

CLIENT ALERT: Massachusetts' New Junk Fee Rules

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On March 3, 2025, the Attorney General of Massachusetts adopted a new set of consumer protection regulations (the "Rules") aimed at curbing so-called "junk fees." Here, "junk fees" refers to two anti-consumer business practices:

1. Advertising a deceptively low upfront price and then adding hidden, unexpected or unnecessary charges at checkout; or
2. Offering trial periods or subscriptions that involve automatic, recurring charges – often without clearly disclosing the total cost, the nature of the charges, or an easy way to cancel.

Unlike the Federal Trade Commissions' recent junk fee regulations which only apply to live-event tickets and short-term lodging, the Rules impose broad obligations on *any* business that offers a product or service targeted at Massachusetts consumers – regardless of whether the transaction is completed. Effective **September 2, 2025**, key requirements include:

- Disclosing the total price of a product or service upfront;
- Clearly informing consumers of charges associated with trial offers or subscriptions, especially those with automatic renewals; and
- Providing a simple, accessible mechanism for cancellation for products or services with trial offers or recurring charges.

Violations of the Rules are deemed unfair and deceptive practices under Chapter 93A of the Massachusetts General Laws, subjecting violators to penalties of up to \$5,000 per violation, treble damages for willful and knowing violations, and attorneys' fees and costs.

As consumer protection regulations, the Rules do not apply to transactions between businesses. In addition, certain industries (e.g., motor vehicle dealers, healthcare providers, and creditors) that comply with specific regulatory regimes are deemed compliant.

Upfront Disclosure of Total Price

The Rules prohibit advertising a lower price upfront and then increasing it by adding charges at the final stage of the transaction. Thus, to comply with the Rules, businesses must ensure that they are not misrepresenting or failing to disclose the total price of that product or service *at the beginning of the transaction*.

The Rules require businesses to clearly and conspicuously disclose:

- The total price of a product or service, including any mandatory charges, to Massachusetts consumers whenever they present pricing information and before requesting any personal information (including billing information) from the consumer;
- The nature, purpose, and amount of any charges that would be imposed on the transaction due to the purchase of that product or service (excluding shipping charges and governmental charges such as state tax); and
- Whether any charges are optional or waivable and provide clear, readily accessible instructions for avoiding such charges.

The total price of a product or service must be displayed more prominently than any other pricing information. Businesses may collect a consumer's personal information prior to providing the total price of a product or service if the information is necessary to facilitate

underwriting for the transaction, or to determine the availability of a product or service or the legality of the transaction. Businesses collecting information in these contexts may only collect it to the extent necessary to effectuate the underwriting or determination.

Trial Offers and Recurring Fees

The Rules also regulate trial offers and recurring fees. Prior to the consumer's acceptance of the trial offer, businesses must clearly and conspicuously disclose:

- Any charges a consumer may incur from accepting a trial offer;
- The identity of each product or service for which a consumer may incur a charge upon accepting a trial offer;
- Instructions on how to reject or cancel the trial offer before charges are incurred;
- The calendar date by which a rejection or cancellation must occur to avoid incurring a charge; and
- The calendar date charges will be incurred if a consumer fails to reject or cancel the trial offer.

Businesses that use negative option features—contract terms that treat a consumer's silence or failure to cancel as a consent to recurring charges—in the sale of a product or service must clearly and conspicuously disclose the following information *prior to the consumer's purchase of the product or service*:

- That the consumer will be charged for the product or service or that charges will increase after a trial period ends;
- That charges will recur unless the consumer takes timely action to cancel or prevent them; and
- Clear instructions on how the consumer can cancel the negative option feature and avoid future charges.

Consumers must be able to cancel the negative option feature through the same medium the consumer used to enroll (e.g., online, by phone, by mail, or in person), and cancellation must be as easy to access and use as the sign-up process. Furthermore, a business must provide an internet

or telephone cancellation for in-person purchases which utilize negative option features.

Businesses that use negative option features lasting more than 31 days must send a written notice to consumers within no more than 30 days and no fewer than 5 days before the consumer's cancellation deadline. This written notice must include information consistent with the initial trial offer disclosure described above. Furthermore, it must be delivered through a commonly used medium that is reasonably calculated to be seen and understood by an ordinary consumer, or through the medium that the consumer has affirmatively selected as their preferred method of contact.

KEY OBLIGATIONS

Disclose the Total Price Upfront. Ensure the total cost—including any mandatory fees and charges—is clearly and conspicuously disclosed upfront and before the consumer provides any personal or payment information.

Avoid Hidden or Surprise Fees. Do not add fees at checkout or after the initial price presentation unless they were clearly disclosed at the outset.

Label Charges Clearly. Distinguish between required and optional charges and clearly explain how consumers can decline optional charges.

Use Plain, Understandable Language. Fee descriptions must be transparent and free from misleading terminology—avoid vague terms like “service fee” without explanation.

Maintain Transparency in Subscription and Negative Option Plans. Clearly disclose recurring charges, trial periods, and cancellation deadlines, and provide easy-to-use cancellation methods through the same medium the consumer used to enroll.

Provide Advance Notice for Long-Term Negative Option Features. If a negative option feature lasts more than 31 days, send written notice 5 to 30 days before the consumer must cancel to avoid further charges.

Deliver Notices Through Approved Channels. Send required notices through a commonly used medium, or another medium the consumer affirmatively selected.

Train Staff and Update Systems. Train sales and customer service teams on the new

requirements and audit platforms and checkout, signup, and cancellation processes for compliance.

Evaluate Safe Harbor Eligibility. If your business is a regulated industry (e.g., motor vehicle dealer, healthcare provider, or creditor), determine whether compliance with existing laws qualifies as compliance with the Rules.

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