

## Indiana

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

In short, yes. A party seeking to compel arbitration must: (1) demonstrate the existence of an enforceable agreement to arbitrate the dispute; and (2) prove that the disputed matter is the type of claim that the parties agreed to arbitrate.<sup>i</sup> Once the court is satisfied that the parties contracted to submit their dispute to arbitration, the court is required to compel arbitration.<sup>ii</sup>

There are some limits regarding whether a party is compelled to participate in arbitration. Specifically, while the parties are bound to arbitrate all matters, not explicitly excluded that reasonably fit within the language used in an arbitration agreement, they are only bound to arbitrate those issues that by clear language they have agreed to arbitrate.<sup>iii</sup>

Arbitration agreements can also be attacked as being unconscionable or as having resulted from fraud or unequal bargaining power.<sup>iv</sup>

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

There is limited case law and/or statutory laws governing gift cards, subscription services, and loyalty programs. However, House Bill 1181 does provide certain restrictions on gift cards.

Specifically, according to state legislature, House Bill 1181 provides in part that if after any time a gift card sold or issued to an Indiana consumer and the merchant/business: (1) ceases to do business within Indiana; (2) ceases to offer the types of goods or services that were offered to consumers at the time the gift card was originally offered and/or sold, if the expiration date has not already elapsed, the merchant or business owner, upon request by the consumer, shall promptly refund to the holder of the gift certificate the balance of the underlying funds or provide the consumer the remaining balance in some other manner.

The house bill expressly provides that violation of House Bill 1181 would be actionable under the Deceptive Consumer Act, and the consumer would be entitled to remedies codified under the Act.

---

<sup>i</sup> See, *Safety Nat. Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986 (Ind. Ct. App. 2005)

<sup>ii</sup> *Id.* See also, Ind. Code § 34-57-2-3

<sup>iii</sup> *Id.*

<sup>iv</sup> See, *Walker v. DaimlerChrysler Corp.*, 856 N.E. 2d 90 (Ind. Ct. App. 2006)