

Massachusetts Hops on the Junk Fee Bandwagon – and Online Cancellation, Too

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This week, Massachusetts Attorney General Andrea Joy Campbell's office [touted the release](#) of draft regulations to prohibit hidden "junk fees," enhance transparency in various transactions, and make it easy for consumers to cancel subscriptions. The office highlights that junk fees can make it difficult for consumers to comparison shop, harm honest business, and have a disproportionate impact on marginalized consumers. It also cites increases in automatically renewing contracts and trial offers that are more difficult to cancel than they are to enter into.

AG Campbell will be using the rule making power from the Massachusetts Consumer Protection Act, and the office will be taking public comments until December 20, 2023, holding a hearing and comment session on the same day.

Junk Fees

Some aspects of the junk fee [proposed regulations](#) mirror [California's junk fee statute](#) and the [FTC's proposed junk fee rule](#):

- Requiring the total price to be disclosed when an offer is made; and
- Allowing required government fees to be excluded from the total price.

Others are closer to the FTC's proposed rule:

- Requiring the total price be disclosed *more prominently* than any other price;
- *Not* excluding any particular industries or products; and
- Banning misrepresentations of fees.

Finally, still other portions differ from both:

- Requiring the disclosure of optional, refundable, or waivable fees at every offer point; and
- Requiring the disclosure of a total price each time it is presented, and before any personal information is collected (unless it is necessary to determine a legal sale or if the product is available in a geographic location).

These proposed requirements could have a huge impact on companies who had planned to deal with all-in pricing through providing optional fees or waiting to disclose the total price -- because the rule seems to *require* the disclosure of both the total price and any optional fees from the outset, and

before any personal information (which isn't defined) is collected.

Recurring Fees (Autorenewals) & Trial Offers

Some of the proposed MA regulations on autorenewals ([940 C.M.R.38.05](#)) do not tread new ground in comparison to some other states' autorenewal statutes. For example, the proposal requires:

- businesses with online enrollment to provide online cancellation;
- disclosure of key terms of the trial offer prior to acceptance of the offer; and
- a reminder notice for trial offers exceeding 30 days that must disclose how the customer can cancel.

Where it seems to go further than other current state requirements is:

- Both the consent to the terms and any required reminder notice must include the calendar date the customer would incur the charge.
- The reminder notice "shall be provided in a manner substantially similar to that by which the consumer accepted the trial offer."

This additional reminder notice and specific date requirement – particularly in the initial offer terms which are usually a static display – could pose technical challenges for companies. What will it mean to provide a notice in a similar manner to the acceptance if the customer accepted the offer on a website or app – would a push notification be required? A notification on the website?

Enforcement

The Massachusetts Consumer Act allows the AG to make rules, but it should be noted that "Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act), as from time to time amended." This will make things interesting if the FTC continues to roll out its potentially inconsistent junk fee and negative option rules.

If the rule is finalized, the AG (and "any person") has the same authority as it has under its Consumer Act to enforce and bring an action for damages, fees, and equitable relief. The AG may also seek penalties of up to \$5,000 and restitution for certain violations.

Takeaways

The draft regulations include some confusing provisions and could have a significant impact on many companies. Companies who may be affected should consider submitting comments before the December 20 deadline. And expect more to come as other states continue to weigh in on "junk fees" and enforce their automatic renewal statutes.