

Bill No. SB 2188

Barcode 091720

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Campbell) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 7, between lines 5 and 6,

insert:

Section 4. Section 44.104, Florida Statutes, is amended to read:

44.104 Voluntary binding arbitration ~~and voluntary trial resolution.~~--

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

(2) If the parties have entered into an agreement which provides ~~in voluntary binding arbitration~~ for a method for appointing of one or more arbitrators, ~~or which provides in voluntary trial resolution a method for appointing a member~~

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1 ~~of The Florida Bar in good standing for more than 5 years to~~  
2 ~~act as trial resolution judge,~~ the court shall proceed with  
3 the appointment as prescribed. However, ~~in voluntary binding~~  
4 ~~arbitration~~ at least one of the arbitrators, who shall serve  
5 as the chief arbitrator, shall meet the qualifications and  
6 training requirements adopted pursuant to s. 44.106. In the  
7 absence of an agreement, or if the agreement method fails or  
8 for any reason cannot be followed, the court, on application  
9 of a party, shall appoint one or more qualified arbitrators,  
10 ~~or the trial resolution judge, as the case requires.~~

11 (3) The arbitrators ~~or trial resolution judge~~ shall be  
12 compensated by the parties according to their agreement.

13 (4) Within 10 days after the submission of the request  
14 for binding arbitration, ~~or voluntary trial resolution,~~ the  
15 court shall provide for the appointment of the arbitrator or  
16 arbitrators, ~~or trial resolution judge, as the case requires.~~  
17 Once appointed, the arbitrators ~~or trial resolution judge~~  
18 shall notify the parties of the time and place for the  
19 hearing.

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

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

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1           (7) The chief arbitrator ~~or trial resolution judge~~ may  
 2 administer oaths or affirmations and conduct the proceedings  
 3 as the rules of court shall provide. At the request of any  
 4 party, the chief arbitrator ~~or trial resolution judge~~ shall  
 5 issue 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 ~~A voluntary binding arbitration~~ hearing shall  
 11 be conducted by all of the arbitrators, but a majority may  
 12 determine any question and render a final decision. ~~A trial~~  
 13 ~~resolution judge shall conduct a voluntary trial resolution~~  
 14 ~~hearing. The trial resolution judge may determine any question~~  
 15 ~~and render a final decision.~~

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

18           (10) An appeal of a voluntary binding arbitration  
 19 decision shall be taken to the circuit court and shall be  
 20 limited to review on the record and not de novo, of:

21           (a) Any alleged failure of the arbitrators to comply  
 22 with the applicable rules of procedure or evidence.

23           (b) Any alleged partiality or misconduct by an  
 24 arbitrator prejudicing the rights of any party.

25           (c) Whether the decision reaches a result contrary to  
 26 the Constitution of the United States or of the State of  
 27 Florida.

28           (11) ~~Any party may enforce a final decision rendered~~  
 29 ~~in a voluntary trial by filing a petition for final judgment~~  
 30 ~~in the circuit court in the circuit in which the voluntary~~  
 31 ~~trial took place. Upon entry of final judgment by the circuit~~

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1 ~~court, any party may appeal to the appropriate appellate~~  
2 ~~court. Factual findings determined in the voluntary trial are~~  
3 ~~not subject to appeal.~~

4       ~~(12)~~ The harmless error doctrine shall apply in all  
5 appeals. No further review shall be permitted unless a  
6 constitutional issue is raised.

7       ~~(12)~~~~(13)~~ If no appeal is taken within the time  
8 provided by rules promulgated by the Supreme Court, then the  
9 decision shall be referred to the presiding judge in the case,  
10 or if one has not been assigned, then to the chief judge of  
11 the circuit for assignment to a circuit judge, who shall enter  
12 such orders and judgments as are required to carry out the  
13 terms of the decision, which orders shall be enforceable by  
14 the contempt powers of the court and for which judgments  
15 execution shall issue on request of a party.

16       ~~(13)~~~~(14)~~ This section shall not apply to any dispute  
17 involving child custody, visitation, or child support, or to  
18 any dispute which involves the rights of a third party not a  
19 party to the arbitration ~~or voluntary trial resolution~~ when  
20 the third party would be an indispensable party if the dispute  
21 were resolved in court or when the third party notifies the  
22 chief arbitrator ~~or the trial resolution judge~~ that the third  
23 party would be a proper party if the dispute were resolved in  
24 court, that the third party intends to intervene in the action  
25 in court, and that the third party does not agree to proceed  
26 under this section.

27       Section 5. Section 44.1041, Florida Statutes, is  
28 created to read:

29       44.1041 Voluntary trial resolution.--

30       (1) Two or more opposing parties who are involved in a  
31 civil dispute may agree in writing to submit the controversy

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1 to voluntary trial resolution in lieu of litigation of the  
2 issues involved, before or after a lawsuit has been filed, if  
3 no constitutional issue is involved.

4       (2) If application for voluntary trial resolution is  
5 made before a lawsuit is filed, such application shall be  
6 filed and fees paid to the clerk of the court as if for  
7 complaints initiating civil actions. The clerk of the court  
8 shall handle and account for these matters in all respects as  
9 if they were civil actions, except that the clerk of the court  
10 shall keep separate the records of the applications for  
11 voluntary trial resolution from all other civil actions. If  
12 application for voluntary trial resolution is made after a  
13 lawsuit has been filed, such application shall be filed in the  
14 corresponding civil action.

15       (3) The filing of a presuit application for voluntary  
16 trial resolution tolls the running of the applicable statutes  
17 of limitation.

18       (4) If the parties have entered into an agreement that  
19 provides a method for appointing a member of The Florida Bar  
20 in good standing for more than 5 years to act as  
21 trial-resolution judge, the court shall proceed with the  
22 appointment as prescribed. In the absence of an agreement, or  
23 if the agreement method fails or for any reason cannot be  
24 followed, the court, on application of a party, shall appoint  
25 the trial-resolution judge.

26       (5) The trial-resolution judge shall be compensated by  
27 the parties according to their agreement.

28       (6) Once appointed, the trial-resolution judge shall  
29 notify the parties of the time and place for any hearings.

30       (7) The trial-resolution judge may administer oaths or  
31 affirmations and conduct the proceedings as the rules of court

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1 provides. At the request of any party, the trial-resolution  
2 judge shall issue subpoenas for the attendance of witnesses  
3 and for the production of books, records, documents, and other  
4 evidence and may apply to the court for orders compelling  
5 attendance and production. Subpoenas are served and are  
6 enforceable in the manner provided by law.

7 (8) A trial-resolution judge shall conduct the  
8 voluntary trial-resolution hearing. The trial-resolution judge  
9 may determine any question and render a final decision.

10 (9) The Florida Evidence Code applies to all  
11 proceedings under this section.

12 (10) Any party may enforce a final decision rendered  
13 in a voluntary trial by filing a petition for final judgment  
14 in the circuit court in the circuit in which the voluntary  
15 trial took place. Upon entry of final judgment by the circuit  
16 court, any party may appeal to the appropriate appellate court  
17 any factual findings and rulings on questions of law made by  
18 the trial-resolution judge.

19 (11) The harmless-error doctrine applies in all  
20 appeals.

21 (12) If a final decision rendered in a voluntary trial  
22 has not been incorporated into a final judgment, the decision  
23 shall be referred to the presiding judge in the case, or if  
24 one has not been assigned, the decision shall be referred to  
25 the chief judge of the circuit for assignment to a circuit  
26 judge who shall enter such orders and judgments as are  
27 required to carry out the terms of the decision. Any orders  
28 issued are enforceable by the contempt powers of the court and  
29 for which judgments of execution shall issue upon the request  
30 of a party.

31 (13) This section does not apply to any dispute

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1 involving child custody, visitation, or child support, or to  
 2 any dispute that involves the rights of a third party who is  
 3 not a party to the voluntary trial resolution when the third  
 4 party would be an indispensable party if the dispute were  
 5 resolved in court, or if the third party notifies the  
 6 trial-resolution judge that the third party would be a proper  
 7 party if the dispute were resolved in court, that the third  
 8 party intends to intervene in the action in court, and that  
 9 the third party does not agree to proceed under this section.

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11 (Redesignate subsequent sections.)

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14 ===== T I T L E    A M E N D M E N T =====

15 And the title is amended as follows:

16        On page 1, line 12, after the first semicolon,

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18 insert:

19        amending s. 44.104, F.S.; deleting all  
 20        references to voluntary trial resolution;  
 21        creating s. 44.1041, F.S.; providing for  
 22        voluntary trial resolution upon agreement of  
 23        the parties to a civil dispute; providing for  
 24        the appointment and compensation of a  
 25        trial-resolution judge; providing guidelines  
 26        for conducting a voluntary trial-resolution  
 27        hearing; providing for enforcement and appeal;

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