



CAPSTONE

Franchise Advisors

Dear NASAA Team,

My name is John Zelenika, and I have extensive experience as a franchise development professional, consultant, CFE, I'm active in 2 prominent franchise consultant networks, and I have done development work directly for a few different brands over time. I am writing to offer my input as to the NASAA Model Franchise Broker Registration Act. Thank you for letting me share my professional insights with you, based on my 30+ years of corporate experience as well as almost 10 years in the franchise industry. Thank you for allowing me to share my insights based on years of involvement in the franchise industry.

While your intent to ensure ethical practices in franchise consulting is welcomed and refreshing, I feel that the current draft of the Model Act introduces some complexities that may inadvertently stifle the franchise sales process. Here are my observations and suggestions:

The Role of Franchise Consultants/Brokers:

- Franchise consultants/brokers play a vital role in helping to matching prospective franchisees with the right-fit industry segments for them, as well as top performing franchisors in those segments.
- Ethical consultants identify their clients' skill sets, motivation to investigate business ownership, as well as their personal/professional goals and current financial position in order to help them identify and learn about potentially suitable franchise opportunities.
- Consultants/Brokers are similar to employment recruiters in that we facilitate introductions to potential opportunities without being part of the franchise award process. Furthermore, we are compensated only if/when a franchisor actually awards a franchise, and our clients accept.

Impact on Prospective Franchisees

- The current draft of the Model Act may unintentionally complicate the franchise discovery process for prospective franchisees, thereby making the process more time consuming and cumbersome.
- Requiring multiple disclosure documents can create the perception of too many layers, unnecessary confusion/anxiety, potentially deterring individuals from pursuing franchise opportunities all together.

Key Concerns and Suggestions

- **Section 2: Definitions:** The distinction between a "franchise broker" and a "franchise broker representative" needs to be more clearly defined. Discussing the Licensing for brokers, including specified training hours similar to the Certified Franchise Executive (CFE) program, would be beneficial. However, the term "representatives" is very vague and will likely be misunderstood.



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- **Section 3: Prohibited Practices:** While the potential goal of preventing unregistered / aka untrained brokers from engaging with prospective franchise candidates, imposing that responsibility on franchisors to verify broker registration adds an unnecessary administrative burden on those franchisors. A more convenient and efficient option may be to maintain a centralized database that franchisors could quickly refer to, although even that may be difficult to implement and maintain.

Section 4: Registration: The phrase "material change" needs a specific and precise definition. Significant changes, such as a criminal history or new litigation, would be considered material. However, repetitive updates for minor changes would be inefficient, burdensome, and simply unnecessary.

Section 5: Disclosure Obligation: The mandate to disclose "all compensation" is challenging. Referral fees offered by franchisors often change due to economic factors, desires to be active in certain markets, competition, etc. This would trigger frequent updates to disclosure documents, which will add to confusion, as well as starts-and-stops. A more practical approach may be to disclose an "commonly acknowledged, or typical referral fee range". This would do a better job of balancing industry transparency with administrative feasibility. And, this particular disclosure should be included in the franchisor's FDD, not in additional paperwork passed to the franchise broker.

Client List Disclosure: Requiring consultants/brokers to disclose their own proprietary client lists raises significant issues with regard to confidentiality, and would likely undermine the trust between consultants/brokers and clients. It may also lead to the misuse of private information while not providing any clear benefits to these candidates/prospective franchisees. In short, 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 sale, transfer, or closure, is excessive. The current 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: In order to promote proper training & integrity among franchise consultants/brokers, national education and licensing requirements should be considered & implemented. Mandatory training programs, similar to the CFE, would ensure that consultants/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, financially prohibitive, and will again add layers of complexity for franchisors as well as consultants/professionals. Primarily due to the time & effort involved to research each state individually.



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Conclusion

The Model Act should be drafted with 2 primary goals in mind:

1. Protect prospective candidates & franchisees throughout their research & due diligence process.
2. Foster an environment conducive to ethical franchise consulting/brokering for all.

However, in my professional opinion, the current draft introduces complexities that could discourage potential franchisees and impose undue burdens on consultants/brokers as well as franchisors. I certainly ask that the NASAA takes these suggestions into consideration, with the desire to create a more balanced, effective, regulatory framework.

Thank you for considering my remarks. I am open to further discussion regarding any questions you may have, so please feel free to contact me at your convenience.

Sincerely,

John A. Zelenika, - Capstone Franchise Advisors

Multi Industry Organization Member, & Experienced Business Professional