

## South Carolina

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

Yes, South Carolina 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[.].<sup>i</sup>

We observe “that it is the policy of this state to favor the arbitration of disputes.”<sup>ii</sup> Accordingly, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.<sup>iii</sup> A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.<sup>iv</sup> Nevertheless, arbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law.<sup>v</sup> The parties to an arbitration agreement are at liberty to choose the terms under which they will arbitrate.<sup>vi</sup>

In order to be enforceable, however, any contract containing a mandatory arbitration must contain: “notice ... typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.”<sup>vii</sup> Additionally, because South Carolina Courts evaluate the enforceability of mandatory arbitration provisions based on contract law principles, these clauses are subject to standard contractual defenses such as impossibility, impracticability, unconscionable terms, etc. Consequently, proponents of mandatory arbitration should be aware that South Carolina Courts routinely invalidate contracts containing mandatory arbitration provisions based on contractual defenses. Thus, when drafting mandatory arbitration provisions, proponents would do well to keep these defenses in mind.

South Carolina courts will not enforce the following kinds of arbitration agreements

- (1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder;
- (2) Arbitration agreements between employers and employees or between their respective representatives unless the agreement provides that this chapter shall apply; *provided*, however, that notwithstanding any other provision of law, employers and employees or their respective representatives may not agree that workmen's compensation claims, unemployment compensation claims and collective bargaining disputes shall be subject to the provisions of this chapter and any such provision so agreed upon shall be null and void. An agreement to apply this chapter shall not be made a condition of employment.

(3) A pre-agreement entered into when the relationship of the contracting parties is such that of lawyer-client or doctor-patient and the term “doctor” shall include all those persons licensed to practice medicine pursuant to Chapters 9, 15, 31, 37, 47, 51, 55, 67 and 69 of Title 40 of the 1976 Code.

(4) Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.<sup>viii</sup>

The Supreme Court of South Carolina recently held that a court cannot delegate its jurisdiction to decide child custody and support through the use of binding arbitration provisions.<sup>ix</sup>

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

### GIFT CARDS

Under South Carolina law, a gift card or gift certificate (issued after July 1, 2004), which entitles a recipient of the certificate to the delivery of goods or services shall not have an expiration date before the first anniversary of the date on which the certificate is issued or sold, unless the expiration date is provided on the front of the gift certificate in capitalized letters in at least ten-point font.<sup>x</sup> Expiration dates that do not conform to this requirement shall expire on the first anniversary of the date on which the certificate is issued or sold.<sup>xi</sup> In addition, a condition relating to the use of a gift card or certificate which provides that it decreases in value over a period of time, or that a fee is charged against the balance after a certain period of time must be stated clearly on the certificate, envelope, covering or receipt given to the recipient.<sup>xii</sup> Otherwise, no deduction shall be applied against the remaining or original balance.<sup>xiii</sup>

If no expiration date is provided on the issuance of a gift card or certificate, a credit memo issued in the ordinary course of an issuer's business is considered abandoned property if it remains unclaimed for more than five years after becoming payable or distributable.<sup>xiv</sup> However, legislation, titled the Revised Uniform Unclaimed Property Act of 2021, has been introduced (though not yet signed into law), and which provides for the manner, procedures and requirements of expiration of “gift cards” “stored-value cards” and “loyalty cards.” This proposed legislation would make store-value cards and gift cards, if not yet activated by its user, expire one year after the funds would have first been available to the owner.

### SUBSCRIPTION SERVICES/LOYALTY PROGRAMS

At this time, South Carolina does not have any specific law relative to subscription services and/or loyalty programs.

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

South Carolina’s security breach and notification statute is codified at S.C. Code Ann. § 39-1-90.

### DUTY TO NOTIFY

Under the statute, a person conducting business in the state of South Carolina has a duty to notify a person of a breach of security of their data immediately following discovery of the breach, if personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person. “Personal Identifying Information” for purposes of the statute includes: (1) Social Security Numbers; (2) Driver’s License or State ID

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Card numbers; (3) financial account numbers, or credit card information along with the required security code; or (4) other information which may be used to access a person's financial accounts.

When the business learns of the breach of Personal Identifying Information, it is required to provide notice to the person through one of four ways: (1) written notice; (2) electronic notice; (3) by telephone; or (4) substitute notice (i.e. via email, on the company's website, or through a major statewide media), if notice through one of the other means costs over \$250,000 or the person has insufficient contact information.

### DAMAGES

A person who knowingly and willfully violates this section is subject to an administrative fine in the amount of one thousand dollars for each resident whose information was accessible by reason of the breach, the amount to be decided by the Department of Consumer Affairs. Moreover, a resident of South Carolina who is injured by a violation of this section, in addition to and cumulative of all other rights and remedies available at law, may:

- (1) Institute a civil action to recover damages in case of a willful and knowing violation;
- (2) Institute a civil action that must be limited to actual damages resulting from a violation in case of a negligent violation of this section;
- (3) Seek an injunction to enforce compliance; and
- (4) Recover attorney's fees and court costs, if successful.

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

### GENERAL PERSONAL INFORMATION

South Carolina's Family Privacy Protection Act (FPPA), which aims to protect family and personal identifying information, is codified at S.C. Code Ann. Title 20, Ch. 2, Art. 1. Under the FPPA, "personal information" means "information that identifies or describes an individual including, but not limited to, an individual's ... financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private financial institution, ... and any credit records or reports." Specifically, the FPPA requires state entities to "develop privacy policies and procedures to ensure the collection of personal information pertaining to [State citizens] is limited" only to that which is required for the entity to "fulfill a legitimate public purpose." A state agency which supports or provides an Internet website "must clearly display its privacy policy" on said website.

When personal information is authorized to be collected by an entity—other than criminal justice or judicial agencies—at the time of collection, the entity must "advise the citizen to whom the information [belongs] that the information" may be released or publicly scrutinized. On the other hand, any person who requests or obtains records from a state agency, local government, or political subdivision must be informed by the agency that using or obtaining public records for commercial solicitation is prohibited. Persons or private entities that "knowingly obtain or use personal information obtained by a state agency" for commercial solicitation is "guilty of a misdemeanor."

### SOCIAL SECURITY NUMBERS

South Carolina's Personal Identifying Information Privacy Protection Act (PIPPA) is codified at S.C. Code Ann. Title 20, Ch. 2, Art. 3. The PIPPA recognizes that releasing social security numbers can cause "great financial... harm to the individual." Accordingly, no public or governmental body may collect SSNs or any portion thereof unless collection is (1) authorized by law or (2) "imperative for the performance of that body's duties and responsibilities as prescribed by law." Disclosure of SSNs is also limited to specific circumstances involving necessity, court order,

public health, certified copies of vital records, certain official documents, and employment verification.

## DISPOSITION OF BUSINESS RECORDS

South Carolina's Consumer Protection Code (CPC) is codified at S.C. Code Ann. Title 37. Under the CPC, "personal identifying information" includes, but is not limited to, (1) social security numbers; (2) checking/savings account numbers; (3) credit/debit card numbers; and (4) personal identification (PIN) numbers.

When a business disposes of a business record that contains personal identifying information of a customer of a business, the business must shred, erase, or otherwise modify the personal identifying information to make it "unreadable or undecipherable." A business that has contracted with a person in the business of disposing of business records on behalf of others is considered in compliance with S.C. Code Ann. § 37-20-190(A). Notably, S.C. Code Ann. § 37-20-190(A) does not apply to (1) banks or financial institutions that comply with the Gramm-Leach-Bliley Act's privacy and security provision; (2) health insurers in compliance with the standard for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996; or (3) consumer credit-reporting agencies in compliance with the federal Fair Credit Reporting Act.

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<sup>i</sup> S.C. Code Ann. § 15-48-10.

<sup>ii</sup> *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003).

<sup>iii</sup> *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

<sup>iv</sup> *Id.* at 597, 553 S.E.2d at 118–119.

<sup>v</sup> *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001).

<sup>vi</sup> *Dowling v. Home Buyers Warranty Corp., II*, 311 S.C. 233, 236, 428 S.E.2d 709, 710 (1993).

<sup>vii</sup> S.C. Code Ann. § 15-48-10.

<sup>viii</sup> *Id.* at 15-48-10(b).

<sup>ix</sup> *Singh v. Singh*, 863 S.E.2d 330 (S.C. 2021).

<sup>x</sup> S.C. Code Ann. § 39-1-55(A), (B).

<sup>xi</sup> *Id.* at 39-1-55(B).

<sup>xii</sup> *Id.* at 39-1-55(C).

<sup>xiii</sup> *Id.*

<sup>xiv</sup> S.C. Code Ann. § 27-18-150.