

By Senator Carlton

24-1188-01

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled
An act relating to the pilot RV mediation and arbitration program; amending s. 681.1096, F.S.; extending the pilot program an additional period; amending s. 681.1097, F.S.; providing for technical corrections to an arbitrator's decision; prescribing guidelines for appealing an arbitrator's decision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 681.1096, Florida Statutes, is amended to read:

681.1096 Pilot RV Mediation and Arbitration Program; creation and qualifications.--

(1) This section and s. 681.1097 shall apply to disputes determined eligible under this chapter involving recreational vehicles acquired on or after October 1, 1997, and shall remain in effect until September 30, 2002 ~~2001~~, at which time recreational vehicle disputes shall be subject to the provisions of ss. 681.109 and 681.1095. The Attorney General shall report ~~annually~~ to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, and appropriate legislative committees regarding the effectiveness ~~efficiency~~ ~~and cost-effectiveness~~ of the pilot program.

Section 2. Subsections (5) and (7) of section 681.1097, Florida Statutes, are amended to read:

681.1097 Pilot RV Mediation and Arbitration Program; dispute eligibility and program function.--

1 (5) If the mediation ends in an impasse, or if a
2 manufacturer fails to comply with the settlement entered into
3 between the parties, the program administrator shall schedule
4 the dispute for an arbitration hearing. Arbitration
5 proceedings shall be open to the public on reasonable and
6 nondiscriminatory terms.

7 (a) The arbitration hearing shall be conducted by a
8 single arbitrator assigned by the program administrator. The
9 arbitrator shall not be the same person as the mediator who
10 conducted the prior mediation conference in the dispute. The
11 parties may factually object to an arbitrator based on the
12 arbitrator's past or present relationship with a party or a
13 party's attorney, direct or indirect, whether financial,
14 professional, social, or of any other kind. The program
15 administrator shall consider any such objection, determine its
16 validity, and notify the parties of any determination. If the
17 objection is determined valid, the program administrator shall
18 assign another arbitrator to the case.

19 (b) The arbitrator may issue subpoenas for the
20 attendance of witnesses and for the production of records,
21 documents, and other evidence. Subpoenas so issued shall be
22 served and, upon application to the court by a party to the
23 arbitration, enforced in the manner provided by law for the
24 service and enforcement of subpoenas in civil actions. Fees
25 for attendance as a witness shall be the same as for a witness
26 in the circuit court.

27 (c) At all program arbitration proceedings, the
28 parties may present oral and written testimony, present
29 witnesses and evidence relevant to the dispute, cross-examine
30 witnesses, and be represented by counsel. The arbitrator
31 shall record the arbitration hearing and shall have the power

1 to administer oaths. The arbitrator may inspect the vehicle
2 if requested by a party or if the arbitrator considers such
3 inspection appropriate.

4 (d) The program arbitrator may continue a hearing on
5 his or her own motion or upon the request of a party for good
6 cause shown. A request for continuance by the consumer
7 constitutes a waiver of the time period set forth in s.
8 681.1096(3)(k) for completion of all proceedings under the
9 program.

10 (e) Where the arbitration is the result of a
11 manufacturer's failure to perform in accordance with a
12 settlement ~~mediation~~ agreement, any relief to the consumer
13 granted by the arbitration will be no less than the relief
14 agreed to by the manufacturer in the settlement agreement.

15 (f) The arbitrator shall grant relief if a reasonable
16 number of attempts have been undertaken to correct a
17 nonconformity or nonconformities.

18 (g) The program arbitrator shall render a decision
19 within 10 days of the closing of the hearing. The decision
20 shall be in writing on a form prescribed or approved by the
21 department. The program administrator shall send a copy of the
22 decision to the consumer and each involved manufacturer by
23 registered mail. The program administrator shall also send a
24 copy of the decision to the department within 5 days of
25 mailing to the parties.

26 (h) A manufacturer shall comply with an arbitration
27 decision within 40 days of the date the manufacturer receives
28 the written decision. Compliance occurs on the date the
29 consumer receives delivery of an acceptable replacement motor
30 vehicle or the refund specified in the arbitration award. If a
31 manufacturer fails to comply within the time required, the

1 consumer must notify the program administrator in writing
2 within 10 days. The program administrator shall notify the
3 department of a manufacturer's failure to comply. The
4 department shall have the authority to enforce compliance with
5 arbitration decisions under this section in the same manner as
6 is provided for enforcement of compliance with board decisions
7 under s. 681.1095(10). In any civil action arising under this
8 chapter and relating to a dispute arbitrated pursuant to this
9 section, the decision of the arbitrator is admissible in
10 evidence.

11 (i) Either party may request the program arbitrator to
12 make a technical correction to the decision by filing a
13 written request with the program administrator no later than
14 10 days after receipt of the written decision. Technical
15 corrections shall be limited to computational errors,
16 correction of a party's name or information regarding the
17 recreational vehicle, and typographical or spelling errors.
18 Technical correction of a decision shall not toll the time for
19 filing an appeal or for manufacturer compliance.

20 (7) A decision of the arbitrator is binding unless
21 appealed by either party by filing a petition with the circuit
22 court within the time and in the manner prescribed by
23 subsections 681.1095(10) and (12). Subsections 681.1095(13)
24 and (14) are applicable to appeals filed under this section.
25 ~~Either party may make application to the circuit court for the~~
26 ~~county in which one of the parties resides or has a place of~~
27 ~~business or, if neither party resides or has a place of~~
28 ~~business in this state, the county where the arbitration~~
29 ~~hearing was held, for an order confirming, vacating,~~
30 ~~modifying, or correcting any award, in accordance with the~~
31 ~~provisions of this section and ss. 682.12, 682.13, 682.14,~~

1 ~~682.15, and 682.17. Such application must be filed within 30~~
2 ~~days of the moving party's receipt of the written decision or~~
3 ~~the decision becomes final. Upon filing such application, the~~
4 ~~moving party shall mail a copy to the department and, upon~~
5 ~~entry of any judgment or decree, shall mail a copy of such~~
6 ~~judgment or decree to the department. A review of such~~
7 ~~application by the circuit court shall be confined to the~~
8 ~~record of the proceedings before the program arbitrator. The~~
9 ~~court shall conduct a de novo review of the questions of law~~
10 ~~raised in the application. In addition to the grounds set~~
11 ~~forth in ss. 682.13 and 682.14, the court shall consider~~
12 ~~questions of fact raised in the application. In reviewing~~
13 ~~questions of fact, the court shall uphold the award unless it~~
14 ~~determines that the factual findings of the arbitrator are not~~
15 ~~supported by substantial evidence in the record and that the~~
16 ~~substantial rights of the moving party have been prejudiced.~~
17 ~~If the arbitrator fails to state findings or reasons for the~~
18 ~~stated award, or the findings or reasons are inadequate, the~~
19 ~~court shall search the record to determine whether a basis~~
20 ~~exists to uphold the award. The court shall expedite~~
21 ~~consideration of any application filed under this section on~~
22 ~~the calendar.~~

23 ~~(a)~~ If a decision of a program arbitrator in favor of
24 a consumer is confirmed by the court, recovery by the consumer
25 shall include the pecuniary value of the award, attorney's
26 fees incurred in obtaining confirmation of the award, and all
27 costs and continuing damages in the amount of \$25 per day for
28 each day beyond the 40-day period following a manufacturer's
29 receipt of the arbitrator's decision. If a court determines
30 the manufacturer acted in bad faith in bringing the appeal or
31 brought the appeal solely for the purpose of harassment, or in

1 complete absence of a justiciable issue of law or fact, the
2 court shall double, and may triple, the amount of the total
3 award.

4 ~~(b) An appeal of a judgment or order by the court~~
5 ~~confirming, denying confirmation, modifying or correcting, or~~
6 ~~vacating the award may be taken in the manner and to the same~~
7 ~~extent as from orders or judgments in a civil action.~~

8 Section 3. This act shall take effect upon becoming a
9 law.

10 *****

11 SENATE SUMMARY

12
13 Extends the pilot RV mediation and arbitration program
14 for an additional year. Authorizes parties to request
15 technical corrections to an arbitrator's decision, but
16 technical corrections will not toll the time for filing
17 an appeal or for manufacturer compliance. Provides that
18 appeals are subject to the same guidelines as appeals of
19 New Motor Vehicle Arbitration Board decisions, and that
20 the attorney's fees will likewise follow the guidelines
21 for decisions of the latter board.
22
23
24
25
26
27
28
29
30
31