

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 2.2-1604 and 2.2-4310 of the Code of Virginia, relating to the Virginia  
3 Public Procurement Act; small, women-owned, and minority-owned businesses.

4 [S 1333]  
5 Approved

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

7 **1. That §§ 2.2-1604 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:**  
8 **§ 2.2-1604. Definitions.**

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

10 "Certification" means the process by which a business is determined to be a small, women-owned, or  
11 minority-owned business for the purpose of reporting small, women-owned, and minority-owned  
12 business participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

13 "Department" means the Department of Small Business and Supplier Diversity or any division of the  
14 Department to which the Director has delegated or assigned duties and responsibilities.

15 "Employment services organization" means an organization that provides community-based  
16 employment services to individuals with disabilities that is an approved Commission on Accreditation of  
17 Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative  
18 Services.

19 "*Historically black colleges and university*" includes any college or university that was established  
20 prior to 1964; whose principal mission was, and is, the education of black Americans; and that is  
21 accredited by a nationally recognized accrediting agency or association determined by the Secretary of  
22 Education.

23 "Minority individual" means an individual who is a citizen of the United States or a legal resident  
24 alien and who satisfies one or more of the following definitions:

25 1. "African American" means a person having origins in any of the original peoples of Africa and  
26 who is regarded as such by the community of which this person claims to be a part.

27 2. "Asian American" means a person having origins in any of the original peoples of the Far East,  
28 Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China,  
29 Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of  
30 the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of  
31 which this person claims to be a part.

32 3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of  
33 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and  
34 who is regarded as such by the community of which this person claims to be a part.

35 4. "Native American" means a person having origins in any of the original peoples of North America  
36 and who is regarded as such by the community of which this person claims to be a part or who is  
37 recognized by a tribal organization.

38 "Minority-owned business" means a business that is at least 51 percent owned by one or more  
39 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,  
40 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership  
41 interest in the corporation, partnership, or limited liability company or other entity is owned by one or  
42 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and  
43 daily business operations are controlled by one or more minority individuals, or any historically black  
44 college or university, regardless of the percentage ownership by minority individuals or, in the case of a  
45 corporation, partnership, or limited liability company or other entity, the equity ownership interest in  
46 the corporation, partnership, or limited liability company or other entity.

47 "Small business" means a business that is at least 51 percent independently owned and controlled by  
48 one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has  
49 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the  
50 previous three years. One or more of the individual owners shall control both the management and daily  
51 business operations of the small business.

52 "State agency" means any authority, board, department, instrumentality, institution, agency, or other  
53 unit of state government. "State agency" does not include any county, city, or town.

54 "Women-owned business" means a business that is at least 51 percent owned by one or more women  
55 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited  
56 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or

57 more women who are U.S. citizens or legal resident aliens, and both the management and daily business  
58 operations are controlled by one or more women.

59 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**  
60 **and service disabled veteran-owned business.**

61 A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or  
62 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled  
63 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever  
64 solicitations are made, each public body shall include businesses selected from a list made available by  
65 the Department of Small Business and Supplier Diversity.

66 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation  
67 of small businesses and businesses owned by women, minorities, and service disabled veterans in  
68 procurement transactions. The programs established shall be in writing and shall comply with the  
69 provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection  
70 C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and  
71 shall include specific plans to achieve any goals established therein. State agencies shall submit annual  
72 progress reports on small, women-owned, and minority-owned business procurement and on service  
73 disabled veteran-owned business procurement to the Department of Small Business and Supplier  
74 Diversity in a form specified by the Department of Small Business and Supplier Diversity. The  
75 Department of Small Business and Supplier Diversity shall make information on service disabled  
76 veteran-owned procurement available to the Department of Veterans Services upon request.

77 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
78 analysis that documents a statistically significant disparity between the availability and utilization of  
79 women-owned and minority-owned businesses, the Governor is authorized and encouraged to require  
80 state agencies to implement appropriate enhancement or remedial measures consistent with prevailing  
81 law.

82 D. In the solicitation or awarding of contracts, no state agency, department or institution shall  
83 discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the  
84 state agency, department or institution has made a written determination that employing ex-offenders on  
85 the specific contract is not in its best interest.

86 E. As used in this section:

87 "Minority individual" means an individual who is a citizen of the United States or a legal resident  
88 alien and who satisfies one or more of the following definitions:

89 1. "African American" means a person having origins in any of the original peoples of Africa and  
90 who is regarded as such by the community of which this person claims to be a part.

91 2. "Asian American" means a person having origins in any of the original peoples of the Far East,  
92 Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China,  
93 Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of  
94 the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of  
95 which this person claims to be a part.

96 3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of  
97 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and  
98 who is regarded as such by the community of which this person claims to be a part.

99 4. "Native American" means a person having origins in any of the original peoples of North America  
100 and who is regarded as such by the community of which this person claims to be a part or who is  
101 recognized by a tribal organization.

102 "Minority-owned business" means a business that is at least 51 percent owned by one or more  
103 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,  
104 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership  
105 interest in the corporation, partnership, or limited liability company or other entity is owned by one or  
106 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and  
107 daily business operations are controlled by one or more minority individuals, *or any historically black*  
108 *college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority*  
109 *individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the*  
110 *equity ownership interest in the corporation, partnership, or limited liability company or other entity.*

111 "Service disabled veteran" means a veteran who (i) served on active duty in the United States  
112 military ground, naval, or air service, (ii) was discharged or released under conditions other than  
113 dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of  
114 Veterans Affairs.

115 "Service disabled veteran business" means a business that is at least 51 percent owned by one or  
116 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company  
117 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or

118 limited liability company or other entity is owned by one or more individuals who are service disabled  
119 veterans and both the management and daily business operations are controlled by one or more  
120 individuals who are service disabled veterans.

121 "Small business" means a business, independently owned and controlled by one or more individuals  
122 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,  
123 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of  
124 the individual owners shall control both the management and daily business operations of the small  
125 business.

126 "State agency" means any authority, board, department, instrumentality, institution, agency, or other  
127 unit of state government. "State agency" shall not include any county, city, or town.

128 "Women-owned business" means a business that is at least 51 percent owned by one or more women  
129 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited  
130 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or  
131 more women who are U.S. citizens or legal resident aliens, and both the management and daily business  
132 operations are controlled by one or more women.