

# Arkansas Legislature Prescribes Contractual Waiver of Jury Trial in Lending Agreements

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In late 2017, the Arkansas Supreme Court held that pre-dispute jury trial waivers in loan agreements are unenforceable as per the Arkansas Constitution. The Court provided that, according to the state's Constitution, the right to a jury trial may only be waived "in the manner prescribed by law." Because no state statute or procedural rule expressly allowed for such waivers, the Court deemed them to be invalid. This case of *Tilley v. Malvern National Bank* left many parties across the state questioning the status of their own contractual loan agreements including similar pre-dispute jury trial waivers.

Cue the Arkansas Legislature. In its Second Extraordinary Session of 2018, the Arkansas General Assembly passed Senate Bill 5, which clarifies that pre-dispute contractual waivers of jury trial in lending agreements are enforceable. The bill provides, in part, that "[a] written provision in a contract to borrow money or to lend money in which the parties agree to waive their respective rights to a trial by jury under Arkansas Constitution, Article 2, § 7, is valid and enforceable except upon those grounds that exist at law or in equity for the revocation of any contract." Section 2 of the bill states that the act applies retroactively to any contractual waiver of a jury trial that was agreed to before the effective date of the act. Thus, any such waiver in a lending agreement that was in effect before the bill became law is valid. Further, the bill notes the uncertainty parties have about their contracts following "decisions of the Arkansas Supreme Court" and declares an emergency in light of such confusion that warrants the immediate effectiveness of the bill. Governor Asa Hutchinson signed the bill into law on March 19, 2018.

Read Senate Bill 5 [here](#).

Whether a lender or borrower is drafting or entering into a lending agreement, legal counsel can prove to be valuable in terms of knowing what is permissible to include under the law.