

1 State of Arkansas
2 91st General Assembly
3 Second Extraordinary Session, 2018
4

A Bill

Call Item 4
SENATE BILL 5

5 By: Senator J. Hutchinson
6 By: Representative Ballinger
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE WAIVER OF A PERSON'S OR
10 ENTITY'S RIGHT TO A JURY TRIAL THAT IS CONDITIONED ON
11 A CONTRACTUAL AGREEMENT OF THE PARTIES; TO DECLARE AN
12 EMERGENCY; AND FOR OTHER PURPOSES.
13
14

Subtitle

16 CONCERNING THE WAIVER OF A PERSON'S OR
17 ENTITY'S RIGHT TO A JURY TRIAL THAT IS
18 CONDITIONED ON A CONTRACTUAL AGREEMENT OF
19 THE PARTIES; AND TO DECLARE AN EMERGENCY.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. As authorized by Article 2, § 7, of the Arkansas
25 Constitution, Arkansas Code Title 16, Chapter 30, is amended to add an
26 additional section to read as follows:

27 16-30-104. Contractual waiver of jury trial.

28 (a) A written provision in a contract in which the parties agree to
29 waive their respective rights to trial by jury under Arkansas Constitution,
30 Article 2, § 7, is presumptively valid, irrevocable, and enforceable.

31 (b) A party that has signed a contract containing a waiver described
32 in subsection (a) of this section may not avoid enforcement or application of
33 the waiver by asserting that the party did not read, understand, or agree to
34 the waiver.

35 (c) A nonparty to a contract that contains a waiver described in
36 subsection (a) of this section that attempts to enforce the contract or any



1 rights under the contract as a third-party beneficiary or through another
2 legal theory permitting the enforcement of the contract is subject to the
3 waiver in the same manner as the parties to the contract.

4 (d) A waiver described in subsection (a) of this section is valid and
5 enforceable whether the parties entered into the contract before or after a
6 lawsuit concerning the contract was filed.

7
8 SECTION 2. DO NOT CODIFY. Retroactivity.

9 (a) This act applies retroactively to a contract to waive a jury trial
10 entered into before the effective date of this act.

11 (b) This act applies retroactively to all judicial proceedings in
12 which a contract to waive a jury trial is at issue if the judicial proceeding
13 is still pending on the effective date of the act.

14
15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that decisions of the Arkansas
17 Supreme Court regarding contractual jury waiver provisions leave parties in
18 doubt about the applicability of their contracts; that this uncertainty must
19 be resolved immediately; and that this uncertainty may only be resolved
20 through the immediate effectiveness of this act. Therefore, an emergency is
21 declared to exist, and this act being immediately necessary for the
22 preservation of the public peace, health, and safety shall become effective
23 on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

30
31
32
33
34
35
36