

2021 SPECIAL SESSION I

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SENATE BILL NO. 1384

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend the Code of Virginia by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4377.1 through 2.2-4377.5, relating to the Virginia Public Procurement Act; local arbitration agreements.

Patron—Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4377.1 through 2.2-4377.5, as follows:

Article 7.

Civil Rights and Consumer Protection Disclosure Act.

§ 2.2-4377.1. Definitions.

As used in this article:

"Consumer dispute" means a dispute between an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes and the seller or provider of such property, services, money, or credit.

"Civil rights dispute" means a dispute (i) arising from an alleged violation of (a) the Constitution of the United States or the constitution of a state or (b) any federal, state, or local law that prohibits discrimination on the basis of race, sex, age, gender identity, sexual orientation, disability, religion, national origin, or any legally protected status in education, employment, credit, housing, public accommodations and facilities, voting, veterans or service member services, health care, or a program funded or conducted by the federal government, Commonwealth of Virginia, or local government, including any law referred to or described in § 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis, and (ii) in which at least one party alleging a violation described in clause (i) is one or more individuals or their authorized representative, including one or more individuals seeking certification as a class under Rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of state law.

"Employment dispute" means a dispute between one or more individuals or their authorized representative and a person arising out of or related to the work relationship or prospective work relationship between them, including a dispute regarding the terms of or payment for, advertising of, recruiting for, referring of, arranging for, or discipline or discharge in connection with such work, regardless of whether the individual is or would be classified as an employee or a non-employee with respect to such work, and including a dispute arising under any law referred to or described in § 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis, and including a dispute in which an individual or individuals seek certification as a class under Rule 23 of the Federal Rules of Civil Procedure or as a collective action under § 16(b) of the Fair Labor Standards Act, or a comparable rule or provision of state law.

"Pre-dispute arbitration clause" means any contractual provision under which one or both parties to the contract commits to or is required to resolve through private arbitration, rather than in court, disputes that have not yet arisen between them at the time the contract is made.

"Senior executive" means any person who holds the title of president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer or, without regard to title, salary, or compensation, performs the function of one or more of these positions.

§ 2.2-4377.2. Procurement procedures; disclosures.

A. For any procurement solicitation or contract exceeding \$10,000 for goods and services, a participating locality may require the bidder or offeror to disclose information regarding the use of pre-dispute arbitration clauses in employment, civil rights, and consumer disputes. The participating locality shall require the bidder or offeror to provide written or electronic submissions, together with any requested documents referenced in such submissions, to allow the locality to ascertain:

1. Whether the bidder or offeror requires persons with whom it is in a work relationship or prospective work relationship to sign or otherwise enter into a contract containing a pre-dispute arbitration clause that would cover an employment or civil rights dispute; and

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59 2. Whether the bidder or offeror requires consumers to sign or otherwise enter into a contract
60 containing a pre-dispute arbitration clause that would cover a consumer or civil rights dispute as a
61 condition of purchasing products or services, downloading mobile applications, or using websites;

62 B. If a bidder or offeror indicates in its submission, pursuant to subsection A, that it utilizes
63 arbitration, such bidder or offeror shall provide a copy of its pre-dispute arbitration clause to the
64 participating locality along with the following information:

65 1. The number of requests for arbitration the bidder or offeror received in the last five years;

66 2. The number of occasions the bidder or offeror filed a motion to compel arbitration in a judicial
67 proceeding in the last five years;

68 3. The number of employees or consumers that exercised their right to opt out of arbitration if the
69 bidder or offeror utilized an opt-out provision in its pre-dispute arbitration clause; and

70 4. The number of times a claimant prevailed in any arbitration related to any employment, civil
71 rights, or consumer disputes that were submitted to arbitration.

72 C. Such disclosures shall be open to the inspection of any citizen, or any interested person, firm, or
73 corporation in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

74 D. Nothing in this article shall apply to (i) an arbitration provision in a contract between an
75 employer and a labor organization or between labor organizations or (ii) senior executives who have
76 negotiated employment contracts that include pre-dispute arbitration provisions.

77 **§ 2.2-4377.3. Solicitation evaluation criteria.**

78 A. In addition to other factors relevant to awarding contracts under existing law, a participating
79 locality may consider the policies and practices related to arbitration of each bidder or offeror as
80 disclosed in submissions required pursuant to § 2.2-4377.2 in making an award of the contract.

81 B. A bidder or offeror that fails to disclose the information required pursuant to § 2.2-4377.2 shall
82 not be eligible to enter into a contract to provide goods or services to a participating locality.

83 **§ 2.2-4377.4. Compliance for post-award actions.**

84 A. A contractor required to provide information pursuant to § 2.2-4377.2 shall be required to update
85 such information every six months during the performance of any contract. The contractor shall furnish
86 all submissions and documents required pursuant to § 2.2-4377.2 to the contracting locality and shall
87 permit access to its books, records, and accounts by the contracting agency for the limited purpose of
88 investigating compliance with this article.

89 B. Such contractor shall include the disclosure inquiry provisions of § 2.2-4377.2 in every
90 subcontract or purchase order related to the performance of the covered contract with the participating
91 locality or its agencies and make such disclosures binding upon each subcontractor or vendor.

92 C. The contractor shall take such action with respect to any subcontract or purchase order as the
93 contracting agency may direct as a means of enforcing such provisions, including sanctions for
94 noncompliance.

95 **§ 2.2-4377.5. Penalty.**

96 Upon violation by a contractor of any provision of this article, a locality may cancel, terminate, or
97 suspend, in whole or in part, any such contractor's contract and may declare the contractor ineligible
98 for further contracts with such locality for up to five years.