

WI ST 895.50
W.S.A. 895.50

TEXT

WEST'S WISCONSIN STATUTES ANNOTATED
MISCELLANEOUS ACTIONS, PROCEEDINGS AND PROCEDURE
CHAPTER 895. MISCELLANEOUS GENERAL PROVISIONS
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895.50. Right of privacy

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

- (a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;
 - (b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment;
- and

(c) A reasonable amount for attorney fees.

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

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

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

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

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

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

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

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

- 1. The action was commenced in bad faith or for harassment purposes.
- 2. The action was devoid of arguable basis in law or equity.

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

<<For credits, see Historical Note field.>>

HISTORICAL NOTES -- HISTORICAL AND STATUTORY NOTES

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

Source:

L.1977, c. 176, s 5, eff. Nov. 30, 1977.
1987 Act 399, s 472zkbc, eff. May 17, 1988.
1991 Act 294, s 4, eff. May 14, 1992.

1991 Act 294 amended subsec. (4).

REFERENCES -- CROSS REFERENCES

CROSS REFERENCES

Criminal trespass, see ss 943.13,943.14.

Defamation, see s 942.01.

False information for publication, see s 942.03.

Freedom of speech and press, see Const. Art. 1, s 3.

Opening letters, see s 942.05.
Polygraph and similar tests, see s 942.06.
Statute of limitations, see s 893.57.
Survival of actions, see s 895.01.

REFERENCES -- LAW REVIEW AND JOURNAL COMMENTARIES

LAW REVIEW AND JOURNAL COMMENTARIES

Absence of false light from the Wisconsin privacy statute. 66 Marq.L.Rev. 99 (1982).
At work while "under the influence": The employer's response to a hazardous condition. 70 Marq.L.Rev. 88 (1986).
Public access to law enforcement records in Wisconsin. 68 Marq.L.Rev. 705 (1985).
Recovering attorney fees. Steven P. Means, 68 Wis.Law. 14 (Aug.1995).
Statutory attorney's fees. Lawrence Alan Towers, 62 Wis.Law. 19 (Nov. 1989).
Tort of misappropriation of name or likeness. 1978 Wis.L.Rev. 1029.
Wisconsin Public Records Law. 67 Marq.L.Rev. 65 (1983).

REFERENCES -- LIBRARY REFERENCES

LIBRARY REFERENCES

1996 Main Volume

Torts k8.5(2).
WESTLAW Topic No. 379.
C.J.S. Right of Privacy and Publicity ss 2 to 19, 34, 39, 42.

Comments.

Protective orders, Grenig and Harvey, 3 Wisconsin Practice, s 401.7.(2d ed.).

ANNOTATIONS -- NOTES OF DECISIONS

NOTES OF DECISIONS

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ANNOTATIONS (Notes of Decisions Index)

1. In general

Agents of school district did not invade principal's privacy under Wisconsin law when they followed him on public streets and

highways during his commute to determine whether he was violating school district residency requirement. *Munson v. Milwaukee Bd. of School Directors*, C.A.7 (Wis.)1992, 969 F.2d 266.

There is a public policy interest in protecting reputations of citizens. *Newspapers, Inc. v. Breier* (1979) 279 N.W.2d 179, 89 Wis.2d 417.

Publicity given to matters of private life may constitute an invasion of right of privacy. *Newspapers, Inc. v. Breier* (1979) 279 N.W.2d 179, 89 Wis.2d 417.

Good faith disclosure of records relating to complaints against health care professionals while the matters are merely "under investigation" will not expose custodian to liability for damages. *Op. Atty. Gen.*, Feb. 17, 1984.

The right to privacy law, this section, creating a cause of action for an invasion of rights of privacy, does not affect the duties of a custodian of public records, under St.1977, s 19.21, relating to public records including the duties of custodians of

public records and the right of any person to examine or copy public records. Op.Atty.Gen., March 1, 1979.

2. Arrest records

Where arrest records are made public, arrested person has no remedy for an invasion of his reputational interests. Newspapers, Inc. v. Breier (1979) 279 N.W.2d 179, 89 Wis.2d 417.

3. Print publications

Articles in Catholic publication discussing moral, economic, and social implications of corporation's decision to move 2,000 jobs did not invade privacy of director and vice-president of corporation, as articles did not state that plaintiff was either Catholic or decisionmaker at corporation, articles did not state that plaintiff violated social teaching of Catholic church, or was blind to consequences of his choices, and purportedly objectionable phrases did not specifically identify plaintiff. Thompson v. National Catholic Reporter Pub. Co., E.D.Wis.1998, 4 F.Supp.2d 833.

Events surrounding suicide attempt of inmate suspected of having AIDS (Acquired Immune Deficiency Syndrome) constituted public controversy, such that newspapers' publication of story was not invasion of his privacy. Van Straten v. Milwaukee Journal Newspaper-Publisher (App. 1989) 447 N.W.2d 105, 151 Wis.2d 905, review denied 451 N.W.2d 297, certiorari denied 110 S.Ct. 2626, 496 U.S. 929, 110 L.Ed.2d 646.

4. Medical records

Inmate did not state cause of action for intrusion upon the privacy of another by alleging that jail personnel disclosed his medical records which included the results of a test for human immunodeficiency virus (HIV). Hillman v. Columbia County (App. 1991) 474 N.W.2d 913, 164 Wis.2d 376, 12 A.L.R.5th 997, review granted 482 N.W.2d 105.

Statute defining invasion of privacy as an intrusion in a place that a reasonable person would consider private is limited by the term "place" to geographical meaning and does not include intrusion into a file of medical records. Hillman v. Columbia County (App. 1991) 474 N.W.2d 913, 164 Wis.2d 376, 12 A.L.R.5th 997, review granted 482 N.W.2d 105.

5. Public disclosure of private facts

School teacher who was a subject of school district report investigating employee allegations of sexual harassment had general right to privacy under Wisconsin law. Armada Broadcasting, Inc. v. Stirn (1994) 516 N.W.2d 357, 183 Wis.2d 463.

Genuine issue of material fact existed as to whether jail employees read inmate's medical records and disclosed to other employees

and inmates the inmate's human immunodeficiency virus (HIV) positive status and thus could be held liable for public disclosure of private facts. *Hillman v. Columbia County* (App. 1991) 474 N.W.2d 913, 164 Wis.2d 376, 12 A.L.R.5th 997, review granted 482 N.W.2d 105.

Oral communications among numerous employees and inmates of a jail constitutes "publicity" for purposes of statute creating a cause of action for public disclosure of private facts, and inmate stated a claim against jail personnel for invasion of privacy by alleging that they disclosed results of his human immunodeficiency virus (HIV) test. *Hillman v. Columbia County* (App. 1991) 474 N.W.2d 913, 164 Wis.2d 376, 12 A.L.R.5th 997, review granted 482 N.W.2d 105.

6. Damages

Employer's failure to retract statement concerning worker's discharge which was published in company newsletter could not be considered by jury in assessing damages for claims of defamation and invasion of privacy, where worker's wrongful discharge and punitive damage claims had been dismissed; it was improper to inject employee's motives into compensatory damages award. *Zinda v. Louisiana Pacific Corp.* (1989) 440 N.W.2d 548, 149 Wis.2d 913.

7. Prima facie case

Plaintiff seeking to establish cause of action for public disclosure of private facts under this section must prove that there has been public disclosure of facts regarding plaintiff, that facts disclosed are private, that private matter made public is one which would be highly offensive to reasonable person of ordinary sensibilities, and that defendant acted either unreasonably or recklessly as to whether there was legitimate public interest in matter, or with actual knowledge that none existed. *Zinda v. Louisiana Pacific Corp.* (1989) 440 N.W.2d 548, 149 Wis.2d 913.

Discharged worker established prima facie case of public disclosure of private facts under this section against former employer for communicating fact and reason for worker's discharge to substantial audience by virtue of newsletter. *Zinda v. Louisiana Pacific Corp.* (1989) 440 N.W.2d 548, 149 Wis.2d 913.

8. Defenses

Employee's claim against employer for public disclosure of private facts under this section was subject to defense of conditional privilege for communications of common interest. *Zinda v. Louisiana Pacific Corp.* (1989) 440 N.W.2d 548, 149 Wis.2d 913.

9. Religious affiliation

Under Wisconsin law, publisher's disclosure of corporate officers' membership in Catholic Church did not violate invasion of privacy statute. *Briggs & Stratton Corp. v. National Catholic Reporter Pub. Co.*, E.D.Wis.1997, 978 F.Supp. 1195.

Publication of person's religious affiliation, standing alone, is not so private that it would offend reasonable person, and thus would not violate Wisconsin's invasion of privacy statute. *Briggs & Stratton Corp. v. National Catholic Reporter Pub. Co.*, E.D.Wis.1997, 978 F.Supp. 1195.

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