

From: [Cary Schneider](#)
To: [NASAA Comments](#)
Cc: [Theresa Leets](#); bill.beatty@dfi.wa.gov; [Erin Houston](#)
Subject: [EXTERNAL]Requested comments on proposed NASAA Model Franchise Broker Registration Act
Date: Thursday, June 13, 2024 3:51:34 PM

Dear NASAA,

Thank you for soliciting feedback on the proposed NASAA Model Franchise Broker Registration Act. As an experienced industry professional, I appreciate the opportunity to share my thoughts on the development of this important Act.

I have owned my own business and provided services as a franchise broker since 2015 and have also been a franchisee, in addition to owning several other nonfranchise companies. I fully support regulating the franchise broker industry to provide minimum ethical and educational standards and ensure a high level of professionalism in the industry to serve prospective franchisees at the highest level. After reviewing the draft however, I do have some recommended revisions that I believe ultimately would benefit all stakeholders.

Evaluating the intent of this Act at a high level, it may be more efficient and ultimately more effective if this Act was administered at a national level to avoid individual states from having the burden to administer it and for individuals subject to the Act to then only have to file and when necessary, update the appropriate documentation in one place. A national, uniform level of reporting would likely be more accurate and current and if a particular state wishes to have additional requirements they can of course enact those (similar to NY and Washington State currently do as an example).

Here are additional comments on the specific sections:

Section 2: Definitions

The definitions of “Franchise broker” and “Franchise broker representative” appear to be at least in part repetitive and one or both could be misinterpreted. If both of these terms are needed, further distinction would be useful.

Licensing for brokers, including specified training hours similar to the Certified Franchise Executive (CFE) program, would be beneficial.

I do want to add that I see the role of franchise broker to first identify franchise opportunities that based on the information obtained to date from the prospective franchise candidate, may be a good fit for them and have territory availability. Then, it is to facilitate an introduction to the franchisor while continuing to be a resource for both the prospective franchise candidate and also the franchisor in assisting both of them in getting the information they need for a mutual vetting process and ultimately to each make a determination on the opportunity. This may lead to a franchise award and acceptance. As a franchise broker I play no role in the actual decision making process for either party.

Section 3: Prohibited Practices

While it is sensible to prevent unregistered or untrained brokers from engaging with prospective franchisees, placing the responsibility on franchisors to verify broker registration

adds an unnecessary administrative burden. This is another benefit of a centralized, national level maintained database that may be more effective and appropriate.

Section 4: Registration

I work with clients in nearly all 50 states as do many of my colleagues so again, requiring franchise brokers and franchise broker representatives to register individually in each state is tedious, burdensome and likely will require a significant allocation of both time and financial resources (for all parties). My time invested could be better allocated assisting prospective franchisees.

A "material change" should be explicitly and precisely defined. Significant changes that are relevant to the industry, such as criminal history or new relevant litigation, should be considered material. However, frequent updates for minor changes would be burdensome, unnecessary and likely inconsistently applied

As to the ability for a state to deny, suspend or revoke a registration, what constitutes a "public interest" should be consistent across all states and also be explicitly defined and be relevant to the role the franchise broker has with the prospective franchisee.

Section 5: Disclosure Obligation

The mandate to "provide a prospective franchisee with a disclosure statement prior to an in-person, virtual, telephonic, or electronic communication relating to any specific franchise opportunity" may be impractical as in many cases, we are contacting an individual after they have inquired online and without necessarily referencing what franchise they may have an interest in, or in some cases they are inquiring about several franchises. Our contact effort may also initially be by phone or text. The timing of any required formal disclosure may be more appropriate and practical as a follow up to the initial conversation assuming both parties intend on continuing their efforts together.

In addition, attempting to disclose "all compensation" may also be impractical. Referral fees vary from one franchise to another and also will vary based on how many units a franchise candidate is ultimately awarded. Prospective franchise candidates also often are exploring multiple opportunities concurrently and in some cases, are the party to initially reference a specific franchise for further discussion and the franchise broker may not have immediate access to the current information on what the actual compensation may be (if any, as some franchisors do not compensate brokers for referrals). Referral fees can also change frequently as they can increase or decrease at the discretion of the franchisor and the applicable amount may be dictated on when a franchise is awarded. (which of course is unknown at the time of the initial contact) This would also require frequent updates to disclosure documents, which can lead to confusion. Disclosing a "typical referral fee range" may be a more practical approach and still provide a reasonable level of transparency and likely with greater accuracy.

Franchise brokers also do not have any control of the timing on when a FDD may be provided by a franchisor to a prospective franchisee (they often do it at different stages), nor necessarily any indication of when the FDD has been provided. For all of these reasons, it may be most effective and reliable to include any of the requested info in this disclosure obligation solely into a franchisor's FDD,.

Section 6: Recordkeeping Obligation

"... in the public interest or for the protection of franchisees." should be explicitly defined in the Act to avoid a broad range of what subjectively would trigger this requirement and should be entirely relevant to the role a franchise broker has with a prospective franchisee.

Requiring records to be kept for 10 years is excessive. The IRS only requires records to be kept 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later, and 7 years if you file a claim for a loss from worthless securities or bad debt deduction. 3 years would appear reasonable.

Section 7: Obligations of Franchisors and Subfranchisors

Franchisors are frequently (daily, weekly) getting introduced to franchise brokers that ultimately have an interest in sharing their opportunity with a prospective franchise candidate. Requiring a franchisor to refile an updated list of franchise brokers every few weeks or months would be impractical. Updating the list annually would be more reasonable.

I would also suggest to "raise the bar" and 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 industry.

Thank you again for considering my comments. I hope they are of value and please contact me if I can provide any additional insight or feedback.

Best regards,

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