



2023 ASSEMBLY BILL 1157

March 22, 2024 - Introduced by Representative GUNDRUM. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to repeal* 823.02; *to renumber and amend* 823.01 and 823.015; *to*
2 *amend* 823.03, 823.04, 823.05 and 823.06; and *to create* subchapter I (title)
3 of chapter 823 [precedes 823.001], 823.001, 823.002, 823.01 (1), 823.012,
4 823.013, 823.021, 823.024, subchapter II (title) of chapter 823 [precedes
5 823.029] and subchapter III (title) of chapter 823 [precedes 823.065] of the
6 statutes; **relating to:** abrogating the common law and codifying the law of
7 public nuisance.

Analysis by the Legislative Reference Bureau

This bill abrogates the common law of public nuisance and codifies the law of public nuisance.

The bill defines “public nuisance” to mean an unlawful condition that violates a right common to the general public to use public real property, and the bill defines “unlawful condition” to mean a condition, activity, or situation that is expressly prohibited by the laws of this state. The bill provides that a person may be held liable for creating or maintaining a public nuisance only if the person controls the public nuisance at the time a cause of action for public nuisance arises.

The bill provides that only the following persons may maintain a public nuisance action:

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1. The state or the city, village, town, or county (political subdivision) that has a substantial ownership interest in or authority over the real property, or the ancillary space related to the real property, to which the public nuisance relates.

2. A nongovernmental person (private party) that suffers injuries peculiar to the private party, so far as necessary to protect the private party's rights and to obtain an injunction to prevent the same.

If the plaintiff is the state or a political subdivision (governmental body), all of the following apply:

1. The governmental body may maintain the public nuisance action only by an attorney employed by the governmental body.

2. If more than one governmental body is a plaintiff, there is a presumption that only one governmental body has standing to maintain the action, and the court must, on its own motion, determine which governmental bodies have standing.

3. The governmental body may not maintain the public nuisance action solely to recover a financial expenditure of the governmental body related to the remediation, abatement, or injunction of an unlawful condition.

If the plaintiff is a private party, all of the following apply:

1. The private party bears the burden of establishing by clear and convincing evidence that the private party suffered an injury peculiar to the private party.

2. The fact that public real property has a spiritual, cultural, emotional, or otherwise personal significance to a private party is not, by itself, sufficient to establish that the use of or damage to the real property is an injury peculiar to the private party.

3. The private party may not maintain both a public nuisance action and a private nuisance action related to damages resulting from the same unlawful condition.

The bill limits the remedies available in an action for public nuisance to only the following:

1. Injunctive relief sufficient to abate the public nuisance.

2. Monetary damages in an amount reasonably necessary to abate the public nuisance but not including a) speculative estimates of current needs, b) costs of future remediation, c) costs of investigating and identifying the existence of an unlawful condition, or d) costs of public services provided as a result of the public nuisance.

3. Compensatory damages for a private party's injury that is peculiar to the private party.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

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1 **SECTION 1.** Subchapter I (title) of chapter 823 [precedes 823.001] of the statutes
2 is created to read:

CHAPTER 823**SUBCHAPTER I****PUBLIC NUISANCES; GENERALLY**

6 **SECTION 2.** 823.001 of the statutes is created to read:

7 **823.001 Abrogation of common law.** The common law of public nuisance
8 in this state is abolished.

9 **SECTION 3.** 823.002 of the statutes is created to read:

10 **823.002 Definitions.** In this subchapter:

11 (1) "Government attorney" means an attorney regularly employed on a
12 salaried basis by this state or a political subdivision. "Government attorney" does
13 not include an attorney hired on a contingency fee or hourly basis or on a short-term
14 or temporary basis, including a legal fellow, special prosecutor, or other similar
15 provisional position.

16 (2) "Political subdivision" means a city, village, town, or county.

17 (3) "Public nuisance" means an unlawful condition that violates a right
18 common to the general public to use public real property.

19 (4) "Real property" includes the waters of the state, as defined under s. 281.01
20 (18).

21 (5) "Unlawful condition" means a condition, activity, or situation that is
22 expressly prohibited by the laws of this state.

23 **SECTION 4.** 823.01 of the statutes is renumbered 823.01 (intro.) and amended
24 to read:

ASSEMBLY BILL 1157**SECTION 4**

1 **823.01 Jurisdiction over Causes of action for public nuisances.** (intro.)

2 Any person, county, city, village or town of the following persons may maintain an
3 action to recover damages or to abate a public nuisance ~~from which~~:

4 **(2) PRIVATE ACTION.** Subject to s. 823.013, a nongovernmental person that
5 suffers injuries peculiar to the ~~complainant are suffered~~ person, so far as necessary
6 to protect the ~~complainant's~~ person's rights and to obtain an injunction to prevent the
7 same.

8 **SECTION 5.** 823.01 (1) of the statutes is created to read:

9 **823.01 (1) GOVERNMENTAL ACTION.** Subject to s. 823.012, the state or a political
10 subdivision that has a substantial ownership interest in or authority over the real
11 property, or the ancillary space related to the real property, to which the public
12 nuisance relates.

13 **SECTION 6.** 823.012 of the statutes is created to read:

14 **823.012 Enforcement by government. (1)** The state or a political
15 subdivision that maintains a public nuisance action authorized under s. 823.01 (1)
16 may maintain the action only by a government attorney employed by the state or that
17 political subdivision.

18 **(2)** In a public nuisance action maintained under s. 823.01 (1) by more than one
19 political subdivision, or by the state and one or more political subdivisions, the court
20 shall, on its own motion, determine which governmental parties have standing to
21 maintain the action. There is a presumption under this subsection that only one
22 governmental party has standing, which may be rebutted with clear and convincing
23 evidence.

24 **(3)** The state or a political subdivision may not maintain a public nuisance
25 action under s. 823.01 (1) solely to recover a financial expenditure by the state or

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1 political subdivision related to the remediation, abatement, or injunction of an
2 unlawful condition.

3 **SECTION 7.** 823.013 of the statutes is created to read:

4 **823.013 Enforcement by private parties. (1)** In an action to enjoin a public
5 nuisance under s. 823.01 (2), a nongovernmental person bears the burden of
6 establishing by clear and convincing evidence that the person suffered an injury
7 peculiar to the person.

8 **(2)** The fact that public real property has a spiritual, cultural, emotional, or
9 otherwise personal significance to a nongovernmental person is not, by itself,
10 sufficient to establish that the use of or damage to the real property is an injury
11 peculiar to the person for purposes of s. 823.01.

12 **(3)** A nongovernmental person may not maintain both a public nuisance action
13 under s. 823.01 (2) and a private nuisance action related to damages resulting from
14 the same unlawful condition.

15 **SECTION 8.** 823.015 of the statutes is renumbered 823.029 and amended to
16 read:

17 **823.029 Action against condominium association.** If a city, village, town,
18 or county has grounds under this chapter to abate a private nuisance occurring upon
19 the common elements of a condominium and the failure of a condominium
20 association under ch. 703 to perform its duties to maintain and control the common
21 elements is a reason the nuisance has not been abated, an action for a receivership
22 under ch. 823 may be brought against the condominium association whether it is
23 incorporated or unincorporated. This section does not authorize the seizure of
24 condominium buildings or units.

25 **SECTION 9.** 823.02 of the statutes is repealed.

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SECTION 10

1 **SECTION 10.** 823.021 of the statutes is created to read:

2 **823.021 Liability for public nuisance.** A person may be held liable for
3 creating or maintaining a public nuisance only if the person controls the public
4 nuisance at the time a cause of action under this subchapter arises.

5 **SECTION 11.** 823.024 of the statutes is created to read:

6 **823.024 Remedies for public nuisance. (1)** In a public nuisance action
7 under this subchapter, a court may award only the following relief:

8 (a) Injunctive relief sufficient to abate the public nuisance.

9 (b) Monetary damages in an amount reasonably necessary to abate the public
10 nuisance. Damages under this paragraph do not include any of the following:

11 1. Speculative estimates of current needs.

12 2. Costs of future remediation.

13 3. Costs of investigating and identifying the existence of an unlawful condition.

14 4. Costs of public services provided as a result of the public nuisance.

15 (c) Compensatory damages for a nongovernmental plaintiff's injury that is
16 peculiar to the plaintiff as described under s. 823.01.

17 **(2)** The plaintiff shall establish the amount of any damages described under
18 sub. (1) (b) by clear and convincing evidence.

19 **SECTION 12.** Subchapter II (title) of chapter 823 [precedes 823.029] of the
20 statutes is created to read:

21 **CHAPTER 823**

22 SUBCHAPTER II

23 PRIVATE NUISANCES; GENERALLY

24 **SECTION 13.** 823.03 of the statutes is amended to read:

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1 **823.03 Judgment.** In ~~such actions~~ an action for private nuisance, when the
2 plaintiff prevails, the plaintiff shall, in addition to judgment for damages and costs,
3 also have judgment that the nuisance be abated unless the court ~~shall~~ otherwise
4 ~~order~~ orders.

5 **SECTION 14.** 823.04 of the statutes is amended to read:

6 **823.04 Execution and warrant.** In case of judgment that ~~the~~ a private
7 nuisance be abated and removed, the plaintiff shall have execution in the common
8 form for the plaintiff's damages and costs and a separate warrant to the proper
9 officer requiring the officer to abate and remove the nuisance at the expense of the
10 defendant.

11 **SECTION 15.** 823.05 of the statutes is amended to read:

12 **823.05 Warrant may be stayed.** The court may, on the application of the
13 defendant in an action for private nuisance, order a stay of such warrant for such
14 time as may be necessary, not exceeding 6 months, to give the defendant an
15 opportunity to remove the nuisance, upon the defendant's giving satisfactory
16 security to do so within the time specified in the order.

17 **SECTION 16.** 823.06 of the statutes is amended to read:

18 **823.06 Expense of abating, how collected.** The expense of abating ~~such a~~
19 private nuisance pursuant to ~~such a~~ warrant under s. 823.04 shall be collected by the
20 officer in the same manner as damages and costs are collected upon execution or may
21 be collected by finding the defendant personally liable for these expenses, as
22 provided in s. 74.53. The officer may sell any material of any fences, buildings, or
23 other things abated or removed as a private nuisance as personal property is sold
24 upon execution and apply the proceeds to pay the expenses of such abatement,
25 paying the residue, if any, to the defendant.

