

Montana

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

Yes, Montana recognizes mandatory arbitration provisions under its version of the Uniform Arbitration Act. Specifically,

a written agreement to submit an existing controversy to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.ⁱ

a written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.ⁱⁱ

a written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.ⁱⁱⁱ

However, mandatory arbitration provisions are not enforceable for the following:

- (a) claims arising out of personal injury, whether based on contract or tort;
- (b) any contract by an individual for the acquisition of real or personal furnished by the individual is \$5,000 or less;
- (c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or
- (d) claims for workers' compensation.^{iv}

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

I. Gift Cards

Gift cards are included in Montana's Consumer Protection Act. A gift certificate is defined as a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor

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chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.^v

Certain actions in relation to the sale/transaction of gift cards/certificates are prohibited under the Consumer Protection Act:

(1) A gift certificate is valid until redemption and does not terminate. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate

(2) The value represented by the gift certificate belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a gift certificate presented by an individual whose name does not match the name on the gift certificate

(3) A gift certificate may not be reduced in value by any fee, including a dormancy fee applied if a certificate is not used

(4) If the original value of the gift certificate was more than \$5 and the remaining value is less than \$5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the gift certificate for cash.^{vi}

II. Subscription Services/Loyalty Programs

We could not identify any state statute, case law, or regulation regarding subscription services or loyalty program. Interestingly, the Montana Department of Revenue submitted a rule for public comment on establishing a customer loyalty program for marijuana dispensaries but that rule was withdrawn in September 9, 2022.^{vii}

ⁱ MT ST 27-5-114(1); *Ratchye v. Lucas*, 957 P.2d 1128 (Mont. 1998).

ⁱⁱ MT ST 27-5-114(2).

ⁱⁱⁱ *Id.* at (3).

^{iv} *Id.* at (2)(a)–(d); *Young v. Security Union Title Ins. Co.*, 971 P.2d 1233 (Mont. 1998) (insurance policies).

^v MT ST 30-14-102(5)(a).

^{vi} MT ST 30-14-108.

^{vii} 2022 MAR p. 1767.