

From: [Andrew McNall](#)
To: [NASAA Comments](#)
Cc: [Theresa Leets](#); bill.beatty@dfi.wa.gov; [Erin Houston](#)
Subject: [EXTERNAL]Public Comment on draft NASAA Model Franchise Broker Registration Act
Date: Thursday, June 13, 2024 5:28:04 PM

Dear NASAA Team,

My name is Andrew McNall. I'm COO of NexGenEsis Healthcare, a franchisor.

I am writing to provide feedback on the NASAA Model Franchise Broker Registration Act. I appreciate the opportunity to share my comments based on years of involvement in the franchise industry.

First, your intention to enhance and codify ethical practices for franchise brokering is laudable. Ensuring that potential franchisees, who often know little about franchising when they start researching, are protected from deceptive and high-pressure sales practices is important to all of us in the franchise industry.

With this in mind, while the current draft of the Model Act includes several important provisions, I'm concerned that the draft also has definitions and provisions that might inadvertently hinder the franchise sales process. As a franchisor, we rely on franchise brokers to connect us with interested franchisees. Some of the disclosure requirements in the Act very well might, unintentionally, discourage franchisees from engaging in the process.

My key concerns and suggestions are as follows:

Section 2: Definitions

The definition of a "franchise broker" should be limited to a person or company that receives a commission upon the sale of a franchise. This is where harm to a franchisee is likely to occur; where a person motivated by a commission has the temptation to engage in unethical behavior during the sale process.

Someone who works for the franchise broker, a lawyer or accountant who introduces someone to a franchise broker, or a franchisee who receives no compensation when a sale occurs has little-to-no incentive to engage in unethical practices. It would be an undue burden for people like this to have to register as "franchise brokers".

Section 3: Prohibited Practices

While it is sensible to prevent unregistered / aka untrained brokers from engaging with prospective franchisees, imposing the responsibility on franchisors to verify broker registration adds unnecessary administrative burden. As a franchisor, we are not immediately aware of all the changes in the people in the industry and would not want to indirectly violate compliance due to a lack of knowledge and insight into the topic. A centralized, government-maintained database would be essential for this.

Section 4: Registration

Requiring franchise brokers to register in each state that adopts a version of the Model Act puts an undue burden on those brokers. Unlike Real Estate agents, who typically list and sell real estate in one or two states, a Franchise Broker literally could have clients who purchase franchises in all 50 states in a year. If every state adopted a version of the Model Act, that broker would need to register 50 times, which would be a huge administrative burden for people who are typically independent contractors.

A national registry for franchisee brokers would be much less burdensome on the brokers. And, this would be similar to what financial advisers need to do when they pass their Series 7, which is good in all states.

Additionally, the term "material change" needs a precise definition. Significant changes, such as criminal history or new litigation, should be considered material. However, frequent updates for minor changes would be burdensome and unnecessary.

Section 5: Disclosure Obligation

The mandate to disclose "all compensation" is challenging for two reasons. First, disclosing compensation fees up front can derail potential franchisee interest. One unintended consequence would be potential franchisees circumventing Franchise Brokers and going directly to the Franchisor to be awarded a franchise, thinking that they will get a reduced franchise fee by not using a broker. If that became routine, it would disrupt the function that Franchisors rely on Franchise Brokers to do.

Second, fees often change, necessitating frequent updates to disclosure documents, which can lead to confusion. Disclosing a "typical referral fee range" would be a more practical approach, balancing transparency with administrative feasibility. This disclosure could be within the franchisor's FDD and updated annually. Disclosure of our referral compensation also reduces our competitive advantage. The compensation provided supports the marketing expense to help brokers focus on spending their marketing dollars on our brand.

Client List Disclosure

Requiring client lists, franchisees' personal emails, and numbers raises significant privacy concerns. A Franchise Broker works with the client's personal information, as the business has not been established yet. This requirement might also lead to misuse of information and does not clearly benefit prospective franchisees. The rationale for this requirement is not well-defined in the proposed Act. Giving this information too early in the process could harm future efforts to communicate with the prospect and put an increased call volume on already time-strapped first-year franchise owners. Contact information is already provided in the FDD. This is a fair practice and could simply be continued. No other investment allows for the disclosure of all past clients except for franchising. This requirement could do more harm than good.

Conclusion

Ideally, a Model Act should protect prospective franchisees from unethical practices while creating an environment in which a franchisee can trust the process the Franchise Brokers guides them through: the transparent review of franchises to find the best fit for the future franchisee. The current draft introduces complexities that could discourage potential franchisees and impose undue burdens on brokers and franchisors.

I urge NASAA to consider these suggestions, and the suggestions of other colleagues in the franchising industry, to develop a more balanced and effective regulatory framework.

Thank you for considering my comments. I am open to further discussions and clarifications. Please feel free to contact me at your convenience.

Sincerely,

Andrew McNall, PhD
Chief Operating Officer
NexGenEsis Healthcare, LLC
www.nexgenesishhealthcare.com
O: (713) 909-4514
M: (346) 888-9154
[Schedule a call](#)

