

By: Bell of Kaufman, Bell of Montgomery,  
Thompson of Brazoria, Lambert,  
Romero, Jr.

H.B. No. 679

Substitute the following for H.B. No. 679:

By: González of Dallas

C.S.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. VOIDABLE CONTRACT PROVISION: EXPERIENCE  
26 MODIFIER. (a) In this section:

27           (1) "Contract" means a contract awarded by a

1 governmental entity that is:

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

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

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

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

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

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

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

18 (4) "Governmental entity" means:

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

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

26 (b) With respect to a contract:

27 (1) an offer to contract may not contain a term

1 requiring a person to have a specified experience modifier in order  
2 to accept the offer; and

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

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

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

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

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

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

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