

State of Wisconsin



1995 Assembly Bill 546

Date of enactment: **March 6, 1996**
Date of publication*: **March 19, 1996**

1995 WISCONSIN ACT 149

AN ACT to repeal 814.04 (9); to amend 823.08 (1); and to repeal and recreate 823.08 (2) to (4) of the statutes; relating to: restricting the remedies available 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:

SECTION 1. 814.04 (9) of the statutes is repealed.

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

823.08 (1) **LEGISLATIVE PURPOSE.** The legislature finds that development in rural areas and changes in agricultural technology, practices and scale of operation have, ~~on occasion,~~ increasingly tended to create conflicts between agricultural and other activities uses of land. 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 agricultural technology. The legislature therefore deems it in the best interest of the state to establish guidelines for the resolution of limits on the remedies available in 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 prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

SECTION 3. 823.08 (2) to (4) of the statutes are repealed and recreated to read:

823.08 (2) **DEFINITIONS.** In this section:

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

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

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

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

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

(am) Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

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

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

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

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

3. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court may not order the defendant to take any action that substantially

and adversely affects the economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

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

(b) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation expenses to the defendant in any action in which an agricultural use or agricultural practice is alleged to be a nuisance if the agricultural use or agricultural practice is not found to be a nuisance.
