

From: [Farha Khaja](#)
To: [NASAA Comments](#)
Cc: [Theresa Leets](#); bill.beatty@dfi.wa.gov; [Erin Houston](#)
Subject: [EXTERNAL]Public Comments on Proposed NASAA Model Franchise Broker Registration Act (the "Act")
Date: Thursday, June 13, 2024 4:02:05 PM

Dear NASAA Team,

My name is Farha Khaja, and I have been operating as a full time franchise consultant under the umbrella of the Franchise Brokers Association for a year now. As a women, minority business owner, I take great pride and responsibility in helping educate and expose the multitude of business opportunities available in the franchise industry to underrepresented communities. I believe in the opportunity that the franchise industry provides to allow a diverse set of people achieve the dream of entrepreneurship and reap the immediate and long-lasting rewards of building and running your own business.

As such, I am writing to provide feedback on the NASAA Model Franchise Broker Registration Act. Thank you for allowing me to share my insights as someone on the front lines seeing the impact my work has on many lives, and intimately understanding the franchise consulting process.

While the intention to ensure ethical practices in franchise brokering is commendable, the current draft of the Model Act introduces complexities that might inadvertently hinder the franchise sales process. I have several concerns and suggestions that I hope will be considered for the final draft. As it currently stands, there are likely to be some unintended consequences.

The ACT does not address bad acts. It only makes non-disclosure or improper disclosure an illegal act and then justifies cause against the franchise broker, franchisor, or franchise broker representative.

1. Broadens the definition of a franchise broker
2. Reduces the definition of a transaction
3. Increases liability and cost to defend
4. Makes compliance unreasonable, a costly burden, and unreachable by affected parties

Here are my observations and suggestions:

The Role of Franchise Brokers

Franchise brokers play a vital role in matching prospective franchisees with the right franchisors. Ethical brokers prioritize their clients' best interests, helping them find suitable franchise opportunities. Brokers are akin to employment recruiters; they facilitate introductions without making final decisions on franchise awards and are compensated only when a franchisor awards a franchise.

Impact on Prospective Franchisees

The current draft of the Model Act may unintentionally complicate the franchise discovery process for prospective franchisees. Requiring multiple disclosure documents can create unnecessary confusion and anxiety, potentially deterring individuals from pursuing franchise opportunities.

Key Concerns and Suggestions

Section 2: Definitions

The distinction between a "franchise broker" and a "franchise broker representative" requires clearer definitions. Licensing for brokers, including specified training hours similar to the Certified Franchise Executive (CFE) program, would be beneficial. However, the term "representatives" is too vague and will be misinterpreted.

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. A centralized, government-maintained database would be essential for this, though it might be impractical to implement.

Section 4: Registration

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. Referral 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 should be within the franchisor's FDD, not additional paperwork passed to the franchise broker.

Client List Disclosure

Requiring brokers to disclose their client lists raises significant confidentiality concerns and could undermine trust between brokers and clients. 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.

Record Retention

The proposed requirement to retain records for 10 years, even after business closure, is excessive. The 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

To promote integrity among franchise brokers, national education and licensing requirements should be implemented. Mandatory training programs, similar to the CFE, would ensure 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 and financially prohibitive.

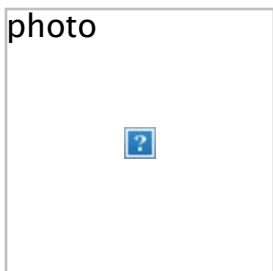
Conclusion

The Model Act should protect prospective franchisees while fostering an environment conducive to ethical franchise brokering. The current draft introduces complexities that could discourage potential franchisees and impose undue burdens on brokers and franchisors. I urge the NASAA to consider these suggestions 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,

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