unfair practices under s. 100.20, Stats.

b. In SECTION 4, replace “stats.” with “Stats.” in s. ATCP 134.06 (2) (c). [s. 1.07 (2), Manual.] This comment also applies to s. ATCP 134.08 (8) and (9) in SECTION 11.

c. In SECTION 11, replace “chs.” with “ch.” in s. ATCP 134.08 (3). [s. 1.07 (2), Manual.]

d. In SECTION 12, insert “and” before “779.43” in s. ATCP 134.09 (4) (a). Also in that paragraph, insert “Stats.,” after “779.43.” [s. 1.07 (2), Manual.]

e. SECTION 14 should be revised to read as follows: “This rule takes effect on the first day of the third month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (b), Stats.”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the introductory clause, insert a comma after “ATCP 134.02 (2)”.

b. In SECTION 11, in which new language is proposed for s. ATCP 134.08 (8), insert a comma on page 12, line 3, after the word “tenant” and before the phrase “is a victim” to read as follows: “...with the tenant, is a victim, as defined in s. 950.02 (4), Stats., of that crime”. The comma makes clear that the provision applies when the tenant is a victim, in addition to applying when someone who resides with the tenant is a victim.