

Virginia

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

Yes, Virginia generally recognizes mandatory arbitration provisions.ⁱ Therefore, agreements to submit existing or future controversies to arbitration are considered “valid, enforceable, and irrevocable,” provided they are in writing and otherwise contractually valid. When such an agreement is ignored and a proceeding is commenced, a court must order the parties to arbitrate upon application and a showing of a valid mandatory arbitration agreement by one party.ⁱⁱ Likewise, a party may apply for a stay of proceedings in violation of a valid mandatory arbitration agreement.ⁱⁱⁱ

While these agreements are generally enforceable, they have been held unenforceable in certain situations. First, pursuant to a recent Supreme Court of Virginia decision, mandatory arbitration provisions in trusts are unenforceable against beneficiaries.^{iv} Second, in 2019, the Virginia State Corporation Commission issued a regulation which prohibits investment advisers operating in Virginia from including mandatory arbitration provisions in advisory contracts.^v However, this rule is likely preempted by the Federal Arbitration Act and, therefore, unenforceable if challenged in federal court.

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

I. Gift Cards

Virginia’s Disposition of Unclaimed Property Act governs unused/inactive gift cards/certificates. Virginia defines a gift card as

a certificate, electronic card, or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of an equal value.^{vi}

Generally, “a gift certificate or credit balance issued in the ordinary course of the issuer’s business that has remained unclaimed by the owner for more than five years after such gift certificate or credit balance became payable is presumed abandoned.”^{vii} However, subsection A regarding presumed abandoned gift cards does not apply to: “credit balances payable to a business association; outstanding checks resulting from or attributable to the sale of goods or services to a business association; promotional incentives; and credits, gift certificates, coupons, layaways, and similar items, provided that such credits, gift certificates, coupons, layaways, and similar items are redeemable in merchandise, in services, or through future purchases.”^{viii}

Virginia's Trade and Commerce title contains a small chapter governing the sale of gift certificates/cards. This section defines a gift certificate as

a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a banked dollar value where the issuer has received payment for the full banked dollar value for the future purchase, or delivery, of goods or services and any certificate issued by a merchant where the issuer has received payment for the full face value of the certificate for future purchases, or delivery, of goods or services.^x

Merchants that sell gift certificates in the state of Virginia must comply with the following disclosure requirements:

- Each gift certificate issued by a merchant in the Commonwealth that has an expiration date shall include either (i) a statement of the expiration date of the certificate or (ii) a telephone number or Internet address where the holder of the certificate may obtain information regarding the expiration date of the certificate.
- Each gift certificate issued by a merchant in the Commonwealth that diminishes in value over time shall include a telephone number or Internet address where the holder of the certificate may obtain information regarding the diminution in the value of the certificate over time.
- The information required by this section shall be clearly and permanently imprinted on the certificate.^x

Any violation of the provisions of the gift certificate chapter constitutes a prohibited practice pursuant to the provisions of § 59.1-200, which defined prohibited practices under the Virginia Consumer Protection Act, and shall be subject to any and all of the enforcement provisions of Chapter 17 (the Virginia Consumer Protection Act) of this title.^{xi}

II. Subscription Services

Virginia recently enacted statutes that regulate subscription services. Key terms include:^{xii}

Automatic renewal – a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

Automatic renewal offer terms – the following clear and conspicuous disclosures:

That the subscription or purchasing agreement will continue until the consumer cancels;

The description of the cancellation policy that applies to the offer;

The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;

The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and

The minimum purchase obligation, if any.

Consumer – any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

Continuous service – a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

Pursuant to Virginia’s Automatic Renewal Offers and Continuous Service Offers Act, no supplier making an automatic renewal or continuous service offer to a consumer in Virginia shall do any of the following:^{xiii}

Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the consumer becomes obligated on the automatic renewal or continuous service offer and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the supplier shall also disclose in the acknowledgment how to cancel the free trial before the consumer pays or becomes obligated to pay for the goods or services.

A supplier making automatic renewal or continuous service offers shall provide a toll-free telephone number, an electronic mail address, a postal address only when the supplier directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in subdivision A 3. Each supplier making automatic renewal or continuous service offers through an online website shall make available a conspicuous online option to cancel a recurring purchase of a good or service.

In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer in the Commonwealth, the supplier shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

The requirements of this section shall apply only prior to the completion of the initial order for the automatic renewal or continuous service, except:

The requirement in subdivision A 3 may be fulfilled after completion of the initial order; and

The requirement in subsection C shall be fulfilled prior to implementation of the material change.

“In any case in which a supplier sends any goods, wares, merchandise, or products to a consumer under a

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continuous service agreement or automatic renewal of a purchase without first obtaining the consumer's affirmative consent as described in § 59.1-207.46, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner he sees fit without any obligation whatsoever on the consumer's part to the supplier, including any obligation or responsibility for shipping any goods, wares, merchandise, or products to the supplier.”^{xiv}

Virginia’s Automatic Renewal Offers and Continuous Service Offers Act does not apply to

Any service provided by a supplier or its affiliate where either the supplier or its affiliate is doing business pursuant to a franchise issued by a political subdivision of the Commonwealth or a license, franchise, certificate, or other authorization issued by the State Corporation Commission to a public service company or public utility pursuant to Title 56;

Any service provided by a supplier or its affiliate where either the supplier or its affiliate is regulated by the State Corporation Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission;

Alarm company operators that are regulated pursuant to § 15.2-911;

A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution, licensed under federal or state law;

Any home protection company regulated by the State Corporation Commission pursuant to Chapter 26 (§ 38.2-2600 et seq.) of Title 38.2;

Any home service contract provider regulated by the Department of Agriculture and Consumer Services pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.); or

Any health club registered pursuant to the Virginia Health Club Act (59.1-294 et seq.).^{xv}

Finally, any violation of this act amounts to a prohibited practice under the provisions of § 59.1-200 (Prohibited Practices) and shall be subject to the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).^{xvi} If a supplier makes a good faith effort to comply with the requirements of the relevant code section, it shall not be subject to a civil penalty or damages.^{xvii}

III. Loyalty Programs

There are no applicable laws, however, Va. Code § 59.1-578 may have some application as to the collection of data.

ⁱ Va. Code Ann. § 8.01-581.01.

ⁱⁱ Va. Code Ann. § 8.01-581.02.

ⁱⁱⁱ *Id.*

^{iv} *Boyle v. Anderson*, 871 S.E.2d 226, 2022 Va. Lexis 22 (2022).

^v 21-VAC5-80-200(F).

^{vi} Va. Code Ann. § 55.1-2500.

^{vii} VA. Code Ann. § 55.1-2515(A).

^{viii} *Id.* at § 55.1-2515(B).

^{ix} Va. Code Ann. § 59.1-530.

^x Va. Code Ann. § 59.1-531.

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^{xi} Va. Code Ann. § 59.1-532.

^{xii} Va. Code Ann. 59.1-207.45.

^{xiii} Va. Code Ann. 59.1-207.46(A).

^{xiv} Va. Code Ann. 59.1-207.47.

^{xv} Va. Code Ann. 59.1-207.48

^{xvi} Va. Code Ann. 59.1-207.49

^{xvii} *Id.*