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 shares 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 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 federal 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 master settlement agreement payments, as determined under section IX (g) 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 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. 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.
3  Updated 17–18 Wis. Stats.

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 pro-
cess 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 com-
pliance with this section and s. 995.10.
d. The name, address, and telephone number of the financial
institution where the nonparticipating manufacturer has estab-
lished 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 calen-
dary 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 fam-
ily 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 fam-
ily in its certification unless it affirms that the brand family consti-
tutes its cigarettes for purposes of s. 995.10.
8. Nothing in this section shall be construed as limiting or oth-
erwise 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 direc-
tory the name or brand families of any nonparticipating manufac-
turer 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:
3. The attorney general shall update the directory as necessary
to correct mistakes and to add or remove a tobacco product manu-
facturer 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, offer or possess for sale, in this state cigarettes of a tobacco
product manufacturer or brand family not included in the direc-
tory.
(3) AGENT FOR SERVICE OF PROCESS. (a) Requirement for agent
for service of process. Any nonresident or foreign nonparticipat-
ing manufacturer that has not registered to do business in this state
as a foreign corporation or business entity shall, as a condition pre-
cedent 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 sec-
tion 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 manu-
facturer shall provide the name, address, phone number, and
proof of the appointment and availability of the agent to the attor-
ney 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 appoint-
ment, the nonparticipating manufacturer shall notify the depart-
ment and attorney general of that termination within 5 calendar
days and shall include proof to the satisfaction of the attorney gen-
eral of the appointment of a new agent.
(c) Service on department of financial institutions. Any nonpar-
taking 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 depart-
ment of financial institutions provided, however, that the appoint-
ment 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 document-
ation 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 
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 pro-
duct manufacturer is in compliance with this section.

(e) Quarterly escrow installments. To promote compliance 
with this section, the attorney general may promulgate rules requir-
ing 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 
by such deposits are made. The attorney general may require pro-
duction 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 vio-
lated 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 con-
stitute a separate violation. For each violation the department may 
also impose a forfeiture in an amount not to exceed the greater of 
500 percent 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 viola-
tion of sub. (2) (c) shall be deemed contraband and such cigarettes 
shall be subject to seizure as provided under s. 139.40. All ciga-
rettes that are seized shall be destroyed and not resold.

(c) Injunction. The attorney general, on behalf of the depart-
ment, may seek an injunction to restrain a threatened or actual vio-
lation 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, poss-
sess, 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 direc-
tory under sub. (2) (b) a brand family or tobacco product manufac-
turer 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 com-
ply with fully 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 Novem-
ber 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 
and 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-
ute, as those terms are defined in the master settlement agreement, 
then that portion of this section is not valid.

995.20 Wisconsin family month, week and Sunday. The month of November, in which the celebration of Thanksgiv-
ing 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. 757.175; 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. 33; 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) (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 having 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.

(bm) “Invasion of privacy” does not include the use of a surveillance device under s. 995.60.

(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.

(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 968.373.

**History:** 1977 c. 176; 1978 a. 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 common law. Hirsch v. S.C. Johnson & Son, Inc., 99 Wis. 2d 379, 280 N.W.2d 129 (1979). The right of privacy includes “communication among numerous employees and jail inmates is sufficient to constitute publicity under sub. (2) (c) [now sub. (2) (am) 1.]. The plain meaning of “a place” in sub. (2) (a) [now sub. (2) (am) 1.]. 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 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 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 privacy highly offensive to a reasonable person in violation of sub. (2) (a) [now sub. (2) (am) 1.]. Poston v. Burns, 2010 WI App 73, 325 Wis. 2d 404, 784 N.W.2d 717, 09−0463.

Sub. (2) (a) [now sub. (2) (am) 1.]. 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 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) [now sub. (2) (am) 3.] addresses situations where an individual makes public information about the private life of another person in a highly offensive way. In order to fall under sub. (2) (c) [now sub. (2) (am) 3.], 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) [now sub. (2) (am) 2.] is that it does not cover bidding on someone’s name as a keyword search term. The holding that “non-visible” type of use at issue in this case. Habash 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. 14.68 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 law.  Endejan. 1978 WLR 1029.

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 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. Complying 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 or to 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 for, grant access to, or 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 student 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) (a), (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) (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. Section 111.322 (2m) applies to a discharge or other discriminatory act arising in connection with any proceeding under this paragraph.

(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 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 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 or a surveillance device to a landlord 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...
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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) 1.

(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) (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.