

BILL ANALYSIS

Senate Research Center

H.B. 679
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 679 prohibits the use of insurance experience modifiers in public and private construction contracts.

Experience modifiers are a workers' compensation actuarial tool normally used when determining rates for employers seeking to purchase workers' compensation coverage. An experience modifier formula rates a company by comparing the company's workers' comp claims profile (loss history) to other similarly sized companies in the same industry.

In the context of construction contracts, however, third party entities have begun requiring experience modifiers as a substitute for assessing company safety, which has led to unfair discrimination against contract bidders.

H.B. 679 ensures experience modifiers are applied only where appropriate and restricts the use of experience modifiers in private and public construction contracts.

H.B. 679 amends current law relating to limitations on the use of workers' compensation insurance experience modifier values in soliciting and awarding public and private construction contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 272.001, Business and Commerce Code, to read as follows:

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

SECTION 2. Amends Section 272.002, Business and Commerce Code, as follows:

Sec. 272.002. New heading: INAPPLICABILITY. Provides that Section 272.001 (Voidable Contract Provision), rather than Chapter 272 (Law Applicable to Certain Construction Contracts), does not apply to a construction contract that meets certain criteria.

SECTION 3. Amends Chapter 272, Business and Commerce Code, by adding Section 272.003, as follows:

Sec. 272.003. VOIDABLE CONTRACT PROVISION: EXPERIENCE MODIFIER.

(a) Defines "contract solicitation," "experience modifier," and "governmental entity."

(b) Provides that this section does not apply to a governmental entity.

(c) Provides that with respect to a construction contract:

(1) an offer to contract is prohibited from containing a term requiring a person to have a specified experience modifier in order to accept the offer; and

(2) a contract solicitation is prohibited from requiring a person to have a specified experience modifier in order to submit a response to the contract solicitation.

(d) Prohibits a construction contract or an agreement collateral to or affecting a construction contract from requiring the contractor to have a specified experience modifier.

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

SECTION 4. Amends Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.909, as follows:

Sec. 2252.909. VOIDABLE CONTRACT PROVISION: EXPERIENCE MODIFIER.

(a) Defines "contract," "contract solicitation," "experience modifier," and "governmental entity."

(b) Provides that with respect to a contract:

(1) an offer to contract is prohibited from containing a term requiring a person to have a specified experience modifier in order to accept the offer; and

(2) a contract solicitation is prohibited from requiring a person to have a specified experience modifier in order to submit a response to the contract solicitation.

(c) Prohibits a contract or an agreement collateral to or affecting a contract from requiring the contractor to have a specified experience modifier.

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

SECTION 5. Makes application of Chapter 272, Business and Commerce Code, as amended by this Act, prospective.

SECTION 6. Makes application of Section 2252.909, Government Code, as added by this Act, prospective.

SECTION 7. Effective date: September 1, 2023.