The validity of contractual provisions for waiving a jury trial, made independently of any pending litigation, has been recognized or assumed in a number of cases which have considered such provisions. On the other hand, a contractual waiver of a jury trial in an agreement has been deemed unenforceable where such contractual waiver violated the state constitutional right to a jury trial in civil cases absent legislative authorization and the state statute authorizing the waiver of jury trial did not authorize a predispute waiver of that right or where the state constitutional guarantee of right to a jury trial referred to only two exceptions: when no issuable defense was filed and when the parties failed to demand a jury trial, plainly contemplating a pendency of litigation at the time of waiver.

Since the right to a jury trial is highly favored, a waiver of the right to a jury trial will be strictly construed and will not be lightly inferred or extended. Accordingly, a party seeking to enforce such a provision must demonstrate that consent is both knowing and voluntary. Where the waiver clause is buried inconspicuously in a contract such that the party’s waiver could neither be knowing or intentional, the waiver is deemed invalid.