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Tennessee

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

Yes, generally. See Tennessee Code Annotated §29-5-301, et seq.

The signature requirement for contracts relating to property and structures utilized as a residence of the party includes homeowner insurance policies. See Merrimack Mut. Fire Ins. Co. v. Batts, 59 S.W.3d 142, 152 (Tenn. Ct. App. 2001).

Arbitration agreements between physicians and patients are not per se void as against public policy. Buraczynski v. Eyring, 919 S.W.2d 314, 319 (Tenn. 1996).

Written agreements to submit to arbitration within the cotton industry are governed by T.C.A. §29-5-201, et seq. Under this code section, Tennessee recognizes mandatory arbitration agreements within the cotton industry:

A written agreement to submit any existing controversy within or related to the cotton industry to arbitration or a provision in a written contract, except a forward crop contract, to submit to arbitration any controversy within or related to the cotton industry thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. T.C.A. §29-5-202(a).

A controversy within or related to the cotton industry includes “but is not limited to any controversy arising from, connected with, or in any way relating to the sale, purchase, pledge, hypothecation, or exchange of, or other.” T.C.A. §29-5-202(b)(1).

Previously, the TN Court of Appeals ruled that an attorney-in-fact under a financial POA could not bind a resident of an assisted-living facility to an arbitration agreement without also having a healthcare power of attorney. Even then, the Court of Appeals ruled that any such arbitration agreement could not bind the heirs of the resident.

Recently, the TN Supreme Court issued its ruling in Williams v. Smyrna Residential, LLC, et. al., reversing the Court of Appeals and remanding to the trial court to compel arbitration. It ruled that signing the arbitration agreement is not a “health care decision” and, so long as the admissions process is not conditioned on executing the arbitration agreement, it is a legal decision. Additionally, under the plain language of Tennessee’s wrongful death statute, a decedent’s cause of action passes to its surviving spouse and other beneficiaries. The claims of those beneficiaries, therefore, are subject to the same limitations as would have been imposed upon the decedent had he taken legal action while alive. Williams v. Smyrna Residential, LLC, et.al., 685 S.W.3d 718 (Tenn. 2024).

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

GIFT CARDS

Tennessee's Consumer Protection Act addresses the sale and purchase of gifts certificates/cards. Specifically, gifts cards cannot be sold containing an expiration date that is less than 2 years after the date of sale or charge a fee to for the issuance of the gift certificate.ⁱ Additionally, "[n]o person or entity, within 2 years after the gift certificate is issued, shall charge services charges or fees . . . that have the effect of reducing the total amount for which the holder may redeem the gift certificate."ⁱⁱ The statutory restrictions on expiration dates and service fees does not apply to certain categories of gift certificates:

- (1) Distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift certificate by the consumer
- (2) Sold below face value at a volume discount to employers or given or sold below face value to nonprofit or charitable organizations for fundraising purposes;
- (3) Sold by a nonprofit or charitable organization for fundraising purposes;
- (4) Given to an employee by an employer, if use of the gift certificate is limited to the employer's business establishment, which may include a group of merchants that are affiliated with the business establishment; or
- (5) Issued by an employer to an employee in recognition of services performed by the employee.ⁱⁱⁱ

Tennessee's Uniform Unclaimed Property Act governs certain gift cards which falls under the definition of a stored value card: "a stored-value card: (i) The value of which does not expire; (ii) That may be decreased in value only by redemption for merchandise, goods, or services; and (iii) That, unless required by law, must not be redeemed for or converted into money or otherwise monetized by the issuer . . ."^{iv} A stored value card is presumed abandoned 5 years after the later of "(1) December 31 of the year in which the card is issued or additional funds are deposited into it; (2) The most recent indication of interest in the card by the apparent owner; or (3) A verification or review of the balance by or on behalf of the apparent owner."^v

An insurer issuing a group or individual benefit plan may offer voluntary wellness or health improvement program that uses incentives or rewards like gift cards, to encourage or reward a plan member's participation in the program.^{vi}

Tennessee passed a few statutes which addresses the sale and purchase of gift cards in the alcohol/wine industry. A winery or farm winery permit holder is permitted to sell, in addition to its own wine, retails items related or incidental to the consumption, dispensing, or storage of wine, like gift cards.^{vii} Tennessee-licensed alcohol retailers may sell gift certificates or gift cards to consumers.^{viii} No gift card shall be honored, accepted, or sold to anyone visibly intoxicated.^{ix} No gift card shall be honored or accepted from anyone under the age of twenty-one (21) for the purchase of alcoholic beverages or beer.^x Such practices will be deemed to be a violation.^{xi}

SUBSCRIPTION SERVICES/LOYALTY PROGRAMS

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

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

Each state agency, municipality, and county shall create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by the state agency, municipality, or county. T.C.A. §47-18-2901(A-B). Notwithstanding any other law to the contrary, failure to comply with this section shall create a cause of action or claim for damages against the state, municipality, or county if a citizen of this state proves by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. §47-18-2901(C).

T.C.A. §47-18-3307 governing Data Protection Assessments is effective as of July 1, 2025. This statute is a portion of the Tennessee Information Protection Act.

(a) A controller shall conduct and document a data protection assessment of each of the following processing activities involving personal information:

- (1) the processing of personal information for purposes of targeted advertising;
- (2) the sale of personal information;
- (3) the processing of personal information for purposes of profiling, where the profiling presents a reasonably foreseeable risk of:

(A) unfair or deceptive treatment of, or unlawful disparate impact on, consumers;

(B) financial, physical, or reputational injury to consumers;

(C) a physical or other intrusion upon the solitude or seclusion, or the private affairs or concerns, or consumers, where the intrusion would be offensive to a reasonable person; or

(D) other substantial injury to consumers;

(4) The processing of sensitive data; and

(6) Processing activities involving personal information that present a heightened risk of harm to consumers.

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

T.C.A. §45-10-103 governs the Financial Records Privacy Act. The following are expressly permitted by, but are not otherwise subject to, this chapter:

- (1) The preparation, examination, handling or maintenance of any financial records:
 - a. By any attorney, officer, employee or agent of a financial institution having custody of the records; or
 - b. By a certified public accountant engaged by the financial institution to perform an independent audit;
- (2) The examination of any financial records by, or the furnishing of financial records by a financial institution to, any officer, employee or agent of a supervisory agency for use solely in the exercise of the person's duties as an officer, employee, or agent of the agency...
- (1) The exchange in the regular course of business of credit information between a financial institution and other financial institutions or commercial enterprises, directly or through a credit reporting agency.
- (2) The furnishing of information or records deemed by a financial institution to be necessary or incidental to the performance of the duties of a federal, state, or local official or agency...

(15)(A) The furnishing by a financial institution of information or records to an affiliate of the financial institution;

(B) As used in this subdivision (15), “affiliate of a financial institution” is:

(i) A corporation, eighty percent (80%) of any class of voting stock of which is owned, directly or indirectly, by the financial institution or by a corporation that, directly or indirectly, also owns eighty percent (80%) of any class of voting stock of the financial institution; or

(ii) A corporation that owns, directly or indirectly, eighty percent (80%) of any class of voting stock of the financial institution;

(C) The affiliate to whom the records and information are furnished shall hold the records or information subject to this chapter as if the affiliate were the financial institution furnishing the records or information.

ⁱ T.C.A. § 47-18-127(a).

ⁱⁱ *Id.* at § 47-18-127(b).

ⁱⁱⁱ *Id.* at § 47-18-127(d).

^{iv} T.C.A. § 66-29-102(9).

^v T.C.A. § 66-29-110(a).

^{vi} T.C.A. § 56-8-112.

^{vii} T.C.A. § 57-3-207(h)(1)(C).

^{viii} TN ADC 0100-03-13(9).

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*