

1999 DRAFTING REQUEST**Bill**

Received: 12/14/98

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact: Don Dyke, 6-0292

Alt. Drafters:

Subject: Courts - torts

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Privacy regarding photographic images and sound recordings

Instructions:

See 1979 AB 1224 and 1981 AB 40 and s. 895.50, 942.0 and .03

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	nelsorp1 02/9/99	chanaman 02/16/99	martykr 02/16/99	_____	lrb_docadmin 02/16/99		
/1	nelsorp1 03/12/99	chanaman 03/12/99	jfrantze 03/12/99	_____	lrb_docadmin 03/12/99	lrb_docadmin 03/16/99	

FE Sent For:

<END>

Not
Needed

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1?	nelsorp1	cmh 1 4/16	jm 2 16	HH 2 2/16			

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<END>

1981 ASSEMBLY BILL 40

January 15, 1981 -- Introduced by Representative ROGERS. Referred to
Committee on Judiciary.

1 AN ACT to create 895.50 (2) (d) of the statutes, relating to invasion of
2 privacy.

Analysis by the Legislative Reference Bureau

Chapter 176, laws of 1977, created a right of privacy. An invasion of privacy was recognized in situations such as unreasonable intrusion upon seclusion, appropriation of name or likeness or unreasonable publicity given to another's life.

This proposal recognizes as an invasion of privacy publicity which places a person in a false light or a false position. In order to be actionable, the false light must be highly offensive to a reasonable person. The "false light" provision is based on the Restatement of the Law, Second, Torts section 652E. Section 652B to 652D of the Restatement, Second were the basis for the present "invasion of privacy" law.

This proposal makes a distinction in the liability standards for publishers depending on whether or not the person who is the subject of publicity is a public figure. If the person is a public figure, the publisher must have acted with actual knowledge or with reckless disregard as to the falsity of the publicized matter. For any other person, the publisher is held to a standard of exercising reasonable care.

The proposal also specifically states that truth is an absolute defense to a "false light" action.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

3 SECTION 1. 895.50 (2) (d) of the statutes is created to read:
4 895.50 (2) (d) 1. Publicity given to a matter concerning another
5 person that places the other person before the public in a false light if

1 the false light in which the other person was placed would be high
2 offensive to a reasonable person.

3 2. a. If the person who is the subject of publicity is a public
4 person, the publisher is liable under this paragraph if he or she had
5 knowledge of or acted with reckless disregard as to the falsity of the
6 publicized matter; or

7 b. If the person who is the subject of publicity is a private
8 person, the publisher is liable under this paragraph if he or she did not
9 use reasonable care.

10 3. Truth of the publicized matter is an absolute defense to an
11 action under this paragraph.

12 4. In this paragraph:

13 a. "Private person" means a person who is not a public person.

14 b. "Public person" means that the person has general fame or
15 notoriety in the community and pervasive involvement in the affairs of
16 society; the person has put himself or herself in the public eye with
17 respect to the issues or events reported; or the person has deliberately
18 engaged the public's attention to influence the issues or events reported.

19 c. "Publisher" means any person who gives publicity to a matter.

20 (End)

10

10

1979 ASSEMBLY BILL 1224

February 26, 1980 -- Introduced by Representatives ROGERS, KEDROWSKI,
LALLENSACK, VANDERPERREN, KLICKA and DILWEG. Referred to Committee
on Judiciary.

1 AN ACT to create 895.50 (2) (d) of the statutes, relating to invasion of
2 privacy.

Analysis by the Legislative Reference Bureau

Chapter 176, laws of 1977, created a right of privacy. An invasion of privacy was recognized in situations such as unreasonable intrusion upon seclusion, appropriation of name or likeness or unreasonable publicity given to another's life.

This proposal recognizes as an invasion of privacy publicity which places a person in a false light or a false position. In order to be actionable, the false light must be highly offensive to a reasonable person and the actor must know of or have acted in reckless disregard of the falsity. The "false light" provision is based on the Restatement of the Law, Second, Torts section 652E. Section 652B to 652D of the Restatement, Second were the basis for the present "invasion of privacy" law.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

3 SECTION 1. 895.50 (2) (d) of the statutes is created to read:

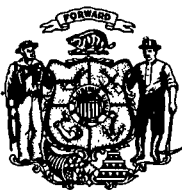
4 895.50 (2) (d) Publicity given to a matter concerning another
5 person that places the other person before the public in a false light if:

6 1. The false light in which the other person was placed would be
7 highly offensive to a reasonable person; and

8 2. The actor had knowledge of or acted in reckless disregard as to
9 the falsity of the publicized matter and the false light in which the
10 other person would be placed.

11 (End)

10



cmf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Senate} relating to: expanding the right of privacy.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 895.50 (2) (d) of the statutes is created to read:

3 895.50 (2) (d) [✓] (insert 1-3)

4 SECTION 2. 895.50 (2m) of the statutes is created to read:

5 895.50 (2m) [✓] (insert 1-5)

6 SECTION 3. Initial applicability.

7 (1) This act first applies to publicity given to a matter concerning another
8 person on the effective date of this subsection.

9 (END)

10

1981 ASSEMBLY BILL 40

January 15, 1981 - Introduced by Representative ROGERS. Referred to Committee on Judiciary.

Insert 1-3

1 AN ACT to create 895.50 (2) (d) of the statutes, relating to invasion of
2 privacy.

Analysis by the Legislative Reference Bureau

Chapter 176, laws of 1977, created a right of privacy. An invasion of privacy was recognized in situations such as unreasonable intrusion upon seclusion, appropriation of name or likeness or unreasonable publicity given to another's life.

This proposal recognizes as an invasion of privacy publicity which places a person in a false light or a false position. In order to be actionable, the false light must be highly offensive to a reasonable person. The "false light" provision is based on the Restatement of the Law, Second, Torts section 652E. Section 652B to 652D of the Restatement, Second were the basis for the present "invasion of privacy" law.

This proposal makes a distinction in the liability standards for publishers depending on whether or not the person who is the subject of publicity is a public figure. If the person is a public figure, the publisher must have acted with actual knowledge or with reckless disregard as to the falsity of the publicized matter. For any other person, the publisher is held to a standard of exercising reasonable care.

The proposal also specifically states that truth is an absolute defense to a "false light" action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.50 (2) (d) of the statutes is created to read:
4 895.50 (2) (d) ~~Publicity~~ ^{NO} Publicity given to a matter concerning another
5 person that places the other person before the public in a false light if
the false light in which the other person was placed would be ~~highly~~ ^{highly}
offensive to a reasonable person.

(END OF INSERT)

Handwritten notes:
highly
offensive to a reasonable person

3



Insert 1-5
subsection

12
13
MD 9/1

(a) ~~to~~ In this ~~paragraph~~:

1# "Private person" means a person who is not a public person.

2# "Public person" means that the person has general fame or
notoriety in the community and pervasive involvement in the affairs of
society; the person has put himself or herself in the public eye with
respect to the issues or events reported; or the person has deliberately
engaged the public's attention to influence the issues or events reported.

3# "Publisher" means any person who gives publicity to a matter

Typed

, including a person who communicates the matter
in a newspaper or magazine, on radio
or television or by electronic means

Proof ALL

Typed

3 (b) ~~to~~ If the person who is the subject of ^{the} publicity is a public
4 person, the publisher is liable under this ^{section} ~~paragraph~~ if ~~the publisher had~~
5 ^{the publisher had} knowledge of or acted with reckless disregard as to the falsity of the
6 publicized matter ~~and~~ ^{under sub. (2)(d)}

7 (c) ~~to~~ If the person who is the subject of ^{the} publicity is a private
8 person, the publisher is liable under this ^{section} ~~paragraph~~ if ~~he or she did not~~
9 ^{the publisher did not} use reasonable care.

10 (d) ~~to~~ Truth of the publicized matter is an absolute defense to an
11 action ~~under this paragraph~~ for the violation of a
person's privacy under
sub. (2)(d) if the
publisher acted with good motives
and for justifiable ends

Typed

From 942.01(3)

(END OF INSERT)

10

10



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

OK
From Rep. Schneider

1 **AN ACT to create** 895.50 (2) (d) and 895.50 (2m) of the statutes; **relating to:**
2 expanding the right of privacy.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 895.50 (2) (d) of the statutes is created to read:
4 895.50 (2) (d) Publicity given to a matter concerning another person that places
5 the other person before the public in a false light if the false light in which the other
6 person was placed would be highly offensive to a reasonable person.

7 **SECTION 2.** 895.50 (2m) of the statutes is created to read:
8 895.50 (2m) (a) In this subsection:
9 1. "Private person" means a person who is not a public person.
10 2. "Public person" means that the person has general fame or notoriety in the
11 community and pervasive involvement in the affairs of society; the person has put

SECTION 2

1 himself or herself in the public eye with respect to the issues or events reported; or
2 the person has deliberately engaged the public's attention to influence the issues or
3 events reported.

4 3. "Publisher" means any person who gives publicity to a matter, including a
5 person who communicates the matter in a newspaper or magazine, on radio or
6 television or by electronic means.

7 (b) If the person who is the subject of the publicity under sub. (2) (d) is a public
8 person, the publisher is liable under this section if the publisher had knowledge of
9 or acted with reckless disregard as to the falsity of the publicized matter.

10 (c) If the person who is the subject of the publicity under sub. (2) (d) is a private
11 person, the publisher is liable under this section if the publisher did not use
12 reasonable care.

13 (d) Truth of the publicized matter is an absolute defense to an action for the
14 violation of a person's privacy under sub. (2) (d) if the publisher acted with good
15 motives and for justifiable ends.

16 **SECTION 3. Initial applicability.**

17 (1) This act first applies to publicity given to a matter concerning another
18 person on the effective date of this subsection.

19 (END)



cmh

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

refer
cat

1 AN ACT *to create* 895.50 (2) (d) and 895.50 (2m) of the statutes; relating to:
2 expanding the right of privacy.

Ths. anal →

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.50 (2) (d) of the statutes is created to read:

4 895.50 (2) (d) Publicity given to a matter concerning another person that places
5 the other person before the public in a false light if the false light in which the other
6 person was placed would be highly offensive to a reasonable person.

7 SECTION 2. 895.50 (2m) of the statutes is created to read:

8 895.50 (2m) (a) In this subsection:

9 1. "Private person" means a person who is not a public person.

10 2. "Public person" means that the person has general fame or notoriety in the
11 community and pervasive involvement in the affairs of society; the person has put

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2 the person has deliberately engaged the public's attention to influence the issues or
3 events reported.

4 3. "Publisher" means any person who gives publicity to a matter, including a
5 person who communicates the matter in a newspaper or magazine, on radio or
6 television or by electronic means.

7 (b) If the person who is the subject of the publicity under sub. (2) (d) is a public
8 person, the publisher is liable under this section if the publisher had knowledge of
9 or acted with reckless disregard as to the falsity of the publicized matter.

10 (c) If the person who is the subject of the publicity under sub. (2) (d) is a private
11 person, the publisher is liable under this section if the publisher did not use
12 reasonable care.

13 (d) Truth of the publicized matter is an absolute defense to an action for the
14 violation of a person's privacy under sub. (2) (d) if the publisher acted with good
15 motives and for justifiable ends.

16 **SECTION 3. Initial applicability.**

17 (1) This act first applies to publicity given to a matter concerning another
18 person on the effective date of this subsection.

19 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1278/lins
RPN:cmh:km

insert anl:

Under current law, an individual whose privacy is unreasonably invaded is entitled to equitable relief to restrain the invasion, compensatory damages and reasonable attorney fees. An "invasion of privacy" in current law means any of the following:

1. A highly offensive intrusion upon the privacy of another in a place that a reasonable person would consider private or in a manner that is actionable for trespass.

2. The advertising or trade use of the name or picture of a living person without first receiving that person's permission.

3. The publicity given to the private life of another that is highly offensive if the person that publicized the private life had acted unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved or with actual knowledge that there was no legitimate public interest in the matter publicized.

This bill adds another definition of "invasion of privacy". Under the bill, it is an invasion of a person's privacy if publicity is given to a matter concerning that person that places that person in a false light if that false light would be highly offensive to another person.

Under the bill, if the person placed in the false light is a public person, the person who publicized the matter is liable for an invasion of the person's privacy if the publisher had knowledge of the falsity of the matter or acted with reckless disregard as to the falsity of the matter. If the person placed in the false light is a private person, the person who publicized the matter is liable for an invasion of the person's privacy if the publisher did not use reasonable care. Under the bill, the truth of the publicized matter is a defense to an action for invasion of the person's privacy if the publisher acted with good motives and for justifiable ends.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/12/99

To: Representative Schneider

Relating to LRB drafting number: LRB-1278

Topic

Privacy regarding photographic images and sound recordings

Subject(s)

Courts - torts

1. **JACKET** the draft for introduction



in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511