From:	David Whalen
To:	NASAA Comments
Cc:	Erin Houston; bill.beatty@dfi.wa.gov; Theresa Leets
Subject:	[EXTERNAL]Broker Registration Act
Date:	Thursday, June 13, 2024 2:32:38 PM

Dear NASAA Team,

My name is David Whalen, and I have extensive experience as a franchise broker, I have also owned several businesses over the last 40 years. Thirteen years ago, I was a client working with two different franchise consultants from two different organizations. I've really been on all sides. I am writing to provide feedback on the NASAA Model Franchise Broker Registration Act. Thank you for allowing me to share my insights based on years of involvement in the franchise industry.

While the intention to ensure ethical practices in franchise brokering is commendable, the current

draft of the Model Act introduces complexities that might inadvertently hinder the franchise sales process. Here are my observations and suggestions:

The Role of Franchise Brokers

Franchise brokers play a vital role in matching prospective franchisees with the right franchisors.

Ethical brokers prioritize their clients' best interests, helping them find suitable franchise opportunities. Brokers are akin to employment recruiters; they facilitate introductions without making final decisions on franchise awards and are compensated only when a franchisor awards

a franchise.

Impact on Prospective Franchisees

The current draft of the Model Act may unintentionally complicate the franchise discovery process for prospective franchisees. Requiring multiple disclosure documents can create unnecessary confusion and anxiety, potentially deterring individuals from pursuing franchise opportunities.

Key Concerns and Suggestions

Section 2: Definitions

The distinction between a "franchise broker" and a "franchise broker representative" requires clearer definitions. Licensing for brokers, including specified training hours similar to the Certified Franchise Executive (CFE) program would be beneficial. However, the term "representatives" is too vague and will be misinterpreted.

Section 3: Prohibited Practices

While it is sensible to prevent unregistered / aka untrained brokers from engaging with prospective franchisees, imposing the responsibility on franchisors to verify broker registration

adds unnecessary administrative burden. A centralized, government-maintained database would

be essential for this, though it might be impractical to implement.

Section 4: Registration

The term "material change" needs a precise definition. Significant changes, such as criminal My name is Stacie Shannon, and I have extensive experience as a franchisor, franchise development professional, broker, and multi-unit franchise owner. I am writing

history or new litigation, should be considered material. However, frequent updates for minor changes would be burdensome and unnecessary.

Section 5: Disclosure Obligation

The mandate to disclose "all compensation" is challenging. Referral fees often change, necessitating frequent updates to disclosure documents, which can lead to confusion. Disclosing

a "typical referral fee range" would be a more practical approach, balancing transparency with administrative feasibility. This disclosure should be within the franchisor's FDD, not additional

paperwork passed to the franchise broker.

Client List Disclosure

Requiring brokers to disclose their client lists raises significant confidentiality concerns and could undermine trust between brokers and clients. This requirement might also lead to misuse of information and does not clearly benefit prospective franchisees. The rationale for this requirement is not well-defined in the proposed act.

Record Retention

The proposed requirement to retain records for 10 years, even after business closure, is excessive. The statute of limitations for fraud and misrepresentation ranges from 5-7 years. Even

the IRS only requires record retention for 7 years. A 10-year requirement is overly burdensome

and should be reconsidered.

Education and Licensing Requirements

To promote integrity among franchise brokers, national education and licensing requirements should be implemented. Mandatory training programs, similar to the CFE, would ensure brokers

adhere to ethical standards and industry best practices. National licensing would create a consistent standard of professionalism and accountability, benefiting the franchise sector. Breaking this down to a state-by-state level will be burdensome and financially prohibitive.

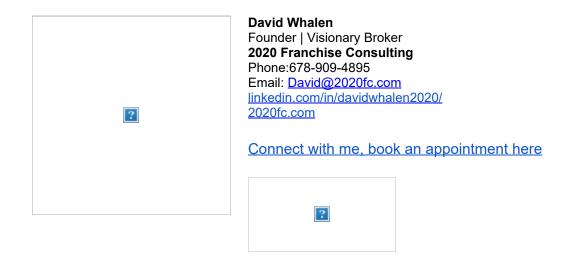
Conclusion

The Model Act should protect prospective franchisees while fostering an environment conducive

to ethical franchise brokering. The current draft introduces complexities that could discourage potential franchisees and impose undue burdens on brokers and franchisors. I urge the NASAA

to consider these suggestions to develop a more balanced and effective regulatory framework. Thank you for considering my comments. I am open to further discussions and clarifications. Please feel free to contact me at your convenience.

Sincerely,



Recipient acknowledges that it has not relied on any statement made by our brokers in our candidates determination of whether or not to become a franchisee or enter into any relationship with the Franchise. The candidate has conducted or will conduct, prior to signing any agreement with respect to the Franchise, its own due diligence on the Franchise and has not and will not rely on any representation whatsoever of our brokers.

This email does not constitute an offer of a franchise per the registration requirements by the Franchisor in some States. The following are the registration States (CA, HI, IL, IN, MD, MI, MN, NY, ND, RI, SD, VA, WA, WI).

The information provided in any PowerPoint presentation or brochure is found in greater detail in the franchisor's Franchise Disclosure Document. You should review the entire Franchise Disclosure Document carefully and seek the advice of a professional advisor prior to making any decision on whether to purchase this franchise. Do not rely on any information which is not consistent with the information in the Franchise Disclosure Document.

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