

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 260

4
5 By: Senator K. Hammer
6 By: Representatives Brooks, Ladyman

For An Act To Be Entitled

9 AN ACT TO PROHIBIT THE USE OF AN EXPERIENCE
10 MODIFICATION FACTOR IN CERTAIN CONTRACTS AND
11 PROCUREMENTS; TO AMEND THE ARKANSAS PROCUREMENT LAW;
12 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

13
14
15
16 TO PROHIBIT THE USE OF AN EXPERIENCE
17 MODIFICATION FACTOR IN CERTAIN CONTRACTS
18 AND PROCUREMENTS; AND TO DECLARE AN
19 EMERGENCY.

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. Arkansas Code Title 4, Chapter 56, Subchapter 1, is amended
25 to add an additional section to read as follows:

26 4-56-105. Prohibition on use of experience modification factor –

Definitions.

27
28 (a) As used in this section:

29 (1) "Contract" means an agreement for the provision of
30 construction services under which the contractor will be required to have and
31 maintain a workers' compensation insurance policy;

32 (2) "Experience modification factor" means a value assigned to
33 an employer as determined by a rate service organization in accordance with
34 the filings required to be made by the rate service organization under § 23-
35 67-201 et seq.;

36 (3) "Offer to contract" means a solicitation of bids, a request



1 for proposals, or a similar invitation to enter into a contract, that is
 2 extended to potential contractors for construction services; and

3 (4) "Rate service organization" means the same as defined in §
 4 23-67-202.

5 (b) A contract for construction services and an offer to contract
 6 shall not include a requirement that a bidder, offeror, or contractor have a
 7 specified experience modification factor to be eligible to participate in the
 8 solicitation or to be awarded a contract.

9
 10 SECTION 2. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
 11 amended to add an additional section to read as follows:

12 19-11-282. Prohibition on use of experience modification factor –
 13 Definitions.

14 (a) As used in this section:

15 (1) "Experience modification factor" means a value assigned to
 16 an employer as determined by a rate service organization in accordance with
 17 the filings required to be made by the rate service organization under § 23-
 18 67-201 et seq.;

19 (2) "Offer to contract" means a solicitation under this chapter,
 20 including without limitation an invitation for bids, a request for proposals,
 21 and a request for qualifications, in which an invitation to enter into a
 22 contract is extended to potential contractors for construction services; and

23 (3) "Rate service organization" means the same as defined in §
 24 23-67-202.

25 (b) A contract for construction services and an offer to contract
 26 shall not include a requirement that a bidder, offeror, or contractor have a
 27 specified experience modification factor to be eligible to participate in the
 28 solicitation or to be awarded a contract.

29
 30 SECTION 3. DO NOT CODIFY. Applicability.

31 This act applies to all contracts for construction services and offers
 32 to contract issued on or after the effective date of this act.

33
 34 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
 35 General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-
 36 19) pandemic has resulted in high levels of unemployment and an economic

1 crisis for many businesses; that many businesses in the state are struggling
2 to remain in business, an effort that is hampered by the unfair practice of
3 using experience modification factors in determining eligibility to
4 participate in certain contract solicitations and awards; that businesses in
5 this state are losing business because of the unfair practice of requiring
6 specific experience modification factors in determining the eligibility of
7 contractors and potential contractors; that the effect of this unfair
8 practice is increased unemployment as businesses are forced to close due to
9 an inability to obtain contracts; that prohibiting the use of experience
10 modification factors in certain contracts and procurements will alleviate the
11 burden on businesses in this state; and that this act is immediately
12 necessary because immediately removing the impediment to economic growth
13 presented by the use of experience modification factors in certain contracts
14 and procurements will help to revitalize the workforce and increase
15 employment in the state, thereby assisting in the state's economic recovery
16 and improving employers' ability to continue to provide employment and
17 services necessary to the peace, health, and safety of the residents of this
18 state. Therefore, an emergency is declared to exist, and this act being
19 immediately necessary for the preservation of the public peace, health, and
20 safety shall become effective on:

21 (1) The date of its approval by the Governor;

22 (2) If the bill is neither approved nor vetoed by the Governor,
23 the expiration of the period of time during which the Governor may veto the
24 bill; or

25 (3) If the bill is vetoed by the Governor and the veto is
26 overridden, the date the last house overrides the veto.

27
28
29
30
31
32
33
34
35
36