

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

6 [S 227]

7 Approved

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

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

12 **§ 8.01-581.010. Vacating an award.**

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

- 14 1. The award was procured by corruption, fraud or other undue means;
 15 2. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators,
 16 or misconduct prejudicing the rights of any party;
 17 3. The arbitrators exceeded their powers;
 18 4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to
 19 hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of
 20 § 8.01-581.04, in such a way as to substantially prejudice the rights of a party; ~~or~~
 21 5. There was no arbitration agreement and the issue was not adversely determined in proceedings under
 22 § 8.01-581.02, and the party did not participate in the arbitration hearing without raising the objection; *or*
 23 6. *The award was rendered by an arbitrator selected in violation of the provisions of Article 3 (§ 8.01-017*
 24 *et seq.).*

25 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
 26 grounds for vacating or refusing to confirm the award.

27 An application under this section shall be made within ~~ninety~~ 90 days after delivery of a copy of the
 28 award to the applicant, except that, if predicated upon corruption, fraud, or other undue means, it shall be
 29 made within ~~ninety~~ 90 days after such grounds are known or reasonably should have been known. An
 30 application shall be made by filing a petition with the appropriate court within the prescribed time limits of
 31 this section, or by raising reasons supporting vacation in response to another party's petition to confirm the
 32 award, provided that such response is filed within the prescribed time limits of this section.

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

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

41 *Article 3.*42 *Arbitration Fairness Act.*43 **§ 8.01-581.017. Definitions.**

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

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

47 *"Consumer" means an individual who seeks, uses, or acquires, by purchase or lease, any goods or*
 48 *services for personal, family, or household purposes.*

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

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

55 *"Neutral arbitrator" means an arbitrator who is (i) selected jointly by the parties or by the arbitrators*
 56 *selected by the parties or (ii) appointed by the court when the parties or arbitrators selected by the parties*

57 fail to select an arbitrator jointly.

58 "Pre-dispute arbitration agreement" means an agreement to arbitrate a dispute between a consumer and
59 a business or between an individual employed in the Commonwealth and that individual's employer that had
60 not yet arisen at the time of making such agreement.

61 "Virginia-connected transaction" means any transaction, agreement, or dispute that arises out of, relates
62 to, or is otherwise connected with activities, relationships, or events occurring within the Commonwealth,
63 including any arbitration ordered by a state or federal court located in the Commonwealth.

64 **§ 8.01-581.018. Arbitrator selection process; methods; prohibited practices.**

65 A. In any arbitration with a high-volume arbitration service provider pursuant to a pre-dispute
66 arbitration agreement, the high-volume arbitration service provider shall not require any party to accept or
67 use any particular arbitrator in an arbitration proceeding involving a Virginia-connected transaction.

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

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

- 76 1. A striking method in which parties alternatively eliminate arbitrators from a list until one remains;
- 77 2. A ranking method in which parties rank arbitrators and the highest mutually ranked arbitrator is
78 selected;
- 79 3. A random selection method in which an arbitrator is selected from a pool of arbitrators previously
80 approved by both parties; or
- 81 4. Any other method that ensures neither party can compel the other to accept an arbitrator without
82 meaningful input.

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

- 87 1. The existence of any ground for disqualification of a judge for a violation of the Canons of Judicial
88 Conduct;
- 89 2. Whether the proposed neutral arbitrator has a current arrangement concerning prospective
90 employment or other compensated service as a dispute resolution neutral or is participating in, or, within the
91 last two years, has participated in, discussions regarding such prospective employment or service with a
92 party to the proceeding; or
- 93 3. The names of the parties to all prior or pending arbitrations during the preceding five years where the
94 proposed neutral arbitrator served or is serving as a party arbitrator for a party to the arbitration
95 proceeding or for a lawyer for a party to such proceeding, and the results of each case arbitrated to
96 conclusion, including the date of the arbitration award, the identification of the prevailing party, the names
97 of the parties' attorneys, the text of any written award, and the amount of monetary damages awarded, if any.
98 To preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the
99 pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or
100 corporate entity.

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

106 **§ 8.01-581.019. Reporting requirements.**

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

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

114 **§ 8.01-581.020. Procedural requirements.**

115 A. Where an arbitration in a Virginia-connected transaction requires, either expressly or through
116 application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain
117 fees and costs before the arbitration can proceed, such drafting party shall (i) be in material breach of the
118 arbitration agreement; (ii) be in default of the arbitration; and (iii) be deemed to have waived the right to

119 *compel such arbitration if the fees or costs to initiate an arbitration proceeding are not paid within 30 days*
120 *after the due date.*

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

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

131 *1. Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction; or*

132 *2. Compel arbitration in which the drafting party shall pay reasonable attorney fees and costs related to*
133 *the arbitration.*

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

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

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

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

150 **§ 8.01-581.021. Enforcement; civil remedies.**

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

157 *B. Upon a determination that a high-volume arbitration service provider has failed to comply with the*
158 *provisions of this article, the State Corporation Commission may impose a civil penalty in an amount not to*
159 *exceed \$10,000 per violation.*

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

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

165 **2. That the provisions of this act shall apply to all arbitration agreements entered into on or after July**
166 **1, 2026.**