

Texas

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

Yes, Texas generally recognizes mandatory arbitration provisions:

(a) A written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that:

- (1) exists at the time of the agreement; or
- (2) arises between the parties after the date of the agreement.

(b) A party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.ⁱ

Mandatory arbitration agreements are not enforceable, unless the agreement to arbitrate is in writing and signed by each party and the party's attorney for the following kinds of agreements:

- (1) a collective bargaining agreement between an employer and a labor union;
- (2) an agreement for the acquisition by one or more individuals of property, services, money, or credit in which the total consideration to be furnished by the individual is not more than \$50,000, except as provided by Subsection (b);
- (3) a claim for personal injury, except as provided by Subsection (c);
- (4) a claim for workers' compensation benefits; or
- (5) an agreement made before January 1, 1966.ⁱⁱ

An arbitration agreement may bind non-signatories under any of the following six theories: (1) incorporation by reference, (2) assumption, (3) agency, (4) alter ego, (5) equitable estoppel, and (6) third-party beneficiary.ⁱⁱⁱ

Under the Texas Administrative Code, Texas Department of Insurance, Division of Workers' Compensation, Dispute Resolution, "[f]ollowing a benefit review conference where disputed benefit issue(s) remain unresolved, the parties may mutually agree to engage in arbitration on those issues."^{iv} The parties must sign a firm prescribed by the division and file it with the division's chief within 20 days of the last day of the benefit review conference.^v The decision to proceed with arbitration "in place of a division contested case hearing," once properly filed is binding and irrevocable "for the resolution of all disputes arising out of the claims that are under the jurisdiction of the division."^{vi}

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

I. Gift Cards

Gift cards fall under the definition of a stored value card and are governed by Texas' Business and Commerce Code.^{vii} Qualifying gift cards must a clear and conspicuous disclosure about any applicable "expiration date or policy, fee, or other material restriction or contract term."^{viii} Additionally, a gift card must contain a disclosure regarding the expiration date or a periodic fee that reduces the unredeemed value of the gift card.^{ix}

Texas' Business and Commerce Code establishes permissible fees on the use of gift cards. As long as the issuer of the gift card complies with the notice requirements, it may collect a handling fee related to issuing or adding value to the card, access fee for a card transaction at an unmanned teller machine, and reissue or replacement change, so long as seller complies with disclosure requirements.^x Issuers of a gift card may also collect a periodic fee or charge that causes the unredeemed balance to decrease if the fee is reasonable, not assessed until one year after the sale, and the disclosure requirements are met.^{xi} Issuers of gift cards are required to refund the balance of a store value card that carries a balance of less than \$ 2.50 when redeemed in person to make a purchase.^{xii}

Gift cards, as stored value cards, also fall under Texas' Abandonment of Personal Property Act.^{xiii} If the existence and location of the owner of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and uncharged value on the earlier of: 1) the card's expiration date; 2) the third anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card; or 3) the first anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, if the card's value represents wages, as defined by Section 61.001, Labor Code.^{xiv}

II. Loyalty Programs

The holder of a alcohol manufacturer or wholesale tier license or permit may not directly or indirectly reimburse a retailer for a loyalty program, but Retailers and holders of a manufacturing tier licenses or permits who are authorized to sell directly to consumers may offer a loyalty program subject to the conditions in this subsection.^{xv}

III. Subscription Services

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

ⁱ V.T.C.A. Civ. Prac. & Remedy Code § 171.001.

ⁱⁱ V.T.C.A. Civ. Prac. & Remedy Code § 171.002 (a)-(b).

ⁱⁱⁱ *Hart of Tex. Cattle Feeders, LLC v. Bonsmara Natural Beef Co., LLC*, 583 S.W.3d 705, 711 (Texas Ct. App. 2019).

^{iv} 28 TAC § 144-4.

^v *Id.*

^{vi} *Id.*

^{vii} V.T.C.A. Bus. & C. § 604.001 (defining stored value card to explicitly include a gift card or gift certificate).

^{viii} V.T.C.A. Bus. & C. § 604.101.

^{ix} V.T.C.A. Bus. & C. § 604.102.

^x V.T.C.A. Bus. & C. § 604.051.

^{xi} V.T.C.A. Bus. & C. § 604.052.

^{xii} V.T.C.A. Bus. & C. § 604.152.

^{xiii} V.T.C.A. Property Code § 72.1016.

^{xiv} *Id.* at § 72.1016(b).

^{xv} 16 TAC § 45.102.