

June 12, 2024

My name is Karol Mercurio. I have been a “Franchise Consultant” for the past 24 years. I have been associated with several “consultant” groups and have been a member of IFPG for the past twelve years. As a member of IFPG I have been appointed to the “Ethics Committee” and the “Executive Committee.” I take immense pride in being a member of these committees. The committees have helped form industry standard of ethics within our group while being the voice of the consultants for change and skill enhancement.

The proposed “Franchise Broker Act” raises many concerns for the “Franchise Consultant” network and the franchise sales process in general. Unfortunately, the sins of a few are being paid by the faithful. I do believe the consultants are honest and ethical. They want to help their candidates change their lives by finding them a franchise that meets their specific personal and financial goals.

The act, as currently written, I fear will create confusion to the “candidate.” Most folks I have worked with through the years, when at the end of the sales process, are faced with a decision to either move forward and become a franchisee or decline the offer made by the franchise. At this stage of the process many folks are faced with fear and anxiety. Buying a franchise is a big decision and fear of failure or even fear of success is often a factor with their decision. Implementing unnecessary documents, etc. I believe will negatively impact the completion of a sale, the decline in the number of franchises awarded each year and the decline in the franchise/consultant model itself.

I am submitting my thoughts for changes in this act for your consideration:

1. Change the name “**broker**” to “**consultant.**” A broker is engaged in buying or selling something. A consultant is not involved in the sales transaction provides expert professional advice.
2. Change “**prospective franchisee**” to “**candidate.**” A prospect, by definition, is “interested in negotiating to buy or lease something.” A “candidate” is a person who is “applying for something” which is the case here and the “candidate” is “awarded” the franchise if qualified at the end of the sales process.
3. **Prohibited Practices:** If passed, it is the consultant’s responsibility to register each year and update their application during that year if applicable. I do not see how consultant registration can be logistically managed by the franchisor as this should not be their “burden.” Should a consultant register a lead with a given franchise, they could easily include a copy of their state registration along with the other documents submitted introducing their candidate.
4. **Registration:** A consultant must register with each state who complies with this act. There are only two states now in which a consultant needs to register which are Washington State and New York State. A consultant then could choose the states in which they do business, therefore reducing the lead flow to franchise brands and reducing their potential for sales. To date, if I conducted business in either Washington or New York, I have yet to be asked by a franchisor or prospect to produce documentation of registration. It is irrelevant for most people.

5. **Competency Examinations:** A consultant must pass a “competency examination” and pay a “fee” prior to registration. This is yet another unnecessary hoop to jump through. Competency examinations, if deemed necessary, could be implemented by the consultant broker networks who are already charging membership fees. The competence of the franchisor, in my opinion, is far more credible and important to the buyer.
6. **Disclosure Obligations:** Providing a disclosure statement to the candidate prior to them receiving the Franchise Disclosure Document. We do not always know when the FDD is being presented to the candidate. If necessary, we would then have to provide this information at the very beginning of our candidate’s due diligence process. The disclosure document need not include a financial statement or disclosures of insurance, etc. I see no relevance to this having any connection to the sale of a franchise or the ethics of a consultant. A candidate at any time can stop collaborating with a specific consultant if they feel violated in any way. There are no fees collected and no obligation to continue a relationship. Should the purpose of the disclosure statement be to ensure ethical behavior of a consultant, then a one-page document could be drafted to address these issues.
7. **Disclosing Compensation:** Consultant commissions vary by brand. If there are multiple territories chosen at the end of the due diligence, then the commission is higher. In my 24 years of consulting, I have yet to be asked for a specific amount of money I would be paid should a candidate buy a franchise. They may ask “how are you paid” not “how much are you paid.” Should I refer three franchise brands for review, each brand may have a different commission. Based on this act, I would need to disclose three different commissions. This conversation opens us to unnecessary discussions and negotiations with our candidates. This is unprofessional and unnecessary. If we are speaking about ethical conduct, my first concern is matching my candidate to the franchise that meets their personal criteria. I will not get paid any commission if I do not make a match. The commission for me, up front is honestly irrelevant. This act makes it far more relevant and unnecessary for discussion.

Conclusion: If the purpose of this proposed act is to provide clarity and transparency to the franchise candidate prior to the purchase of a franchise while protecting the integrity of the Franchise Consultant and Franchisor, I do not believe, as this act is written, will accomplish this goal. This act will create more confusion on the part of the candidate, create unnecessary and unclear paperwork to be disclosed and elevate the level of fear and anxiety associated with a candidate’s decision. This then will trickle down to the decline in growth of the franchise community and the decline in the enhancement of small business owners wanting a piece of the American Dream in our country. A person like me, who is working part time as a consultant would not consider incurring these unnecessary steps and level of scrutiny and retire.

There is quite a simple solution. If deemed necessary, a “broker disclosure registration form” such as one used in the state of New York could be drafted. The candidate can be informed by the franchisor that the consultant they are working with is registered and approved to do business in their specific state. The franchisor can inform the candidate as could the consultant.

Most consultants and franchisors are honest and ethical. We should not have to punish the masses for the sins of a few.

Thank you for your time!

Karol Mercurio