

Tennessee

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

Yes, Tennessee generally recognizes mandatory arbitration provisions:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the revocation of any contract; provided, that for contracts relating to farm property, structures or goods, or to property and structures utilized as a residence of a party, the clause providing for arbitration shall be additionally signed or initialed by the parties.ⁱ

The signature requirement for contracts relating to property and structures utilized as a residence of the party includes homeowner insurance policies.ⁱⁱ

Arbitration agreements between physicians and patients are not per se void as against public policy.ⁱⁱⁱ

Written agreements to submit to arbitration within the cotton industry are governed by T.C.A. 29-5-201 et seq. Under this code section, Tennessee recognizes mandatory arbitration agreements within the cotton industry:

A written agreement to submit any existing controversy within or related to the cotton industry to arbitration or a provision in a written contract, except a forward crop contract, to submit to arbitration any controversy within or related to the cotton industry thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.^{iv}

A controversy within or related to the cotton industry includes “but is not limited to any controversy arising from, connected with, or in any way relating to the sale, purchase, pledge, hypothecation, or exchange of, or other.”^v

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

I. Gift Cards

Tennessee’s Consumer Protection Act addresses the sale and purchase of gifts certificates/cards. Specifically, gifts cards cannot be sold containing an expiration date that is less than 2 years after the date of sale or charge a fee to for the issuance of the gift certificate.^{vi} Additionally, “[n]o person or entity, within 2 years after the gift

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certificate is issued, shall charge services charges or fees . . . that have the effect of reducing the total amount for which the holder may redeem the gift certificate.”^{vii} The statutory restrictions on expiration dates and service fees does not apply to certain categories of gift certificates:

- (1) Distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift certificate by the consumer
- (2) Sold below face value at a volume discount to employers or given or sold below face value to nonprofit or charitable organizations for fundraising purposes;
- (3) Sold by a nonprofit or charitable organization for fundraising purposes;
- (4) Given to an employee by an employer, if use of the gift certificate is limited to the employer's business establishment, which may include a group of merchants that are affiliated with the business establishment; or
- (5) Issued by an employer to an employee in recognition of services performed by the employee.^{viii}

Tennessee’s Uniform Unclaimed Property Act governs certain gift cards which falls under the definition of a stored value card: “a stored-value card: (i) The value of which does not expire; (ii) That may be decreased in value only by redemption for merchandise, goods, or services; and (iii) That, unless required by law, must not be redeemed for or converted into money or otherwise monetized by the issuer . . .”^{ix} A stored value card is presumed abandoned 5 years after the later of “(1) December 31 of the year in which the card is issued or additional funds are deposited into it; (2) The most recent indication of interest in the card by the apparent owner; or (3) A verification or review of the balance by or on behalf of the apparent owner.”^x

An insurer issuing a group or individual benefit plan may offer voluntary wellness or health improvement program that uses incentives or rewards like gift cards, to encourage or reward a plan member’s participation in the program.^{xi}

Tennessee passed a few statutes which addresses the sale and purchase of gift cards in the alcohol/wine industry. A winery or farm winery permit holder is permitted to sell, in addition to its own wine, retails items related or incidental to the consumption, dispensing, or storage of wine, like gift cards.^{xii} Tennessee-licensed alcohol retailers may sell gift certificates or gift cards to consumers.^{xiii} No gift card shall be honored, accepted, or sold to anyone visibly intoxicated.^{xiv} No gift card shall be honored or accepted from anyone under the age of twenty-one (21) for the purchase of alcoholic beverages or beer.^{xv} Such practices will be deemed to be a violation.^{xvi}

II. Subscription Services/Loyalty Programs

We could not locate any state statutes, case law, or regulations on subscription services or loyalty programs.

ⁱ T.C.A. § 29-5-302.

ⁱⁱ See *Merrimack Mut. Fire Ins, Co. v. Batts*, 59 S.W.3d 142, 152 (Tenn. Ct. App. 2001).

ⁱⁱⁱ *Buraczynski v. Eyring*, 919 S.W.2d 314, 319 (Tenn. 1996).

^{iv} T.C.A. § 29-5-202(a).

^v T.C.A. § 29-5-202(b)(1).

^{vi} T.C.A. § 47-18-127(a).

^{vii} *Id.* at § 47-18-127(b).

^{viii} *Id.* at § 47-18-127(d).

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^{ix} T.C.A. § 66-29-102(9).

^x T.C.A. § 66-29-110(a).

^{xi} T.C.A. § 56-8-112.

^{xii} T.C.A. § 57-3-207(h)(1)(C).

^{xiii} TN ADC 0100-03-13(9).

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.*