

## West Virginia

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

Yes, West Virginia generally recognizes mandatory arbitration provisions.<sup>i</sup> The basis for upholding mandatory arbitration provisions is that “an arbitration provision in a written contract was bargained for and that arbitration was intended to be the exclusive means of resolving disputes arising under the contract[.]”<sup>ii</sup> Factors considered by West Virginia courts to determine the enforceability of arbitration provisions include: (1) the entire contract; (2) the nature of the contracting parties; and (3) the nature of the undertakings covered by the contract.<sup>iii</sup>

There are exceptions to mandatory arbitration agreements in certain circumstances including, but not limited to, unconscionability, collective bargaining agreements, and consumer loan transactions subject to the West Virginia Consumer Credit Protection Act.<sup>iv</sup>

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

#### I. Gift Cards

West Virginia’s Uniform Unclaimed Property Act applies to unclaimed gift certificates. Gift certificates are deemed to be unclaimed by the apparent owner three years after December 31 of the year in which the certificate was sold; provided, however, when the gift certificate is redeemable in merchandise only, the amount abandoned is deemed to be sixty percent (60%) of the certificate’s face value.<sup>v</sup>

#### II. Loyalty Programs

Sales, offers for sale, or advertisements to sell involving a discount or rebate by purchases through the use of a bonus, loyalty or rewards program or involving the redemption of credits, discounts or rebates through a bonus, loyalty or rewards program are permissible and specifically exempt from the provisions of the Unfair Trade Practices Act.<sup>vi</sup>

#### III. Subscription Services

We could not locate any state laws or case law on subscription services.

<sup>i</sup> *AC&S Inc. v. George*, 244 W.Va. 49, 851 S.E.2d 495 (W.Va. 2020).

<sup>ii</sup> *State ex rel Clites v. Clawges*, 224 W. Va. 299, 685 S.E.2d 693 (2009).

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.*; *State ex rel. Ocwen Loan Servicing, LLC v. Webster*, 232 W.Va. 341, 752 S.E.2d 372 (W.Va. 2013); *Arnold v. United Companies Lending Corp.*, 204 W.Va. 229, 237, 511 S.E.2d 854, 862 (W.Va. 1998) *overruled on other grounds in Dan Ryan Builders, Inc. v. Nelson*, 230 W.Va. 281, 737 S.E.2d 550 (W.Va. 2012).

<sup>v</sup> W.Va. Code § 36-8-2.

<sup>vi</sup> W.Va. Code § 47-11A-8(f).