CHAPTER 995

MISCELLANEOUS STATUTES

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995.10 Tobacco product agreement. (1) DEFINITIONS. In this section:

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C of the master settlement agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with, another person. Solely for the purposes of this definition, "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(d) 1. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subd. 1. a.

2. The term "cigarette" includes "roll−your−own" tobacco, which is tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

3. For purposes of this definition of "cigarette", 0.09 ounces of "roll−your−own" tobacco constitutes one individual "cigarette".

(e) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and the leading U.S. tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000, which arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as is consistent with sub. (2) (b) 2.

(g) "Released claims" means released claims as that term is defined in the master settlement agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(i) 1. "Tobacco product manufacturer" means an entity that after May 23, 2000, directly, and not exclusively through any affiliate:

a. Manufactures cigarettes anywhere, which the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; except that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered a tobacco product manufacturer under this paragraph if those cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to those cigarettes as a result of the provisions of subsection II (mm) of the master settlement agreement and that pays the taxes specified in subsection II (z) of the master settlement agreement, and the manufacturer of those cigarettes does not market or advertise those cigarettes in the United States;

b. Is the first purchaser anywhere, for resale in the United States, of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

c. Becomes a successor of an entity described in subd. 1. a. or b.

d. Owns an automated roll−your−own machine that is used to make cigarettes, not including an individual who owns a roll−your−own machine and uses the machine in his or her home solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

2. "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within subd. 1. a., b. or c.

(j) "Units sold" means the number of individual cigarettes sold in this state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary, during the year in question, as measured by the excise taxes collected by this state on containers of "roll−your−own" tobacco and on packs of cigarettes bearing the excise tax stamp of this state.

(2) REQUIREMENTS. Any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, retailer or similar intermediary, after May 23, 2000, shall do one of the following:

(a) Become a participating manufacturer, as that term is defined in section II (jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or

(b) 1. Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as those amounts are adjusted for inflation:

a. For 2000: $.0104712 per unit sold after May 23, 2000.

b. For each of 2001 and 2002: $.0136125 per unit sold.

c. For each of 2003 to 2006: $.0167539 per unit sold.

d. For each year after 2006: $.0188482 per unit sold.

2. A tobacco product manufacturer that places money into escrow under subd. 1. shall receive the interest or other appreciation on that money as earned. The money placed into escrow shall be released from escrow only under the following circumstances:

a. To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by this state or any releasing party located or residing in this state. Moneys shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement.

b. To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of the units sold in a particular year was greater than the master settlement agreement payments, as determined under section IX (i) of that agreement including after the final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert to that tobacco product manufacturer.

c. To the extent not released from escrow under subd. 2. a. or b., money shall be released from escrow and revert to the tobacco product manufacturer twenty−five years after the date on which the money was placed into escrow.

3. Each tobacco product manufacturer that elects to place money into escrow under subd. 1. shall annually certify to the attorney general by each April 15 that the tobacco product manufacturer is in compliance with subds. 1. and 2. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the moneys required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the money required under subd. 1. shall:

a. Be required within 15 days to place money into escrow as shall bring the tobacco product manufacturer into compliance with this subsection. The court, upon a finding of violation of this paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

b. In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this subsection. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow.

c. In the case of a second or subsequent knowing violation, be prohibited from selling cigarettes to consumers within this state directly or through a distributor, retailer or similar intermediary for a period not to exceed 2 years.

4. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

(3) AWARDS OF COSTS AND ATTORNEY FEES. If the attorney general is the prevailing party in an action under this section, the court shall award the attorney general costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(4) PROMULGATION OF RULES. The department of revenue shall promulgate the rules necessary to ascertain the amount of Wisconsin excise tax paid on the cigarettes of each tobacco product manufacturer that elects to place funds into escrow under this section for each year.

History: 1999 a. 122; 2003 a. 73; 2005 a. 155 s. 30; Stats. 2005 s. 995.10; 2013 a. 20.

995.11 Payments under the tobacco settlement agreement. (1) In this section, "tobacco settlement agreement" means the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998.

(2) The state's participation in the tobacco settlement agreement is affirmed.

(3) All payments received and to be received by the state under the tobacco settlement agreement are the property of the state, to be used as provided by law, including a sale, assignment, or transfer of the right to receive the payments under s. 16.63. No political subdivision of the state, and no officer or agent of any political subdivision of the state, shall have or seek to maintain any claim related to the tobacco settlement agreement or any claim against any party that was released from liability by the state under the tobacco settlement agreement.

History: 2001 a. 16; 2005 a. 155 s. 31; Stats. 2005 s. 995.11.

995.12 Certification under the tobacco settlement agreement. (1) DEFINITIONS. In this section:

(a) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including "menthol," "lights," "kings," and "100s," and includes any brand name, alone or in conjunction with any other word; trademark; logo; symbol; motto; selling message; recognizable pattern of colors; or other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(b) "Cigarette" has the meaning given in s. 995.10 (1) (d).

(c) "Department" means the department of revenue.

(d) "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under subch. II of ch. 139 or any person that is required to pay the tax imposed on tobacco products under subch. III of ch. 139.

(e) "Master settlement agreement" has the meaning given in s. 995.10 (1) (e).

(f) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(g) "Participating manufacturer" has the meaning given in section II (jj) of the master settlement agreement.

(h) "Qualified escrow fund" has the meaning given in s. 995.10 (1) (f).

(j) "Tobacco product manufacturer" has the meaning given in s. 995.10 (1) (i).

(k) "Units sold" has the meaning given in s. 995.10 (1) (j).

(2) CERTIFICATIONS; DIRECTORY; TAX STAMPS. (a) *Certification.* 1. Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the department and attorney general, no later than the 30th day of April each year, certifying that as of that date the tobacco product manufacturer is either a participating manufacturer or is in full compliance with s. 995.10 (2) (b).

2. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update that list at least 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department and attorney general.

3. A nonparticipating manufacturer shall include all of the following in its certification:

a. A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

b. A list of all of its brand families that have been sold in the state at any time during the current calendar year.

c. A list of any brand families sold in the state during the preceding calendar year that are no longer being sold in the state as of the date of such certification.

d. The name and address of any other manufacturer of the brand families in the preceding or current calendar year.

4. The nonparticipating manufacturer shall update the list under subd. 3. at least 30 calendar days before any addition to or modification of its brand families by executing and delivering a supplemental certification to the department and attorney general.

5. The nonparticipating manufacturer shall further certify all of the following:

a. That the nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice of that appointment as required by sub. (3).

b. That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

c. That the nonparticipating manufacturer is in full compliance with this section and s. 995.10.

d. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under s. 995.10 (2) (b).

e. The account number of the qualified escrow fund and any subaccount number for the state.

f. The amount the nonparticipating manufacturer placed into the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification as required by the attorney general.

g. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments under s. 995.10 (2) (b).

6. A participating manufacturer may not include a brand family in its certification unless the participating manufacturer affirms that the brand family constitutes its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined under the master settlement agreement.

7. A nonparticipating manufacturer may not include a brand family in its certification unless it affirms that the brand family constitutes its cigarettes for purposes of s. 995.10.

8. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of s. 995.10.

9. Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for the certification under subd. 5. for a period of 5 years, unless otherwise required by law to maintain them for a greater period of time.

(b) *Directory of cigarettes approved for stamping and sale.* Not later than March 1, 2004, the attorney general shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of par. (a) and all brand families that are listed in the certifications, except as follows:

1. The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with par. (a) 3. to 5., unless the attorney general has determined that the violation has been cured.

2. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that any of the following apply:

a. An escrow payment required under s. 995.10 (2) (b) for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

b. Any outstanding final judgment, including interest on that judgment, for a violation of s. 995.10 has not been fully satisfied for the brand family or manufacturer.

3. The attorney general shall update the directory as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements under this paragraph.

4. Every distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required under this section.

(c) *Prohibition against stamping or sale of cigarettes not in the directory.* It shall be unlawful for any person to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to sell, or offer or possess for sale, in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) AGENT FOR SERVICE OF PROCESS. (a) *Requirement for agent for service of process.* Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory under sub. (2) (b), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this section and s. 995.10, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the attorney general.

(b) *Notification of termination of agent.* The nonparticipating manufacturer shall provide notice to the department and attorney general 30 calendar days before termination of the authority of an agent under par. (a) and shall provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the department and attorney general of that termination within 5 calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(c) *Service on department of financial institutions.* Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this subsection, shall be considered to have appointed the department of financial institutions as that agent and may be proceeded against in courts of this state by service of process upon the department of financial institutions provided, however, that the appointment of the department of financial institutions as that agent does not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory under sub. (2) (b).

(4) REPORTING OF INFORMATION; ESCROW INSTALLMENTS. (a) *Reporting by distributors.* Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the department, each distributor shall submit a report that includes any information that the department requires to facilitate compliance with this section, including a list by brand family of the total number of cigarettes, or, in the case of roll−your−own tobacco, the equivalent stick count, for which the distributor affixed stamps during the previous calendar quarter or otherwise paid the tax due for those cigarettes. The distributor shall main-

tain, and make available to the department, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the department for a period of 5 years.

(b) *Disclosure of information.* The department is authorized to disclose to the attorney general any information received under this section and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this section. The department and attorney general shall share with each other the information received under this section, and may share such information with other federal, state, or local agencies only for purposes of enforcement of this section, s. 995.10, or corresponding laws of other states.

(c) *Verification of qualified escrow fund.* The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with s. 995.10, of the amount of money in that fund, exclusive of interest, the amount and date of each deposit into the fund, and the amount and date of each withdrawal from the fund.

(d) *Requests for additional information.* In addition to the information required to be submitted under par. (c), the attorney general may require a distributor or tobacco product manufacturer to submit any additional information, including samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this section.

(e) *Quarterly escrow installments.* To promote compliance with this section, the attorney general may promulgate rules requiring a tobacco product manufacturer subject to the requirements of sub. (2) (a) 3. to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

(5) PENALTIES AND OTHER REMEDIES. (a) *License revocation and civil penalty.* Upon a determination that a distributor has violated sub. (2) (c), the department may revoke or suspend the license of the distributor in the manner provided under s. 139.44 (4) and (7). Each stamp affixed and each sale of cigarettes or offer or possession to sell cigarettes in violation of sub. (2) (c) shall constitute a separate violation. For each violation the department may also impose a forfeiture in an amount not to exceed the greater of 500% of the retail value of the cigarettes or $5,000.

(b) *Contraband and seizure.* Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, in violation of sub. (2) (c) shall be deemed contraband and such cigarettes shall be subject to seizure as provided under s. 139.40. All cigarettes that are seized shall be destroyed and not resold.

(c) *Injunction.* The attorney general, on behalf of the department, may seek an injunction to restrain a threatened or actual violation of sub. (2) (c) or failure to comply with sub. (4) (a) or (d) by a distributor and to compel the distributor to comply with those subsections.

(d) *Unlawful sale and distribution.* It shall be unlawful for a person to sell or distribute cigarettes or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of sub. (2) (c). Section 139.44 (7), as it applies to violations under subchs. II and III of ch. 139, applies to a violation of this paragraph.

(e) *Unfair and deceptive trade practice.* A person who violates sub. (2) (c) engages in an unfair and deceptive trade practice in violation of s. 100.20.

(6) NOTICE AND REVIEW OF DETERMINATION. A determination of the attorney general to not include or to remove from the directory under sub. (2) (b) a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed under ch. 227.

(7) APPLICANTS FOR LICENSES. No person shall be issued a license or granted a renewal of a license to act as a distributor unless that person has certified in writing that the person will comply fully with this section.

(8) DATES. For the year 2003, the first report of distributors required by sub. (4) (a) shall be due 30 calendar days after November 27, 2003; the certifications by a tobacco product manufacturer described in sub. (2) (a) shall be due 45 calendar days after that date; and the directory described in sub. (2) (b) shall be published or made available within 90 calendar days after that date.

(9) PROMULGATION OF RULES. The attorney general may promulgate rules necessary to effect the purposes of this section.

(10) RECOVERY OF COSTS AND FEES BY ATTORNEY GENERAL. In any action brought by the state to enforce this section, including an action under sub. (5) (c) the state shall be entitled to recover the costs of investigation and prosecution expert witness fees, court costs, and reasonable attorney fees.

(11) TRANSFER OF PROFITS FOR VIOLATIONS. If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be transferred and paid to the state. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative.

(12) CONSTRUCTION. If a court finds that the provisions of this section and of s. 995.10 conflict and cannot be harmonized, then the provisions of s. 995.10 shall control. If any part of this section causes s. 995.10 to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this section is not valid.

History: 2003 a. 73; 2005 a. 155 s. 32; Stats. 2005 s. 995.12; 2007 a. 156.

Cross−reference: See also ch. Jus 16, Wis. adm. code.

995.20 Legal holidays. January 1, January 15, the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the last Monday in May (which shall be the day of celebration for May 30), June 19, which shall be the day of observation for Juneteenth Day, July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the partisan primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every 1st class city the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employees shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employees whose duties require that they work on such days be given equivalent time off on other days. Whenever any legal holiday falls on Sunday, the succeeding Monday shall be the legal holiday.

History: 1971 c. 226; 1973 c. 140, 333; 1977 c. 187 s. 96; Stats. 1977 s. 757.17; 1983 a. 7; 1983 a. 192 s. 257; Stats. 1983 s. 895.20; 2005 a. 155 s. 33; Stats. 2005 s. 995.20; 2009 a. 91; 2011 a. 75.

995.22 Wisconsin family month, week and Sunday. The month of November, in which the celebration of Thanksgiving occurs, is designated as Wisconsin Family Month, the first 7 days of that month are designated as Wisconsin Family Week and the first Sunday of that month is designated as Family Sunday. In conjunction therewith, appropriate observances, ceremonies, exercises and activities may be held under state auspices to focus attention on the principles of family responsibility to spouses, children and parents, as well as on the importance of the stability

of marriage and the home for our future well−being; and the chief officials of local governments and the people of the state are invited either to join and participate therein or to conduct like observances in their respective localities.

History: 1973 c. 333; 1977 c. 187 s. 96; Stats. 1977 s. 757.171; 1983 a. 192 s. 258; Stats. 1983 s. 895.22; 1987 a. 27; 2005 a. 155 s. 34; Stats. 2005 s. 995.22.

995.225 Fire Prevention Week. (1) The week in October during which October 9 falls is designated Fire Prevention Week and the Saturday at the end of Fire Prevention Week is designated Wisconsin Firefighters Memorial Day. In conjunction with the week, appropriate observances, ceremonies, exercises, and activities may be held under state auspices to do all of the following:

(a) Commemorate 2 of the most devastating fires in U.S. history, both of which started on October 8, 1871, the Peshtigo fire and the Chicago fire.

(b) Study fire safety tips to help avoid home fires.

(c) Recognize that well−trained, dedicated, and well−equipped fire departments are important to all of the residents of this state.

(d) Recognize that thousands of state firefighters, both full−time and volunteer, dedicate themselves to protecting lives and property.

(e) Express the gratitude of the residents of this state for the valuable contributions that firefighters have made to the other residents of this state.

(f) Honor those contributions and memorialize the firefighters of this state who have died while performing their duties.

(2) The chief officials of local governments and the people of the state are invited either to join and participate in the observances, ceremonies, exercises, and activities under sub. (1) that may be held under state auspices or to conduct similar observances in their respective localities.

History: 2003 a. 56, 320; 2005 a. 155 s. 35; Stats. 2005 s. 995.225; 2011 a. 185.

995.23 Indian Rights Day. July 4 is designated as "Indian Rights Day," and in conjunction with the celebration of Independence Day, appropriate exercises or celebrations may be held in commemoration of the granting by congress of home rule and a bill of rights to the American Indians. When July 4 falls on Sunday, exercises or celebrations of Indian Rights Day may be held on either the third or the fifth.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.175; 1983 a. 192 s. 259; Stats. 1983 s. 895.23; 2005 a. 155 s. 36; Stats. 2005 s. 995.23.

995.24 William D. Hoard Day. October 10 is designated as William D. Hoard Day. Appropriate exercises and celebrations may be held on that day, William D. Hoard's birthday, to honor him and remember him as the 16th governor of Wisconsin and the leading promoter of the dairy industry through his weekly magazine, Hoard's Dairyman.

History: 2009 a. 327; 2011 a. 260 s. 81.

995.30 Ronald W. Reagan Day. February 6 is designated as Ronald W. Reagan Day. Appropriate exercises and celebrations may be held on that day, his birthday, to honor him and remember him as the 40th President of the United States and a promoter of freedom and democracy throughout the world.

History: 2011 a. 32.

995.50 Right of privacy. (1) The right of privacy is recognized in this state. One whose privacy is unreasonably invaded is entitled to the following relief:

(a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;

(b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and

(c) A reasonable amount for attorney fees.

(2) In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

(b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.

(c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

(d) Conduct that is prohibited under s. 942.09, regardless of whether there has been a criminal action related to the conduct, and regardless of the outcome of the criminal action, if there has been a criminal action related to the conduct.

(3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.

(4) Compensatory damages are not limited to damages for pecuniary loss, but shall not be presumed in the absence of proof.

(6) (a) If judgment is entered in favor of the defendant in an action for invasion of privacy, the court shall determine if the action was frivolous. If the court determines that the action was frivolous, it shall award the defendant reasonable fees and costs relating to the defense of the action.

(b) In order to find an action for invasion of privacy to be frivolous under par. (a), the court must find either of the following:

1. The action was commenced in bad faith or for harassment purposes.

2. The action was devoid of arguable basis in law or equity.

(7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. 196.63 or 968.27 to 968.37.

History: 1977 c. 176; 1987 a. 399; 1991 a. 294; 2001 a. 33; 2005 a. 155 s. 51; Stats. 2005 s. 995.50.

Commercial misappropriation of a person's name is prohibited by Wisconsin common law. Hirsch v. S.C. Johnson & Son, Inc. 90 Wis. 2d 379, 280 N.W.2d 129 (1979).

Oral communication among numerous employees and jail inmates is sufficient to constitute publicity under sub. (2) (c). The plain meaning of "a place" in sub. (2) (a) is geographical and does not include a file of medical records. Hillman v. Columbia County, 164 Wis. 2d 376, 474 N.W.2d 913 (Ct. App. 1991).

Disclosure of private information to one person or to a small group does not, as a matter of law in all cases, fail to satisfy the publicity element of an invasion of privacy claim. Whether a disclosure satisfies the publicity element of an invasion of privacy claim depends upon the particular facts of the case and the nature of plaintiff's relationship to the audience who received the information. Pachowitz v. LeDoux, 2003 WI App 120, 265 Wis. 2d 631, 666 N.W.2d 88, 02−2100.

An action for invasion of privacy requires: 1) a public disclosure of facts regarding the plaintiff; 2) the facts disclosed were private; 3) the private matter is one that would be highly offensive to a reasonable person of ordinary sensibilities; and 4) the party disclosing the facts acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter or with actual knowledge that none existed. In order to find public disclosure, the matter must be regarded as substantially certain to become one of public knowledge. Olson v. Red Cedar Clinic, 2004 WI App 102, 273 Wis. 2d 728, 681 N.W.2d 306, 03−2198.

The recording of sounds emanating from a neighbor's home using a common recording device that was placed inside the defendant's own window was not an intrusion of a nature highly offensive to a reasonable person in violation of sub. (2) (a). Poston v. Burns, 2010 WI App 73, 325 Wis. 2d 404, 784 N.W.2d 717, 09−0463.

Sub. (2) (a) has a spatial basis — the invasion of privacy must occur in a place that a reasonable person would consider private or in a manner which is actionable for trespass. In this case, the only action that was allegedly taken by the defendant was the distribution of fliers containing information that was already available to the public. That the information may have inspired others to make phone calls, honk horns, or write letters does not mean that the defendant invaded the plaintiff's private space. Keller v. Patterson, 2012 WI App 78, 343 Wis. 2d 569, 819 N.W.2d 841, 11−0334.

Sub. (2) (c) addresses situations where an individual makes public statements about the private life of another person in a highly offensive way. In order to fall under sub. (2) (c), the statements must make information public that was not previously available to the public. Keller v. Patterson, 2012 WI App 78, 343 Wis. 2d 569, 819 N.W.2d 841, 11−0334.

The more reasonable interpretation of "use" in sub. (2) (b) is that it does not cover bidding on someone's name as a keyword search term. The holding is limited to the

particular "non−visible" type of use at issue in this case. Habush v. Cannon, 2013 WI App 34, 346 Wis. 2d 709, 828 N.W.2d 876, 11−1769.

The right to privacy law does not affect the duties of custodians of public records under s. 19.21. 68 Atty. Gen. 68.

Surveillance of a school district employee from public streets and highways by the employer school district's agents to determine whether the employee was in violation of the district's residency policy did not violate this section. Munson v. Milwaukee Board of School Directors, 969 F.2d 266 (1992).

While the Open Records Law and this statute are related laws, they are only related in that a finding under the Open Records Law that a record should be made public would necessarily mean that "the information was available to the public as a matter of public record." This is true because both statutes apply the same common−law balancing test when determining whether a record is public. When a trial court found only that the procedures delineated in the Open Records Law were not followed, those procedures had no impact on the question of whether a record is public under this section; the procedures are merely procedural, not substantive. Hutchins v. Clarke, 661 F.3d 947 (2011).

A person's religious affiliation, standing alone, is not so private that publication would offend a reasonable person and constitute an invasion of privacy under sub. (2) (c). Briggs & Stratton Corp. v. National Catholic Reporter Publishing Co. 978 F. Supp 1195 (1997).

The exclusivity provision of the Workers Compensation Act does not bar a claim for invasion of privacy under this section. Marino v. Arandell Corp. 1 F. Supp. 2d 947 (1998).

In drafting this section, the legislature used New York's privacy statute as a model. The text of sub. (2) (b) duplicates nearly verbatim New York law. Case law under the New York privacy statute may be particularly useful. Bogie v. Rosenberg, 705 F.3d 603 (2013).

A claim under sub. (2) (a) must show that the alleged intrusion into privacy would be highly offensive to a reasonable person. The question of what kinds of conduct will be regarded as a highly offensive intrusion is largely a matter of social conventions and expectations. The offensiveness of the intrusion itself cannot be based on the content or substance captured by virtue of the alleged intrusion. The fact that the plaintiff was embarrassed to be filmed saying something she regretted having said and later deemed offensive did not convert the filming itself into a highly offensive intrusion. Bogie v. Rosenberg, 705 F.3d 603 (2013).

Where a matter of legitimate public interest is concerned, no cause of action for invasion of privacy will lie. This newsworthiness or public interest exception should be construed broadly, covering not only descriptions of actual events, but also articles concerning political happenings, social trends, or any subject of public interest. Wisconsin courts have also incorporated the common law exception for incidental use into the statute. Bogie v. Rosenberg, 705 F.3d 603 (2013).

Court documents are matters of public interest. It follows that if court documents warrant the public interest exception, Internet search providers and indexes that lead the public to those documents or that capture key terms related to them are likewise entitled to that exception. To the extent that a search provider's profit motives undermine the reliance on the public interest argument, the exception applies even when the entities sharing the information do so largely, and even primarily, to make a profit. Stayart v. Google Incorporated, 710 F.3d 719 (2013).

The absence of false light from the Wisconsin privacy statute. 66 MLR 99 (1982).

The tort of misappropriation of name or likeness under Wisconsin's new privacy law. Endejan, 1978 WLR 1029.

The Case for Reexamining Privacy Law in Wisconsin: Why Wisconsin Courts Should Adopt the Interpretation of the Tort of Intrusion upon Seclusion of *Fisher v. Mount Olive Lutheran Church*. Infield−Harm. 2004 WLR 1781.

The Scope of Wisconsin's Privacy Statute. Backer. Wis. Law. Sept. 2003.

Employer Liability for Employment References. Mac Kelly. Wis. Law. May 2008.

995.67 Domestic abuse services; prohibited disclosures. (1) In this section:

(a) "Domestic abuse" has the meaning given in s. 49.165 (1) (a).

(b) "Domestic abuse services organization" means a nonprofit organization or a public agency that provides any of the following services for victims of domestic abuse:

1. Shelter facilities or private home shelter care.

2. Advocacy and counseling.

3. A 24−hour telephone service.

(c) "Service recipient" means any person who receives or has received domestic abuse services from a domestic abuse services organization.

(2) (a) No employee or agent of a domestic abuse services organization who provides domestic abuse services to a service recipient may intentionally disclose to any person the location of any of the following persons without the informed, written consent of the service recipient:

1. The service recipient.

2. Any minor child of the service recipient.

3. Any minor child in the care or custody of the service recipient.

4. Any minor child who accompanies the service recipient when the service recipient receives domestic abuse services.

(b) Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1991 a. 228; 2005 a. 155 s. 61; Stats. 2005 s. 995.67; 2007 a. 20.