



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 546**

September 21, 1995 - Offered by COMMITTEE ON AGRICULTURE.

1 **AN ACT to repeal** 814.04 (9); **to amend** 823.08 (1); and **to repeal and recreate**
2 823.08 (2) to (4) of the statutes; **relating to:** restricting the remedies available
3 and requiring awards of costs in actions against agricultural uses.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 814.04 (9) of the statutes is repealed.

5 **SECTION 2.** 823.08 (1) of the statutes is amended to read:

6 823.08 (1) LEGISLATIVE PURPOSE. The legislature finds that development in
7 rural areas and changes in agricultural technology, practices and scale of operation
8 have, ~~on occasion,~~ increasingly tended to create conflicts between agricultural and
9 other activities uses of land. The legislature believes that, to the extent possible
10 consistent with good public policy, the law should not hamper agricultural
11 production or the use of modern agricultural technology. The legislature therefore
12 deems it in the best interest of the state to establish ~~guidelines for the resolution of~~
13 limits on the remedies available in those conflicts which reach the judicial system.
14 The legislature further asserts its belief that local units of government, through the

1 exercise of their zoning power, can best prevent such conflicts from arising in the
2 future, and the legislature urges local units of government to use their zoning power
3 accordingly.

4 **SECTION 3.** 823.08 (2) to (4) of the statutes are repealed and recreated to read:

5 823.08 (2) DEFINITIONS. In this section:

6 (a) “Agricultural practice” means any activity associated with an agricultural
7 use.

8 (b) “Agricultural use” has the meaning given in s. 91.01 (1).

9 **(3) NUISANCE ACTIONS.** (a) An agricultural use or an agricultural practice may
10 not be found to be a nuisance if all of the following apply:

11 1. The agricultural use or agricultural practice alleged to be a nuisance is
12 conducted on, or adjacent to, land that was in agricultural use without substantial
13 interruption before the plaintiff began the use of property that the plaintiff alleges
14 was interfered with by the agricultural use or agricultural practice.

15 2. Any change in the scale or manner of the agricultural use or agricultural
16 practice that took place after the plaintiff began that use of property and that is
17 alleged to have contributed to the nuisance is consistent with agricultural uses in the
18 region where the agricultural use or agricultural practice is located.

19 3. The agricultural use or agricultural practice does not present a substantial
20 threat to public health or safety.

21 (b) In an action in which an agricultural use or an agricultural practice is found
22 to be a nuisance, the following conditions apply:

23 1. The relief granted may not substantially restrict or regulate the agricultural
24 use or agricultural practice, unless the agricultural use or agricultural practice is a
25 substantial threat to public health or safety.

1 2. If the court orders the defendant to take any action to mitigate the effects
2 of the agricultural use or agricultural practice found to be a nuisance, the court shall
3 do all of the following:

4 a. Request public agencies having expertise in agricultural matters to furnish
5 the court with suggestions for practices suitable to mitigate the effects of the
6 agricultural use or agricultural practice found to be a nuisance.

7 b. Provide the defendant with a reasonable time to take the action directed in
8 the court's order. The time allowed for the defendant to take the action may not be
9 less than one year after the date of the order unless the agricultural use or
10 agricultural practice is a substantial threat to public health or safety.

11 3. If the court orders the defendant to take any action to mitigate the effects
12 of the agricultural use or agricultural practice found to be a nuisance, the court may
13 not order the defendant to take any action that does any of the following:

14 a. Requires a substantial capital expenditure, unless the agricultural use or
15 agricultural practice is an imminent and substantial threat to public health or safety.

16 b. Substantially and adversely affects the economic viability of the agricultural
17 use.

18 **(4) COSTS.** (a) In this subsection, "litigation expenses" means the sum of the
19 costs, disbursements and expenses, including reasonable attorney, expert witness
20 and engineering fees necessary to prepare for or participate in an action in which an
21 agricultural use or agricultural practice is alleged to be a nuisance.

22 (b) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation
23 expenses to the defendant in any action in which an agricultural use or agricultural

1 practice is alleged to be a nuisance if the agricultural use or agricultural practice is
2 not found to be a nuisance.

3 (END)