



## Daily Legislative Update

91st General Assembly Second Special Session  
Tuesday, March 13, 2018

### AT THE CAPITOL

A Second Special Session of the 91<sup>st</sup> General Assembly convened at 9 a.m. this morning. The House and Senate convened at 2 p.m. Monday afternoon and then adjourned the 2018 Fiscal Session Sine Die in less than 10 minutes.

### JURY WAIVERS IN CONTRACTS

**HB 1006** and **SB 5** by Rep. Bob Ballinger, R-Hindsville, and Sen. Jeremy Hutchinson, R-Little Rock, were filed with the support of the State Chamber/AIA, Arkansas Bankers Association, Associated General Contractors, Arkansas Automobile Dealers Association and others. The bills respond to a Supreme Court decision *Tilley v. Malvern National Bank*, rendered on December 7, 2017.

Jury waiver provisions are common features of contracts into which Arkansans routinely enter. Studies have found jury waiver provisions in as many as 20 percent of all contracts and in more than half of certain types of contracts, such as security and credit agreements. Like businesses everywhere, Arkansas businesses routinely include these provisions in their contracts because they ensure quicker, more efficient resolutions of disputes through trials in front of a judge rather than a jury.

These standard contractual provisions are enforced in federal courts and in the courts of almost every state. Nevertheless, in *Tilley v. Malvern National Bank*, 2017 Ark. 343, the Arkansas Supreme Court, in a 4-3 ruling, made Arkansas the third state—following Georgia and California—to reject these basic contract provisions. The Court held that any jury trial waiver in a contract was invalid because Article 2, Section 7 of the Arkansas Constitution says that a jury trial may only be waived “in the manner prescribed by law,” and neither the General Assembly nor the Supreme Court had enacted statutes or rules permitting waivers. Under the four-justice majority’s ruling, waivers must be approved by either statute or court rule.

The holding in *Tilley* invalidated jury waiver provisions in thousands of contracts entered into by Arkansans. The parties to those contracts bargained for any disputes to be resolved without a jury but have lost the benefit of that bargain. The only solution is an act by the General Assembly approving pre-dispute contractual jury waivers.

This bill therefore expressly permits parties to enter into contractual waivers of jury trials and establishing standards for considering those provisions should they be challenged. The bill also

applies retroactively to contracts and jury proceedings in existence before it goes into effect, which protects parties whose contractual provisions were invalidated by *Tilley*. The bill also declares the infringement of the right to contract imposed by the *Tilley* ruling to be an emergency that must be remedied immediately upon passage of the bill.

**BILLS FILED**

Here is list of all bills filed in accordance with the Governor’s call.

2018 Special Session		
<a href="#">HB 1001</a>	<a href="#">Pitsch, Mat(R)</a> <a href="#">Sample, Bill(R)</a>	Revises the definition of “alcoholic beverages” within the criminal violation of possession of an open container of alcohol in a motor vehicle. Amends the defined areas of a motor vehicle in which a container may be stored.  <b>Companions:</b> <a href="#">SB 4</a> Sample, Bill (Same As) 3-13-18 S Introduced and referred to S-Judiciary
<a href="#">HB 1002</a>	<a href="#">Pitsch, Mat(R)</a>	Authorizes the use of bingo gaming equipment that displays a bingo face electronically.
<a href="#">HB 1003</a>	<a href="#">Maddox, John(R)</a> <a href="#">Teague, Larry(D)</a>	Changes the defenses to prosecution for a violation or operating an all-terrain vehicle from private property to another property via a public street or highway.  <b>Companions:</b> <a href="#">SB 1</a> Teague, Larry (Same As) 3-13-18 S Introduced and referred to S-Transportation, Technology & Leg. Affairs
<a href="#">HB 1004</a>	<a href="#">Lowery, Mark(R)</a> <a href="#">Clark, Alan(R)</a>	Amends the Public School Choice Act of 2015 transfer ratio calculation, stating that a sibling group whose application for student transfer causes a district to exceed the three percent limit on transfers shall be allowed to transfer as a group.
<a href="#">HB 1005</a>	<a href="#">Bentley, Mary(R)</a> <a href="#">Stubblefield, Gary(R)</a>	Exempts unpaved trail construction projects that are under control of the State Parks Commission from design and construction standards and requirements of the DF&A - Building Authority Division.
<a href="#">HB 1006</a>	<a href="#">Ballinger, Bob(R)</a> <a href="#">Hutchinson, Jeremy(R)</a>	Establishes the applicability of contracts in which the parties agree to waive their respective rights to trial by jury.  <b>Position:</b> Our Package

<a href="#">HB 1007</a>	<a href="#">Wardlaw, Jeff(R)</a> <a href="#">Stubblefield, Gary(R)</a>	Provides that an application with ADEQ for modification of an existing permit for the application of liquid animal waste only opens for review those permit conditions which are subject to modification.
<a href="#">HB 1008</a>	<a href="#">Gillam, Jeremy(R)</a> <a href="#">Rapert, Jason(R)</a>	Creates a tax exemption for contributions to a tuition savings account that can be used for expenses within a federal ABLE account.
<a href="#">HB 1009</a>	<a href="#">Lowery, Mark(R)</a> <a href="#">Clark, Alan(R)</a>	Amends the Public School Choice Act of 2015 transfer ratio calculation, stating that a sibling group whose application for student transfer causes a district to exceed the three percent limit on transfers shall be allowed to transfer as a group.
<a href="#">HB 1010</a>	<a href="#">Gray, Michelle(R)</a> <a href="#">Caldwell, Ronald(R)</a>	Establishes the Arkansas Pharmacy Benefits Manager Licensure Act.
	<b>Companions:</b>	<a href="#">SB 2</a> Caldwell, Ronald (Same As) 3-13-18 S Introduced and referred to S-Insurance and Commerce
<a href="#">SB 1</a>	<a href="#">Teague, Larry(D)</a> <a href="#">Maddox, John(R)</a>	Changes the defenses to prosecution for a violation or operating an all-terrain vehicle from private property to another property via a public street or highway.
	<b>Companions:</b>	<a href="#">HB 1003</a> Maddox, John (Same As) 3-13-18 H Meeting set for 10:00 a.m. - MAC Room B, H-Public Transportation
<a href="#">SB 2</a>	<a href="#">Caldwell, Ronald(R)</a> <a href="#">Gray, Michelle(R)</a>	Establishes the Arkansas Pharmacy Benefits Manager Licensure Act.
	<b>Companions:</b>	<a href="#">HB 1010</a> Gray, Michelle (Same As) 3-13-18 H Meeting set for 11:00 a.m. - Room 149, H-Insurance and Commerce
<a href="#">SB 3</a>	<a href="#">Clark, Alan(R)</a> <a href="#">Lowery, Mark(R)</a>	Amends the Public School Choice Act of 2015 transfer ratio calculation, stating that a sibling group whose application for student transfer causes a district to exceed the three percent limit on transfers shall be allowed to transfer as a group.
<a href="#">SB 4</a>	<a href="#">Sample, Bill(R)</a> <a href="#">Pitsch, Mat(R)</a>	Revises the definition of "alcoholic beverages" within the criminal violation of possession of an open container of alcohol in

a motor vehicle. Amends the defined areas of a motor vehicle in which a container may be stored.

**Companions:**

[HB 1001](#) Pitsch, Mat (Same As)  
3-13-18 H Meeting set for 10:00 a.m. - Room 149, H-Judiciary

<a href="#">SB 5</a>	<a href="#">Hutchinson, Jeremy(R)</a> <a href="#">Ballinger, Bob(R)</a>	Establishes the applicability of contracts in which the parties agree to waive their respective rights to trial by jury.
<a href="#">SB 6</a>	<a href="#">Rapert, Jason(R)</a> <a href="#">Gillam, Jeremy(R)</a>	Creates a tax exemption for contributions to a tuition savings account that can be used for expenses within a federal ABLÉ account.
<a href="#">SB 7</a>	<a href="#">Stubblefield, Gary(R)</a> <a href="#">Bentley, Mary(R)</a>	Exempts unpaved trail construction projects that are under control of the State Parks Commission from design and construction standards and requirements of the DF&A - Building Authority Division.
<a href="#">SB 8</a>	<a href="#">Stubblefield, Gary(R)</a> <a href="#">Wardlaw, Jeff(R)</a>	Provides that an application with ADEQ for modification of an existing permit for the application of liquid animal waste only opens for review those permit conditions which are subject to modification.

**LEGISLATIVE SESSION INFORMATION**

During Fiscal Sessions, this update is provided periodically based upon information of interest. To view schedules, calendars, bill information and legislator information, visit: [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

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