CHAPTER 995
MISCELLANEOUS STATUTES

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 percent 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 sub. 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 a cigarette.

   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 (j) 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:
   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 amount received from the state according to the 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 subs. 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 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent 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 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent 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. 995.10 (2) (b) and 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; 2001 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,” “fights,” “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 (j) of the master settlement agreement.

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

(i) “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 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 purposes 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, 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, 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-
tian, and make available to the department, all invoices and docu-
mentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the depart-
ment 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 cor-
responding 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 prod-
uct 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 require-
ments of sub. (2) (a) 3. to make the escrow deposits required in
quarterly installments during the year in which the sales covered
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 pro-
mulgate 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 deter-
mines 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 stat-
tute, 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.

995.12 MISCELLANEOUS STATUTES

995.20 Legal holidays. January 1, the 3rd Monday in Janu-
ary (which shall be the day of celebration for 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 Septem-
ber which shall be known as Labor day, the 2nd Monday in Octo-
ber, 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 750,000 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 holi-
day on the day of such municipal election, and that employees
whose duties require that they work on such days be given equiva-

tent 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; 2015 a. 198; 2017 a. 207 s. 5.

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 activi-
ties may be held under state auspices to do all of the following:
(a) Commemorate 2 of the most devastating fires in U.S. his-
tory, 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 resi-
idents 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 observ-
cances, ceremonies, exercises, and activities under sub. (1) that
may be held under state auspices or to conduct similar observ-
cances in their respective localities.


**995.23 Indian Rights Day.** July 4 is designated as “Indian
Rights Day,” and in conjunction with the celebration of Indepen-
dence 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 Sun-
day, 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 maga-
zine, Hoard’s Dairyman.


**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 recog-
nized in this state. One whose privacy is unreasonably invaded is
entitled to the following relief:
(a) Equitable relief to prevent and restrain such invasion, includ-
ing prior restraint against constitutionally protected commu-
nication 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) (am) In this section, “invasion of privacy” means any of
the following:
1. Intrusion upon the privacy of another of a nature highly
offensive to a reasonable person, except as provided under par.
(bm), in a place that a reasonable person would consider private,
or in a manner that is actionable for trespass.
2. The use, for advertising purposes or for purposes of trade,
of the name, portrait or picture of any living person, without hav-
ing first obtained the written consent of the person or, if the person
is a minor, of his or her parent or guardian.
3. 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.
4. 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.
5. The right of privacy recognized in this section shall be
interpreted in accordance with the developing common law of pri-
vacy, including defenses of absolute and qualified privilege, with
due regard for maintaining freedom of communication, privately
and through the public media.
(3) 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.
(7) An 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 968.373.

History: 1977 c. 176; 1987 s. 399; 1993 a. 294; 2001 a. 33; 2005 a. 155 s. 51; Stats.
2005 s. 995.50; 2013 a. 375; 2019 a. 72.

Commercial misappropriation of a person’s name is prohibited by Wisconsin com-
Oral communication among numerous employees and jail inmates is sufficient to
constitute publicity under sub. (2) (c) [now sub. (2) (am) 3.]. The plain meaning of
the phrase “invasion of privacy” includes publicity under par. (a) of a nature held by
a public official which is offensive to a reasonable person.

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 rela-
tionship 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 are 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 publicity, 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 intru-
sion upon the privacy of the defendant. United States v. Chastain, 2004 WI App 81,
273 Wis. 2d 273, 681 N.W.2d 306, 03−2198.

The plain meaning of the phrase “invasion of privacy” includes publicity under par.
(b) [now sub. (2) (am) 3.] The plain meaning of “invasion of privacy” includes publicity under par. (a) of a nature held by
a public official which is offensive to a reasonable person.

Poston v. Burns, 2010 WI App 73, 325 Wis. 2d 404, 784
N.W.2d 717, 09−0463.

Sub. (2) [now sub. (2) (am) 3.] 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 de-
fendant was the distribution of fliers containing information that was already avail-
able to the public. That the information may have inspired others to make phone calls,
horn honks, or write letters does not mean that the defendant invaded the plaintiff’s

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ber 4, 2023, are designated by NOTES. (Published 10−4−23)
“Employer” includes the state, its political subdivisions, and any office, department, independent agency, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(d) “Personal Internet account” means an Internet-based account that is created and used by an individual exclusively for purposes of personal communications.

(2) RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in pars. (b), (c), and (d), no employer may do any of the following:

1. Request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow observation of that account.

2. Discharge or otherwise discriminate against an employee for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the employee’s personal Internet account, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

3. Refuse to hire an applicant for employment because the applicant refused to disclose access information for, grant access to, or allow observation of the applicant’s personal Internet account.

(b) Paragraph (a) does not prohibit an employer from doing any of the following:

1. Requesting or requiring an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer or in order for the employer to gain access to an account or service provided by the employer, obtained by virtue of the employee’s employment relationship with the employer, or used for the employer’s business purposes.

2. Discharging or disciplining an employee for transferring the employer’s proprietary or confidential information or financial data to the employee’s personal Internet account without the employer’s authorization.

3. Subject to this subdivision, conducting an investigation or requiring an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer’s proprietary or confidential information or financial data to the employee’s personal Internet account, if the employer has reasonable cause to believe that such a transfer has occurred, or of any other alleged employment-related misconduct, violation of the law, or violation of the employer’s work rules, as specified in an employee handbook, if the employer has reasonable cause to believe that activity on the employee’s personal Internet account relating to that misconduct or violation has occurred. In conducting an investigation or requiring an employee to cooperate in an investigation under this subdivision, an employer may require an employee to grant access to or allow observation of the employee’s personal Internet account, but may not require the employee to disclose access information for that account.

4. Restricting or prohibiting an employee’s access to certain Internet sites while using an electronic communications device supplied or paid for in whole or in part by the employer or while using the employer’s network or other resources.

5. Compiling with a duty to screen applicants for employment prior to hiring or a duty to monitor or retain employee communications that is established under state or federal laws, rules, or regulations or the rules of a self-regulatory organization, as defined in 15 USC 78c (a) (26).
6. Viewing, accessing, or using information about an employee or applicant for employment that can be obtained without access information or that is available in the public domain.

7. Requesting or requiring an employee to disclose the employee’s personal electronic mail address.

(c) Paragraph (a) does not apply to a personal Internet account or an electronic communications device of an employee engaged in providing financial services who uses the account or device to conduct the business of an employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or by the rules of a self-regulatory organization, as defined in 15 USC 78c (a) (26).

(d) An employer that inadvertently obtains access information for an employee’s personal Internet account through the use of an electronic device or program that monitors the employer’s network or through an electronic communications device supplied or paid for in whole or in part by the employer is not liable under par. (a) for possessing that access information so long as the employer does not use that access information to access the employee’s personal Internet account.

(3) RESTRICTIONS ON EDUCATIONAL INSTITUTION ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in par. (b), no educational institution may do any of the following:

1. Request or require a student or prospective student, as a condition of admission or enrollment, to disclose access information for the personal Internet account of the student or prospective student to or otherwise grant access to or allow observation of that account.

2. Expel, suspend, discipline, or otherwise penalize any student for exercising the right under subd. 1. to refuse to disclose access information, to grant access to, or to allow observation of the student’s personal Internet account, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

3. Refuse to admit a prospective student because the prospective student refused to disclose access information for, grant access to, or allow observation of the prospective student’s personal Internet account.

(b) Paragraph (a) does not prohibit an educational institution from doing any of the following:

1. Requesting or requiring a tenant to disclose access information to the educational institution in order for the institution to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the institution or in order for the educational institution to gain access to an account or service provided by the institution, obtained by virtue of the student’s admission to the educational institution, or used for educational purposes.

2. Viewing, accessing, or using information about a student or prospective student that can be obtained without access information or that is available in the public domain.

(4) RESTRICTIONS ON LANDLORD ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in par. (b), no landlord may do any of the following:

1. Request or require a tenant or prospective tenant, as a condition of tenancy, to disclose access information for the personal Internet account of the tenant or prospective tenant or to otherwise grant access to or allow observation of that account.

2. Discriminate in a manner described in s. 106.50 (2) against a tenant or prospective tenant for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the personal Internet account of the tenant or prospective tenant, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

(b) Paragraph (a) does not prohibit a landlord from viewing, accessing, or using information about a tenant or prospective tenant that can be obtained without access information or that is available in the public domain.

(5) NO DUTY TO MONITOR. (a) Nothing in this section creates a duty for an employer, educational institution, or landlord to search or monitor the activity of any personal Internet account.

(b) An employer, educational institution, or landlord is not liable under this section for any failure to request or require that an employee, applicant for employment, student, prospective student, tenant, or prospective tenant grant access to, allow observation of, or disclose information that allows access to or observation of a personal Internet account of the employee, applicant for employment, student, prospective student, tenant, or prospective tenant.

(6) ENFORCEMENT. (a) Any person who violates sub. (2), (3), (a) or (4) (a) may be required to forfeit not more than $1,000.

(b) An employee who is discharged or otherwise discriminated against in violation of sub. (2) (a) 2., an applicant for employment who is not hired in violation of sub. (2) (a) 3., a student who is expelled, suspended, disciplined, or otherwise penalized in violation of sub. (3) (a) 2., or a prospective student who is not admitted in violation of sub. (3) (a) 3., may file a complaint with the department of workforce development, and that department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39. If the department of workforce development finds that a violation of sub. (2) (a) 2. or 3. or (3) (a) 2. or 3. has been committed, that department may order the employer or educational institution to take such action authorized under s. 111.39 as will remedy the violation.

(c) A tenant or prospective tenant who is discriminated against in violation of sub. (4) (a) 2. may file a complaint with the department of workforce development, and that department shall process the complaint in the same manner as housing discrimination complaints are processed under s. 106.50. If the department of workforce development finds that a violation of sub. (4) (a) 2. has been committed, that department may order the landlord to take such action authorized under s. 106.50 as will remedy the violation.

History: 2013 a. 208; 2017 a. 59.


995.60 Use of surveillance devices in connection with real estate sales. (1) DEFINITIONS. In this section:

(a) “Real estate” means land and the improvements to the land.

(b) “Record” means to take a photograph, to make a motion picture, videotape, audiotape, recording, or other visual or audio representation, or to record or store in any medium data that represents a visual image or sound recording.

(c) “Representation” means a photograph, exposed film, motion picture, videotape, audiotape, recording, other visual or audio representation, or data that represents a visual image or audio recording.

(d) “Surveillance device” means a camera, audio or video recorder, or any other device that may be used to observe, record, or transfer sounds or images.

(2) USE OF SURVEILLANCE DEVICES. Except as provided under sub. (3), an owner of real estate may use a surveillance device in or on the real estate to observe or record an individual who is present in or on the real estate for a private showing, open house, or other viewing of the real estate in connection with the owner’s attempt to sell the real estate.

(3) PROHIBITED USES. (a) An owner of real estate may not use a surveillance device under sub. (2) in a bathroom or washroom.
(b) 1. Except as provided under subd. 2., an owner of real estate may not copy, sell, rent, broadcast, post, publish, distribute, disclose, transfer, or otherwise share a representation of an individual recorded with a surveillance device under sub. (2).

2. An owner of real estate may provide a representation of an individual recorded with a surveillance device under sub. (2) pursuant to a court order or to the request of a law enforcement officer who is investigating possible criminal conduct.

(4) INTERPRETATION. (a) The use of a surveillance device by an owner of real estate in or on the real estate under this section does not constitute installing a surveillance device in a private place for purposes of s. 942.08 (2) (a).

(b) An owner of real estate that records a representation of an individual with a surveillance device under this section does not capture a representation of the individual under circumstances in which the individual has a reasonable expectation of privacy for purposes of s. 942.09 (2) (am).

(5) ENFORCEMENT. An individual who violates sub. (3) (b) 1. may be required to forfeit not more than $500.

History: 2019 a. 72.

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

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

(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.