

Wisconsin Department of Agriculture, Trade, and Consumer Protection

Opposition to Proposed Limited-Use Public Pool Classification and Regulation ([CR 22-021](#))

April 15, 2022

The peer-to-peer economy empowers everyday Americans to leverage their existing property and skills to earn extra income while creating value, choice, and convenience for consumers. Peer-to-peer sharing benefits both providers and consumers, so we write to oppose new proposed regulations for pool sharing, especially *Subchapter VII: Limited-Use Public Pool* ([CR 22-021](#)).

We ask that you **oppose** the proposed regulations for three main reasons:

- The peer-to-peer economy, including pool sharing, benefits both homeowners and consumers – swimmers, instructors, and families;
- Increased government regulation of private pools offered through sharing platforms creates a dangerous precedent for excessive government limitations on use of private property, especially when there are less restrictive means to protect the public; and
- Combined regulations like those proposed to create Limited-Use Public Pools will restrict the rights of homeowners for merely using their resources for entrepreneurial purposes.

Benefits of Pool Sharing and the Peer-to-Peer Economy

Over the last decade, new platforms have allowed Americans to share their goods and talents in exchange for fees and rental payments. This new opportunity for entrepreneurship includes services that have become a common part of everyday life, such as ride-sharing via Uber or Lyft, food delivery services such as DoorDash, plus more novel ideas like on-demand beauty services and furniture assembly. It also includes short term rentals of assets, such as spare rooms, apartments, and entire homes via AirBnB and VRBO, plus other assets, like parking spaces and backyard pools and patios.

In all of these cases, there are benefits in giving citizens access to needed services while also enabling individuals to transform otherwise underused resources and skills into extra earnings. The first part of our comment addresses the emerging service of pool sharing, however, many of these benefits are also relevant to the sharing of other physical assets owned by Wisconsin citizens.

While still relatively novel, pool sharing allows homeowners to offer their private pools for use to short-term renters. These transactions may have happened informally in the past, when a friend or neighbor offered payment to borrow a homeowner's pool and patio to host a birthday party or enjoy an afternoon swimming with their

families. Now platforms are allowing individuals to access available pools via online reservations with neighborhood homeowners they don't personally know.

For example, [pool sharing rentals from the platform Swimply](#) have been used for individuals who need or provide hydrotherapy, for baptisms, and swimming lessons as well as for general recreation and celebrations. During the COVID-19 pandemic, Swimply served Americans when public pools were closed down. Pool sharing gives swimmers a more customized experience than a crowded public pool that's not suitable for users such as children with special needs. Private pool sharing also has a wider range of options based on the personal preferences of homeowner and swimmers, in terms of scheduling use and matching needs and amenities .

Regulations that force homeowners to comply with standards that apply to public pools will threaten beneficial uses and will deter homeowners from offering their pools to others. For example, "supervisor" requirements would require complicated staffing arrangements and supervision that would limit hours and days that homeowners could welcome swimmers, instructors and families to their pools.

Proposed Regulation Would Impact More Than Just Pools

The proposed regulations to create a Limited-Use Public Pool category would impact more than just homeowners renting their pools. These regulations would create a precedent for further government restrictions on other ways that Wisconsin homeowners use their own private property, including:

- stifling innovation and entrepreneurship by forcing homeowners to seek the state's permission before renting their own property for the use of others;
- complicating the regulatory regime for other asset sharing, such as short-term rentals;
- mis-applying health and safety concerns of large public facilities to individual homeowners and their private property.

While the proposed regulations apply to pools, this regulatory expansion creates a slippery slope for government to dictate requirements for uses of other private property, too. Will the government demand safety and sanitation inspections for a patio grill next to the pool being rented for an afternoon? Would regulators demand safety inspections of pool floats and backyard swing sets, too? Citizens who want to let others borrow their bikes, park at their home for a University of Wisconsin football game, or exchange sporting equipment should be concerned that the government can regulate these transactions as well.

Moreover, this new regulation could impact homeowners already engaged in entrepreneurial activities such as short-term rental of homes and apartments. Wisconsin has existing regulations that govern short-term rentals and prohibits cities from banning them. But this new regulatory framework could invite cities to consider their own burdensome regulations that could discourage both pool sharing and short term rentals. Short-term rental properties *that have swimming pools or hot tubs* might be subject to multiple and conflicting regulatory regimes.

Additionally, this new registration process creates yet another barrier for homeowners to try entrepreneurial activity. This is particularly true if an existing short-term rental owner also offers assets separately from overnight stays. As discussed in the regulatory flexibility analysis, the proposed rule also places additional licensing costs on

those wishing to offer their pool through a platform. The department's analysis notes that such procedures are familiar to the industry; however, it fails to see that homeowners considering pool sharing are not members of any regulated industry. In fact, the [fiscal estimate and economic impact analysis](#) anticipates that the rule will have an impact on small businesses, ranging from \$38,000 to \$540,000. But this does not take into account the Wisconsin homeowners who would now have to pursue licenses under the new "limited-use public pool" requirements.

Finally, it is unclear why this regulation has been suddenly deemed necessary in the first place. We have seen no evidence of safety incidents in Wisconsin or other states where pool sharing has occurred. The Department's [regulatory flexibility analysis](#) discusses investigating water quality or waterborne illnesses for pool sharing, but these risks are already present when homeowners entertain guests.

Similarly, concerns about negative effects of pool sharing are similar to tired debates about other peer-to-peer economy services. Time and again, consumers have demonstrated that they value how these services create new options and convenience. Wisconsin should consider ways to embrace such entrepreneurial ventures, as it has done with short-term rentals.

Pool sharing is just the latest form of the peer-to-peer economy to attract government regulators looking to constrain what Americans do with their time, talent, and assets. But policymakers should learn from the past and avoid unnecessary regulation. Decisions made about pool sharing are likely to set a precedent for regulating other private property sharing that could limit valuable options for Wisconsin consumers and property owners.

For all these reasons, Wisconsin **should reject** the proposed "limited use public pool" classification and accompanying regulations.

Sincerely,

Jennifer Huddleston
Policy Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.