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**Subject:** [EXTERNAL]Proposed NASAA Model Franchise Broker Registration Act - Franchise Brokers Coalition post  
**Date:** Wednesday, June 12, 2024 6:32:47 PM  
**Importance:** High

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Hello NASAA:

My name is Alesia Visconti and I am the CEO and President of FranServe Inc, a franchise referral network/broker group. I also created the Franchise Broker Coalition (FBC) and invited founders and CEOs of 7 other broker networks to participate in FBC. While we are all competitors, we come together under the FBC for the good of franchising. Our collective goal is to promote responsible and ethical actions in franchising, with specific focus on broker functions. We are all members of the International Franchising Association (IFA) and many of us serve on their boards and committees to further uphold high standards in franchising.

To be clear, we are not opposed to a disclosure document for third party sellers; in fact, some of us crafted one internally years ago, to help shed light on the functions of a franchise broker and for greater transparency to the consumer. Collectively, we agree with the idea of a third-party disclosure document. There are however, terms, language, and points in the draft of the NASAA Model Franchise Broker Registration Act that either need clarification, may not be practical to implement, or, as written as they stand, could create more harm than good. For that reason, and with the best intentions, this email is being sent.

We ask that you consider our suggestions, comments and feedback as outlined below:

### **Renaming the Act to "Third Party Franchise Sellers Registration Act"**

- **Rationale:** The current title and scope of the Act primarily address franchise brokers. Broadening the scope to include all third-party sellers will provide a more comprehensive regulatory framework that encompasses franchise sales organizations and other intermediaries.
- **Proposed Change:** Amend the title and revise all references from "franchise brokers" to "third party franchise sellers." Redefine "third party franchise sellers" to include franchise brokers, franchise sales organizations, and any other agents involved in selling franchises. This amendment should be reflected in all relevant sections to cover a broader scope of franchise selling activities.
- **Proposed Change:** Recommend the establishment of a centralized, industry-supported database for tracking all third-party seller registrations and Continuing Education requirements. This database should be accessible by all states but managed by an independent, industry-related entity to ensure neutrality and comprehensive coverage. Additionally, articulate the future challenges and benefits of this centralized approach:
  - "Establish a centralized registration database to be utilized by all states for the purpose of tracking and managing third-party franchise seller registrations and Continuing Education compliance. This database shall be maintained by an independent entity specializing in franchise industry data management."
  - "The implementation of this centralized database would significantly reduce the future administrative burden on franchisors, who would otherwise face the logistical challenge of managing numerous separate registrations for multiple sellers. By simplifying access and reducing repetitive administrative tasks, this system will

enable franchisors to focus more on strategic business operations and less on cumbersome compliance logistics."

### Standardizing Disclosure Timelines

- **Rationale:** Currently proposed multiple disclosure timelines can lead to confusion and may disrupt the franchise sales process. Delaying disclosure until the end of the process ensures that financial disclosures are more accurate and relevant to the final agreement terms. Additionally, later disclosures can enhance the prospective franchisee's understanding and decision-making, as they will have gained sufficient knowledge about the franchise operation and the implications of their investment by that stage. Early-stage disclosures can be overwhelming and potentially off-putting for prospective franchisees, potentially reducing their willingness to proceed with purchasing a franchise.
- **Proposed Change:** Recommend consolidating all disclosure requirements into a single timeline at the point of signing the franchise agreement. This approach not only simplifies compliance but also strategically aligns the disclosure process with the prospective franchisee's readiness to process and utilize the information effectively. Proposed language for the Act might include:
  - "All required disclosures by third-party franchise sellers, including financial compensation and other material information, must be consolidated and provided at the time of signing the franchise agreement. This timing ensures disclosures are accurate, relevant, and less disruptive to the prospective franchisee's experience."
  - "This single disclosure timeline supports a more informed decision-making process by the franchisee, who by the end of the process will be better equipped to understand and evaluate the information provided. Early disclosures, while intended to inform, may instead confuse and deter prospective franchisees due to their premature timing and the complex nature of the information."
- We believe the Act as written today will create complexities within a prospective franchisees' discovery process, which will create confusion and fear unnecessarily and, as a result, have a significant downward impact on business.
  - Example: One franchisee introduced to 3-5 franchisors could be subject to potentially 15+ franchise broker disclosure documents (referring franchise broker, every team member of an FSO (which can be multiple persons on an introductory call depending on the brand.)
- Section 2: Definitions – sub-points (3) and (4). Please define the meaning of "franchise broker" and "franchise broker representative and/or if you could provide further explanation about your purpose for creating this distinction in the proposal.
- Section 4: Registration – sub-point (1) c. We ask that you more clearly define what is considered, or perhaps more importantly what is not considered, "a material change" in the disclosure information filed under this model legislation. We agree that any change

in factors like litigation or criminal history should definitely be considered “material”, but items such as disclosing the industries of the franchise brands represented by the broker and how many brands are represented within each industry – that data changes constantly in most referral network business models as new franchisors are added and others eliminated from inventory. The amount of work needed to maintain continual change is unrealistic to comply with this provision. Since the franchise broker will be required to file an application each calendar year, we 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 – sub-point (2). This section requires a franchise broker to disclose “all compensation they will receive in connection with the offer and sale of a franchise”, at the point in time when the prospective franchisee receives a copy of the Franchise Disclosure Document. The broker may not know the answer to this question due to variable factors including:
    - a. The number and type of the franchise units contracted for,
    - b. The method and timing of payment(s) used to pay the required franchisor fees,
    - c. State escrow requirements of the franchisor,
    - d. Whether the franchise purchased is for a new unit or the resale of an existing unit,
    - e. Any short-term incentives or bonus programs that might be in place from the franchisor when the purchase is actually made,
    - f. Any special concessions agreed to by the broker to the franchisor at the time of the purchase,
    - g. There is another issue related to this compensation disclosure in that most referral network brokers refer the prospective franchisee to multiple franchise companies at the same time. In most cases there are different compensation programs, amounts, schedules and incentive payments from franchisor to franchisor, so this would require multiple disclosures to factor in the variables when making compensation information available to a prospective franchisee.
- Please consider an approach more like the current CA bill. This bill requires a disclosure

of “How the third-party franchise seller is compensated” rather than a specific amount. It would require a broad disclosure of various factors that may come into play such as the most common no sale fee to other alternatives such as single unit placement fees, multi-unit placement fees, territorial or development schedule fees, master license fees, resale fees, bonuses or other incentive program fees, etc. This would require a thorough explanation of the compensation potential for the broker from various activities the prospective franchisee might enter into. It would also provide a clearer explanation of what may be considered by the prospective franchisee to be the broker’s “vested interest” in the prospective franchisee’s purchase decision, if that is a desired goal of the regulation.

### **Operational Framework Suggestions**

- **Section 7: Obligations of Franchisors and Subfranchisors.** We support the new registration and disclosure requirements on brokers, but this requirement on franchisors would create a cumbersome and expensive new burden on the franchisor for little if any benefit to prospective franchisees. In addition, trying to stay current on this requirement for franchisors, if any changes are considered material, would realistically require them to file constant amendments to their initial filing with each state as individual brokers come and go on an almost daily basis. We recommend eliminating this requirement as it is impractical to implement.
  
- **Disclosure of Client List and Confidentiality Concerns:** There has been discussion that the franchise broker disclosure document will require a list of clients helped by said franchise broker over the previous 12 months. This excessive level of detail may lead to unintended consequences, such as data mining and unauthorized selling of proprietary information.
  - **Proposed Change:** Recommend amending the Act to limit the amount of contact information required in disclosures concerning third-party sellers and their previous clients. This would involve providing only the names of the entities involved, without including contact details. Proposed language for the Act might include:
    - "Disclosure documents should only include the names of third-party sellers and previous clients involved in franchise transactions. Contact information such as phone numbers, email addresses, and physical addresses shall be omitted from public disclosure documents to protect the privacy and security of all parties involved."
    - "This limitation is intended to prevent the potential exploitation of these details by third parties, ensuring that client lists, and proprietary information are safeguarded against unauthorized use or commercial distribution."

Please do not hesitate to contact me on behalf of the Franchise Brokers Coalition should you have questions or need clarification, etc. We look forward to working together for the best outcome for all!

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