

SENATE BILL NO. 227

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 8.01-581.010 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 21 of Title 8.01 an article numbered 3, consisting of sections numbered 8.01-581.017 through 8.01-581.021, relating to arbitration; high-volume arbitration service providers; selection of arbitrator; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-581.010 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 21 of Title 8.01 an article numbered 3, consisting of sections numbered 8.01-581.017 through 8.01-581.021, as follows:

§ 8.01-581.010. Vacating an award.

Upon application of a party, the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;
2. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
3. The arbitrators exceeded their powers;
4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 8.01-581.04, in such a way as to substantially prejudice the rights of a party; ~~or~~
5. There was no arbitration agreement and the issue was not adversely determined in proceedings under § 8.01-581.02, and the party did not participate in the arbitration hearing without raising the objection; *or*
6. *The award was rendered by an arbitrator selected in violation of the provisions of Article 3 (§ 8.01-017 et seq.).*

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

An application under this section shall be made within ~~ninety~~ 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud, or other undue means, it shall be made within ~~ninety~~ 90 days after such grounds are known or reasonably should have been known. An

application shall be made by filing a petition with the appropriate court within the prescribed time limits of this section, or by raising reasons supporting vacation in response to another party's petition to confirm the award, provided that such response is filed within the prescribed time limits of this section.

In vacating the award on grounds other than that stated in subdivision 5, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 8.01-581.03. If the award is vacated on grounds set forth in subdivisions 3 and 4 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 8.01-581.03. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Article 3.

Arbitration Fairness Act.

§ 8.01-581.017. Definitions.

As used in this article, unless the context requires a different meaning:

"Arbitration service provider" means any person or entity that administers, facilitates, or provides arbitration services in the Commonwealth.

"Consumer" means an individual who seeks, uses, or acquires, by purchase or lease, any goods or services for personal, family, or household purposes or is an individual employed in the Commonwealth.

"Drafting party" means the company or business that included a pre-dispute arbitration provision in a contract with a consumer or employee. "Drafting party" includes any third party relying upon or otherwise subject to the arbitration provision other than the employee or consumer.

"High-volume arbitration service provider" means any arbitration service provider that conducts more than 100 arbitrations per calendar year that arise from a pre-dispute arbitration agreement involving a consumer and a Virginia-connected transaction.

"Neutral arbitrator" means an arbitrator who is (i) selected jointly by the parties or by the arbitrators selected by the parties or (ii) appointed by the court when the parties or arbitrators selected by the parties fail to select an arbitrator jointly.

"Pre-dispute arbitration agreement" means an agreement to arbitrate a dispute that had not yet arisen at the time of making such agreement.

"Virginia-connected transaction" means any transaction, agreement, or dispute that arises out of, relates

to, or is otherwise connected with activities, relationships, or events occurring within the Commonwealth, including any arbitration ordered by a state or federal court located in the Commonwealth.

§ 8.01-581.018. Arbitrator selection process; methods; prohibited practices.

A. No high-volume arbitration service provider shall require any party to accept or use any particular arbitrator in an arbitration proceeding involving a Virginia-connected transaction.

B. A high-volume arbitration service provider shall establish and maintain procedures that provide parties with (i) a meaningful opportunity to agree upon an arbitrator and (ii) for cases where an agreement upon an arbitrator cannot be reached, an impartial system for arbitrator selection that ensures that (a) each party has an equal voice in the selection process, (b) neither party may unilaterally impose an arbitrator upon the other party, and (c) the selection process is transparent and fair to all parties.

C. An acceptable impartial system for arbitrator selection in accordance with subsection B shall include the following:

1. A striking method in which parties alternatively eliminate arbitrators from a list until one remains;

2. A ranking method in which parties rank arbitrators and the highest mutually ranked arbitrator is selected;

3. A random selection method in which an arbitrator is selected from a pool of arbitrators previously approved by both parties; or

4. Any other method that ensures neither party can compel the other to accept an arbitrator without meaningful input.

D. In any arbitration with a high-volume arbitration service provider pursuant to a pre-dispute arbitration agreement, the proposed neutral arbitrator shall disclose all matters that may cause a person who is aware of the facts to have reasonable uncertainty that such proposed neutral arbitrator would be able to be impartial. Such disclosures include:

1. The existence of any ground for disqualification of a judge for a violation of the Canons of Judicial Conduct;

2. Whether the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding; or

3. The names of the parties to all prior or pending arbitrations during the preceding five years where the proposed neutral arbitrator served or is serving as a party arbitrator for a party to the arbitration

94 *proceeding or for a lawyer for a party to such proceeding, and the results of each case arbitrated to*
95 *conclusion, including the date of the arbitration award, the identification of the prevailing party, the names*
96 *of the parties' attorneys, the text of any written award, and the amount of monetary damages awarded, if any.*
97 *To preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the*
98 *pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or*
99 *corporate entity.*

100 *E. No high-volume arbitration service provider shall administer an arbitration involving a consumer and*
101 *a Virginia-connected transaction if any party or law firm representing a party has, or within the preceding*
102 *five years has had, any type of financial interest in the private arbitration company, including by ownership,*
103 *employment, or appointment and payment as an arbitrator or other neutral.*

104 **§ 8.01-581.019. Reporting requirements.**

105 *All high-volume arbitration service providers shall annually file with the State Corporation Commission a*
106 *report that contains the following information:*

- 107 *1. The total number of arbitrations involving Virginia-connected transactions conducted in the preceding*
108 *calendar year;*
109 *2. A description of the arbitration selection procedures utilized; and*
110 *3. If collected, statistical data regarding arbitrator selection outcomes and the satisfaction rates of the*
111 *parties involved.*

112 **§ 8.01-581.020. Procedural requirements.**

113 *A. Where an arbitration in a Virginia-connected transaction requires, either expressly or through*
114 *application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain*
115 *fees and costs before the arbitration can proceed, such drafting party shall (i) be in material breach of the*
116 *arbitration agreement; (ii) be in default of the arbitration; and (iii) be deemed to have waived the right to*
117 *compel such arbitration if the fees or costs to initiate an arbitration proceeding are not paid within 30 days*
118 *after the due date.*

119 *B. After a consumer meets the filing requirements necessary to initiate an arbitration with a high-volume*
120 *arbitration service provider, the arbitration provider shall immediately provide an invoice for any fees and*
121 *costs required before the arbitration can proceed to all parties to the arbitration. The invoice shall (i) be*
122 *provided in its entirety; (ii) state the full amount owed and the date that payment is due; (iii) include*
123 *estimated future charges through the completion of the arbitration; and (iv) be sent to all parties by the same*
124 *method of delivery on the same day. Absent an express provision in the arbitration agreement stating the*

number of days within which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt.

C. If the drafting party materially breaches the arbitration agreement and is in default under subsection A, the employee or consumer may do either of the following:

1. Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction; or
2. Compel arbitration in which the drafting party shall pay reasonable attorney fees and costs related to the arbitration.

If the consumer proceeds with an action in a court of appropriate jurisdiction, the court shall impose sanctions on the drafting party.

D. Any statute of limitations as to a claim regarding or relating to a Virginia-connected transaction shall be tolled as of the date a party sends an arbitration service provider a written demand to arbitrate and shall remain tolled until 90 days after the termination or completion of the arbitration.

If the non-drafting party withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction pursuant to subdivision C 1, the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in a court, arbitration forum, or other dispute resolution forum.

If an arbitration agreement requires that arbitration of a controversy be demanded or initiated by a party to the arbitration agreement within a certain period of time, the commencement of a civil action by that party based upon that controversy within such period of time shall toll the applicable time limitations contained in the arbitration agreement with respect to that controversy from the earlier of (i) the date the civil action is commenced until 30 days after a final determination by the court that the party is required to arbitrate the controversy or (ii) 30 days after the final termination of the civil action that was commenced and initiated the tolling.

§ 8.01-581.021. Enforcement; civil remedies.

A. A party subjected to an arbitrator selection procedure that violates the provisions of this article may seek injunctive relief or other appropriate civil remedy in the circuit court of the city or county in which the arbitration shall be held or in the circuit court for the City of Richmond. If a hearing has been held and an award has been made pursuant to Article 2 (§ 8.01-581.01 et seq.), a party alleging that such award was determined by an arbitrator selected in violation of the provisions of this article may make an application with the court to vacate the award, and the court shall proceed in accordance with § 8.01-581.010.

B. Upon a determination that a high-volume arbitration service provider has failed to comply with the

156 *provisions of this article, the State Corporation Commission may impose a civil penalty in an amount not to*
157 *exceed \$10,000 per violation.*

158 *C. The requirements of this article shall be incorporated as material terms of any pre-dispute arbitration*
159 *agreement transacted pursuant to Virginia contract law.*

160 *D. Nothing in this article shall be construed to preempt federal law governing arbitration but shall be*
161 *construed to be consistent with such law to the maximum extent permitted. If any provision of this section is*
162 *held invalid or unenforceable, the remaining provisions shall remain in full force and effect.*

163 **2. That the provisions of this act shall apply to all arbitration agreements entered into on or after July**
164 **1, 2026.**