

State of Wisconsin



1995 Senate Bill 498

Date of enactment: **June 6, 1996**
Date of publication*: **June 20, 1996**

1995 WISCONSIN ACT 395

AN ACT *to renumber and amend* 779.035 (2); *to amend* 779.02 (6), 779.14 (1m) (b) 1. and 779.14 (2) (a) (intro.); and *to create* 779.035 (2) (b) and 779.14 (2) (am) of the statutes; **relating to:** subcontractor and supplier claims against private and public construction project payment bonds and defense of actions by prime contractors on construction liens.

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

SECTION 1. 779.02 (6) of the statutes is amended to read:

779.02 (6) PRIME CONTRACTORS TO DEFEND LIEN ACTIONS. Where a lien is filed under this subchapter by any person other than the prime contractor, the prime contractor shall defend any action thereon at personal expense, and during the pendency of the action the owner may withhold from the prime contractor the amount for which the lien was filed and sufficient to defray the costs of the action. In case of judgment against the owner, the owner may deduct from any amount due to the prime contractor the amount of the judgment and if the judgment exceeds the amount due, the owner may recover the difference from the prime contractor. This subsection does not apply if the lien is the result of the failure of the owner to pay the prime contractor.

SECTION 2. 779.035 (2) of the statutes is renumbered 779.035 (2) (a) and amended to read:

779.035 (2) (a) Any Except as provided in par. (b), any party in interest may, not later than one year after the completion of the contract for the construction of the improvement, maintain an action in his or her own name against the prime contractor and the sureties upon the

bond for the recovery of any damages sustained by reason of the failure of the prime contractor to comply with the contract or with the contract between the prime contractor and subcontractors. If the amount realized on the bond is insufficient to satisfy all of the claims of the parties in full, it shall be distributed among the parties proportionally.

SECTION 3. 779.035 (2) (b) of the statutes is created to read:

779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor or supplier may maintain an action under par. (a) only if the subcontractor or supplier has notified the prime contractor in writing that the subcontractor or supplier was providing labor or materials for the construction of the improvement. The notice must be provided no later than 60 days after the date on which the subcontractor or supplier first provided the labor or materials.

2. A notice under subd. 1. is not required if any of the following applies:

a. The contract for the provision of the labor or materials does not exceed \$5,000.

b. The action is brought by an employe of the prime contractor, the subcontractor or the supplier.

* 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].

c. The subcontractor or supplier is listed in a written contract, or in a document appended to a written contract, between a subcontractor or supplier and the prime contractor.

SECTION 4. 779.14 (1m) (b) 1. of the statutes is amended to read:

779.14 (1m) (b) 1. A contract under par. (a) shall not be made unless the prime contractor gives a bond issued by a surety company licensed to do business in this state. ~~The department of natural resources for contracts under s. 23.41, the department of administration for other state contracts, and the public board or body authorized to enter into such contracts for all other contracts under par. (a), may waive the requirement that contractors furnish bonds if guarantees or warranties deemed adequate by the department of natural resources, department of administration or public board or body are provided for by the contract and unless the prime contractor agrees, to the extent practicable, to maintain a list of all subcontractors and suppliers performing labor or furnishing materials under the contract.~~

SECTION 5. 779.14 (2) (a) (intro.) of the statutes is amended to read:

779.14 (2) (a) (intro.) ~~Not~~ Except as provided in par. (am), no later than one year after the completion of work under the contract, any party in interest, including any subcontractor or supplier, may maintain an action in that party's name against the prime contractor and the sureties upon the bond for the recovery of any damages sustained by reason of any of the following:

SECTION 6. 779.14 (2) (am) of the statutes is created to read:

779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor or supplier may maintain an action under par. (a) only if the subcontractor or supplier has notified the prime contractor in writing that the subcontractor or supplier has provided or will provide labor or materials to the public work or improvement. The notice must be provided no later than 60 days after the date on which the subcontractor or supplier first provided the labor or materials.

2. A notice under subd. 1. is not required if any of the following applies:

a. The contract for the provision of the labor or materials does not exceed \$5,000.

b. The action is brought by an employe of the prime contractor, the subcontractor or the supplier.

c. The subcontractor or supplier is listed in the list required to be maintained under sub. (1m) (b) 1. or in a written contract, or in a document appended to a written contract, between a subcontractor or supplier and the prime contractor.

SECTION 7. Initial applicability.

(1) This act first applies to contracts entered into on the effective date of this subsection.

SECTION 8. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.