



683180

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1094 - 1209
and insert:

resolution judge, as the case requires.

(3) A trial resolution judge must be a member of The Florida Bar in good standing for 5 years or more who has agreed to serve.

(4)-(3) The arbitrators or trial resolution judge shall be compensated by the parties according to their agreement with the trial resolution judge.

(5)-(4) Within 10 days after the submission of the request



683180

13 for ~~binding arbitration, or~~ voluntary trial resolution, the
14 court shall provide for the appointment of the ~~arbitrator or~~
15 ~~arbitrators, or~~ trial resolution judge, as the case requires.
16 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
17 notify the parties of the time and place for the hearing.

18 (6) ~~(5)~~ Application for ~~voluntary binding arbitration or~~
19 voluntary trial resolution shall be filed and fees paid to the
20 clerk of court as if for complaints initiating civil actions.
21 The clerk of the court shall handle and account for these
22 matters in all respects as if they were civil actions, except
23 that the clerk of court shall keep separate ~~the records of the~~
24 ~~applications for voluntary binding arbitration and~~ the records
25 of the applications for voluntary trial resolution from all
26 other civil actions.

27 (7) ~~(6)~~ Filing of the application for ~~binding arbitration or~~
28 voluntary trial resolution tolls ~~will toll~~ the running of the
29 applicable statutes of limitation.

30 (8) ~~(7)~~ The ~~chief arbitrator or~~ trial resolution judge may
31 administer oaths or affirmations and conduct the proceedings as
32 the rules of court shall provide. At the request of any party,
33 the ~~chief arbitrator or~~ trial resolution judge shall issue
34 subpoenas for the attendance of witnesses and for the production
35 of books, records, documents, and other evidence and may apply
36 to the court for orders compelling attendance and production.
37 Subpoenas shall be served and shall be enforceable in the manner
38 provided by law. The trial resolution judge may order temporary
39 relief in the same manner, and to the same extent, as in civil
40 actions generally. Any party may enforce such an order by filing
41 a petition in the court. Orders entered by the court are



683180

42 reviewable by the appellate court in the same manner, and to the
43 same extent, as orders in civil actions generally.

44 ~~(9)~~ ~~(8)~~ ~~A voluntary binding arbitration hearing shall be~~
45 ~~conducted by all of the arbitrators, but a majority may~~
46 ~~determine any question and render a final decision.~~ A trial
47 resolution judge shall conduct a voluntary trial resolution
48 hearing. The trial resolution judge may determine any question
49 and render a final decision.

50 ~~(10)~~ ~~(9)~~ ~~The Florida Evidence Code and Florida Rules of~~
51 ~~Civil Procedure shall apply to all proceedings under this~~
52 ~~section, except that voluntary trial resolution is not governed~~
53 ~~by procedural rules regulating general and special magistrates,~~
54 ~~and rulings of the trial resolution judge are not reviewable by~~
55 ~~filing exceptions with the court.~~

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

59 ~~(a) Any alleged failure of the arbitrators to comply with~~
60 ~~the applicable rules of procedure or evidence.~~

61 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
62 ~~prejudicing the rights of any party.~~

63 ~~(c) Whether the decision reaches a result contrary to the~~
64 ~~Constitution of the United States or of the State of Florida.~~

65 (11) Any party may enforce a final decision rendered in a
66 voluntary trial by filing a petition for final judgment in the
67 circuit court in the circuit in which the voluntary trial took
68 place. Upon entry of final judgment by the circuit court, any
69 party may appeal to the appropriate appellate court. The
70 judgment is reviewable by the appellate court in the same



683180

71 manner, and to the same extent, as a judgment in a civil action.
72 ~~Factual findings determined in the voluntary trial are not~~
73 ~~subject to appeal.~~

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

77 (12)~~(13)~~ If no appeal is taken within the time provided by
78 rules promulgated by the Supreme Court, ~~then~~ the decision shall
79 be referred to the presiding judge in the case, or if one has
80 not been assigned, then to the chief judge of the circuit for
81 assignment to a circuit judge, who shall enter such orders and
82 judgments as are required to carry out the terms of the
83 decision. Equitable remedies are, ~~which orders shall be~~
84 enforceable by the contempt powers of the court to the same
85 extent as in civil actions generally. When a judgment provides
86 for execution, and for which judgments execution shall issue on
87 request of a party.

88 (13)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
89 ~~involving child custody, visitation, or child support, or to any~~
90 dispute that ~~which~~ involves the rights of a third party not a
91 party to the ~~arbitration or~~ voluntary trial resolution when the
92 third party would be an indispensable party if the dispute were
93 resolved in court or when the third party notifies ~~the chief~~
94 ~~arbitrator or~~ the trial resolution judge that the third party
95 would be a proper party if the dispute were resolved in court,
96 that the third party intends to intervene in the action in
97 court, and that the third party does not agree to proceed under
98 this section.

99 (14) A trial resolution judge does not have jurisdiction to



683180

100 declare unconstitutional a statute, ordinance, or provision of a
101 constitution. If any such claim is made in the voluntary trial
102 resolution proceeding, that claim shall be severed and
103 adjudicated by a judge of the court.

104 (15) The parties may agree to a trial by a privately
105 selected jury. The court's jury pool may not be used for this
106 purpose. In all other cases, the trial resolution judge shall
107 conduct a bench trial.

108 Section 38. Section 44.107, Florida Statutes, is amended to
109 read:

110 44.107 Immunity for arbitrators, voluntary trial resolution
111 judges, mediators, and mediator trainees.-

112 (1) Arbitrators serving under s. 44.103, voluntary trial
113 resolution judges serving under ~~or~~ s. 44.104, mediators serving
114 under s. 44.102, and trainees fulfilling the mentorship
115 requirements for certification by the Supreme Court as a
116 mediator ~~shall~~ have judicial immunity in the same manner and to
117 the same extent as a judge.

118 (2) A person serving as a mediator in any noncourt-ordered
119 mediation shall have immunity from liability arising from the
120 performance of that person's duties while acting within the
121 scope of the mediation function if such mediation is:

122 (a) Required by statute or agency rule or order;

123 (b) Conducted under ss. 44.401-44.406 by express agreement
124 of the mediation parties; or

125 (c) Facilitated by a mediator certified by the Supreme
126 Court, unless the mediation parties expressly agree not to be
127 bound by ss. 44.401-44.406.

128



683180

129 The mediator does not have immunity if he or she acts in bad
130 faith, with malicious purpose, or in a manner exhibiting wanton
131 and willful disregard of human rights, safety, or property.

132 (3) A person serving under s. 44.106 to assist the Supreme
133 Court in performing its disciplinary function shall have
134 absolute immunity from liability arising from the performance of
135 that person's duties while acting within the scope of that
136 person's appointed function.

137
138 ===== T I T L E A M E N D M E N T =====

139 And the title is amended as follows:

140 Delete lines 156 - 157

141 and insert:

142 amending s. 44.107,