

## Nebraska

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

Yes, Nebraska generally recognizes mandatory arbitration provisions. Under Nebraska's Uniform Arbitration Act, written agreements to arbitrate existing and future controversies are "valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract."<sup>i</sup>

There are, however, several statutory exceptions to the general rule that agreements to arbitrate *future* controversies are enforceable. Under Nebraska law, agreements to arbitrate (1) claims arising out of personal injury based on tort, (2) claims under the Nebraska Fair Employment Act, (3) disputes between parties covered by the Motor Vehicle Industry Regulation Act, and (4) disputes concerning or relating to an insurance policy are invalid and unenforceable.<sup>ii</sup> The Nebraska Supreme Court has referred to those exceptions as "antiarbitration provisions."<sup>iii</sup> And contrary contract provisions agreed to by the parties do not control over those four statutory bars to enforcement of arbitration.<sup>iv</sup>

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

#### I. Gift Cards

Several provisions of the Uniform Disposition of Unclaimed Property Act address gift cards, specifically. Under Nebraska law, gift cards with an expiration date "shall contain a statement clearly and conspicuously printed on it stating whether there is a fee, the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift certificate or gift card, and when the fee will be assessed."<sup>v</sup> The same notice requirements apply to gift cards subject to fees—they must "contain a statement clearly and conspicuously printed on it stating whether there is a fee, the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift certificate or gift card, and when the fee will be assessed."<sup>vi</sup>

#### II. Subscription Services

Nebraska has not enacted any laws regulating automatic renewals of business-to-consumer subscription services.

#### III. Loyalty Programs

There do not appear to be any Nebraska statutes or cases specifically addressing loyalty programs. But these programs could implicate several broader statutory schemes. For example, the Uniform Deceptive Trade Practices Act prohibits merchants from selling or promoting to consumers in a fraudulent or misleading way, failing to disclose material

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information to consumers clearly and conspicuously, and failing to meet reasonable consumer expectations and assumptions.<sup>vii</sup> Further, the Telemarketing and Prize Promotions Act prohibits merchants from making misrepresentations in the context of promotions and sweepstakes, which are often components of loyalty programs.<sup>viii</sup> The Act also requires—in relevant part—sweepstakes operators and prize promoters to provide consumers certain information, such as the odds of winning the prize and the retail value of each prize the consumer is told they will receive.<sup>ix</sup> And to the extent that loyalty programs raise antitrust issues (*e.g.*, predatory pricing, bundling, or exclusive dealing), NEB. REV. STAT. § 59-801 provides that every contract “in restraint of trade or commerce” is unlawful.

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<sup>i</sup> Neb. Rev. Stat. § 25-2602.01(a)–(b).

<sup>ii</sup> Neb. Rev. Stat. § 25-2602.01(f)

<sup>iii</sup> *See Citizens of Human., LLC v. Applied Underwriters Captive Risk Assurance Co., Inc.*, 299 Neb. 545, 558, 909 N.W.2d 614, 625 (2018).

<sup>iv</sup> *See id.*; Neb. Rev. Stat. § 25-2602.01(d).

<sup>v</sup> Neb. Rev. Stat. § 69-1305.03(f).

<sup>vi</sup> *Id.* § 69-1305.03(e).

<sup>vii</sup> *See generally* Neb. Rev. Stat. § 87-302(a).

<sup>viii</sup> *See* Neb. Rev. Stat. § 86-229.

<sup>ix</sup> *See id.* § 86-228.