

## Illinois

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

Arbitration provisions are generally enforceable in Illinois pursuant to the Federal Arbitration Act and the Illinois Uniform Arbitration Act. Enforcement of arbitration clauses generally parallels contract law. Under Illinois law, arbitration clauses will not be enforced if:

- (1) If the clause is unconscionable (it unreasonably favors one party; it represents a disparity in bargaining power; or its terms are difficult to find and read);
- (2) If the clause was entered into by an agent of the party against whom it is being enforced, the principal must have knowledge of the agreement to arbitrate, must have acquiesced in the agreement, and the third party seeking to enforce the arbitration clause must have relied on the representation of an agreement to arbitrate;
- (3) If the authority granted to the agent is the wrong form of authority, i.e., some courts have held that Healthcare Powers of Attorney are not authorized to enter into arbitration agreements on behalf of a patient, it must be a Financial Power of Attorney; and,
- (4) If the arbitration agreement was obtained by fraud.<sup>i</sup>

Even absent an arbitration clause, mandatory arbitration will be ordered in municipal cases (cases seeking less than \$30,000), and, in Cook County, in some law division cases of higher value at the judge's discretion. The law division arbitration program is not actually binding – the award can be rejected for a fee of \$750. And if the litigant who rejects the award fails to obtain that amount at trial, he must pay the other side's attorney's fees for the arbitration. It is worth it to request or move for a referral to mandatory arbitration from the motion judge.

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

#### Gift Cards:

The Illinois Consumer Fraud and Deceptive Business Practices Act ("Act") provides protections in a wide variety of consumer transactions, from automobile purchases to

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animal cremation services.<sup>ii</sup> It also provides consumer protections to holders of certain types of gift certificates.

For any gift certificate or gift card issued on or after Jan. 1, 2008, the Illinois act prohibits a gift certificate from having: (i) an expiration date earlier than five years after the date of issuance, or (ii) a post-purchase fee, such as an inactivity fee.<sup>iii</sup> For gift cards sold prior to Jan. 1, 2008, and containing a post-purchase fee, it is required that they have the terms of the fee conspicuously printed on the certificate in a location that the consumer could see prior to the purchase.

For purposes of the Act, the following do not constitute gift certificates and are not subject to the above restrictions: prepaid calling cards; gift certificates usable with multiple sellers of goods or services; gift certificates distributed as part of an awards, loyalty or promotional program without money or anything of value given by the consumer; gift certificates sold below face value at a volume discount to employers or charitable organizations for fundraising purposes if the expiration is not more than 30 days; or gift certificates issued for a food product.<sup>iv</sup>

### Subscriptions:

Businesses that allow customers to sign up for automatically renewing subscriptions must comply with a patchwork of state and federal regulations. The Federal Trade Commission (“FTC”) recently issued an Enforcement Policy Statement Regarding Negative Option Marketing (“Enforcement Policy”) that addresses recurring subscription programs. In 2022, Illinois amended its existing laws on recurring subscriptions.

As of January 1, 2022, businesses that allow customers to sign up for subscriptions online must offer “cost-effective, timely, and easy-to-use” mechanisms for Illinois customers to terminate their subscriptions. Illinois customers who sign up for subscriptions online must be allowed to cancel their subscriptions online. Additionally, Illinois businesses must provide notice, 30 to 60 days prior to an automatic renewal, including a toll-free phone number, email, postal address, or other cost-effective, timely, and easy-to-use mechanism for cancellation.

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<sup>i</sup> 710 ILCS 5

<sup>ii</sup> 815 ILCS 505

<sup>iii</sup> *Id*

<sup>iv</sup> *Id*