

New Massachusetts Fee Disclosure Rules Impose Substantial Penalties for Non-Compliance

Description

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Effective September 2, 2025, Massachusetts will begin enforcing 940 CMR 38.00, a new regulation aimed at promoting price transparency for consumers. These comprehensive rules apply to the sale or lease of goods and services for personal, family, or household use and designate undisclosed or improperly presented fees as unfair and deceptive practices under the Massachusetts Consumer Protection Act (M.G.L. c. 93A, Section 2). Massachusetts is following the lead of other states and jurisdictions that have recently enacted or proposed regulations requiring total price disclosure and increased transparency around fees, such as those in California, New York City, and several other states considering similar legislation.

While certain transactions, such as business-to-business transactions, may fall outside the regulation's scope, most consumer-facing businesses operating in Massachusetts or targeting Massachusetts residents will be subject to these new rules. Violations will be treated as unfair and deceptive acts or practices, exposing companies to regulatory enforcement actions and potential liability, including liability for a plaintiff's attorneys' fees, and the possibility of multiple damages.

Pursuant to 940 CMR 38.00, key regulatory requirements for businesses marketing, soliciting, or selling products in Massachusetts include:

1) Initial Presentation. This is the first time that the price of any product is presented to the consumer prior the any sale commitment or collection of personal information. For instance, this would be the price displayed in an online advertisement or on a restaurant menu.

- Clearly and conspicuously disclose the total price upfront, including all additional fees and charges necessary to complete the transaction, except government or shipping fees; and
- Clearly identify any additional fees, their nature and purpose, whether they are optional or waivable, and provide instructions on how to avoid them.

2) Final Presentation. This is prior to sale of a product. In the examples above, the final presentation would be the price shown when a consumer clicks "buy" in response to an online advertisement, or when the final check is presented at a restaurant.

- Disclose the information required above for the initial presentation; and
- Disclose the final transaction amount, including the total price of all products purchased plus any applicable shipping and government charges,

At all times, the total price, inclusive of additional fees, must be more prominent than any other pricing information.

For businesses offering trial offers, subscriptions, or automatic renewals, additional rules apply: Prior to consumer acceptance of any trial, businesses must disclose any financial obligations, specify the products involved, explain how to reject or cancel the trial to avoid charges, provide cancellation deadlines, and state when charges will be incurred if not canceled. For products with negative option features (such as automatic renewals or continuity plans), businesses must disclose recurring charges, potential price increases after trials, and cancellation instructions. Cancellation methods must be simple, accessible, and at least as easy as the enrollment method. For instance, if a consumer enrolled online, cancellation must also be possible online.

Additionally, businesses must provide advance written notice of upcoming charges or renewals, with timing varying based on subscription length (e.g., for contracts longer than thirty-one days, notice must be given five to thirty days prior to cancellation deadlines).

To prepare for the September 2025 effective date, companies should review all pricing-related materials, subscription offerings, and marketing practices. This includes updating advertising to display total prices prominently, revising disclosures related to additional fees, and ensuring all cancellation mechanisms are compliant with the regulation.

For assistance on how to comply with 940 CMR 38.00, please contact the PSH [Corporate & Business](#) Group.

Date Created

August 27, 2025