

Committee Substitute for Senate Bill No. 1312

An act relating to the recreational vehicles; amending s. 479.261, F.S.; requiring the Department of Transportation to incorporate certain markers on logo signs for certain establishments; requiring the department to adopt rules regarding the incorporation of those markers; amending s. 681.1096, F.S.; eliminating future termination of the program; revising requirements for program certification to ensure neutrality of dispute resolution; providing guidelines for the training of arbitrators and mediators; providing that the program must complete all mediation and arbitration within 70 days after receipt of the consumer's claim; requiring the program to gather and make available all documents relevant to a dispute; providing consumer exemption from mediation when at least one manufacturer does not qualify for the program; authorizing the Department of Legal Affairs to revoke the qualification of a noncompliant program; providing for notice to programs and manufacturers not in compliance, for opportunity to correct deficiencies, and for administrative hearings; requiring the program to maintain dispute records; creating an annual reporting requirement; providing the program with rulemaking authority to implement provisions of this section; amending s. 681.1097, F.S.; providing and revising dispute resolution guidelines for consumers of recreational vehicles; requiring consumers to submit their dispute to the program; providing that the claim is considered filed when it is date-stamped as received by the program; requiring the consumer's application form to be prescribed by the program; requiring the program administrator to screen all applications to determine eligibility; requiring the program administrator to provide notice of rejected applications; providing for mandatory mediation and the expansion of the scope of mediation at the consent of the parties; providing guidelines for mediation proceedings; requiring written response of manufacturers to consumer allegations; removing requirement that the program administrator notify the department of the mediation outcome; extending the deadline for consumer notification to the program administrator of a manufacturer's failure in comply with a mediation decision; revising guidelines for arbitration proceedings; providing that technical rules of evidence do not apply to arbitration proceedings; providing for the expansion of the scope of arbitration at the consent of the parties; requiring the arbitrator's decision to consider all legal and equitable factors; providing consumers with means for civil enforcement of an award; extending the deadline for consumer notification to the program administrator of a manufacturer's failure in comply with an arbitration decision; providing that the arbitrator's decision is admissible as evidence in certain civil actions; providing an effective date.

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

Section 1. Subsection (1) of section 479.261, Florida Statutes, is amended to read:

479.261 Logo sign program.—

(1) The department shall establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, and camping services at interchanges, through the use of business logos, and may include additional interchanges under the program. A logo sign for nearby attractions may be added to this program if allowed by federal rules.

(a) An attraction as used in this chapter is defined as an establishment, site, facility, or landmark which is open a minimum of 5 days a week for 52 weeks a year; which charges an admission for entry; which has as its principal focus family-oriented entertainment, cultural, educational, recreational, scientific, or historical activities; and which is publicly recognized as a bona fide tourist attraction. However, the permits for businesses seeking to participate in the attractions logo sign program shall be awarded by the department annually to the highest bidders, notwithstanding the limitation on fees in subsection (5), which are qualified for available space at each qualified location, but the fees therefor may not be less than the fees established for logo participants in other logo categories.

(b) The department shall incorporate the use of RV friendly markers on specific information logo signs for establishments that cater to the needs of persons driving recreational vehicles. Establishments that qualify for participation in the specific information logo program and that also qualify as “RV friendly” may request the RV friendly marker on their specific information logo sign. An RV friendly marker must consist of a design approved by the Federal Highway Administration. The department shall adopt rules in accordance with chapter 120 to administer this paragraph, including rules setting forth the minimum requirements that establishments must meet in order to qualify as RV friendly. These requirements shall include large parking spaces, entrances, and exits that can easily accommodate recreational vehicles and facilities having appropriate overhead clearances, if applicable.

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

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

(a) The program must be administered by an administrator and staff that are is sufficiently insulated from the manufacturer to ensure impartial mediation and arbitration services and to ensure that a manufacturer does not make decisions as to whether a consumer's dispute proceeds to mediation or arbitration.

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

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

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

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

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

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

(h) Program arbitrators must complete a Florida Supreme Court certified circuit or county arbitration program, or other arbitration training program approved by the department, ~~in addition to a minimum of 1 day of training in the application of this chapter and any rules adopted thereunder conducted by the department.~~

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

(j) The program must ensure that the mediators and arbitrators are sufficiently trained in the program rules and procedures and in the provisions of this chapter at least every other year and as a precondition to

servicing in the program. The program shall monitor the performance of the mediators and arbitrators to ensure that they are performing competently and impartially and are complying with all program rules and procedures and the provisions of this chapter. Program arbitrators must construe and apply the provisions of this chapter and rules adopted thereunder in making decisions.

(k) The program must complete all mediation and arbitration of an eligible consumer claim within 70 days of the program administrator's receipt of the claim from a consumer ~~the department~~. Failure of the program to complete all proceedings within the prescribed period will not invalidate any settlement agreement or arbitration decision. The program shall gather all documents from the parties to a dispute that are necessary to a full consideration of the dispute, including, but not limited to, a statement of the respective complaints, positions, and desired resolution by the consumer and each manufacturer. Copies of documents submitted to the program shall be provided to all parties involved in the dispute, the assigned mediator, and the assigned arbitrator.

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

(4) The department shall monitor the program for compliance with this chapter. If the program is determined not qualified or if qualification is revoked, then disputes shall be subject to the provisions of ss. 681.109 and 681.1095. If the program is determined not qualified or if qualification is revoked as to a manufacturer, all those manufacturers potentially involved in the eligible consumer dispute ~~the involved manufacturer~~ shall be required to submit to arbitration conducted by the board if such arbitration is requested by a consumer and the dispute is deemed eligible for arbitration by the division pursuant to s. 681.109. A consumer having a dispute involving one or more manufacturers for which the program has been determined not qualified, or for which qualification has been revoked, is not required to submit the dispute to the program irrespective of whether the program may be qualified as to some of the manufacturers potentially involved in the dispute.

(5) A program failing to meet the requirements of this section, s. 681.1097, and the rules adopted thereunder by the department may not be qualified by the department. The department may revoke the qualification of a program for failure to maintain compliance with the requirements of this section, s. 681.1097, and the rules adopted thereunder by the department. The department may revoke the qualification of a program as to one or more participating manufacturers for conduct to be specified by the department by rule pursuant to ss. 120.536(1) and 120.54.

(6)~~(5)~~ If a program is determined not qualified or if qualification is revoked, or if program qualification is revoked as to a particular manufacturer, the program administrator and the involved manufacturer, if any, shall be notified by the department of any deficiencies in the program or, in the case of a manufacturer, notified of the manufacturer's conduct in violation of this chapter or the rules adopted thereunder by the department, shall

be given an opportunity to correct such deficiencies, except as set forth by the department by rule, and shall be informed that it is entitled to a hearing pursuant to chapter 120.

~~(7)~~(6) The program administrator, mediators, and arbitrators are exempt from civil liability arising from any act or omission in connection with any mediation or arbitration conducted under this chapter.

~~(8)~~(7) The program administrator shall maintain records of each dispute submitted to the program, including the recordings of arbitration hearings. Such records shall be maintained in a manner separate from other unrelated records of the program. All records maintained by the program under this chapter shall be public records and shall be available for inspection by the department upon reasonable notice. The program shall retain all records for each dispute for at least 5 years after the final disposition of the dispute. The program shall furnish the department with copies of all settlement agreements and decisions within 30 days after the date of such settlements and decisions. The records for disputes closed as of September 30 of each year shall be turned over to the department by the program administrator by no later than October 30 of the same year, unless a later date is specified by the department.

(9) The program shall provide the department with quarterly and annual reports containing such information as the department shall by rule prescribe.

~~(10)~~(8) The department shall ~~have the authority to adopt reasonable rules pursuant to ss. 120.536(1) and 120.54 to implement~~ carry out the provisions of this section.

Section 3. Section 681.1097, Florida Statutes, is amended to read:

681.1097 ~~Pilot~~ RV Mediation and Arbitration Program; dispute eligibility and program function.—

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

(2) A consumer acquiring a recreational vehicle must apply to participate in this program with respect to a claim arising during the Lemon Law rights period by filing the application in subsection (3) with the program department no later than 60 days after the expiration of the Lemon Law rights period. The claim is considered filed when the application is date-stamped as received by the program.

(3) The consumer's application for participation in the program must be on a form prescribed ~~or approved~~ by the program department. The program

~~administrator department shall screen all applications to participate in the program to determine eligibility. The department shall forward to the program administrator all applications the department determines are potentially entitled to relief under this chapter.~~

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

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

~~(a)(e)~~ The consumer and the manufacturer shall be notified in writing by the ~~program administrator department~~ if an application is rejected. Such notification of rejection shall include a brief explanation as to the reason for the rejection.

~~(b)(d)~~ If the ~~program administrator department~~ rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to the matter considered by the ~~program department~~, any determination made to reject a dispute is admissible in evidence.

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

(4) Mediation shall be mandatory for both the consumer and manufacturer, unless the dispute is settled prior to the scheduled mediation conference. The mediation conference shall be confidential and inadmissible in any subsequent adversarial proceedings. Participation shall be limited to the parties directly involved in the dispute and their attorneys, if any. All manufacturers shall be represented by persons with settlement authority. The parties may, by agreement, consent to expand the scope of a mediation conference to attempt to resolve warranty claims by the consumer which may not be covered under this chapter, if such claims were reported by the consumer to the manufacturer or its authorized service agent during the term of the manufacturer's express warranty.

(a) Upon determination that an application is eligible receipt of an eligible application, the program administrator shall notify the consumer and all involved manufacturers in writing that an eligible application has been received. Such notification shall include a statement that a mediation conference will be scheduled, shall identify the assigned mediator, and provide information regarding the program's procedures. The program administrator shall provide all involved manufacturers with a copy of the completed application and obtain from each manufacturer a written response to the allegations contained in the application along with copies of any documents in support of such response. The written response shall be on a form and submitted in the manner prescribed by the program.

(b) The mediator shall be selected and assigned by the program administrator. The parties may factually object to a mediator based upon the mediator's past or present relationship with a party or a party's attorney, direct or indirect, whether financial, professional, social, or of any other kind. The program administrator shall consider any such objection, determine its validity, and notify the parties of any determination. If the objection is determined valid, the program administrator shall assign another mediator to the case.

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

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

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

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

1. Name and address of the consumer.
2. Name and address of each involved manufacturer.
3. Year, make, model, and vehicle identification number of the subject recreational vehicle.
4. Name and address of the dealership from which the recreational vehicle was acquired.
5. Date the claim was received by the program administrator.
6. Name of the mediator or ~~and/or~~ arbitrator, if any.
7. A complete statement of the terms of the agreement, including, but not limited to: whether the vehicle is to be reacquired by a manufacturer and the identity of the manufacturer that will reacquire the vehicle; the amount of any moneys to be paid by the consumer or ~~and/or~~ a manufacturer; the year, make, and model of any replacement motor vehicle or motor vehicle accepted by the consumer as a trade-assist; the date, time, location, and nature of any agreed upon repair or replacement of a component part or accessory and an estimate as to the anticipated length of time for such repair or replacement; and a time certain for performance not to exceed 40 days from the date the settlement agreement is signed by the parties.

(g) If a manufacturer fails to perform within the time required in any settlement agreement, the consumer must notify the program administrator of such failure in writing within ~~30~~ 10 days of the required performance date. Within 10 days of receipt of such notice, the program administrator shall determine whether the dispute is eligible to proceed to arbitration ~~notify the department of the manufacturer's failure in compliance and shall schedule the matter for an arbitration hearing pursuant to subsection (5). If the program administrator determines the dispute is not eligible for arbitration, the dispute shall be rejected pursuant to subsection (3).~~

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

(a) The arbitration hearing shall be conducted by a single arbitrator assigned by the program administrator. The arbitrator shall not be the same person as the mediator who conducted the prior mediation conference in the dispute. The parties may factually object to an arbitrator based on the arbitrator's past or present relationship with a party or a party's attorney, direct or indirect, whether financial, professional, social, or of any other kind. The program administrator shall consider any such objection, determine its validity, and notify the parties of any determination. If the objection is determined valid, the program administrator shall assign another arbitrator to the case.

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

(c) At all program arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The technical rules of evidence as are applicable to civil court proceedings do not apply to arbitrations conducted by the program. The arbitrator shall record the arbitration hearing and shall have the power to administer oaths. The arbitrator may inspect the vehicle if requested by a party or if the arbitrator considers such inspection appropriate. The parties may, by mutual written agreement, consent to expand the scope of the arbitration hearing to permit consideration by the arbitrator of warranty claims by the consumer that may not be covered under this chapter, provided such claims were first reported by the consumer to the manufacturer or its authorized service agent during the term of the manufacturer's express warranty.

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

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

(e)(f) The arbitrator shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty and the provisions of this chapter grant relief if a reasonable number of attempts have been undertaken to correct a non-conformity or nonconformities.

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

~~(g)(h) A manufacturer shall comply with an arbitration decision within 40 days of the date the manufacturer receives the written decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the relief refund specified in the arbitration award.~~

(h) If a manufacturer fails to comply within the time required, and no appeal has been filed, the consumer shall must notify the program administrator of such failure in writing within 30 40 days. The program administrator shall notify the department of a manufacturer's failure to comply. A consumer may apply to a court of competent jurisdiction in this state for entry of an order confirming the award. Such application shall be by motion filed within 40 days after the manufacturer's failure to comply and shall be heard in the manner and upon notice provided by law or rule of court for the making and hearing of motions. Such application shall be served in the manner provided by law for the service of a civil summons. The consumer shall send a copy of the application for confirmation of the award and any order entered by the court confirming the award to the program administrator. The department shall have the authority to enforce compliance with arbitration decisions under this section in the same manner as is provided for enforcement of compliance with board decisions under s. 681.1095(10). In any civil action arising under this chapter and relating to a dispute arbitrated pursuant to this section, the decision of the arbitrator is admissible in evidence.

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

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

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

(8) In any civil action arising under this chapter relating to a dispute arbitrated pursuant to this section, the decision of the arbitrator is admissible in evidence.

~~(9)(8) The department shall have the authority to adopt reasonable rules pursuant to ss. 120.536(1) and 120.54 to implement carry-out the provisions of this section.~~

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 3, 2005.

Filed in Office Secretary of State June 3, 2005.