

1981 Assembly Bill 112

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CHAPTER 123 , Laws of 1981

AN ACT to create 814.04 (9) and 823.08 of the statutes, relating to nuisance actions against agricultural uses or practices.

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

SECTION 1. 814.04 (9) of the statutes is created to read:

814.04 (9) AGRICULTURAL USE OR PRACTICE NUISANCE ACTIONS. In any nuisance action brought in which an agricultural use or an agricultural practice is alleged to be a nuisance, if the defendant prevails the defendant shall be allowed costs as provided in s. 823.08 (4). In this subsection, "agricultural use" has the meaning specified in s. 91.01 (1) and "agricultural practice" means any activity associated with an agricultural use.

SECTION 2. 823.08 of the statutes is created to read:

823.08 Actions against agricultural uses. (1) LEGISLATIVE PURPOSE. The legislature finds that changes in agricultural technology, practices and scale of operation have, on occasion, tended to create conflicts between agricultural and other activities. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern technology. The legislature therefore deems it in the best interest of the state to establish guidelines for the resolution of those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best pre-

vent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

(2) **NUISANCE ACTIONS.** In this section, “agricultural use” has the meaning specified in s. 91.01 (1) and “agricultural practice” means any activity associated with an agricultural use. In any action finding an agricultural use or an agricultural practice a nuisance, if the use or practice was conducted on lands not subject to an ordinance:

(a) Notwithstanding s. 823.03, closure shall not be available as a remedy unless the agricultural use or practice is a threat to public health and safety;

(b) The court may assess only nominal damages if the agricultural use or practice found to be a nuisance was conducted at the same location, on substantially the same scale and in substantially the same manner prior to the time that any plaintiff acquired an interest in any property damaged by the agricultural use or practice; and

(c) The court may order the defendant to adopt agricultural practices which have potential for reducing the offensive aspects of the activity or use found to be a nuisance. The court may request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable for reducing the offensive aspects of the nuisance.

(3) **ACTIONS WHERE AN ORDINANCE.** (a) In any nuisance action against an agricultural use or agricultural practice conducted on lands subject to an ordinance, the relief granted, if any, shall not substantially restrict or regulate such uses or practices, unless such relief is necessary to protect public health or safety.

(b) In this section, “ordinance” means an exclusive agricultural use zoning ordinance which has been certified under s. 91.06.

(4) **COSTS AND FEES.** In any nuisance action brought in which an agricultural use or an agricultural practice is alleged to be a nuisance, if the defendant prevails the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his or her behalf in connection with the defense of such action, together with a reasonable amount for attorney fees.

SECTION 3. Initial applicability. The treatment of sections 814.04 (9) and 823.08 of the statutes by this act first applies to actions filed on the effective date of this act.
