

House Bill 679
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
SECTION 1. The heading to Section 272.001, Business & Commerce Code, is amended to read as follows: Sec. 272.001. VOIDABLE CONTRACT PROVISION: <u>CHOICE OF LAW</u> .	No equivalent provision.	
SECTION 2. Section 272.002, Business & Commerce Code, is amended to read as follows: Sec. 272.002. INAPPLICABILITY [OF CHAPTER]. <u>Section 272.001</u> [This chapter] does not apply to a construction contract that: (1) is a partnership agreement or other agreement governing an entity or trust; (2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract is doing so as part of the party's agreements with the lender or other person who extends credit; or (3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract is part of that management.	No equivalent provision.	
SECTION 3. Chapter 272, Business & Commerce Code, is amended by adding Section 272.003 to read as follows: <u>Sec. 272.003. VOIDABLE CONTRACT PROVISION: EXPERIENCE MODIFIER. (a) In this section:</u> (1) <u>"Contract solicitation" means a request for bids, proposals, qualifications, offers, or other responses from potential contractors under a construction contract.</u> (2) <u>"Experience modifier" and "governmental entity" have the meanings assigned by Section 2252.909, Government Code.</u>	No equivalent provision.	

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- (b) This section does not apply to a governmental entity.
- (c) With respect to a construction contract:
 - (1) an offer to contract may not contain a term requiring a person to have a specified experience modifier in order to accept the offer; and
 - (2) a contract solicitation may not require a person to have a specified experience modifier in order to submit a response to the contract solicitation.
- (d) A construction contract or an agreement collateral to or affecting a construction contract may not require the contractor to have a specified experience modifier.
- (e) 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. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.909 to read as follows:
Sec. 2252.909. VOIDABLE CONTRACT PROVISION: EXPERIENCE MODIFIER. (a) In this section:
(1) "Contract" means a contract awarded by a governmental entity that is:
(A) a construction contract, as defined by Section 272.0001, Business & Commerce Code; or
(B) a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.
(2) "Contract solicitation" means a request for bids, proposals, qualifications, offers, or other responses from potential contractors under a contract.
(3) "Experience modifier" means a factor expressed as a value that:

SECTION 1. Same as House version.

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<p><u>(A) is assigned to an employer seeking to purchase a workers' compensation insurance policy in this state;</u></p> <p><u>(B) affects the premium amount for the policy; and</u></p> <p><u>(C) is based on the employer's past loss experience.</u></p> <p><u>(4) "Governmental entity" means:</u></p> <p><u>(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute, including an institution of higher education as defined by Section 61.003, Education Code; or</u></p> <p><u>(B) a political subdivision of this state, including a municipality, county, or special purpose district.</u></p> <p><u>(b) With respect to a contract:</u></p> <p><u>(1) an offer to contract may not contain a term requiring a person to have a specified experience modifier in order to accept the offer; and</u></p> <p><u>(2) a contract solicitation may not require a person to have a specified experience modifier in order to submit a response to the contract solicitation.</u></p> <p><u>(c) A contract or an agreement collateral to or affecting a contract may not require the contractor to have a specified experience modifier.</u></p> <p><u>(d) 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.</u></p>		

SECTION 5. The changes in law made by this Act to Chapter 272, Business & Commerce Code, apply only to a contract solicitation or an offer to contract first issued on or after the effective date of this Act or a contract, or agreement collateral to or affecting a contract, entered into on or after the effective

No equivalent provision.

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<p>date of this Act. A contract solicitation or an offer to contract first issued before the effective date of this Act or a contract, or agreement collateral to or affecting a contract, entered into before the effective date of this Act is governed by the law in effect on the date the solicitation or offer was first issued or the contract or agreement was entered into, and that law is continued in effect for that purpose.</p>		
<p>SECTION 6. Section 2252.909, Government Code, as added by this Act, applies only to a contract for which a governmental entity first advertises or otherwise solicits offers on or after the effective date of this Act. A contract for which a governmental entity first advertised or otherwise solicited offers before the effective date of this Act is governed by the law in effect on the date the governmental entity first advertised or otherwise solicited offers, and that law is continued in effect for that purpose.</p>	<p>SECTION 2. Same as House version.</p>	
<p>SECTION 7. This Act takes effect September 1, 2023.</p>	<p>SECTION 3. Same as House version.</p>	