

NASAA Request for Public Comment—Franchise Broker Registration Act

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Dear NASAA,

We would like to submit our comments to the proposed NASAA Model Franchise Broker Registration Act (the “Model Act”), as outlined in the document dated May 13, 2024. While we appreciate the efforts of NASAA to regulate the franchise industry, we believe that this proposed model legislation as currently drafted would impose unnecessary burdens on franchise brokers and hinder entrepreneurship and economic growth.

In submitting these comments, we would like to work alongside the NASAA to ensure the final Model Act is reflective of a balance between promotion of entrepreneurship and economic growth of the franchise industry and the public policy needs of further protecting franchisees from unscrupulous franchise brokers.

We respectfully request that the NASAA adopt some common sense amendments to the proposed Model Act. Specifically:

- Section 3 appears to place the burden on Franchisors to ensure that a franchise broker is registered. We urge the NASAA to revise this section to place the burden on the franchise broker only by deleting (3) and (4).
- Section 4(1)(c) provides that a franchise broker is required to amend its registration if there is a “material change” in the information contained in the application or other required submission. We urge the NASAA to provide a definition of “material change” so that there is no ambiguity on when a franchise broker would be required to amend its registration.
- Section 5(1) provides that a franchise broker must provide a prospective franchisee with a disclosure statement prior to an in-person, virtual, telephonic, or electronic communication relating to any specific franchise opportunity.
 - We urge the NASAA to revise this section to read “. . . must provide a prospective franchisee with a disclosure statement prior to **or along with providing the Franchise Disclosure Document for any specific franchise opportunity.** This change should be adopted because it is focused on maintaining disclosure obligations only to prospective franchisees who are truly interested in and qualified for a potential franchise opportunity. Thousands of prospective franchisees reach out to franchise sales organizations or franchise brokers through electronic or telephonic means inquiring about specific franchise opportunities that never go past an initial communication. As currently drafted, it would be nearly impossible for a franchise broker to comply or it would be an unduly

burdensome administrative requirement from a business perspective to comply by requiring a franchise broker to send thousands of disclosure documents to prospective franchisees that do not move past an initial communication. Franchise brokers would need to invest heavily in some form of technology or automation in order to comply as currently drafted. By limiting the disclosure requirement to the timing of providing the Franchise Disclosure Document, it saves the franchise broker in resources and still accomplishes the disclosure goal with the interested prospective franchisees.

- Section 5(1) also provides the director may require that the disclosure statement include the disclosure of material litigation.
 - We urge the NASAA to revise this section to read “. . .may require that the disclosure statement include the disclosure of **judgments, court orders, or final determinations of specific liability against the franchise broker in the previous 2 year period.** This change should be adopted because it is focused on disclosing specific findings against the franchise broker herself/himself/itself. Franchise brokers are often brought into litigation between a franchisee and franchisor that has nothing to do with the sales process or anything to do with the representation of the franchise broker. Franchisors are already required to disclose material litigation relating to their systems in the Franchise Disclosure Document. By limiting this provision to specific orders or findings against the franchise broker, it achieves the goal of informing the prospective franchisee of pertinent information about the franchise broker without causing confusion for the potential franchisee and reputational harm to the franchise broker by having to disclose frivolous litigation.
- Section 6(3) provides a recordkeeping obligation of 10 years following cessation of business.
 - We urge the NASAA to revise this section to provide an obligation of no more than 7 years, which is in line with other record keeping obligations of other government agencies like the IRS.

Disclosure Statement

- How franchise brokers are compensated. There has been discussion that the form disclosure statement the Project Group is working on may require disclosure of how the franchise broker is compensated. We are in agreement franchise brokers should report their commissions. However, we urge the Project Group to consider requiring the disclosure to be reported as a flat dollar amount

of commission paid as well as a percentage of the average franchisee value over the initial term of the franchise agreement. The flat dollar amount of commission by itself can be misleading because it doesn't take into account the overall value of the franchisee to the franchisor over the term of the franchise agreement. Adding the requirement to report as a percentage of the overall value is a more complete representation of the actual value to the franchisor.

- Disclosure of Client List. There has been discussion that the form disclosure statement the Project Group is working on may require disclosure of a list of all clients with contact information that the franchise broker worked with for the previous 12 months. We urge the Project Group to not include this requirement as there are significant confidentiality and data privacy concerns with having to disclose a list of clients and contact information. The risk of misuse of this information is substantial. The prospective franchisee will receive information for current franchisees in the FDD for the brand so the added disclosure of clients here is duplicative and unnecessary.

We thank you for your time and consideration and for the opportunity to present our comments and concerns. We would welcome the opportunity to have an in-person meeting with the Project Group to discuss these comments, the projected impact of the proposed Model Act, and what should be included in the disclosure statement contemplated by the Model Act. These issues are of extreme importance to the franchise industry and we welcome any opportunity to work with the NASAA in developing workable and equitable solutions.

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