

# 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: Commerce and Consumer Services Committee

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BILL: CS/SB 1312

SPONSOR: Commerce and Consumer Services Committee and Senator Carlton

SUBJECT: Pilot RV Mediation & Arbitration Program

DATE: March 16, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides that the current recreational vehicles mediation and arbitration pilot program shall become a permanent program for the mediation of disputes between recreational vehicle manufacturers and consumers. The program provides for mediation of all disputes arising between the consumers and manufacturers.

This bill amends sections 681.1096 and 681.1097 of the Florida Statutes.

## II. Present Situation:

### Pilot RV Mediation and Arbitration Program

In 1997, ch. 681, F.S., Florida's "Lemon Law," was amended to create substantive changes in the coverage of recreational vehicles (RVs) and to create a privately operated pilot dispute resolution program.<sup>1</sup> Pursuant to s. 681.1096(2), F.S., all RV manufacturers, including manufacturers of chassis and other components, are required to participate in the pilot RV arbitration and mediation program. The RV pilot program is required to meet certain qualifications and be approved by the Attorney General (AG). Participation is mandatory for consumers who bought new RVs on or after October 1, 1997.<sup>2</sup> A consumer with rights under the Lemon Law is also required to participate in the program before resorting to a civil action or any

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<sup>1</sup> Report of the Attorney General 1, Feb. 7, 2005.

<sup>2</sup> Section 681.1096(1), F.S.

other dispute resolution program.<sup>3</sup> If a department rejects a consumer's claim, the consumer has the right to file a lawsuit to enforce the remedies provided in ch. 681, F.S.<sup>4</sup>

Section 681.1097(3), F.S., sets forth the general guidelines for mediation under this section, while s. 681.1096, F.S., establishes the basic qualifications for both mediation and arbitration done in the program. The mediators and arbitrators for the program are required to be "insulated" from the manufacturers, in order to ensure that the mediation and arbitration services are impartial.<sup>5</sup> The administration fees of the program are shouldered entirely by the manufacturers, with no fees paid by the consumers.<sup>6</sup>

Several other provisions of s.681.1096, F.S., set forth guidelines to ensure the neutrality of the program, including a prohibition forbidding the mediators and arbitrators from being employees of the RV manufacturers or dealers, and a requirement that all mediators complete an approved mediation training program. All mediation and arbitration of eligible claims must be completed within seventy days of receipt of the claim, although failure to resolve a claim within that time period would not affect the validity of the subsequent decision.<sup>7</sup> The number of cases resolved within seventy days increased each year from 2002 to 2004, from 56 percent in 2002 to 79 percent in 2004 being timely resolved.<sup>8</sup> The Lemon Law arbitration board of the Attorney General's office monitors the program's compliance with ch. 681, F.S..<sup>9</sup>

Mediation is mandatory for the consumer and manufacturer, unless a settlement occurs prior to mediation, and mediation discussions are inadmissible in any future litigation.<sup>10</sup> Mediation is limited to the parties and their attorneys, if any, and the manufacturers must be represented by a person with settlement authority.<sup>11</sup> If mediation ends in an impasse, the dispute proceeds to arbitration.<sup>12</sup> Section 681.1097(5), F.S., generally sets forth the requirements of arbitration conducted pursuant to this section.

Pursuant to s. 681.1096(1), F.S., the AG's office has issued a report on the Florida Pilot RV Mediation/Arbitration Program regarding the effectiveness of the program, which is scheduled to expire on September 30, 2006.<sup>13</sup> This program is similar to the Lemon Law Arbitration Program the AG's office already supervises. The RV industry funds the pilot program, the goal of which is to resolve Lemon Law disputes between consumers of new RVs and the RV manufacturers, including chassis and major component manufacturers.<sup>14</sup> Rather than having numerous programs sponsored by the various RV manufacturers, the Recreational Vehicle Industry Trade Association (RVIA) decided to develop a program for all of its member manufacturers.<sup>15</sup> Prior

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<sup>3</sup> Section 681.1097, F.S.

<sup>4</sup> Id. at (3)(d).

<sup>5</sup> Section 681.1096(3)(a), F.S.

<sup>6</sup> Id. at (3)(b).

<sup>7</sup> Id. at (3)(k).

<sup>8</sup> Attachment A, Attorney General's Report.

<sup>9</sup> Section 681.1096(4), F.S.; Report of the Attorney General at 1.

<sup>10</sup> Section 681.1097(4), F.S.

<sup>11</sup> Id.

<sup>12</sup> Id. at (4)(e).

<sup>13</sup> Report of the Attorney General at 1.

<sup>14</sup> Id.

<sup>15</sup> Id.

to the creation of the pilot program, eligible RV disputes were arbitrated by the state's New Motor Vehicle Arbitration Board, administered by the AG's office.<sup>16</sup>

Because an RV claim generally involves multiple manufacturers and an RV is sold to the consumer under the name of the end-stage manufacturer, it can be difficult for a consumer to determine which manufacturer is liable when warranty repairs are needed.<sup>17</sup> The first approved pilot program was administered by the American Arbitration Association (AAA) from 1998 until late 2001, when the AAA relocated its offices out of the state and declined to continue the program.<sup>18</sup> In January 2002, the Collins Center for Public Policy in Tallahassee, Florida, became the approved program administrator.<sup>19</sup>

### Claims Resolution and Consumer Feedback

During the calendar years from 1998 to 2004, 272 consumers filed eligible claims with the pilot program.<sup>20</sup> Sixty-seven percent of these claims were resolved by settlements between the parties, and 24 percent were resolved in arbitration.<sup>21</sup> When the Collins Center began administering the program, it began sending out questionnaires to consumer participants in the pilot program, to determine the perceived fairness and effectiveness of the program.<sup>22</sup> Forty-six percent of the questionnaires have been returned, for a total of 61 responses out of 134 questionnaires.<sup>23</sup> On the issue of mediation, eighty-four percent of the respondents whose claims were resolved in mediation felt that the mediation was conducted in a fair and impartial manner, although 50 percent of the respondents were unsatisfied with the settlements they reached with the manufacturers.<sup>24</sup>

According to data from the Collins Center, for the years 2002 to 2004, seventy percent of claims reached a settlement at mediation.<sup>25</sup> The consumers whose claims went to arbitration were considerably less satisfied with the results they received, although it should be noted that 76 percent of the claims sent to arbitration were dismissed.<sup>26</sup> Twenty-five percent of these respondents felt that the arbitrator was not knowledgeable about the Lemon Law, and forty percent felt the arbitrator did not conduct the hearing in an impartial manner.<sup>27</sup> Fifty-four percent felt that they were not given a full and fair opportunity to present their evidence at the hearing, and the same number also reported that they did not understand the reasons the arbitrator gave for the written decision.<sup>28</sup> Finally, fifty-nine percent of these respondents would not recommend the pilot program to others.<sup>29</sup>

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<sup>16</sup> Id. at 2.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 3.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Attachment A, Attorney General's Report.

<sup>26</sup> Report of the Attorney General at 3.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

For the entire program period, 16 percent of cases have received a full settlement, 6 percent resulted in an arbitration award, and 51 percent resulted in a partial settlement.<sup>30</sup>

### **Attorney General's Perspective on Problems with the Pilot Program**

When the pilot program began, the manufacturers were usually represented by attorneys at the mediation conferences, while the consumers were unrepresented.<sup>31</sup> This imbalance, together with the limited protection provided by the statutes, led to few effective resolutions.<sup>32</sup> To remedy this, the AG's office requested that the manufacturers stop sending attorneys to mediation unless the consumers were similarly represented.<sup>33</sup> The RVIA agreed to this and also agreed to mediate all consumer complaints, including those that would not qualify for arbitration, which is limited by statute solely to claims arising under the Lemon Law.<sup>34</sup> The AG noted that this could "salvage the relationship" and allow the manufacturers to hear directly from consumers about various complaints.<sup>35</sup> It is also significant to note that the Lemon Law often does not address many of the consumers' primary complaints about their RVs, because defects in components that are part of an RV's "living facilities" are not eligible for Lemon Law protection.<sup>36</sup>

One problem with the settlements from the mediation program is that since 2002, forty-two percent of the settlements have contained confidentiality clauses, drafted by the manufacturers that render the agreements voidable under the Lemon Law.<sup>37</sup> Settlements have also been contingent upon the consumer giving up all potential rights to pursue other remedies against not only the manufacturer, but also against the dealers and other related entities who are not parties to the Lemon Law claims.<sup>38</sup> The AG has unsuccessfully attempted to persuade the manufacturers to desist from these practices.<sup>39</sup>

When a claim goes to arbitration, the remedies available are more limited because only the Lemon Law and related rules can be applied.<sup>40</sup> In arbitration, the consumer's claim is either denied in total, or the consumer may receive an award ordering the manufacturer to provide either a refund of the RV's purchase price or a replacement vehicle, and the consumer must pay a statutory offset for the time for which they used the "lemon" RV.<sup>41</sup> Manufacturers are always represented by attorneys in the arbitration proceedings, although consumers usually are not.<sup>42</sup> An additional problem with arbitration is that the arbitrators only receive one day of training on the Lemon Law, and little of the information is retained by time a hearing occurs.<sup>43</sup> Because the

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<sup>30</sup> Attachment A, Attorney General's Report.

<sup>31</sup> Attorney General's Report at 3-4.

<sup>32</sup> Id. at 4.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

arbitrators have little independent knowledge of the relevant law and no source of independent legal advice, they tend to rely heavily on the arguments made by the manufacturer's attorney.<sup>44</sup> As a result, arbitration looks more like a trial court, several decisions issued by the arbitrators have wrongly applied the law, and the AG believes that "arbitration has not proven to be effective for consumers."<sup>45</sup>

The AG has determined that the program would be more effective for dispute resolution if settlements were not conditioned on overreaching disclaimers and releases of consumers' rights, and if consumers and manufacturers agreed to expand the scope of mediation and arbitration to include all warranty disputes, regardless of whether such claims fall within the scope of the Lemon Law.<sup>46</sup> The AG also recommends both that its office retain qualification and oversight authority for the program and that all pilot program functions carried out by its office be transferred to the RVIA.<sup>47</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 681.1096, F.S., to eliminate the termination of the mediation and arbitration program, thereby making the program permanent. This section also removes the requirement that the Attorney General present reports on the effectiveness of the pilot program.

**Section 2** amends s. 681.1097, F.S., to reflect that the RV mediation and Arbitration Program is a permanent program.

**Section 3** provides that the act shall take effect upon becoming law.

### 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.

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<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id. at 5.

**B. Private Sector Impact:**

The RVIA will have some expenses connected with the continued financial support of the RV arbitration and mediation program.<sup>48</sup>

**C. Government Sector Impact:**

The Department of Legal Affairs currently incurs recurring expenses of \$29,000 for personnel and \$10,000 for expenses.<sup>49</sup> This bill 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.<sup>50</sup> The program expenses include printing the RV program consumer application form, processing applications filed with the department, and storing and archiving RV program files.<sup>51</sup> These tasks require approximately one day of work per week for a full-time staff assistant.<sup>52</sup> 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.<sup>53</sup>

**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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<sup>48</sup> Id.

<sup>49</sup> Department of Legal Affairs, Fiscal Impact Statement (Feb. 17, 2005).

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

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

None.

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