

New Mass. 'Junk Fee' Regs Will Be Felt Across Industries

By **Megan Ryan and Sam Bodurtha** (October 22, 2025)

Effective Sept. 2, the Massachusetts Office of the Attorney General implemented new regulations prohibiting so-called junk fees and deceptive pricing.

This new regulation, Title 940 of the Code of Massachusetts Regulations, Section 38.00, establishes standards for governing the imposition of fees in connection with marketing, solicitation, and the sale of products for personal, family or household use, as well as trial offers and contracts with negative option features.

More importantly, the regulation also defines "unfair and deceptive acts and practices" that violate Chapter 93A, Massachusetts' consumer protection statute.[1]

Unfair and Deceptive Practices in Connection With Marketing, Solicitation and Sales

The regulation outlines specific advertising, marketing or offer-of-sale practices in Massachusetts that constitute unfair and deceptive practices. To avoid Chapter 93A exposure, sellers must:

- Disclose the total price of a product — including all fees, charges or other expenses, while excluding government or shipping charges — and display the total price more prominently than any other pricing information;
- Disclose both the nature, purpose and amount of any fees, charges or expenses; and, for any optional or waivable fees, charges or expenses, disclose the option or waiver and include instructions on how to avoid such fees, charges and expenses;
- Disclose the final transaction amount, including all government and shipping charges;
- Disclose the total price prior to requiring the consumer to provide any personal information, including billing information; and
- Refrain from misrepresenting that any fees are required by law.[2]

Unfair and Deceptive Practices in Connection With Recurring Fees and Trial Offers

Trial offers, recurring fees and negative option features are also addressed by the newly implemented regulation. To comply with Massachusetts law, sellers must ensure the following.[3]

Sellers must disclose in writing prior to acceptance of a trial offer any financial obligations, the products for which the consumer may incur a financial obligation, instructions on how to reject or cancel the trial offer before incurring the obligation, the date by which the



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consumer must reject or cancel the trial offer to avoid the obligation, and the date the consumer will incur the obligation if the trial offer is not rejected or canceled.

They must also disclose in writing prior to the purchase of a product with a negative option feature that the consumer will be charged for the product or charges will increase after any trial period ends; if applicable, that the charges will occur on a recurring basis unless the consumer takes steps to prevent or stop the charges; and instructions on how to cancel the negative option feature and avoid being charged.

For any product with a negative option feature, they must provide a simple mechanism to cancel the feature to avoid being charged and immediately stop the recurring charges.

For any product with a negative option feature greater than 31 days, sellers should provide written notice between five and 30 days prior to when the consumer must cancel to avoid incurring a subsequent financial obligation, and include the following items:

- The financial obligation if the consumer fails to cancel the negative option feature;
- All products for which the consumer may incur a financial obligation if they fail to cancel the negative option feature;
- The mechanism by which the feature can be canceled;
- The date by which the consumer must cancel the feature to avoid a financial obligation; and
- The date the consumer will incur a financial obligation if they fail to cancel the feature.

For any product with a negative option feature less than 32 days, sellers must provide written notice disclosing at least as frequently as the consumer is charged the amount charged at auto-renewal and instructions as to the mechanism by which the consumer may cancel the feature and avoid incurring additional charges.

Impact Across Industries

This new regulation applies broadly, reaching advertising, marketing, solicitation or offer-of-sale practices targeted to or resulting in a sale in Massachusetts.

The regulation's reach extends to any advertising presented through electronic means such as software applications, text message, radio, television and the internet.[4]

Internet advertising is of particular concern because businesses that may not necessarily be located in Massachusetts but advertise to Massachusetts, or have the potential to make a sale in Massachusetts, must still comply with the regulation.

One potential consequence of noncompliance via electronic advertising, i.e., software applications, text message, radio, television and internet, is customers pursuing class actions.

For example, in *Mulani v. Peter Pan Bus Lines Inc.* in the U.S. District Court for the District of Massachusetts, the plaintiffs proposed a class action against the bus company claiming the website listed ticket price information that then increased with numerous so-called junk fees after clicking "book now." [5]

While the plaintiffs' Massachusetts consumer protection claim arising from the junk fees was ultimately dismissed Sept. 23 on choice-of-law grounds, and the court did not reach the merits of whether the junk fees violated Chapter 93A, the factual basis for this claim demonstrates how internet price advertising can quickly reach many consumers.

To avoid such lawsuits, businesses should ensure their marketing and solicitation of sales complies with the total price requirements set forth by the regulation.

With respect to rentals or leases of a dwelling unit, the regulation allows for the total price to be advertised as the dollar amount paid on a periodic basis — such as a monthly term — so long as the seller also discloses the full period covered by the rental or lease. [6]

However, this periodic basis amount must include all fees. If an owner chooses to charge a tenant for water and sewer usage as measured by a submeter, the owner will have complied with the regulation for purposes of disclosing the charges if the owner complies with all laws regulating the imposition of such fees, including Massachusetts General Laws, Chapter 186, Section 22. [7]

Rental leases in which the tenant's silence or failure to take action to cancel the lease automatically renews the rental terms constitute a negative option feature under the regulation. [8] Therefore, rental agreements with automatic renewals must disclose financial obligations, dates and instructions to terminate the lease.

The regulation also addresses the restaurant and food and grocery delivery industry. The regulation specifically notes that food or grocery delivery platforms may advertise the price of menu items set by the restaurant or grocery store.

However, they must clearly and conspicuously display the maximum mandatory charges or fees that a consumer must pay. [9] Restaurants must disclose all fees, such as service fees, credit card surcharges and kitchen fees, up front instead of adding them to the bill.

Restaurants are permitted to impose a service charge based on party size as long as the charge is clearly and conspicuously disclosed when pricing information is provided and as long as the charge is exclusively paid to wait staff employees, service employees or service bartenders. [10]

Like any business, restaurants will need to ensure their marketing materials and operational and point-of-sale systems are updated to comply with the regulation.

Insurers should also take note of the new regulation. Products insuring property or liability must comply.[11]

Insurance contract renewals based on a consumer's silence or lack of action are considered negative option features, including contract renewals based on an auto payment made by the consumer.

Disclosure of the financial obligations, related timing and instructions on how to cancel must be provided in accordance with the regulation, even if the premium is earned throughout the contract term.[12]

The regulation provides that compliance with other related statutes concerning the advertisement, sale or renewal of credit will constitute compliance with the regulation.[13] This extends to certain assignees of a creditor "who have substantial involvement in the lease transaction, regularly participate in a credit decision, ... or who influence the credit decision by indicating whether or not they will purchase the obligation if the transaction is consummated." [14]

Of note, this does not apply to any person or entity engaged in the business of purchasing delinquent or charged-off consumer loans, consumer credit accounts or other consumer debt for collection purposes.[15]

The regulation does not apply to air transportation provided by air carriers, sales or purchases of securities via a licensed securities professional, and any consumer agreement with a licensed securities professional to engage in automatic periodic purchases or sales of securities.[16]

Conclusion

This new regulation's impact is widespread across numerous industries. Sellers and businesses must take note of the requirements imposed on advertising, particularly as it relates to pricing information, and the disclosures required for negative option features.

The consequences of noncompliance could result in double or treble damages as allowed under Chapter 93A and could even lead to class actions.

Businesses should ensure marketing materials, operational systems, and auto-renewals of contracts, leases, subscriptions, etc. are updated to comply with the regulation. The Massachusetts attorney general's office offers businesses resources to assist with compliance.[17]

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[1] <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter93A/Section2>.

[2] <https://www.mass.gov/doc/junk-fee-regulations-940-cmr-3800-0/download>.

- [3] <https://www.mass.gov/doc/junk-fee-regulations-940-cmr-3800-0/download>.
- [4] <https://www.mass.gov/doc/junk-fee-regulations-940-cmr-3800-0/download>.
- [5] Civil Action No. 24-12277-MGM, 2025 U.S. Dist. LEXIS 186686 (D. Mass. Sept. 23, 2025).
- [6] <https://www.mass.gov/doc/junk-fee-regulations-940-cmr-3800-0/download>.
- [7] <https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download>.
- [8] <https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download>.
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- [14] <https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download>.
- [15] <https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download>.
- [16] <https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download>.
- [17] <https://www.mass.gov/info-details/junk-fee-regulations>.