What the Massachusetts "Junk Fee" Rules Mean for Automotive Sales and Marketing Efforts

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In early March, the Massachusetts Attorney General's Office finalized the commonwealth's regulations on unfair and deceptive fees, which it refers to in its press release as "junk fee" regulations, while simultaneously issuing a business guidance document that provides interpretive gloss to the final rules. The rules, which were adopted nearly a year and a half after they were initially proposed, become effective as of September 2, 2025, and with them a number of marketing and sales practices will be considered unfair and/or deceptive. What does this mean for the auto industry?

Before getting into the weeds, it is worth noting that the final rules answer several lingering questions from their proposed version. The first involves the rules' scope. While the proposed version was unclear about whether it applied to the advertisement and sale of business or commercial products, the final rules clarify that they do not. They expressly state that they are designed to protect consumers who purchase, rent, or lease "products" (defined to include both tangible and intangible goods and services) that will be used for personal, family, or household purposes. As a result, the lease or sale of a vehicle for business or commercial purposes is not covered.

The final rules also include two exceptions that were absent from the proposed version. The first is a limited exception for vehicle manufacturers and dealerships that comply with Massachusetts attorney general regulations governing the advertising and sale of motor vehicles. These parties will be exempt from most of the final rules' pricing requirements for the marketing, solicitation, and sale of motor vehicles. This exception does not extend, however, to the final rules' provisions regulating recurring fees and trial offers. These requirements could apply to the sale of certain ancillary products—a satellite radio service, for example. Moreover, the AG motor vehicle regs govern the sale, and advertisements that are aimed at the sale, of motor vehicles to Massachusetts residents. The final rules are broader, as they define the term "sale" to include a lease. As such, dealers leasing vehicles in Massachusetts apparently will not be able to enjoy this exception and should adhere to all of the requirements of the final rules.

Coupled with this limited exception, the final rules also include a full exception from their requirements regarding the advertisement, sale, or renewal of credit by a "creditor" that is done in compliance with federal and/or Massachusetts Truth in Lending Act requirements. Expectations regarding the breadth of this exception should be tempered in three important regards. First, this exception only applies to the advertisement, sale, or renewal of "credit." As drafted, the exception does not cover sales and marketing efforts related to the price and fees associated with the vehicle itself. These remain subject to the partial exception for dealers and manufacturers discussed above. Second, and perhaps most importantly, as currently drafted, the scope of this exception only applies to TILA-compliant actions taken by a "creditor" as defined under the federal and Massachusetts TILA. Under both, the "creditor" in the credit sale of a motor vehicle is the dealer, meaning that this exemption currently only applies to half of an indirect transaction. Finance sources that purchase indirect retail installment contracts from dealers are not creditors under Reg. Z and thus do not enjoy this exception. It is worth noting that this approach may be a drafting error because, as the drafting currently stands, the final rules provide dealers with two separate exceptions—the limited one for dealers acting in compliance with the AG motor vehicle regulations and a broader one for TILA-compliant creditor actions. As a matter of policy this does not make sense, so it is possible that this was not the true intent of this exception. Regardless, here we are. Finally, because this exception carves out TILA-compliant activities, it does not provide any relief for motor vehicle lease transactions.

So, to the extent the final rules apply, what will they require? The final rules are broken into two substantive parts. First, they impose a number of pricing disclosure practices in connection with any advertising, marketing, solicitation, or offer of sale that is targeted to or results in a sale in Massachusetts. Under this portion of the final rules, it will be a UDAP violation to misrepresent or fail to clearly and conspicuously disclose:

- the "total price" of the product when its price is initially presented or any subsequent presentation of its price;

- both: (a) the nature, purpose, and amount of any fees, charges, or expenses (other than shipping and government charges) imposed due to the purchase of the product, and (b) to the extent any of these fees, charges, or expenses are optional to the consumer or waivable by the seller, the fact that such amounts are optional or waivable, along with information about how they may be avoided; and

- at the "final presentation" of the product's price: (a) the final transaction amount (inclusive of the total price of all products purchased and any applicable shipping and government charges) must be presented more prominently than any other pricing information, (b) the nature, purpose, and amount of any fees, charges, or other expenses imposed due to the purchase of the product, and (c) if any fees are optional to the consumer or waivable by the seller, this fact along with information on how to avoid them.

In addition to these affirmative disclosure requirements, the final rules also impose several conduct-regulating pricing requirements. For example, in any instance where the "total price" of the product is presented, it generally must be disclosed more prominently than other pricing information. Additionally, there is a general requirement to disclose a product's total price clearly and conspicuously before a consumer is required to provide any personal information, unless that information is necessary for underwriting purposes or to determine the availability of the product or the legality of its sale. Finally, the final rules include a general prohibition on misrepresenting any fees, charges, or expenses as required by law when this is not the case. This final general misrepresentation prohibition applies to vehicle manufacturers and dealers, even if they comply with the AG motor vehicle regs.

You will note that many of the final rules' general advertising and sales requirements require a disclosure of the "total price" of the product. This term is defined to mean the "maximum price a consumer must pay for a Product, inclusive of all fees, charges, or other expenses" including any mandatory ancillary product offered in connection with the transaction. It is effectively an "all in price" for the product, although government and shipping charges may be excluded.

The second substantive component of the final rules involves requirements applicable to recurring fees and trial offers. For example, the final rules require that consumers receive a series of written disclosures before they accept a "trial offer," which is defined to mean an offer to a consumer to participate in or acquire a product for a limited time without charge or at a reduced price, for a rebate, or for only incidental costs—such as shipping charges. These disclosures must be clear and conspicuous and include any financial obligations the consumer may incur due to his/her acceptance of the trial offer, an identification of all the products for which the consumer may incur a financial obligation as a result of his/her acceptance of the trial offer, instructions on how to reject or cancel the trial offer before incurring a financial obligation, the date by which the consumer must provide this cancellation or rejection, and the date on which the consumer will incur a financial obligation if s/he fails to provide this notice.

Similarly, the final rules also require that advanced written disclosures be provided to a consumer before s/he purchases a product with a "negative option feature," which means any contract under which a consumer's failure to affirmatively reject or cancel an agreement is construed as his/her desire for the agreement to continue. Prior to purchasing a product with such a feature, a consumer must receive a clear and conspicuous disclosure that s/he will be charged for the product (or, if applicable, that charges will increase after a trial period ends), if applicable, charges will occur on a recurring basis unless the consumer takes affirmative steps to prevent or stop such charges, and information on how to cancel the negative option feature and avoid future charges. The final rules also require that products with a negative option feature must provide a simple mechanism to cancel the feature that will allow the consumer to avoid being charged. This mechanism must be in the same medium and must be at least as easy to access as the method used by the consumer to initiate the negative option feature. The final rules also require sellers to provide pre-cancellation notices to the consumer to remind him/her of the right to cancel the negative option feature to avoid subsequent cost.

While the scope of the final rules is limited in some regards—as discussed above—they also appear to remain effectively nationwide rules, due to the fact that both the pricing and trial offer/negative option rules are triggered by advertising and marketing efforts that are "targeted to" or result in a sale in Massachusetts. The term "targeted to" is defined to mean that the advertisement is used to induce consumers in Massachusetts to enter into a "sale" regardless of whether a sale is actually completed. This is a broad definition and one that technically would apply to any marketing effort that originates from any location, without regard to whether it was intended to specifically target Massachusetts consumers.

The policy of the final rules is clear and correct. The marketplace should be rid of surprise fees that are "dripped" into consumer transactions at the last minute, often after a long iterative sales process has occurred between the buyer and the seller regarding a product and its options. And consumers should not feel tricked into trial offers or negative option arrangements with no apparent way out. However, the final rules also represent an additional layer of regulation that the industry will need to consider in marketing efforts. And while the final rules share many similar concepts and requirements with the Federal Trade Commission's junk fee and negative option rules, they do not match them precisely in terms of specific requirements and scope. So, in the final analysis, it will take the industry time to sort through these overlapping requirements to determine a clear path forward that adequately harmonizes them in a compliant and operationally feasible way.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

hudsoncook.com