

1999 ASSEMBLY BILL 945

March 29, 2000 – Introduced by Representative POCAN. Referred to Committee on Judiciary and Personal Privacy.

- 1 **AN ACT to create** 895.74 of the statutes; **relating to:** creating a private action
2 for injuries resulting from the failure to comply with a public contract.

Analysis by the Legislative Reference Bureau

Generally, if a person fails to comply with all of the provisions of a contract, the other party to the contract may bring a suit against the person for damages related to the failure or for specific performance of the contract provisions. Under current law, if a contractor obstructs a street or sidewalk while performing the contracted duties, the contractor is required to put up and maintain barriers and lights to prevent accidents. If the contractor fails to provide the barriers and lights, and that failure results in an accident, the contractor is liable for damages caused by that failure. Current law also requires the contract to include a provision to this effect, and a provision making the contractor liable for any negligent performance of the contract.

In *Sussex Tool and Supply, Inc. v. Mainline Sewer and Water, Inc.*, No. 98-2649 (Nov. 1999), the Wisconsin court of appeals held that a business whose profits suffered due to decreased road accessibility could not sue the private contractor constructing the sewer under contract with a village. The contract required the contractor to provide vehicular access at all times to the properties affected by the project. The court held that the business did not have standing as a beneficiary of the contract because a public works project benefits the public as a whole, not individual public members. The court said that an individual may recover his or her damages resulting from the failure to fulfill the provisions of a public works contract only if the contract specifically provides for damage awards to individual public

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members. The court denied the business from recovering under a negligence claim because the court felt that to do so would open a field of liability with no just or sensible stopping point.

This bill allows an individual to sue a private contractor if the individual suffers physical injury, sickness or death as a result of the failure of the private contractor to perform any provision of a contract between the contractor and a governmental unit. The bill places the burden of proof upon the injured individual to prove his or her case by a preponderance of the evidence. Under the bill, if the individual prevails, he or she may recover litigation costs, including reasonable attorney fees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 895.74 of the statutes is created to read:

2 **895.74 Private action for physical injury, sickness or death. (1)** In this
3 section, “governmental unit” means the state, any county, city, village or town, or any
4 political subdivision, department, division, board or agency of the state, county, city,
5 village or town.

6 **(2)** Except as provided in ss. 895.48 (2) (b), 895.482 (2), 895.483 (1), 895.485 (2)
7 and (4), 895.51 (2) and (3) and 895.517 (2) any individual who suffers physical injury,
8 sickness or death as the result of the failure of a private person to perform any
9 provision of a contract between that private person and a governmental unit has a
10 cause of action against that private person for that physical injury, sickness or death.

11 **(3)** The burden of proof in a civil action under sub. (2) rests with the individual
12 who suffers the physical injury, sickness or death to prove his or her case by a
13 preponderance of the credible evidence.

14 **(4)** If the plaintiff prevails in a civil action under sub. (2), he or she may recover
15 special and general damages, punitive damages, costs of the investigation and

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1 litigation which were reasonably incurred and, notwithstanding s. 814.04 (1),
2 reasonable attorney fees.

3 **SECTION 2. Initial applicability.**

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

6 (END)