

Alabama

Are mandatory arbitration provisions recognized in your state? If so, are there any limitations to its enforcement?

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Yes, mandatory arbitration provisions are widely recognized and are generally enforceable in Alabama if there is a valid agreement to arbitrate and a party has not waived its right to arbitrate by litigation conduct. In determining whether the parties entered into a valid arbitration agreement, Alabama courts apply state contract law principles including whether there was offer and acceptance, consideration, and mutual assent to the terms essential to the contract.ⁱ

Even if there is a valid agreement to arbitrate, however, the party resisting arbitration may be able to show waiver if the party seeking arbitration substantially invoked the litigation process and the party resisting arbitration is substantially prejudiced by requiring it to arbitrate.ⁱⁱ A party seeking to prove the other party waived its right to arbitrate has a “heavy burden” and courts do not lightly infer a waiver of the right to arbitrate.ⁱⁱⁱ

In terms of other potential limitations on the enforcement of arbitration provisions, an Alabama court may void an arbitration clause as a matter of public policy if it is based on consideration that is illegal under Alabama law, such as gambling^{iv} or if the arbitration clause is found unconscionable because it has terms grossly favorable to a party that has overwhelming bargaining power^v

What is your state’s law, if any, regarding gift cards, subscription services and loyalty programs?

Gift certificates are presumed abandoned, other than those exempt under §35-12-73, three years after June 30 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate's face value.^{vi}

A gift certificate, gift card, or in-store merchandise credit issued or maintained by any person engaged primarily in the business of selling tangible personal property at retail is exempt from reporting under this article.^{vii}

ⁱ See, *Baptist Health Sys., Inc. v. Mack*, 860 So. 2d 1265, 1273 (Ala. 2003)

ⁱⁱ See, *Ocwen Loan Servicing, LLC v. Washington*, 939 So. 2d 6, 14 (Ala. 2006); *Aurora Healthcare, Inc. v. Ramsey*, 83 So. 3d 495, 500 (Ala. 2011)

ⁱⁱⁱ See, *Paragon Ltd., Inc. v. Boles*, 987 So. 2d 561, 564 (Ala. 2007) (quoting *Mutual Assurance, Inc. v. Wilson*, 716 So. 2d 1160, 1164 (Ala. 1998))

^{iv} See, *Macon County Greyhound Park v. Hoffman*, 226 So. 3d 152, 167 (Ala. 2016)

^v See, *Anderson v. Ashby*, 873 So. 2d 168, 174 (Ala. 2003)

^{vi} Ala. Code §35-12-72(a)(17)

^{vii} Ala. Code §35-12-73(b)(1)