

West Virginia

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

Generally, mandatory arbitration provisions are recognized in West Virginia. *AC&S Inc. v. George*, 244 W.Va. 49, 851 S.E.2d 495 (W.Va. 2020). 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[.]” *State ex rel Clites v. Clawges*, 224 W. Va. 299, 685 S.E.2d 693 (2009). 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. *Id.*

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. See, *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).

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

The following laws apply to gift cards, subscription services, and loyalty programs.

- **W.Va. Code § 36-8-2.** Under the Uniform Unclaimed Property Act, 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.
- **W.Va. Code § 47-11A-8(f):** 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.

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

Article 2A of the West Virginia Consumer Credit and Protection Act (the “Act”) requires that an “individual or entity that owns or licenses computerized data that includes personal information shall give notice of any breach of the security of the system

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following discovery or notification of the breach of the security of the system to any resident of [West Virginia] whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person.” West Virginia Code § 46A-2A-102. Failure to comply with the notice provisions required by the Act may result in enforcement actions by the West Virginia Attorney General or, in the case of a licensed financial institution, the financial institution’s primary functional regulator. W. Va. Code § 46A-2A-104.

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

No such statutory law exists.