Wisconsin’s Right-to-Farm Law

**Purpose of the Statute**

The statute commonly referred to as Wisconsin’s “Right-to-Farm Law” is s. 823.08, Stats. This statute directs the courts, under specific conditions set forth in the statute, to favor agriculture in certain legal disputes over agricultural uses of land. This statute was created in the 1981 Legislative Session and was substantially revised in the 1995 session.

The purpose of the statute is to provide a measure of protection for farmers from lawsuits, or the threat of lawsuits, in which the normal consequences of an agricultural activity such as odors, noise, dust, flies or slow-moving vehicles are claimed to be a nuisance. To the extent that the statute accomplishes this purpose, it facilitates the continuation and expansion of agricultural activities, particularly in areas where farmland is being converted to residential use, and reduces one of the pressures (the threat of lawsuits) on farmers to sell land for development.

The statute includes a statement of public purpose. In it, the Legislature expresses a belief that local units of government are in the best position to prevent conflicts in land use through effective zoning, and urges local units of government to use their zoning powers accordingly.

**Scope of the Statute**

Although the statute is known as the right-to-farm law, the statute does not explicitly create a “right” to farm. Rather, the statute provides that:

- If an agricultural use meets criteria in the statute, the court may not hold that the agricultural use is a nuisance.

- The defendant farmer can recover costs of the civil action, including attorney fees, if the agricultural use is held by the court not to be a nuisance.

- Even if an agricultural use is held by the court to be a nuisance, the remedies that would otherwise be available to the plaintiff in a lawsuit are limited by the statute.

The statute applies to “agricultural uses and agricultural practices.” An agricultural use is defined in the statute by a list of examples that includes beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass mint and seed crops; raising of fruits, nuts and berries; and sod farming; as well as placing land in certain federal farm programs.

An agricultural practice is defined in the statute as “any activity associated with an agricultural use.” In this memorandum, the abbreviated
term “agricultural use” is used for clarity and readability.

**NUISANCE LAW**

Section 823.08, Stats., applies to lawsuits in which agricultural uses are alleged to be a nuisance. In legal terminology, “nuisance” does not have a precise definition. A nuisance is simply an unreasonable activity or use of property that interferes substantially with the enjoyment of life, health or safety of another person. To be a nuisance, an activity or use of property must cause significant harm.

The plaintiff (i.e., the party alleging injury) in a lawsuit against a farmer who is engaged in an agricultural use can proceed on the grounds that the alleged nuisance is either “public” or “private.” A public nuisance is one that affects the public generally and the lawsuit to abate the nuisance is usually brought by a governmental unit. A private nuisance is an interference with the use of nearby real property and the lawsuit to abate the nuisance is brought by an individual with an ownership interest in the affected property. Section 823.08, Stats., appears to apply only to litigation regarding private nuisances, although this is not expressly stated in the statute.

In a private nuisance lawsuit, the plaintiff must convince the court that the defendant’s conduct is unreasonable and that the defendant’s action caused the plaintiff’s injury. It is not necessary for the plaintiff to prove that the defendant’s conduct was negligent or intentional.

One of the defenses available in private nuisance law is known as the “coming to the nuisance” defense. In a lawsuit involving an agricultural activity, this defense is available when the plaintiff moved into the area after the farming operation was established. This defense is not an automatic bar to recovery by the plaintiff, but is rather one more factor for the court to consider.

If the plaintiff prevails in a private nuisance lawsuit, the remedy typically consists of damages to compensate for the plaintiff’s injury and an injunction to abate the nuisance or refrain from further action that causes a nuisance.

**STATUTORY RESTRICTIONS ON LAWSUITS AGAINST AGRICULTURAL USES**

**Restriction on the Court’s Determination of What is a Nuisance**

Under s. 823.08, Stats., the statute directs the court to find that an agricultural use is not a nuisance if the court finds both of the following to be true:

- The agricultural use is conducted on land that was in agricultural use without substantial interruption before the plaintiff began the use of the property that the plaintiff alleges was interfered with by the agricultural use. (This is a statutory codification of the “coming to the nuisance” defense, as well as a requirement for the court to accept that defense and to determine the outcome of the lawsuit based on it.)

- The agricultural use does not present a substantial threat to public health or safety. The statute further provides that this protection applies whether or not a change in the agricultural use is alleged to have contributed to the nuisance. (This is analogous to the requirement for the plaintiff in a private nuisance lawsuit to prove that the agricultural activity is unreasonable, but sets the threshold of proof higher by requiring the plaintiff to show that the activity was a substantial threat to public health or safety.)

The second bullet point above also avoids the possibility of a court finding that the statute is an unconstitutional taking of private property without compensation, which occurred recently.
in Iowa. The Iowa Supreme Court invalidated the Iowa right-to-farm statute on the grounds that it did not allow the court to find even the most offensive and unreasonable agricultural activity to be a nuisance, and the Iowa statute thereby allowed some farmers to deprive nearby landowners of substantially all value of their property without giving those landowners any redress.

If the court determines that the agricultural use was substantially interrupted or if the agricultural use presents a substantial threat to public health or safety, the plaintiff may proceed. Of course this does not guarantee that the plaintiff will prevail. It only means that the plaintiff may attempt to prove that the agricultural use constitutes a nuisance.

**Restrictions on Remedies**

If the defendant farmer does not successfully invoke the statutory defense, and the plaintiff persuades the court that the agricultural use is a nuisance, the remedies available to the plaintiff are restricted by the statute as follows:

- Any relief granted by the court may not substantially restrict or regulate the agricultural use unless it is a substantial threat to public health and safety.

- The court must request public agencies with expertise in agricultural matters to give the court suggestions for practices to mitigate the effects of the agricultural use which is a nuisance, if the court orders mitigation.

- The court must give the defendant a reasonable time to undertake court-ordered mitigation which may not be less than one year after the date of the order unless the agricultural use is a substantial threat to public health or safety.

- The court may not order the defendant to undertake mitigation that substantially and adversely affects the economic viability of the agricultural use, unless the agricultural use is a substantial threat to public health and safety.

**Litigation Expenses**

If the defendant prevails in the action (i.e., either the defendant successfully raises the statutory defense or the plaintiff fails to prove that the agricultural use is a nuisance), the statute authorizes the award of costs and expenses to the defendant. This statute differs from the normal rule for civil lawsuits, which limits the costs and expenses that a prevailing party may recover.

The statute defines “litigation expenses” as the sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare for or participate in a legal action in which an agricultural use is alleged to be a nuisance. The statute then directs the court to award litigation expenses to the defendant in any action which an agricultural use is alleged to be a nuisance, if the agricultural use is found not to be a nuisance.

The Legal Memorandum was prepared on August 16, 2000, by Mark C. Patronsy, Senior Staff Attorney.