

By Senator Campbell

33-334-98

1 A bill to be entitled
2 An act relating to voluntary trial resolution;
3 creating s. 44.1051, F.S.; permitting the
4 written agreement by two or more parties in a
5 civil dispute to submit the controversy to
6 binding voluntary trial resolution in lieu of
7 litigation when no constitutional issue is
8 involved; providing duties of the clerk of the
9 court and guidelines relating to application
10 for voluntary trial resolution; providing for
11 fees; providing for tolling of statutory
12 limitations period; providing for court
13 appointment of a member of The Florida Bar to
14 act as trial resolution judge; providing
15 qualifications and authority of trial
16 resolution judge; providing for subpoenas and
17 court orders compelling attendance and
18 production of certain evidence; providing for
19 hearing and appeal; providing for applicability
20 of the Florida Evidence Code; providing for
21 issuance and enforcement through contempt
22 powers of court orders carrying out the trial
23 resolution judge's decision; providing for
24 nonapplicability of voluntary trial resolution
25 to certain disputes involving child custody,
26 visitation, or support or rights of third
27 parties not participating in voluntary trial
28 resolution; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 44.1051, Florida Statutes, is
2 created to read:

3 44.1051 Voluntary trial resolution.--

4 (1) Two or more parties who are involved in a civil
5 dispute may agree in writing to submit the controversy to
6 voluntary trial resolution in lieu of litigation of the issues
7 involved, prior to or after a lawsuit has been filed, provided
8 no constitutional issue is involved.

9 (2) If the parties have entered into an agreement that
10 provides for a method for appointment of a member of The
11 Florida Bar in good standing for more than 5 years to act as
12 trial resolution judge, the court shall proceed with the
13 appointment as prescribed.

14 (3) The trial resolution judge shall be compensated by
15 the parties according to their agreement.

16 (4) Within 10 days of the submission of the request
17 for binding voluntary trial resolution, the court shall
18 provide for the appointment of the trial resolution judge.
19 Once appointed, the trial resolution judge shall notify the
20 parties of the time and place for the hearing.

21 (5) Application for voluntary trial resolution shall
22 be filed and fees paid to the clerk of the court as if for
23 complaints initiating civil actions. The clerk of the court
24 shall handle and account for these matters in all respects as
25 if they were civil actions except that the clerk of the court
26 shall keep separate the records of the applications for
27 voluntary binding trial resolution from all other civil
28 actions.

29 (6) Filing of the application for binding voluntary
30 trial resolution will toll the running of the applicable
31 statutes of limitation.

1 (7) The appointed trial resolution judge shall have
2 such power to administer oaths or affirmation and to conduct
3 the proceedings as the rules of court shall provide. At the
4 request of any party, the trial resolution judge shall issue
5 subpoenas for the attendance of witnesses and for the
6 production of books, records, documents, and other evidence
7 and may apply to the court for orders compelling attendance
8 and production. Subpoenas shall be served and shall be
9 enforceable in the manner provided by law.

10 (8) The hearing shall be conducted by the trial
11 resolution judge, who may determine any question and render a
12 final decision.

13 (9) The Florida Evidence Code shall apply to all
14 proceedings under this section.

15 (10) An appeal may be taken to the appropriate
16 appellate court. The harmless error doctrine shall apply in
17 all appeals. No further review shall be permitted unless a
18 constitutional issue is raised.

19 (11) If no appeal is taken within the time provided by
20 rules promulgated by the Supreme Court, then the decision
21 shall be referred to the presiding court judge in the case, or
22 if one has not been assigned, then to the chief judge of the
23 circuit for assignment to a circuit judge, who shall enter
24 such orders and judgments as are required to carry out the
25 terms of decision, which orders shall be enforceable by the
26 contempt powers of the court and for which judgments
27 executions shall issue on request of a party.

28 (12) This section shall not apply to any dispute
29 involving child custody, visitation, or child support, or to
30 any dispute that involves the rights of a third party not a
31 party to the voluntary trial resolution.

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Section 2. This act shall take effect October 1, 1998.

SENATE SUMMARY

Permits written agreement by two or more parties in a civil dispute to submit the controversy to binding voluntary trial resolution in lieu of litigation when no constitutional issue is involved. Provides duties of the clerk of the court and guidelines relating to application for voluntary trial resolution, and provides for application fees. Provides for tolling of statutory limitations period. Provides for court appointment of a member of The Florida Bar to act as trial resolution judge. Prescribes qualifications and authority of trial resolution judge. Provides for subpoenas and court orders compelling attendance and production of certain evidence. Provides for hearing and appeal. Provides for applicability of the Florida Evidence Code. Provides for issuance and enforcement through contempt powers of court orders carrying out the trial resolution judge's decision. Provides for nonapplicability of voluntary trial resolution to certain disputes involving child custody, visitation, or support or rights of third parties not participating in voluntary trial resolution.