



## 1995 ASSEMBLY BILL 546

September 6, 1995 - Introduced by Representatives KLUSMAN, WARD, GRONEMUS, OTT, OLSEN, ZUKOWSKI, AINSWORTH, WILDER, HAHN, SKINDRUD, OTTE, KREIBICH, COLEMAN, JENSEN, FREESE, SERATTI, BRANDEMUEHL, SILBAUGH, GUNDERSON, NASS, HUTCHISON, BRANCEL, POWERS, OURADA, GOETSCH, LEHMAN, MUSSER, HUEBSCH, ALBERS, GROTHMAN, JOHNSRUD, FOTI, PORTER, GARD and HARSDFORF, cosponsored by Senators DRZEWIECKI, A. LASEE, BRESKE, SCHULTZ, WEEDEN, RUDE, ZIEN, DARLING and FITZGERALD. Referred to 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.

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### *Analysis by the Legislative Reference Bureau*

This bill changes the law related to court cases in which agricultural activities are alleged to be nuisances. Under current law, in such a case, if the agricultural activity is conducted on land subject to a certified exclusive agricultural use zoning ordinance, the relief granted may not substantially restrict the agricultural activity unless a substantial restriction is necessary to protect public health or safety. If the agricultural activity is not conducted on land subject to such an ordinance, all of the following apply:

1. The court may not order the agricultural activity to cease unless the activity is a threat to public health and safety.
2. The court may assess only nominal damages if the agricultural activity found to be a nuisance was conducted at the same location, on substantially the same scale and in substantially the same manner before the plaintiff acquired an interest in the property damaged by the agricultural activity.
3. The court may order the defendant to adopt agricultural practices that may reduce the offensive aspects of the activity found to be a nuisance and may ask public agencies having expertise in agricultural matters to furnish the court with suggestions for those practices.

This bill eliminates the distinction between actions involving land that is subject to an exclusive agricultural use zoning ordinance and land that is not subject to such an ordinance. Under this bill, in a court case that finds an agricultural activity to be a nuisance, the following conditions apply:

1. The court may not substantially restrict or regulate the agricultural activity, unless the agricultural activity is an imminent and substantial threat to public health or safety.

2. The court may assess only nominal damages if the agricultural activity found to be a nuisance is conducted on land that has been in agricultural use since before the plaintiff began the use of property that is interfered with by the agricultural activity and if any change in the scale or manner of the agricultural operation that took place after the plaintiff began that use of the property is consistent with agricultural activities in the region.

3. If the court orders the defendant to take any action to reduce the effects of the agricultural activity that is found to be a nuisance, the court must ask public agencies having expertise in agricultural matters to furnish the court with suggestions for such an action and provide the defendant with a reasonable time to take the action.

4. If the court orders the defendant to take any action to reduce the effects of the agricultural activity that is found to be a nuisance, the court may not order the defendant to take any action that requires a substantial capital expenditure, unless the agricultural activity is an imminent and substantial threat to public health or safety, or that substantially and adversely affects the economic viability of the agricultural operation.

Under current law, in any action in which an agricultural activity is alleged to be a nuisance, if the defendant prevails, the defendant recovers his or her reasonable costs and expenses, including attorney fees. Under this bill, in any action in which an agricultural activity is alleged to be a nuisance, if the defendant prevails or the plaintiff is awarded only nominal damages, the defendant recovers his or her costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees.

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

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

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

3           823.08 (1) LEGISLATIVE PURPOSE. The legislature finds that the encroachment  
4 of scattered site residential development in rural areas, the expansion of urban areas  
5 and changes in agricultural technology, practices and scale of operation have, on  
6 occasion, increasingly tended to create conflicts between agricultural and other  
7 activities uses of land. The legislature believes that, to the extent possible consistent  
8 with good public policy, the law should not hamper agricultural production or the use  
9 of modern agricultural technology. The legislature therefore deems it in the best

1 interest of the state to establish ~~guidelines for the resolution of~~ limits on the remedies  
2 available in those conflicts which reach the judicial system. The legislature further  
3 asserts its belief that local units of government, through the exercise of their zoning  
4 power, can best prevent such conflicts from arising in the future, and the legislature  
5 urges local units of government to use their zoning power accordingly.

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

7 823.08 (2) DEFINITIONS. In this section:

8 (a) "Agricultural practice" means any activity associated with an agricultural  
9 use.

10 (b) "Agricultural use" has the meaning given in s. 91.01 (1).

11 (3) NUISANCE ACTIONS. In any action finding an agricultural use or an  
12 agricultural practice to be a nuisance the following conditions apply:

13 (a) The court may assess only nominal damages if all of the following apply:

14 1. The agricultural use or agricultural practice found to be a nuisance is  
15 conducted on land that was in agricultural use without substantial interruption  
16 before the plaintiff began the use of property that the plaintiff alleges was interfered  
17 with by the agricultural use or agricultural practice.

18 2. Any change in the scale or manner of agricultural operation that took place  
19 after the plaintiff began that use of property is consistent with agricultural uses in  
20 the region where the agricultural use or agricultural practice is located.

21 (b) The relief granted may not substantially restrict or regulate the  
22 agricultural use or agricultural practice, unless the agricultural use or agricultural  
23 practice is an imminent and substantial threat to public health or safety.

1 (c) 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 1. 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 2. 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 an imminent and substantial threat to public health or safety.

11 (d) 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 1. 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 2. 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 ss. 814.01, 814.03 and 814.04 (1) and (2), the court shall  
23 award litigation expenses to the defendant in any action in which an agricultural use  
24 or agricultural practice is alleged to be a nuisance if one of the following applies:

