

Wisconsin Privacy Laws

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General Privacy

Telephone records; obtaining, selling, or receiving without consent; Wis. Stat. § 100.525.

No person may obtain, without the customer's consent, a customer's telephone records that identify:

- The telephone numbers dialed by the customer.
- The telephone numbers of calls made to the customer.
- The time or duration of the calls.

A person who illegally obtains this information is guilty of a felony, and may be required to forfeit property used or intended to be used in committing the felony. Also, the court may require the violator to pay the person whose telephone records have been misappropriated the amount of actual losses incurred, or \$1,000, whichever is greater; and the amount of gain to the violator as a result of the violation.

Nondisclosure of information on receipts; Wis. Stat. § 134.74.

No person who is in the business of selling goods at retail or selling services and who accepts a credit card or a debit card for the purchase of goods or services may issue a credit card or debit card receipt, for that purchase, on which is printed more than 5 digits of the credit card or debit card number.

Disposal of records containing personal information; Wis. Stat. § 134.97.

No financial institution, investment company, medical business, or tax preparation business, may dispose of records containing personal information without shredding the record, erasing the information from the record, or otherwise destroying the information. No may use any personal information that was not properly destroyed without the consent of the individual who is the subject of the information.

Under this law, "personal information" includes data related to an individual's:

- Health condition that is not public knowledge.
- Accounts with a financial institution
- Federal, state or local tax returns.

The personal information protected by this law must be “personally identifiable” such that it is capable of being associated with a particular individual through one or more identifiers.

In addition to criminal and civil forfeiture penalties imposed by the state, an individual who suffers damages because a person violates this law may sue the violator to recover the damages.

Notaries; confidentiality; Wis. Stat. § 137.01 (5m).

A notary public shall keep confidential all documents and information contained in documents reviewed by the notary public while performing his or her duties and may release the documents or information to a 3rd person only with the written consent of the person who requested the notary services.

A notary public who violates this law is liable to the person who requested the notary services for any damages that person may have incurred as a result of the violation.

Contracts requiring prisoner access to personal information; Wis. Stat. §§ 301.029.

The Wisconsin department of corrections may not enter into contracts relating to prisoner employment that would require a prisoner to perform data entry or telemarketing and have access to a person’s credit or debit card numbers, checking or savings account numbers, or social security number.

Notice of unauthorized acquisition of personal information; Wis. Stat. § 134.98.

Whenever an entity that collects personal information in the ordinary course of its business becomes aware that an unauthorized person has acquired the personal information, the business shall notify the individuals whose personal information has been acquired.

This law applies to any entity that does business in Wisconsin including a state or local government organization, but does apply to:

- A business conducted solely by an individual, such as a sole proprietorship.
- A federally regulated financial institution, or a person that has a contract with a federally regulated financial institution, if the financial institution has a policy in place to handle the unauthorized acquisition of personal information

- A health care plan, health care clearing house, or a health care provider that transacts personal information electronically, if the plan, clearing house, or provider complies with federal law regulating unauthorized acquisition of personal information.

Personal information under this law means an individual's:

- Name.
- Driver's license or state identification number.
- Financial account number, including credit or debit account number or any security code access code or password that would permit access to an individual's financial account.
- DNA profile.
- Fingerprint, voice print, retina or iris image, or any other unique physical representation.

The fact that an entity has failed to comply with this law may be used as evidence in court to prove that the entity is liable for damages incurred by an individual whose identity has been misappropriated. There are no other penalties imposed by this law.

Government Records Privacy

Wisconsin public records law; Wis. Stat. §§ 19.21 and following.

The Wisconsin Public Records Law generally opens state and local government records to public inspection, unless there is a specific law that denies public access. The Wisconsin Public Records Law specifically denies access to information that identifies applicants for public positions and law enforcement informers, and denies access to a public employee's personnel records that contain personally identifiable information.

The Wisconsin Public Records Law also requires state and local authorities to do the following:

- Notify a public employee before releasing any records that contain information relating to discipline-type actions involving the employee.
- Notify a non-public employee whose personally-identifiable information is on a record provided by his or her employer before releasing the record.
- Notify an individual whose personally-identifiable information is on a record obtained by subpoena or search warrant before releasing the record.

Department of Natural Resources - nondisclosure of personal information; Wis. Stat. § 23.45.

Registration forms used by the Wisconsin department of natural resources shall include an option for an individual who is required to put personal information on the form to declare that the personal information should not be released to the public.

The personal information subject to this law includes name, social security number, telephone number, street address, post office box number, and 9-digit extended zip code.

Employee Trust Fund - public records; Wis. Stat. § 40.07.

An individual's personal information maintained in the records of the public employee trust fund is not a public record and shall not be disclosed unless the information is:

- Requested by the person whose record contains the information.
- Requested by a public employee for use in the discharge of the employee's duties.
- Required to be disclosed by a court order.
- Required to be disclosed for the proper administration of the duties of the public employee trust fund.

Disclosure of information from vital records; Wis. Stat. § 69.20.

Certificates of birth, death, and divorce or annulment, marriage documents, and records containing information taken from those records or documents, are confidential and may only be released to the registrant, the registrant's immediate family or legal representative, or in certain situations to state government officials for the purpose of compiling health statistics.

Department of Transportation - disclosure of personal identifiers; Wis. Stat. § 85.103.

A person who applies to the Wisconsin department of transportation for an auto registration, certificate of title, drivers license, or identification card, may request that the department maintain the confidentiality of information contained in those records that contain the person's name, social security number, telephone number, street address, post-office box number, or 9-digit extended zip code, except in certain limited situations.

Department of Regulation and Licensing; nondisclosure of certain personal information; Wis. Stat. § 440.14.

The Wisconsin department of regulation and licensing, or any of its credentialing boards, may not release lists that contain personal identifiers of 10 or more individuals unless the

department first gives the individual an opportunity to refuse to have his or her name included in the release.

Under this law, a “personal identifier” means a name, social security number, telephone number, street address, post-office box number, or zip code.

If an individual refuses to allow his or her information to be included in the list, the department may not include the individual’s name on a list unless it provides the list to another state agency, a law enforcement agency, or an agency of the federal government.

Financial Information Privacy

Access to credit reports; Wis. Stat. § 100.54.

An individual may require a consumer reporting agency to put a “security freeze” on his or her credit report. Where a security freeze is in place, the consumer reporting agency may not release the individual’s credit report for any purpose related to the extension of credit to any person without the individual’s consent, except in certain specified situations.

An individual who has placed a security freeze on his or her credit report may authorize release of the report to a specific person, or may remove the freeze, by providing the point of contact designated by the consumer reporting agency with the pre-arranged personal identification number or password and paying any fee that may be required not to exceed \$10 per request.

If a lender requests access to an individual’s consumer report that is subject to a freeze, and the request is made in connection with the individual’s application for the extension of credit, the credit reporting agency may tell the lender that the report is subject to a freeze, and the lender may treat the individual’s application as incomplete.

Savings banks - access to books and records; Wis. Stat. § 214.37 (00).

A savings bank, which is regulated by the state, must keep its financial records confidential. A person has the right to inspect any records maintained by the bank concerning that person’s deposit accounts or loans, and may authorize others to have access to these records.

Otherwise, access to financial records or information contained in those records that identify an individual customer is limited to the following:

- To an officer, employee or agent of the savings bank to prepare, examine, handle, or maintain, or a certified public accountant engaged by the savings bank to perform an audit.

- To an officer, agent or employee of the state division of banking or other government authorized banking organization.
- As part of the regular exchange of credit information the savings bank and other financial institutions, a mortgage broker, or a consumer reporting agency.
- As information furnished to the appropriate law enforcement authority if the savings bank believes a crime has been committed involving the savings bank.
- Furnished pursuant to legal process, such as a subpoena, summons, warrant or court order.
- Where disclosure is required by state or federal law, such as reports to the Internal Revenue Service, information furnished in accordance with the Wisconsin unclaimed property act, information concerning the dishonor of a negotiable instrument required to be disclosed under the uniform commercial code, or disclosures required upon the death of the depositor.

A savings bank may sell or otherwise make use of a list of customers if all of the following apply:

- The list only includes the names and addresses of the customers, and has no other information.
- The savings bank notifies all customers on the list of its intent to sell the information and gives the customer an opportunity to refuse to allow the sale of his or her name and address.
- The person who receives the list agrees not to give it to anyone else.

Health Information Privacy

Social service recipients- protection of personal information; Wis. Stat. ch. 46.

The law regulating social services in Wisconsin contains a number of provisions that protect personal information identifying social service recipients.

For example, the public may not have access to records containing personally identifiable information kept by a family care resource center (Wis. Stat. § 46.283) or care management organization (Wis. Stat. § 46.284) unless:

- The individual who is the subject of the personally identifiable information gives an informed consent to release the information.
- The law requires the release.

- The Wisconsin department of health and family services (“DHFS”), center, or organization must release the information to comply with its lawful duties.

A family care district may not disclose to the public any record containing personally identifiable information concerning an individual who receives its services without the individual’s informed consent, unless otherwise required by law (Wis. Stat. § 46.2895).

No person may use or disclose any information concerning an individual who has been selected for an assessment related to a home visitation program, or who applied for and declined such an assessment, unless the disclosure is connected with the activities of the home visitation program or medical assistance program, or unless the individual has provided his or her informed consent (Wis. Stat. § 46.515).

Reports of elder abuse or neglect may not be released by a county agency or other investigating agency except under the following circumstances (Wis. Stat. § 46.90):

- To the elder person, the person suspected of abusing the elder person, either of their guardians, or an agency or individual providing direct services to the elderly person or other persons involved, except that information identifying the person who initially reported the abuse may not be released.
- To the protective service agency involved, where the protective service agency maintains confidentiality.
- To a person designated by DHFS or the law to monitor and evaluate the program.
- For purposes of research if the researcher has been approved by DHFS or the county agency, and the researcher has provided assurances that confidentiality will be maintained.
- Pursuant to a court order.
- To law enforcement officials in accordance with established policy.

Nursing home facilities - rights of residents; Wis. Stat. § 50.09.

A resident in a nursing home has a right to confidentiality of health and personal records. The resident may refuse the release of his or her personal information to any individual outside the facility except in the case of the resident’s transfer to another facility, or as required by law or 3rd-party payment contracts.

Alcoholism treatment programs - records of patients; Wis. Stat. § 51.45 (14).

The registration and treatment records of alcoholism treatment programs and facilities are confidential and privileged to the patient.

Mental health patient rights; Wis. Stat. § 51.61 (1) (n).

An individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency in a mental health treatment facility has a right to confidentiality of treatment records, to inspect and copy the records, and to challenge the accuracy of information in the records.

Health care services review; confidentiality of information; Wis. Stat. § 146.38.

Information acquired in connection with the review of an emergency health care provider, such as an ambulance service, emergency medical technician, or first responder, must be kept confidential. A person who discloses information or releases a record in violation of this law is civilly liable to any person harmed by the disclosure or release.

Emergency medical services - confidentiality of information; Wis. Stat. § 146.50 (12).

All records made by an ambulance service, emergency medical technician, or first responder shall be treated as confidential health care records subject to Wis. Stat. §§ 146.81 to 146.84.

Confidentiality of patient health care records; Wis. Stat. §§ 146.81 through 146.84.

All patient health care records shall remain confidential. Generally, patient health care records may only be released to a person upon the informed consent of the patient, or as authorized by the patient.

Release of these records or the information contained in them may be released without the informed consent or authorization of the patient only in certain situations described by the law. These situations, among others, include:

- Upon a court order or for testimony in court proceedings for hospitalization, guardianship, protective services, or protective placement.
- To medical staff members where necessary to provide patient care.
- To medical staff committees and other similar oversight groups, and to legally authorized government regulators, for conducting necessary audits.
- To a medical researcher of the purpose of medical research where the researcher agrees to maintain confidentiality.
- Upon the death of the patient, to the coroner or medical examiner for the purpose of completing the death certificate, to an organ procurement organization by a hospital in accordance with a lawful agreement, or to law enforcement officials for investigation of the death.

- If the subject is a juvenile victim of abuse, to various government regulated or court appointed advocates and guardians, and to law enforcement officials.
- If the subject is a juvenile placed in a foster home or other similar facility, or is being considered for placement, to various agency's or officials for the purpose of processing and maintaining the placement.
- To the department of transportation by a physician or optometrist where the patient is unable to safely operate a motor vehicle.
- Where the subject is a prisoner, to medical staff for the prisoner's care.
- If release of information contained in the records do not personally identify the patient.

The law restricting release of patient health care records apply to a wide range of health care providers, including: nurses, chiropractors, dentists, physicians, physical therapists, podiatrists, dieticians, athletic trainers, occupational therapists, pharmacists, acupuncturists, psychologists, social workers or other professional counselors, speech-language therapists, massage therapists, hospice, in-patient care facility, community-based residential facility, and rural medical center.

Where a health care provider ceases operating, most providers are required to notify the patients where his or her health care records will be maintained. If the provider intends to destroy the records, the provider must given notice enabling the patient to retrieve the records before destruction.

A person who illegally violates the confidentiality of patient health care records is subject to criminal penalties including imprisonment and fines, and, if a state or local government employee, termination or suspension without pay.

A person who illegally violates the confidentiality of patient health care records may also be liable to the person injured as a result of the violation for actual damages, additional damages of at least \$25,000 if the violation was willful or \$1,000 otherwise, and the costs and attorneys fees related to any legal action to recover the damages.

HIV tests - confidentiality of test results; Wis. Stat. §§ 252.12 (3) and 252.15 (5).

The results of a test for HIV confidential. Although the test subject, or the test subject's health care agent, may release the test results to anyone, no other person may release the test results except to certain persons identified in the law.

Among others, the persons to whom the test results may be released include:

- The test subject, the test subject's health care agent, or a person to whom release has been authorized by the test subject or the test subject's health care agent.
- A health care provider for the purpose of providing health care to the test subject, the health care provider's agent or employee for processing records, and the health care provider's review board for monitoring health services..
- A blood bank or plasma center.
- A health care provider that distributes human body parts.
- The state epidemiologist.
- A funeral director.
- A researcher who agrees to maintain confidentiality.
- A coroner or medical examiner.
- A sheriff, jailer, or prisoner's health care provider.
- To anyone subject to the lawful order of a court.

If Wisconsin department of health and family services performed the HIV test as part of its duty to conduct health surveys, the test results may only be released in a form that does not personally identify the test subject unless the release is to the test subject or another person with the test subject's informed consent.

Insurers - nondisclosure of personal medical information and other personal information: Wis. Stat. §§ 604.08 (8) and 610.70.

Insurers doing business in Wisconsin shall maintain the confidentiality of personal medical information in its possession. An insurer may not disclose personal medical information about an individual without the express written consent of the individual or the individual's authorized representative except where the disclosure is made:

- In relation to the protection of the insured's interest in the assessment of causation, fault or liability, or in the detection of criminal activity or fraud.
- To an insurance regulatory authority, in response to an administrative or judicial order, or otherwise permitted by law.
- For the purpose of pursuing a contribution or subrogation claim.
- To a professional medical review organization.

- To a medical care institution or health care provider to verify insurance coverage or benefits, or to conduct an operations or services audit.
- To a network plan offered by an insurer, where the information is needed to coordinate the provision of health care and payments for the health care.
- To a group policy holder only where necessary to report claims experience or conduct an audit of the insurer's operations or services.
- For the purpose of making business decisions concerning the sale or merger of an insurance business.
- To the insurer's legal representative for the purpose of claims review, or legal advice or defense.

Upon receiving a written request from an individual who is the subject of personal medical records, an insurer shall provide the individual, or certain other persons designated by the individual, access to those records. The insurer shall also give the individual an opportunity to request corrections to the records, and shall notify the individual if it will honor the request.

In addition to the law governing personal medical information, the Wisconsin commissioner of insurance may refuse to disclose, and may prevent any other person from disclosing, personal information obtained in the course of regulating state insurance funds. For purposes of this law, personal information means information which can be associated with an individual through one or more identifiers.

Any person who knowingly and willfully obtains information about an individual from an insurer under false pretenses maybe liable for criminal penalties up to 9 months in jail and up to a \$25,000 fine, or maybe liable to the individual for actual damages, exemplary damages of not more than \$25,000, and costs and attorney fees.

Identity Theft

Unauthorized use of an individual's identifying information; Wis. Stat. § 943.201.

It is unlawful to use personal information of an individual without that individual's consent to:

- Obtain credit, money, goods, services, employment, or any other thing of value or benefit.
- Avoid civil or criminal process or penalty.
- Harm the reputation, property, person or estate of the individual.

This law prohibits the unauthorized use of information that can be associated with an individual through one or more identifiers and any document, card or plate containing this information, such as:

- Name, address or telephone number.
- Driver's license number.
- Social security number.
- Employer, employee number, or place of employment.
- Taxpayer ID number.
- DNA profile.
- Mother's maiden name.
- Depository account number, credit card number, ATM card password, telephone service identifier, or any other account number, password or electronic identifier that can be used to obtain money, goods, services, an account transfer, or anything else of value or benefit.
- Fingerprint, voiceprint, retina iris image, or any other unique physical characteristic.

Violation of this law is a class H felony including up to 6 years in jail and a \$10,000 fine.

If an individual reports to his or her local law enforcement agency that the individual's identity has been stolen in violation of this law, the agency shall prepare a report. If the agency concludes it does not have jurisdiction to prosecute the crime, it shall inform the individual which law enforcement agency has jurisdiction.

Unauthorized use of a business's identifying information; Wis. Stat. § 943.203.

It is unlawful to use identifying information of a person that is not an individual, such as a business, charity, labor union, or any other organization, without that person's consent to:

- Obtain credit, money, goods, services, employment, or any other thing of value or benefit.
- Harm the reputation, property, person or estate of the individual.

This law prohibits the unauthorized use of information that can be associated with a person through one or more identifiers and any document, card or plate containing this information, such as:

- Name, address or telephone number.
- Employer identification number.
- Depository account number, credit card number, ATM card password, telephone service identifier, or any other account number, password or electronic identifier that can be used to obtain money, goods, services, an account transfer, or anything else of value or benefit.

Violation of this law is a class H felony including up to 6 years in jail and a \$10,000 fine.

If a person reports to its local law enforcement agency that the person's identity has been stolen in violation of this law, the agency shall prepare a report. If the agency concludes it does not have jurisdiction to prosecute the crime, it shall inform the person which law enforcement agency has jurisdiction.

Financial card crimes - theft by taking card; Wis. Stat. § 943.41 (3).

No person shall:

- Obtain a financial transaction card, such as a credit card or debit card, from another without the cardholder's consent.
- Receive an illegally obtained financial transaction card with intent to use it or sell it or transfer it to another person. If a person possesses 2 or more financial transaction cards in 2 or the names of 2 or more other persons, it is prima facie evidence the person acquired them in violation of this law.
- Receive a financial transaction card that the person knows to have been lost, stolen, or delivered by mistake to the wrong cardholder, and retain possession of the card with intent to use it, sell it, or transfer it to another person other than the issuer or cardholder. Possession of such a card for more than 7 days is prima facie evidence that this law has been violated.
- Sell a financial transaction card other than the user.
- Buy a financial transaction card other than from the issuer.
- Obtain control over a financial transaction card as security for a debt with intent to defraud the issuer or any other person.

- Receive a financial transaction card issued in the name of another person which he or she has reason to know was obtained in violation of this law.

A person who violates this law is guilty of a class A misdemeanor, except that a person who receives a financial transaction card issued in the name of another person which he or she has reason to know was obtained in violation of this law is guilty of a class I felony.

Fraud against a financial institution; Wis. Stat. § 943.82 (2).

Any person who represents that he or she is a financial or a representative of a financial institution for the purpose of obtaining or recording a person's personal identifying information is guilty of Class H felony including up to 6 years in jail and a \$10,000 fine.

Under this law, “personally identifying information” means the unauthorized use of information that can be associated with a person through one or more identifiers and any document, card or plate containing this information, such as:

- Name, address or telephone number.
- Driver’s license number.
- Social security number.
- Employer, employee number, or place of employment.
- Taxpayer ID number.
- DNA profile.
- Mother’s maiden name.
- Depository account number, credit card number, ATM card password, telephone service identifier, or any other account number, password or electronic identifier that can be used to obtain money, goods, services, an account transfer, or anything else of value or benefit.
- Fingerprint, voiceprint, retina iris image, or any other unique physical characteristic.

Harassment - acquires personally identifiable information; Wis. Stat. § 947.013.

If a person, when committing the crime of harassment, intentionally gains access to electronic data that contains the victim’s personally identifiable information in order to facilitate the crime, the person is subject to an increased penalty.

Harassment occurs when a person repeatedly commits acts which harass or intimidate another for no legitimate purpose, and carries a misdemeanor penalty of up to 9 months in jail and a \$10,000 fine.

But if the person intentionally gains access to electronic data that contains the victim's personally identifiable information in order to facilitate the harassment, it is a felony including up to 6 years in jail and a \$10,000 fine.

Personally identifiable information under this law means information that can be associated with an individual through one or more identifiers or other information or circumstances.

Unsolicited Commercial Communications

Telephone solicitations – prerecorded messages; Wis. Stat. § 100.52 (4) (a).

Telemarketers are prohibited from calling persons whose telephone numbers are included in the Wisconsin No Call list. Also, telemarketers are prohibited from using electronically prerecorded messages without the consent of the person called. A person who violates this law may be required to forfeit \$100 for each violation.

Facsimile machines – prohibition of unsolicited messages; Wis. Stat. § 134.72.

No person may make a solicitation by facsimile machine without the consent of the person solicited unless:

- The document transmitted is no more than 1 page in length and received after 9 p.m. and before 6 a.m.
- The person making the solicitation has had a prior business relationship with the person being solicited.

In no case may a person send a solicitation by facsimile machine if the person being solicited has stated he or she does not want to receive the solicitation.

