

## Colorado

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

Generally, mandatory arbitration provisions are recognized in Colorado. If there is an agreement contained in a record to submit to arbitration, any existing controversy arising between the parties to the agreement is valid and enforceable except on grounds that exist at law or in equity for revocation of the contract.<sup>i</sup> However, if there is argument of whether an agreement to arbitrate is valid or there is any controversy, a Court shall decide the validity.<sup>ii</sup> An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.<sup>iii</sup> Under this statute, if the Court determines there is a binding arbitration agreement and the dispute falls within the scope of that agreement, the Court will order arbitration.

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

#### GIFT CARDS:

A “gift card” is a prefunded tangible or electronic record of a specific monetary value evidencing an issuer’s agreement to provide goods, services, credit, money, or anything of value.<sup>iv</sup> The issuer is required to redeem the remaining value of a gift card for cash if the amount remaining is five dollars or less on request of the gift card holder.<sup>v</sup> Furthermore, it is unlawful for any person or entity to sell a gift card that contains a service fee, a dormant fee, an inactivity fee, a maintenance fee, or any other type of fee.<sup>vi</sup> A violation of this section will be deemed a deceptive trade practice.<sup>vii</sup>

#### SUBSCRIPTION SERVICES:

Automatic renewal offer terms need to be offered in a clear and conspicuous manner before the automatic renewal contract is executed.<sup>viii</sup> If an online link is utilized, the link must direct the consumer to detailed information about the automatic renewal.<sup>ix</sup> There must also be a “simple, cost effective, timely, easy-to-use, and readily accessible mechanism for canceling an automatic renewal contract.”<sup>x</sup> If a material change occurs in terms of the automatic renewal contract, the consumer shall be provided clear and conspicuous notice of the change.<sup>xi</sup> A person that sells a good or service to a consumer on an automatic renewal contract shall send clear and conspicuous notice: at least twenty-five and no more than forty days before the first automatic renewal, and at least twenty-five and no more than forty days before each automatic renewal thereafter.<sup>xii</sup>

### LOYALTY PROGRAMS:

It is unlawful for grocery store retailers to offer, provide, or continue to use a loyalty program or discount program. Any use of these will result in a civil penalty.<sup>xiii</sup> Regarding liquor laws, any liquor retailers shall maintain and make available business records regarding all loyalty or rewards program transactions.<sup>xiv</sup> This requires documentation regarding the value or rewards programs benefits and how they may be accrued and redeemed.<sup>xv</sup> Liquor retailers are required to have a unique customer identification number assigned to each member.<sup>xvi</sup> Also, liquor retailers require invoices showing the retailer's cost of the individual alcohol product to which a benefit was applied to redeemed, and receipts for every alcoholic beverage to which loyalty points were redeemed.<sup>xvii</sup>

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

Colorado law requires persons and entities that maintain own or licenses personal identifying information ("PII") in the course of the person's business, vocation, or occupation to:

- Establish written policies governing disposal of PII; C.R.S. 6-1-713.
- Take reasonable steps to protect PII; C.R.S. 6-1-713.5
- Notify of security breaches affecting personal information (PI), which includes detailed notice to Colorado residents and, in certain circumstances, notice to the Attorney General. C.R.S. 6-1-716

"Personal identifying information" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, employer, student, or military identification number; or a financial transaction device, this includes credits cards, checks, bank account numbers, and such. C.R.S. 6-1-713.

Colorado's Privacy Act ("CPA") went into effect on July 1, 2023, and applies to businesses that:

- (I) Controls or processes the personal data of one hundred thousand consumers or more during a calendar year; or
  - (II) Derives revenue or receives a discount on the price of goods or services from the sale of personal data and processes or controls the personal data of twenty-five thousand consumers or more.
- C.R.S. 6-1-1304.

The CPA requires businesses to:

- Be transparent about how they collect, store, use, share, and sell personal data
- Clearly identify the purpose for which they collect, store, use, share, and sell personal data
- Minimize the amount of data they collect and store
- Avoid secondary uses of the data
- Use reasonable security practices to secure the data
- Respond to requests by individuals asserting the rights granted to them under the law C.R.S. 6-1-1308

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

### COMPLIANCE:

- Persons licensed to do business in Colorado must keep records of all sales made and such other books or accounts as may be necessary to determine the amount of tax for which they are liable. C.R.S. 39-26-116.
  - Such persons must keep "for a period of three [3] years all invoices of goods and merchandise

purchased for resale and all such books, invoices, and other records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agent.” Id.

- Records must show gross receipts from sales or rental payments from leases, deductions claimed, and total purchase price of all property purchased and must include all receipts, invoices, cash register tapes, and working papers used to prepare tax returns.
  - For more information regarding what type of records to preserve, please see <https://www.irs.gov/businesses/small-businesses-self-employed/what-kind-of-records-should-i-keep>.
- Persons subject to the use tax must maintain monthly records of the amount of tax due. C.R.S. 39-26-204.
  - “If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar-month basis will impose unnecessary hardship, the executive director of the department of revenue, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.” C.R.S. 39-26-109.

## VIOLATIONS AND RELATED PENALTIES:

- Willfully failing to collect, truthfully account for, pay over, or otherwise make a materially false statement in connection with an application for a refund of any tax required by the Department, “or in any manner evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.” C.R.S. 39-26-120(1)-(2); see also C.R.S. 39-21-118(2)(a).
  - A “retailer or vendor” who violates this Section is “guilty of a class 5 felony” and “punished as provided in section 18-1.3-401.” C.R.S. 39-26-120(2) (emphasis added); see also C.R.S. 39-26-121 (“any person guilty of a felony” under this Section will “be punished under C.R.S. 39-21-118.”) (emphasis added).
    - C.R.S. 18-1.3-401(1)(a)(III)(A) (fines for class 5 felonies range from one thousand dollars [\$1,000.00] to one hundred thousand dollars [\$100,000.00]).
    - C.R.S. 39-21-118(2)(a) (“[C]lass 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, or shall be punished by a fine of not more than one hundred thousand dollars [\$100,000.00], or five hundred thousand dollars [\$500,000.00] in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.”).
- Knowingly and willfully swearing to or verifying any false statement. C.R.S. 39-26-120(3).
  - “[C]lass 2 misdemeanor.” Id.; see also C.R.S. 18-1.3-501(1)(a) (fines for class 2 misdemeanors committed prior to March 1, 2022, range from two hundred fifty dollars [\$250.00] to one thousand dollars [\$1,000.00] and/or imprisonment ranging from three [3] months to three hundred sixty four [364] days); C.R.S. 18-1.3-501(1)(a.5) (class 2 misdemeanors committed after March 1, 2022, contemplate up to one hundred twenty [120] days imprisonment and/or not more than seven hundred fifty dollar [\$750.00] fine).
- Other Violations and Penalties include:
  - Making a false statement to apply for a refund with gross negligence or recklessness. C.R.S. 39-21-118(2.5).



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xiii 2004 Bill Text CO S.B. 81

xiv 1 C.C.R. 47-321

xv *Id*

xvi *Id*

xvii *Id*