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H.B. No. 679

A BILL TO BE ENTITLED

1 AN ACT
2 relating to limitations on the use of workers' compensation
3 insurance experience modifier values in soliciting and awarding
4 public and private construction contracts.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Section 272.001, Business &
7 Commerce Code, is amended to read as follows:

8 Sec. 272.001. VOIDABLE CONTRACT PROVISION: CHOICE OF LAW.

9 SECTION 2. Section 272.002, Business & Commerce Code, is
10 amended to read as follows:

11 Sec. 272.002. INAPPLICABILITY [~~OF CHAPTER~~]. Section
12 272.001 [~~This chapter~~] does not apply to a construction contract
13 that:

14 (1) is a partnership agreement or other agreement
15 governing an entity or trust;

16 (2) provides for a loan or other extension of credit
17 and the party promising to perform the work that is the subject of
18 the construction contract is doing so as part of the party's
19 agreements with the lender or other person who extends credit; or

20 (3) is for the management of real property or
21 improvements and the obligation to perform the work that is the
22 subject of the construction contract is part of that management.

23 SECTION 3. Chapter 272, Business & Commerce Code, is
24 amended by adding Section 272.003 to read as follows:

25 Sec. 272.003. VOIDABLE CONTRACT PROVISION: EXPERIENCE

1 MODIFIER. (a) In this section:

2 (1) "Contract solicitation" means a request for bids,
3 proposals, qualifications, offers, or other responses from
4 potential contractors under a construction contract.

5 (2) "Experience modifier" and "governmental entity"
6 have the meanings assigned by Section 2252.909, Government Code.

7 (b) This section does not apply to a governmental entity.

8 (c) With respect to a construction contract:

9 (1) an offer to contract may not contain a term
10 requiring a person to have a specified experience modifier in order
11 to accept the offer; and

12 (2) a contract solicitation may not require a person
13 to have a specified experience modifier in order to submit a
14 response to the contract solicitation.

15 (d) A construction contract or an agreement collateral to or
16 affecting a construction contract may not require the contractor to
17 have a specified experience modifier.

18 (e) A contract solicitation, an offer, a construction
19 contract, or an agreement collateral to or affecting a construction
20 contract that violates Subsection (c) or (d) is voidable as against
21 public policy.

22 SECTION 4. Subchapter 7, Chapter 2252, Government Code, is
23 amended by adding Section 2252.909 to read as follows:

24 Sec. 2252.909. VOIDABLE CONTRACT PROVISION: EXPERIENCE
25 MODIFIER. (a) In this section:

26 (1) "Contract" means a contract awarded by a
27 governmental entity that is:

1 (A) a construction contract, as defined by
2 Section 272.0001, Business & Commerce Code; or

3 (B) a contract for constructing, altering, or
4 repairing a public building or carrying out or completing any
5 public work.

6 (2) "Contract solicitation" means a request for bids,
7 proposals, qualifications, offers, or other responses from
8 potential contractors under a contract.

9 (3) "Experience modifier" means a factor expressed as
10 a value that:

11 (A) is assigned to an employer seeking to
12 purchase a workers' compensation insurance policy in this state;

13 (B) affects the premium amount for the policy;
14 and

15 (C) is based on the employer's past loss
16 experience.

17 (4) "Governmental entity" means:

18 (A) a department, commission, board, office, or
19 other agency in the executive branch of state government created by
20 the state constitution or a state statute, including an institution
21 of higher education as defined by Section 61.003, Education Code;
22 or

23 (B) a political subdivision of this state,
24 including a municipality, county, or special purpose district.

25 (b) With respect to a contract:

26 (1) an offer to contract may not contain a term
27 requiring a person to have a specified experience modifier in order

1 to accept the offer; and

2 (2) a contract solicitation may not require a person
3 to have a specified experience modifier in order to submit a
4 response to the contract solicitation.

5 (c) A contract or an agreement collateral to or affecting a
6 contract may not require the contractor to have a specified
7 experience modifier.

8 (d) A contract solicitation, an offer, a contract, or an
9 agreement collateral to or affecting a contract that violates
10 Subsection (b) or (c) is voidable as against public policy.

11 SECTION 5. The changes in law made by this Act to Chapter
12 272, Business & Commerce Code, apply only to a contract
13 solicitation or an offer to contract first issued on or after the
14 effective date of this Act or a contract, or agreement collateral to
15 or affecting a contract, entered into on or after the effective date
16 of this Act. A contract solicitation or an offer to contract first
17 issued before the effective date of this Act or a contract, or
18 agreement collateral to or affecting a contract, entered into
19 before the effective date of this Act is governed by the law in
20 effect on the date the solicitation or offer was first issued or the
21 contract or agreement was entered into, and that law is continued in
22 effect for that purpose.

23 SECTION 6. Section 2252.909, Government Code, as added by
24 this Act, applies only to a contract for which a governmental entity
25 first advertises or otherwise solicits offers on or after the
26 effective date of this Act. A contract for which a governmental
27 entity first advertised or otherwise solicited offers before the

1 effective date of this Act is governed by the law in effect on the
2 date the governmental entity first advertised or otherwise
3 solicited offers, and that law is continued in effect for that
4 purpose.

5 SECTION 7. This Act takes effect September 1, 2023.