

BILL ANALYSIS

C.S.H.B. 679
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Worker's compensation experience modification factors were historically used as an actuarial tool to determine prices in the insurance industry. However, third-party companies have promoted this metric over the past two decades as a reflection of a company's commitment to safety. This creates an arbitrary, inequitable qualifying process and adversely impacts contractors in Texas. C.S.H.B. 679 seeks to ensure that these actuarial standards are applied only to where they are relevant and not used as a tool to discriminate against contract bidders unfairly. Accordingly, the bill establishes limitations on the use of experience modifiers in public and private construction contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 679 amends the Business & Commerce Code to prohibit the following with respect to a construction contract:

- an offer to contract from including a term requiring a person to have a specified experience modifier in order to accept the offer;
- a contract solicitation from requiring a person to have a specified experience modifier in order to submit a response to the solicitation; and
- a contract or an agreement collateral to or affecting a contract from requiring the contractor to have a specified experience modifier.

These prohibitions do not apply to an executive branch state agency or a political subdivision and apply only to a contract solicitation or an offer to contract first issued on or after the bill's effective date or to a contract, or agreement collateral to or affecting a contract, entered into on or after that date.

C.S.H.B. 679 amends the Government Code to establish the same prohibitions with respect to a construction contract or a contract for constructing, altering, or repairing a public building or carrying out or completing any public work that is awarded by an executive branch state agency or a political subdivision. These prohibitions apply only to a contract for which an applicable governmental entity first advertises or otherwise solicits offers on or after the bill's effective date.

C.S.H.B. 679 voids as against public policy a contract solicitation, offer, construction contract, or agreement collateral to or affecting a construction contract that violates the prohibitions set out by the bill regarding experience modifiers. The bill defines, among other terms, "experience modifier" as a factor expressed as a value that is assigned to an employer seeking to purchase a workers' compensation insurance policy in Texas, affects the premium amount for the policy, and is based on the employer's past loss cost experience.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 679 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced defined "experience modifier" as a factor that is, among other things, based on an employer's past and prospective loss cost experience, the substitute omits from the definition prospective loss cost experience.

The introduced included provisions prohibiting an applicable government contract from being awarded based on an experience modifier. The substitute does not include these provisions but instead makes applicable to these government contracts the same prohibitions the bill applies to private construction contracts.