

By Senator Carlton

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A bill to be entitled

An act relating to the Pilot RV Mediation and Arbitration Program; amending ss. 681.1096 and 681.1097, F.S.; eliminating the termination of the mediation and arbitration pilot program for disputes involving the manufacturer of a recreational vehicle acquired on or after a specified date; providing an effective date.

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

Section 1. 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, 2006, at which time recreational vehicle disputes shall be subject to the provisions of ss. 681.109 and 681.1095. The Attorney General shall report 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 of the pilot program.~~

(2) Each manufacturer of a recreational vehicle involved in a dispute that is determined eligible under this chapter, including chassis and component manufacturers which separately warrant the chassis and components and which otherwise meet the definition of manufacturer set forth in s.

1 681.102(14), shall participate in a mediation and arbitration
2 program that is deemed qualified by the department.

3 (3) In order to be deemed qualified by the department,
4 the mediation and arbitration program must, at a minimum, meet
5 the following requirements:

6 (a) The program must be administered by an
7 administrator and staff that is sufficiently insulated from
8 the manufacturer to ensure impartial mediation and arbitration
9 services.

10 (b) Program administration fees must be paid by the
11 manufacturer and no such fees shall be charged to a consumer.

12 (c) The program must be adequately staffed at a level
13 sufficient to ensure the provision of fair and expeditious
14 dispute resolution services.

15 (d) Program mediators and arbitrators must be
16 sufficiently insulated from a manufacturer to ensure the
17 provision of impartial mediation and arbitration of disputes.

18 (e) Program mediators and arbitrators shall not be
19 employed by a manufacturer or a motor vehicle dealer.

20 (f) Program mediators must complete a Florida Supreme
21 Court certified circuit or county mediation training program,
22 or other mediation training program approved by the
23 department, in addition to a minimum of one-half day of
24 training on this chapter conducted by the department.

25 (g) Program mediators must comply with the Model
26 Standards of Conduct for Mediators issued by the American
27 Arbitration Association, the Dispute Resolution Section of the
28 American Bar Association, and the Society of Professionals in
29 Dispute Resolution.

30 (h) Program arbitrators must complete a Florida
31 Supreme Court certified circuit or county arbitration program,

1 or other arbitration training program approved by the
2 department, in addition to a minimum of 1 day of training in
3 the application of this chapter and any rules adopted
4 thereunder conducted by the department.

5 (i) Program arbitrators must comply with the Code of
6 Ethics for Arbitrators in Commercial Disputes published by the
7 American Arbitration Association and the American Bar
8 Association in 1977 and as amended.

9 (j) Program arbitrators must construe and apply the
10 provisions of this chapter and rules adopted thereunder in
11 making decisions.

12 (k) The program must complete all mediation and
13 arbitration of an eligible consumer claim within 70 days of
14 the program administrator's receipt of the claim from the
15 department. Failure of the program to complete all proceedings
16 within the prescribed period will not invalidate any
17 settlement agreement or arbitration decision.

18 (l) Mediation conferences and arbitration proceedings
19 must be held at reasonably convenient locations within the
20 state so as to enable a consumer to attend and present a
21 dispute orally.

22 (4) The department shall monitor the program for
23 compliance with this chapter. If the program is determined not
24 qualified or if qualification is revoked, then the involved
25 manufacturer shall be required to submit to arbitration
26 conducted by the board if such arbitration is requested by a
27 consumer and the dispute is deemed eligible for arbitration by
28 the division pursuant to s. 681.109.

29 (5) If a program is determined not qualified or if
30 qualification is revoked, the involved manufacturer shall be
31 notified by the department of any deficiencies in the program

1 and informed that it is entitled to a hearing pursuant to
2 chapter 120.

3 (6) The program administrator, mediators, and
4 arbitrators are exempt from civil liability arising from any
5 act or omission in connection with any mediation or
6 arbitration conducted under this chapter.

7 (7) The program administrator shall maintain records
8 of each dispute submitted to the program, including the
9 recordings of arbitration hearings. All records maintained by
10 the program under this chapter shall be public records and
11 shall be available for inspection by the department upon
12 reasonable notice. The records for disputes closed as of
13 September 30 of each year shall be turned over to the
14 department by the program administrator by no later than
15 October 30 of the same year, unless a later date is specified
16 by the department.

17 (8) The department may ~~shall have the authority to~~
18 adopt ~~reasonable~~ rules to administer ~~carry out the provisions~~
19 ~~of~~ this section.

20 Section 2. Section 681.1097, Florida Statutes, is
21 amended to read:

22 681.1097 ~~Pilot~~ RV Mediation and Arbitration Program;
23 dispute eligibility and program function.--

24 (1) Before filing a civil action on a matter subject
25 to s. 681.104, a consumer who acquires a recreational vehicle
26 must first submit the dispute to the department, and to the
27 program if the dispute is deemed eligible. Such consumer is
28 not required to resort to a procedure certified pursuant to s.
29 681.108, notwithstanding that one of the manufacturers of the
30 recreational vehicle has such a procedure. Such consumer is
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1 not required to resort to arbitration conducted by the board,
2 except as provided in s. 681.1096(4) and in this section.

3 (2) A consumer acquiring a recreational vehicle must
4 apply to participate in this program with respect to a claim
5 arising during the Lemon Law rights period by filing the
6 application in subsection (3) with the department no later
7 than 60 days after the expiration of the Lemon Law rights
8 period.

9 (3) The consumer's application for participation in
10 the program must be on a form prescribed or approved by the
11 department. The department shall screen all applications to
12 participate in the program to determine eligibility. The
13 department shall forward to the program administrator all
14 applications the department determines are potentially
15 entitled to relief under this chapter.

16 (a) If the department determines the application lacks
17 sufficient information from which a determination of
18 eligibility can be made, the department shall request
19 additional information from the consumer and, upon review of
20 such additional information, shall determine whether the
21 application is eligible or reject the application as
22 incomplete.

23 (b) The department shall reject any application it
24 determines to be fraudulent or outside the scope of this
25 chapter.

26 (c) The consumer and the manufacturer shall be
27 notified in writing by the department if an application is
28 rejected. Such notification of rejection shall include a
29 brief explanation as to the reason for the rejection.

30 (d) If the department rejects a dispute, the consumer
31 may file a lawsuit to enforce the remedies provided under this

1 chapter. In any civil action arising under this chapter and
2 relating to the matter considered by the department, any
3 determination made to reject a dispute is admissible in
4 evidence.

5 (e) The department may delegate responsibility for the
6 screening of claims to the program, in which event claims
7 filed with the department shall be forwarded to the program
8 administrator and the provisions of this section shall apply
9 to claims screened by the program.

10 (4) Mediation shall be mandatory for both the consumer
11 and manufacturer, unless the dispute is settled prior to the
12 scheduled mediation conference. The mediation conference
13 shall be confidential and inadmissible in any subsequent
14 adversarial proceedings. Participation shall be limited to
15 the parties directly involved in the dispute and their
16 attorneys, if any. All manufacturers shall be represented by
17 persons with settlement authority.

18 (a) Upon receipt of an eligible application, the
19 program administrator shall notify the consumer and all
20 involved manufacturers in writing that an eligible application
21 has been received. Such notification shall include a
22 statement that a mediation conference will be scheduled, shall
23 identify the assigned mediator, and provide information
24 regarding the program's procedures. The program administrator
25 shall provide all involved manufacturers with a copy of the
26 completed application.

27 (b) The mediator shall be selected and assigned by the
28 program administrator. The parties may factually object to a
29 mediator based upon the mediator's past or present
30 relationship with a party or a party's attorney, direct or
31 indirect, whether financial, professional, social, or of any

1 other kind. The program administrator shall consider any such
2 objection, determine its validity, and notify the parties of
3 any determination. If the objection is determined valid, the
4 program administrator shall assign another mediator to the
5 case.

6 (c) At the mediation conference, the mediator shall
7 assist the parties' efforts to reach a mutually acceptable
8 settlement of their dispute; however, the mediator shall not
9 impose any settlement upon the parties.

10 (d) Upon conclusion of the mediation conference, the
11 mediator shall notify the program administrator that the case
12 has settled or remains at an impasse. The program
13 administrator shall notify the department in writing of the
14 outcome of the mediation.

15 (e) If the mediation conference ends in an impasse, it
16 shall proceed to arbitration pursuant to subsection (5). The
17 program administrator shall immediately notify the parties in
18 writing that the dispute will proceed to arbitration and shall
19 identify the assigned arbitrator.

20 (f) If the parties enter into a settlement at any time
21 after the dispute has been submitted to the program, such
22 settlement must be reduced to writing, signed by the consumer
23 and all involved manufacturers, and filed with the program
24 administrator. The program administrator shall send a copy to
25 the department. All settlements must contain, at a minimum,
26 the following information:

- 27 1. Name and address of the consumer.
- 28 2. Name and address of each involved manufacturer.
- 29 3. Year, make, model, and vehicle identification
30 number of the subject recreational vehicle.

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1 4. Name and address of the dealership from which the
2 recreational vehicle was acquired.

3 5. Date the claim was received by the program
4 administrator.

5 6. Name of the mediator and/or arbitrator, if any.

6 7. Statement of the terms of the agreement, including,
7 but not limited to: whether the vehicle is to be reacquired
8 by a manufacturer and the identity of the manufacturer that
9 will reacquire the vehicle; the amount of any moneys to be
10 paid by the consumer and/or a manufacturer; the year, make,
11 and model of any replacement motor vehicle or motor vehicle
12 accepted by the consumer as a trade-assist; and a time certain
13 for performance not to exceed 40 days from the date the
14 settlement agreement is signed by the parties.

15 (g) If a manufacturer fails to perform within the time
16 required in any settlement agreement, the consumer must notify
17 the program administrator of such failure in writing within 10
18 days of the required performance date. Within 10 days of
19 receipt of such notice, the program administrator shall notify
20 the department of the manufacturer's failure in compliance and
21 shall schedule the matter for an arbitration hearing pursuant
22 to subsection (5).

23 (5) If the mediation ends in an impasse, or if a
24 manufacturer fails to comply with the settlement entered into
25 between the parties, the program administrator shall schedule
26 the dispute for an arbitration hearing. Arbitration
27 proceedings shall be open to the public on reasonable and
28 nondiscriminatory terms.

29 (a) The arbitration hearing shall be conducted by a
30 single arbitrator assigned by the program administrator. The
31 arbitrator shall not be the same person as the mediator who

1 | conducted the prior mediation conference in the dispute. The
2 | parties may factually object to an arbitrator based on the
3 | arbitrator's past or present relationship with a party or a
4 | party's attorney, direct or indirect, whether financial,
5 | professional, social, or of any other kind. The program
6 | administrator shall consider any such objection, determine its
7 | validity, and notify the parties of any determination. If the
8 | objection is determined valid, the program administrator shall
9 | assign another arbitrator to the case.

10 | (b) The arbitrator may issue subpoenas for the
11 | attendance of witnesses and for the production of records,
12 | documents, and other evidence. Subpoenas so issued shall be
13 | served and, upon application to the court by a party to the
14 | arbitration, enforced in the manner provided by law for the
15 | service and enforcement of subpoenas in civil actions. Fees
16 | for attendance as a witness shall be the same as for a witness
17 | in the circuit court.

18 | (c) At all program arbitration proceedings, the
19 | parties may present oral and written testimony, present
20 | witnesses and evidence relevant to the dispute, cross-examine
21 | witnesses, and be represented by counsel. The arbitrator
22 | shall record the arbitration hearing and shall have the power
23 | to administer oaths. The arbitrator may inspect the vehicle
24 | if requested by a party or if the arbitrator considers such
25 | inspection appropriate.

26 | (d) The program arbitrator may continue a hearing on
27 | his or her own motion or upon the request of a party for good
28 | cause shown. A request for continuance by the consumer
29 | constitutes a waiver of the time period set forth in s.
30 | 681.1096(3)(k) for completion of all proceedings under the
31 | program.

1 (e) Where the arbitration is the result of a
2 manufacturer's failure to perform in accordance with a
3 settlement agreement, any relief to the consumer granted by
4 the arbitration will be no less than the relief agreed to by
5 the manufacturer in the settlement agreement.

6 (f) The arbitrator shall grant relief if a reasonable
7 number of attempts have been undertaken to correct a
8 nonconformity or nonconformities.

9 (g) The program arbitrator shall render a decision
10 within 10 days of the closing of the hearing. The decision
11 shall be in writing on a form prescribed or approved by the
12 department. The program administrator shall send a copy of the
13 decision to the consumer and each involved manufacturer by
14 registered mail. The program administrator shall also send a
15 copy of the decision to the department within 5 days of
16 mailing to the parties.

17 (h) A manufacturer shall comply with an arbitration
18 decision within 40 days of the date the manufacturer receives
19 the written decision. Compliance occurs on the date the
20 consumer receives delivery of an acceptable replacement motor
21 vehicle or the refund specified in the arbitration award. If a
22 manufacturer fails to comply within the time required, the
23 consumer must notify the program administrator in writing
24 within 10 days. The program administrator shall notify the
25 department of a manufacturer's failure to comply. The
26 department shall have the authority to enforce compliance with
27 arbitration decisions under this section in the same manner as
28 is provided for enforcement of compliance with board decisions
29 under s. 681.1095(10). In any civil action arising under this
30 chapter and relating to a dispute arbitrated pursuant to this
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1 | section, the decision of the arbitrator is admissible in
2 | evidence.

3 | (i) Either party may request that the program
4 | arbitrator make a technical correction to the decision by
5 | filing a written request with the program administrator within
6 | 10 days after receipt of the written decision. Technical
7 | corrections shall be limited to computational errors,
8 | correction of a party's name or information regarding the
9 | recreational vehicle, and typographical or spelling errors.
10 | Technical correction of a decision shall not toll the time for
11 | filing an appeal or for manufacturer compliance.

12 | (6) Except as otherwise provided, all provisions in
13 | this section pertaining to mandatory mediation and
14 | arbitration, eligibility screening, mediation proceedings,
15 | arbitration hearings and decisions, and any appeals thereof
16 | are exempt from the provisions of chapter 120.

17 | (7) A decision of the arbitrator is binding unless
18 | appealed by either party by filing a petition with the circuit
19 | court within the time and in the manner prescribed by s.
20 | 681.1095(10) and (12). Section 681.1095(13) and (14) apply to
21 | appeals filed under this section. If a decision of a program
22 | arbitrator in favor of a consumer is confirmed by the court,
23 | recovery by the consumer shall include the pecuniary value of
24 | the award, attorney's fees incurred in obtaining confirmation
25 | of the award, and all costs and continuing damages in the
26 | amount of \$25 per day for each day beyond the 40-day period
27 | following a manufacturer's receipt of the arbitrator's
28 | decision. If a court determines the manufacturer acted in bad
29 | faith in bringing the appeal or brought the appeal solely for
30 | the purpose of harassment, or in complete absence of a
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1 justiciable issue of law or fact, the court shall double, and
2 may triple, the amount of the total award.

3 (8) The department may ~~shall have the authority to~~
4 adopt ~~reasonable~~ rules to administer ~~carry out the provisions~~
5 ~~of~~ this section.

6 Section 3. This act shall take effect upon becoming a
7 law.

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SENATE SUMMARY

Eliminates the termination scheduled for September 30,
2006, of the Pilot RV Mediation and Arbitration Program
within the Department of Legal Affairs.