



Dear NASAA,

My name is Don Daszkowski and I am the Founder and CEO of the International Franchise Professionals Group, LLC which is a membership-based franchise broker organization whose membership consists of franchise consultants, franchisors, and franchise suppliers. IFPG was formed over 12 years ago and has grown to be a leading organization in the franchise industry not only by member count but also because of our positioning and reputation on the importance of ethical business practices by franchise brokers and consultants. This letter is in response to the Request for Public Comment on the NASAA Model Franchise Broker Registration Act. It is my hope that the comments and questions posed below will be taken under consideration as your team creates the final draft version of this model.

In my experience, the majority of franchise brokers want to do well by their clients as their main concern and are true advocates for their clients' wants and desires. Third party franchise sellers who follow ethical practices and have successful interactions are generally thanked and appreciated by prospective franchisees. In addition, hundreds of franchisors rely on franchise brokers to help their franchise systems grow. Franchise brokers are typically the number one referral source for franchisors. Franchise brokers represent 80-90% of franchises awarded for many franchise systems. Franchisors represented by franchise sales organizations rely 100% on these third party sellers to sell all the franchises in their franchise system.

Unfortunately, I do not believe the model act as written today helps address the problems we are facing in the franchise sales process. In fact, it most likely negatively impacts the number of prospective franchisees who will complete the process. This has also been confirmed by speaking with many franchisors. Below is a list of comments:

- I agree with the IFA that this act should be called the 'third part franchise seller' versus the 'franchise broker' name in its current state, and the rest of the act should reflect this naming convention as that term much more adequately describes the persons and entities who are subject to this Act.
- A third party franchise sellers' role in the franchise sales process is to make introductions between prospective franchisees and franchisors. They do not decide if a candidate is awarded a franchise and are only compensated if a franchisor decides to award a territory like recruiters for employment. Additionally, any franchise broker aligned with a reputable franchise broker organization will have been educated on the important fact that all prospective franchisees should be encouraged to retain legal counsel as they review relevant franchisor documents to ensure their interests are represented adequately. Their legal counsel will help them identify any issues, and the franchisor will also have the ultimate say in awarding certain individuals a franchise territory and the number of territories awarded to each individual.
- The Act as written today will create complexities within a prospective franchisees' discovery process. The significant documentation risks distracting prospective franchisees from assessing the important attributes of a potential franchise, such as the economic opportunity, operational system, and franchise culture, which are all very important for a franchisee's success.

- Example: One franchisee introduced to 3-5 franchisors could be subject to potentially 15+ third party franchise seller disclosure documents (referring franchise broker, every team member of a Franchise Sales Organization (an “FSO”) which can be multiple people on an introductory call depending on the brand).

- **Section 2: Definitions** – The distinction between a ‘franchise broker’ and a ‘franchise broker representative’ is a confusing item, and more clarity is needed. It is unclear which roles must be registered under the current language. Given the nature of those roles, Franchise broker representatives should not have to register and disclose unless they are recommending franchise brands to potential franchisees. Only those who are recommending franchise brands should be subject to these requirements. Many franchise broker representatives are not paid by commissions and do not have a standard way to be compensated. And as stated above, the term ‘franchise broker’ should be replaced by ‘third party franchise seller’ to more adequately encompass all of the parties this Act intends to apply.

- **Section 4: Registration** – The explicit definition of ‘material change’ would be very helpful. I would agree that changes to criminal history or new litigation items should be considered material. Since the third party franchise seller will be required to file an application each calendar year, I do not believe any other items would be considered ‘material changes’ that would require an update to occur in an increment less than 12 months.

- **Section 5: Disclosure Obligation** – Given the nuances of how a third party franchise seller typically conducts their process with prospective franchisees, the language as it currently stands in the Model Act should be amended to account for those nuances.
 - Zero Compensation: It is important to note that the majority of the third party franchise sellers’ time spent with prospective franchisees results in zero compensation because most prospective franchisees never end up becoming franchisees, which would trigger compensation to the third party franchise seller. Third party franchise sellers can work with approximately 200 or more candidates before finding a candidate who will be awarded a franchise.
 - All Compensation: The requirement to disclose “all compensation” is an item that could present issues related to compliance if not properly considered. Again, using IFPG as an example, we have hundreds of franchise consultant members and hundreds of franchisor members. Daily, we have franchisors amending their referral agreements with us to change the referral fee they will pay brokers upon a successful sale. Sometimes, they raise the referral fee, sometimes they lower it. I think it is necessary to avoid regulations requiring hundreds of third party franchise sellers to amend their disclosure document with multiple states every time a franchisor amends their referral fee. Ultimately, with 1 prospective franchisee receiving 10+ disclosure documents all with individual compensation disclosed per brand, the opportunity for confusion and misunderstanding increases exponentially. We anticipate many prospective franchisees will mistakenly come to the conclusion that the third party franchise seller will be compensated by all the brands at some point or that all 10 people who disclosed the one candidate are all being paid which simply isn’t the case.

- **Section 6 - Recordkeeping Obligation** – Item 3 of this section requires third party franchise sellers to retain records for 10 years after cessation of business. I believe this to be a slight overreach given the standard recordkeeping requirements for other government agencies such as the IRS are generally 3-5 years. 10 years is well beyond any statutory limitation period.

Operational Framework Suggestions

- **Timing of Disclosure Document** – Any disclosure made by a third party franchise seller should be required within 14 days of when the prospective franchisee receives the FDD from the franchisor. This will provide a definitive point in time for third party franchise sellers to utilize given the regulation that exists around FDD disclosures. Practically, many third party franchise sellers will choose to provide the disclosure document well before this time, but this is the most easily understood and frankly, enforceable timing requirement. Requiring disclosure too early in the process will unnecessarily create confusion and fear for the prospective franchisee.

Disclosure Framework Suggestions:

- **Success-Based Referral Fee:** I encourage you to consider a framework that is more similar to that introduced by the California legislature. This would require the disclosure document to outline “how third party franchise sellers are compensated” to help prospective franchisees understand that the franchisors may pay a referral fee when a territory or unit is purchased. I would also encourage you to avoid language requiring specific commission rates to be disclosed by the franchisor, as this would be incredibly burdensome administratively, as identified above. A reasonable solution would be to ensure the disclosure document included a ‘typical referral fee range’ for one unit. Most franchisors’ referral fees fall into a similar range. Third party franchise sellers who are members of IFPG or similar organizations do not receive any additional compensation from franchisors other than the success-based referral fee.
 - Requiring the disclosure of specific referral fees is also unnecessarily detrimental to those operating as third party franchise sellers, franchise broker organizations, and franchisors. Referral fees are part of confidential business arrangements and can be utilized as a business’ competitive advantage versus its competition. The specifics should not be publicized information as there are other ways to protect and inform prospective franchisees without causing unintended damage to business operators.
- **Disclosure of Client List:** There has been discussion that the third party franchise seller disclosure document may require a list of clients helped by said third party franchise seller over the previous 12 months. This requirement should not be included:
 - Confidentiality concerns for consumers – Like in other professions, the relationship between a potential franchisee and a third party franchise seller is confidential. This requirement would erode the trust a third party franchise seller builds with clients that their pursuits will be kept confidential and private.
 - Early validation—Potential franchisees should not have the names and contact information of franchisees before ever talking to the franchisor. Yes, the franchisee information is listed in the FDD, but it’s the franchisor’s right to grant that information. Many franchisors I speak to have concerns about providing these lists of franchisees before potential franchisees being educated on franchise ownership or specific franchise brands.

- Bad Actor Use of Client Lists – When this information becomes more readily and easily accessible, the risk of bad actors to misuse this information in unforeseen ways increases substantially.

Thank you in advance for considering these comments. I encourage open communication and welcome any questions or clarifications you may need. Feel free to reach out to me at your convenience.

Don Daszkowski
Founder & CEO
IFPG - International Franchise Professionals Group
don@ifpg.org