

By: Bell of Kaufman

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:

1 Sec. 272.003. VOIDABLE CONTRACT PROVISION: EXPERIENCE
2 MODIFIER. (a) In this section:

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

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

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

9 (c) With respect to a construction contract:

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

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

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

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

23 SECTION 4. Subchapter [Z](#), Chapter [2252](#), Government Code, is
24 amended by adding Section 2252.909 to read as follows:

25 Sec. 2252.909. CONTRACT AWARD BASED ON EXPERIENCE MODIFIER
26 PROHIBITED. (a) In this section:

27 (1) "Contract" means:

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) "Experience modifier" means a factor expressed as
7 a value that:

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

10 (B) affects the premium amount for the policy;
11 and

12 (C) is based on the employer's past and
13 prospective loss cost experience.

14 (3) "Governmental entity" means:

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

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

22 (b) Notwithstanding any other law, a governmental entity
23 may not:

24 (1) request or require an offeror to include an
25 experience modifier in a bid, proposal, qualification, offer, or
26 other response submitted as part of the selection process for the
27 award of a contract; or

1 (2) consider an experience modifier in the process of
2 awarding a contract, including the:

3 (A) evaluation of bids, proposals,
4 qualifications, offers, or other responses; or

5 (B) selection of an offeror.

6 (c) A contract entered into in violation of Subsection (b)
7 is void as against public policy.

8 SECTION 5. The changes in law made by this Act to Chapter
9 272, Business & Commerce Code, apply only to a contract
10 solicitation or an offer to contract first issued on or after the
11 effective date of this Act or a contract, or agreement collateral to
12 or affecting a contract, entered into on or after the effective date
13 of this Act. A contract solicitation or an offer to contract first
14 issued before the effective date of this Act or a contract, or
15 agreement collateral to or affecting a contract, entered into
16 before the effective date of this Act is governed by the law in
17 effect on the date the solicitation or offer was first issued or the
18 contract or agreement was entered into, and that law is continued in
19 effect for that purpose.

20 SECTION 6. Section 2252.909, Government Code, as added by
21 this Act, applies only to a contract for which a governmental entity
22 first advertises or otherwise solicits offers on or after the
23 effective date of this Act. A contract for which a governmental
24 entity first advertised or otherwise solicited offers before the
25 effective date of this Act is governed by the law in effect on the
26 date the governmental entity first advertised or otherwise
27 solicited offers, and that law is continued in effect for that

1 purpose.

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