

INDIANA

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

Mandatory Arbitration Provisions are Recognized in Indiana.

Indiana recognizes a strong policy favoring arbitration agreements¹, and Indiana courts generally will enforce mandatory arbitration agreements, as established by Indiana's Uniform Arbitration Act. The Act provides that "a written agreement to submit to arbitration is valid, and enforceable . . . except upon such grounds as exist at law or in equity for the revocation of any contract."² A party seeking to compel arbitration must: (1) demonstrate the existence of an enforceable agreement to arbitrate the dispute; and (2) prove that the disputed matter is the type of claim that the parties agreed to arbitrate.³ Once the court is satisfied that the parties contracted to submit their dispute to arbitration, the court is required to compel arbitration.⁴ Therefore, where there is a written arbitration agreement and no limitation on enforceability of such agreement applies, Indiana courts will enforce such arbitration agreement.

Limitations on the Enforceability of Arbitration Provisions

Indiana courts will enforce only mandatory arbitration agreements as to those issues that the parties have agreed to arbitrate by clear language, evincing an intent to resolve disputes through arbitration.⁵ Courts will not extend mandatory arbitration agreements not contained in the contract by implication or reference, unless it is made clear that the arbitration agreement is part of the contract through clear and explicit language.⁶ Additionally, arbitration agreements can also be attacked as being unconscionable or as having resulted from fraud or unequal bargaining power. Therefore, where it is not clear that the parties intended to arbitrate over a subject, Indiana courts may choose not to enforce arbitration agreements.

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

There is limited case law and/or statutory laws governing gift cards, subscription services, and loyalty programs. However, Indiana House Bill 1260 does provide certain restrictions on gift cards.

¹ *Ind. CPA Soc'y v. GoMembers, Inc.*, 777 N.E.2d 747, 750 (Ind.Ct. App. 2002).

² Ind. Code § 34-57-2-1.

³ *See Safety Nat. Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986 (Ind. Ct. App. 2005).

⁴ *Id.* *See also*, Ind. Code § 34-57-2-3.

⁵ *Novotny v. Renewal by Andersen Corp.*, 861 N.E.2d 15 (Ind. Ct. App. 2007).

⁶ *See MPACT Const. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901 (Ind. 2004).

Specifically, HB 1260 provides that a person shall not sell or issue to an Indiana consumer any gift certificate or store gift card with an expiration date unless the following conditions are satisfied: (1) the seller has established policies and procedures to provide consumers with a reasonable opportunity to purchase a gift certificate/card with at least five years remaining until the date of expiration; (2) the expiration date of the underlying funds is at least five years after the date the certificate was initially issued or the date on which funds were last loaded onto the store gift card or the expiration date of the store card or gift certificate; (3) the following disclosures are provided on the gift certificate or store card: (a) the expiration date for the underlying funds or, if the funds do not expire, a statement of that fact; (b) a telephone number and/or website through which the consumer may obtain a replacement store gift card or gift certificate; (c) except in the case of a gift certificate or, if nonreloadable, a store gift card that bears an expiration date that is at least seven years from the date of issuance, a statement that the gift certificate or store gift card expires, but that the underlying funds either do not expire or expire later than the gift certificate or store gift card and that the consumer may contact the issuer for a replacement gift certificate or store gift card; (4) a fee or charge is not imposed on the consumer for replacing the gift certificate or store gift card, nor a fee for providing the consumer with the remaining balance in some other manner before the expiration date of the underlying funds; unless the gift certificate or store gift card has been lost or stolen.⁷

Indiana's law regarding gift cards provides a revision to its Revised Unclaimed Uniform Property Act and creates a specific exemption from escheat for gift cards.⁸ Additionally, the law defines "gift card," as follows: "[g]ift card means a stored card value: (A) the value of which does not expire; (B) that may be decreased in value only by redemption for merchandise, goods, or services, **or due to any fees deducted by the card issuer**; and (C) that, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer."⁹

What is your state's law, if any, regarding safeguarding consumer credit card or other private data (i.e., cyber security)?

Signed into law on May 1, 2024 and effective on January 1, 2026, the Indiana Consumer Data Protection Act outlines the rights of consumers regarding their data privacy, as well as the obligations of controllers to protect their consumers' data.¹⁰ The Act covers one (a) who conducts business in Indiana or (b) produces products/services which are targeted towards residents of Indiana and (1) controls or processes personal data of at least 100,000 Indiana residents or (2) controls or processes personal data of at least 25,000 Indiana residents and derives over 50 percent of its gross revenue from the sale of personal data. The Act outlines the obligations of controllers, including the following:

- Limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to disclosed purposes for which such data is processed.
- Adopt and implement reasonable administrative, technical, and physical data security practices.
- Process consumers' sensitive data only after obtaining the consumer's consent.
- Process consumer data in a non-discriminatory manner and refrain from discriminating against consumers who exercise the rights granted by the statute.

⁷ H.B. 1260. 119th Gen. Assemb., Reg. Sess. (Ind. 2021).

⁸ Ind. Pub. L. 101 (2023).

⁹ *Id.*

¹⁰ See S.E.A. 5, 123rd Gen/ Assemb., Reg. Sess. (Ind. 2023).

- Provide a clear privacy policy that includes the categories of personal data processed, the purpose for processing personal data, the categories of data shared with third parties, the types of third parties, the consumer's rights, and how consumers may exercise their rights, including an appeal.
- Clearly disclose if the controller sells consumers' personal data to third parties or engages in targeted advertising and provide consumers an opportunity to opt out.
- Establish a process for consumers to appeal the refusal to take action on requests to exercise their rights.
- Conduct a data protection impact assessment on the processing of personal data for targeted advertising, the sale of personal data, profiling, sensitive data, and any processing activities that involve personal data that present a heightened risk of harm to consumers.
- When in possession of deidentified data, take reasonable measures to ensure that the data cannot be associated with an individual, commit publicly to maintaining data as deidentified data, and obligate any recipients of the data to comply with the Indiana Data Privacy Law.¹¹

Additionally, the Act grants consumers the following rights:

- Confirm with the controller whether the controller is processing the consumer's data.
- Correct inaccuracies in the consumer's personal data that the consumer provided to the controller.
- Delete personal data provided by or obtained about the consumer.
- Obtain a copy of or a representative summary of the consumer's personal data that the consumer previously provided to the controller (i.e., data portability).
- Opt out of the processing of the consumer's personal data for purposes of targeted advertising, the sale of personal data, or profiling.¹²

What is your state's law, if any, regarding the collection and handling of financial information?

The Indiana Consumer Protection Act also protects the collection and handling of consumers' financial information and data.¹³ However, financial institutions themselves are expressly exempt from this Act.¹⁴

Additionally, IC 4-1-11-5 provides that any state agency that owns or licenses computerized data that includes personal information, including financial information, shall disclose a breach of the security of the system following discovery or notification of the breach to any state resident whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.¹⁵

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See Ind. Code § 4-1-11-5 (2023).