

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 1312

SPONSOR: Commerce and Consumer Services Committee and Senator Carlton

SUBJECT: Pilot RV Mediation and Arbitration Program

DATE: March 21, 2005

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Siebert</u> | <u>Cooper</u>  | <u>CM</u> | <u>Fav/CS</u>    |
| 2. | <u>Cibula</u>  | <u>Maclure</u> | <u>JU</u> | <u>Favorable</u> |
| 3. | _____          | _____          | <u>JA</u> | _____            |
| 4. | _____          | _____          | _____     | _____            |
| 5. | _____          | _____          | _____     | _____            |
| 6. | _____          | _____          | _____     | _____            |

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## I. Summary:

This committee substitute amends the provisions of law creating the Pilot RV Mediation and Arbitration Program (program) and makes the program permanent. The most significant changes to the program:

- Increases the requirement for mediators and arbitrators to have training on the Lemon Law by requiring sufficient training in addition to minimum amount of time in training;
- Require the program to provide the Department of Legal Affairs with copies of settlement agreements and decisions;
- Allow consumers and manufacturers to agree to allow mediation or arbitration to attempt to resolve all warranty claims;
- Expand arbitrator authority to grant relief; and
- Transfer the Department of Legal Affairs' obligations to determine eligibility for the program to the program administrator.

The committee substitute also directs the Department of Transportation to incorporate the use of markers on signs to indicate which establishments cater to people who drive recreational vehicles.

This bill substantially amends the following sections of the Florida Statutes: 479.261, 681.1096, and 681.1097.

## II. Present Situation:

Chapter 681, F.S., is the Motor Vehicle Warranty Enforcement Act, but is commonly known as the “Lemon Law.” Under the Lemon Law:

If [a] recreation vehicle has been subjected to at least three repair attempts for the same defect that is not a defective living facility component, or has been out of service for repair of one or more defects that are not defective living facility components for 15 or more days, then, written notification must be sent to **each** manufacturer (not the dealer) which may provide warranty coverage of the defects.

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If a final repair attempt by the manufacturer(s) after receipt of notification fails to correct a recurring, non-living facility defect, **or** if the vehicle is out of service by reason of repair of one or more non-living facility defects for a total of 60 cumulative days, and the manufacturer(s) or authorized service agent(s) had at least one opportunity to inspect or repair the vehicle after receipt of the written notification, then, the consumer may be eligible for a refund or replacement under the Lemon Law.<sup>1</sup>

### Pilot RV Mediation and Arbitration Program

In 1997, the Legislature created the Pilot RV Mediation and Arbitration Program (program).<sup>2</sup> Purchasers of recreational vehicles on or after October 1, 1997, must submit their disputes to the Department of Legal Affairs (department) before filing a lawsuit.<sup>3</sup> The Collins Center for Public Policy, the program administrator, screens disputes for eligibility.<sup>4</sup> Under the program, eligible disputes will first be referred to mediation.<sup>5</sup> If an impasse is reached during mediation, the dispute will be referred to arbitration.<sup>6</sup> An arbitrator’s “decision will either award the consumer a refund or replacement vehicle, or dismiss the claim.”<sup>7</sup> The costs of the program are funded by recreational vehicle manufacturers.<sup>8</sup>

### Report of the Attorney General

As required by s. 681.1096(1), F.S., the Attorney General issued a report dated, February 7, 2005, on the effectiveness of the program. The report concluded as follows:

Mediation has been an effective means for consumers to obtain some resolution of claims, particularly those claims that could not be arbitrated under the Lemon

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<sup>1</sup> OFFICE OF THE ATTORNEY GENERAL OF FLORIDA, RECREATION VEHICLES at <http://myfloridalegal.com>.

<sup>2</sup> Chapter 97-245, L.O.F.

<sup>3</sup> Sections 681.1096(1) and 681.1097(1), F.S.

<sup>4</sup> OFFICE OF THE ATTORNEY GENERAL OF FLORIDA, *supra* note 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 681.1096(3)(b), F.S.

Law. Arbitration, however, has been less effective, due to its very limited scope. The overall effectiveness of the pilot program is diminished by the continued manufacturer practice of conditioning settlements on overreaching disclaimers of consumers' rights. The program would be a more effective tool for dispute resolution with the following changes:

- Prohibit the conditioning of settlements upon the execution of overreaching releases, rights disclaimers and confidentiality clauses;
- Permit consumers and manufacturers to agree to expand the scope of both mediation and arbitration to attempt resolution of all warranty disputes, irrespective of whether they are potentially covered under the Lemon Law;
- Expand the scope of the arbitrators' authority to award relief;
- Retain qualification and oversight authority over the program by the Office of the Attorney General; and
- Transfer all pilot program functions that were carried out by the Office of the Attorney General during the pilot period to the program.<sup>9</sup>

### **III. Effect of Proposed Changes:**

This committee substitute amends the provisions of law creating the Pilot RV Mediation and Arbitration Program (program) and makes the program permanent. The most significant changes to the program:

- Increases the requirement for mediators and arbitrators to have training on the Lemon Law by requiring sufficient training in addition to minimum amount of time in training;
- Require the program to provide the Department of Legal Affairs with copies of settlement agreements and decisions;
- Allow consumers and manufacturers to agree to allow mediation or arbitration to attempt to resolve all warranty claims;
- Expand arbitrator authority to grant all legal and equitable relief; and
- Transfer the Department of Legal Affairs' obligations to determine eligibility for the program to the program administrator.

The committee substitute also directs the Department of Transportation to incorporate the use of markers on signs to indicate which establishments cater to people who drive recreational vehicles. The committee substitute provides that the marker will be a yellow smiley face under the letters "RV."

The committee substitute takes effect upon becoming law.

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<sup>9</sup> OFFICE OF THE ATTORNEY GENERAL, LEMON LAW ARBITRATION PROGRAM, REPORT OF THE ATTORNEY GENERAL: FLORIDA PILOT RV MEDIATION/ARBITRATION PROGRAM, February 7, 2005.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Recreational vehicle manufactures will have continued expenses associated with the RV Mediation and Arbitration Program (program).

## C. Government Sector Impact:

The Department of Legal Affairs currently incurs recurring expenses of \$29,000 for personnel and \$10,000 for expenses. This committee substitute will not increase or decrease the current expenditures on the program, which is currently using the resources of the Lemon Law arbitration program, although any significant increase in RV claims could result in a need for OPS staff at the Department of Legal Affairs, which provides training for the arbitrators and mediators. The program expenses include printing the RV program consumer application form, processing applications filed with the department, and storing and archiving RV program files. These tasks require approximately one day of work per week for a full-time staff assistant. The program also involves approximately one-third of the work time of a full-time attorney to monitor the program for compliance with statute, including traveling to observe mediations and arbitration hearings, responding to consumer and RV program staff requests, and enforcing manufacturer compliance with arbitration awards.

The Department of Transportation may incur costs associated with placing markers on signs indicating that a particular establishment is “RV friendly.”

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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