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## HOUSE BILL NO. 1372

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 (Proposed by the House Committee on Commerce and Labor  
 on February 5, 2015)

(Patron Prior to Substitute—Delegate Webert)

A BILL to amend and reenact § 38.2-1913 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 11 a section numbered 11-9.8, relating to offers to contract that condition eligibility on a bidder's experience modification factor; requiring the development and use of an experience modification factor that excludes not-at-fault motor vehicle accidents.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-1913 Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 11 a section numbered 11-9.8 as follows:**

**§ 11-9.8. Construction of certain terms of offer to contract; use of secondary experience modification factor.**

A. As used in this section:

"Contract" means an agreement for the provision of services under which the contractor will be required to have and maintain a policy of insurance as defined in § 38.2-119.

"Experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with their uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

"Offer to contract" means a solicitation of bids, request for proposals, or similar invitation to enter into a contract that is extended to potential contractors.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state..

"Secondary experience modification factor" means the secondary experience modification factor developed by a rate service organization pursuant to subsection D of § 38.2-1913.

B. A term of an offer to contract issued on or after July 1, 2016, that requires that the successful bidder have an experience modification factor equal to or less than any specified value shall be satisfied by any bidder that has a secondary experience modification factor equal to or less than the specified value.

C. Any contract or offer to contract that requires the contractor or bidder responding to the offer to contract to have an experience modification factor equal to or less than any specified value and that is entered into or issued on or after July 1, 2016, shall be construed as requiring the contractor or person responding to the offer to have a secondary experience modification factor equal to or less than the specified value.

**§ 38.2-1913. Operation and control of rate service organizations.**

A. No rate service organization shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall use the service of a rate service organization for such purposes unless the rate service organization has obtained a license under § 38.2-1914.

B. No rate service organization shall refuse to supply any services for which it is licensed in this Commonwealth to any insurer authorized to do business in this Commonwealth and offering to pay the fair and usual compensation for the services.

C. Any rate service organization subject to this chapter may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements, other evidences of insurance, or evidences of the cancellation of insurance, and may make reasonable rules governing their submission and the correction of any errors or omissions in them. This provision applies to the classes of insurance for which the rate service organization is licensed pursuant to § 38.2-1914.

D. A rate service organization may develop a uniform policy and uniform (i) statistical plans, (ii) experience rating plans, and (iii) classification systems for use by its members in the provision of insurance defined in § 38.2-119 and the reporting of the experience of this line of insurance. Each rate service organization may also develop manual rules for the recording and reporting of experience data of members pursuant to its uniform plans and systems. Such uniform plans, systems, and rules shall be filed with the Commission by the rate service organization and be approved prior to their use by members of the rate service organization. *Every uniform experience rating plan shall provide for a calculation of a secondary experience modification factor for the purposes outlined in § 11-9.8. The methodology for calculating a secondary experience modification factor for an employer shall be the*

60 *same methodology used in assigning an experience modification factor for the employer except that the*  
61 *secondary experience modification factor shall exclude any loss experience arising from any motor*  
62 *vehicle accident where the employee was not wholly or partially at fault. Where liability has not yet*  
63 *been finally determined, the rate service organization shall not use information provided with regard to*  
64 *the motor vehicle accident in its calculation of an employer's secondary experience modification factor*  
65 *until a final determination of liability has been made.*

66 E. No insurer shall be required to become a member or subscriber to any rate service organization.