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THE STATE OF FRANCHISING:

2025 in Review and 2026 Update

Franchising entered 2026 on firmer footing than the year prior. Despite persistent inflation, tighter credit and uneven consumer demand, which pushed systems away from aggressive expansion and toward increased focus on unit-level efficiency and cost discipline, the sector grew anyway. The start of 2026 brought more than 20,000 net new franchised establishments, roughly 2.4% growth and some 210,000 jobs added — carrying employment through franchised businesses past nine million, according to the International Franchise Association (IFA). The IFA's 2026 franchising economic outlook projected continued but measured growth with franchised businesses increasing to roughly 845,000 units and output climbing to more than $921 billion.

The composition of that growth matters more than its rate. Ownership is consolidating: multi-unit operators constitute 19.3% of franchisees but control 58.8% of all locations, per the IFA. Child services and commercial and residential services lead sector growth, and preventive health care has become the third-largest franchised industry since the pandemic, with growth continuing in home health and senior care, among others. Technology has moved from pilot programs to part of the integrated infrastructure — increasingly being imposed by franchisors on a mandatory basis — and private equity is re-engaging as financing eases.

The result is franchising is consolidating and standardizing at the same moment its legal architecture continues to fragment. That tension is reflected in this report.

The American Franchise Act and the Joint-Employer Question

The most consequential pending federal legislation, H.R. 5267 and its companion in the Senate, S. 3525, would codify the current "direct and immediate control" standard for joint-employer status, so that a franchisor is a joint employer only where it actually exercises control of a franchisees' employees — such as determining wages, benefits, hours, shifts and discipline for employees — not where it only sets brand and operational standards. Despite broad industry backing, the bill's receptivity remained delayed until it recently passed out of the House committee and is expected to go for a vote

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on the House floor. Our contributor examines what that stall means in practice: the standard franchisors rely on today exists because of agency determination rather than statute, and it is reversible. The exposure falls hardest on systems exercising control through step-in management rights, direct training, mandated technology and vendor programs.

Noncompetition Law: Federal Retreat, State Proliferation

The FTC's 2024 noncompete ban is gone. It was enjoined in 2024, as the agency withdrew its appeal in September 2025 and formally struck it from the Code of Federal Regulations in February 2026. But the Commission has changed instruments rather than exited, pivoting to case-by-case Section 5 enforcement. Meanwhile, the states are moving decisively in both directions at once: Tennessee, Utah and Virginia tightened noncompete enforceability through legislation in 2026. Virgina was the first to pass a noncompete law specific to franchise agreements, while Kansas and Florida's CHOICE Act moved the other way. Cases applying California law continue to show a crack in the long-understood, near-complete ban on noncompetes, even in business relationships. This article traces what that means for multistate systems — chiefly, that the single national template is finished, and enforceability now turns on where the franchisee, owners and employees reside and what the choice-of-law clause says.

Tariffs Disrupt Supply Chain

Tariffs affected franchising's economic performance, with reciprocal tariffs imposed in 2025 reaching as high as 14.5% on goods imported from China, alongside expanded steel and aluminum duties raising costs for kitchen equipment, fitness equipment and packaging. These hit restaurants and gyms the hardest, causing many brands to delay investment and expansion due to the uncertainty of costs. This pressure eased in the first half of 2026, but the tariff environment still favors franchise systems with diversified or domestic heavy supply chains.

Regulatory Developments: Continued Focus on Non-Disclosed Fees and Accommodating State Registration Processes; Broker Laws

Federal disclosure expectations have risen without an FTC rule change. FTC staff guidance and state administrators are increasingly focusing on limits and caps on future fees and fee increases in the franchise disclosure document (FDD) and franchise agreement, as well as prohibiting the imposition of fees that are not disclosed in the FDD for any services, including mandated technology. Meanwhile, the states are solving a different problem: delays in reviews. For example, Maryland, which received 79% of its 1,719 franchise applications between March and May of 2025 (with 45% in April alone), is utilizing a new Fast-Track Renewal Program, launched Jan. 1, 2026. It was renewed through 2031 by this session's Franchise Reform Act, which allows eligible franchisors to file by Feb. 1 (before the audit is complete) and obtain their review ahead of the spring crush. New York's Attorney General followed in February 2026 with an early-review option and a prioritization channel

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for renewals tied to pending sales. Both states decoupled expedited review from the audit calendar without lowering the substantive bar. Maryland, notably, paired its accommodation with expanded liability reaching controlling persons and employees who materially aid a violation of the franchise law.

Joining New York's and Washington's broker requirements, California's franchise broker law (when it comes into full effect in July 2027) requires brokers to register annually and provide pre-sale disclosure effective once funding is provided by the California legislature. The North American Securities Administrators Association's (NASAA) Model Franchise Broker Registration Act, adopted in May 2026, establishes a template for registration, disclosure and record-keeping requirements.

Conflict Resolution in Franchise Disputes

Alternative dispute resolution has matured into a practice focused specifically on franchising rather than borrowed from general commercial work. Franchise agreements increasingly build a structured escalation: negotiation, then mediation on a 30- to 60-day window, then arbitration or litigation. Our contributor takes up critical focus points for maximizing opportunities for successful franchise mediation: the asymmetry between a franchisor defending system integrity and an individually capitalized franchisee; strategic timing issues; and the importance of selecting a mediator with fluency in franchising and the human mind's reaction to conflict.

What Ties These Together

None of the above issues are deregulation. With respect to enforcing noncompete covenants, joint employer liability, broker registration, tariff regulation and franchise registration processes, it is the relocation of regulation to more than a dozen separate desks — each with its own approach to implementation and resolution. The practical consequence is that uniformity — the operating premise of the franchise model itself — is now something a franchisor must engineer around. Mediation can be the glue addressing disputes growing out this fragmentation if franchisors and franchisees remain guided by the principle that most disputes have an acceptable resolution, and if both parties are willing to reserve judgement and carefully consider their options outside of litigation.



Proposed American Franchise Act Would Bring Sanity to "Joint Employment" Standard in Franchising



Jess A. Dance
Shareholder
Denver

Key Takeaways

- The American Franchise Act would create a statutory joint-employer test for franchisors under the NLRA and FLSA, requiring substantial direct and immediate control over essential employment terms.
- The proposed standard could reduce regulatory swings that have exposed franchisors to potential joint liability based on ordinary brand standards and controls inherent in the franchise model.
- Franchisors, franchisees and industry participants should monitor the bill's progress and consider engaging with lawmakers on the proposed framework before further congressional action.

A bipartisan group in the U.S. House of Representatives introduced the American Franchise Act (H.R. 5267) on Sept. 10, 2025, taking direct aim at the standard for determining when franchisors may be considered joint employers of a franchisee's employees under the National Labor Relations Act (NLRA) and Fair Labor Standards Act (FLSA). If enacted, the Act would bring clarity — and sanity — to what has become a volatile area of law.

Years of Legal Whiplash

The past decade has witnessed wild swings in how joint employment is evaluated under the NLRA, the federal law governing collective bargaining and certain labor practices, and the FLSA, the federal wage-and-hour law.

Through agency rulemaking and court challenges, the legal standard has bounced between the long-standing, focused test — whether a putative joint employer actually exercised "direct and immediate control" over essential employment terms and conditions — to an expansive standard that considered indirect control and the reserved right to control, even if never exercised. Since 2015, this test has flipped back and forth (and back and back again) with each change in presidential administration.

These swings create serious uncertainty for franchise businesses. An expansive view of joint employment harms the overall viability of franchising by exposing franchisors to potential joint liability, based solely on a franchisor's exercise of the kind of brand standards and control inherent to franchising. Such constant regulatory flux makes it difficult for franchise businesses to structure their operations or assess risk with certainty.

What the American Franchise Act Would Do

The Act would protect franchising by amending the NLRA and FLSA to adopt a clear, consistent test for franchisor joint employment. Under the Act, "[a] franchisor may be considered a joint employer of the employees of a franchisee only if the franchisor possesses and exercises substantial direct and

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immediate control over one or more essential terms or conditions of the employees of the franchisee."

The phrase "substantial direct and immediate control" would mean having "direct and immediate control that has a regular or continuous consequential effect on an essential term and condition of employment of a franchisee's employees," as opposed to sporadic, isolated or *de minimis* control. The Act would also limit the list of "essential terms and conditions of employment" to wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction.

Implications for Franchise Businesses

If enacted, the Act would lock into the statutes a common-sense standard for determining franchisor joint-employer liability under the NLRA and FLSA — protecting franchise businesses from the ever-present risk of new rulemaking and flipping standards with each change in White House leadership. The Act only applies to the franchisor-franchisee relationship and does not affect joint employer determinations outside of franchising.

As of publication, the proposed Act has over 120 cosponsors — Democrat and Republican alike — in the House of Representatives. On July 21, 2026, it was approved by the House Committee on Education and the Workforce, sending it closer to a full House vote. A companion bill (S. 3525) was introduced in the U.S. Senate on Dec. 17, 2025. Progress of the American Franchise Act in Congress will be an important development for franchisors, franchisees and other industry participants to monitor, and those interested may contact their Representatives and Senators to express their support for the American Franchise Act's proposed regulatory framework.

The Rise of State Fast-Track Franchise Registration Programs



Jarina Duffy
Shareholder
Philadelphia

Key Takeaways

- Maryland and New York have created expedited pathways for certain franchise renewal registrations, offering eligible franchisors faster review timelines or early review before audited financials are available.
- Registration delays can stall franchise sales, disrupt broker relationships and push development timelines into later quarters or fiscal years, especially in states with historically long review periods.
- Franchisors should build renewal calendars around fast-track eligibility, required cover-letter language, financial statement timing and state-specific application details to preserve development momentum.

For franchisors operating in registration states, delays in franchise registration can stall development pipelines in the applicable states, disrupt broker relationships and push unit openings into the next fiscal quarter or year.

In response to examiner backlogs and industry pressure, two states, Maryland and New York, have introduced expedited or "fast-track" franchise registration programs. Historically, the back and forth with state regulators during the franchise registration process can take weeks or even months. This delay prevents a franchisor from offering or selling franchises in these states during this period. Overall, Maryland and New York's fast-track programs for renewal registrations offer shortened review timelines and priority assessment by state regulators for franchisors that meet certain eligibility requirements.

To qualify for the Maryland fast-track program, franchisors must:

1. Be currently registered in Maryland
2. Have a fiscal year that ends between Dec. 24 and Jan. 7
3. Not be subject to a pending investigation with the Maryland Securities Division

By Feb. 1, franchisors must submit their renewal application package, which must include a cover letter expressly requesting the fast-track program, uniform registration application, costs and sources of funds form, franchise seller disclosure forms and the uniform consent to service of process.

Franchisors must also submit their franchise disclosure document (FDD) that has been updated for the next registration year, with the exception of the financial statements for the prior fiscal year. Within 15 business days of the filing, the examiner from the Securities Division will review the application and

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provide either a pre-clearance letter or a deficiency letter. Within 15 business days of a deficiency letter, franchisors must respond to cure any deficiencies.

By April 10, a franchisor must submit:

1. The completed 2026 FDD with audited financial statements for the prior fiscal year
2. The consent of accountant
3. The certification page (second page of Form A)

Within 10 business days of the submission of the completed FDD and remaining application pages, the examiner will issue either an effective notice or a deficiency letter. There is no additional fee for the Maryland fast-track program. Franchisors will be required to pay the standard $250 renewal fee when submitting the application (prior to Feb. 1). On May 13, 2026, Maryland Governor Wes Moore signed the Franchise Reform Act into law, which renews the Maryland fast-track program for the next six years and includes requirements to measure the program's effect on review of FDD registrations.

In New York, while there is no official fast-track program, the New York State Office of the Attorney General (OAG) issued guidance for the state regulators' review of FDDs. In the Guidance for Accelerating Review of Franchisor Registration Applications, the OAG provided tips for franchisors when submitting franchise registration applications to New York. First, the OAG suggested ensuring that certain New York specific disclosures are accurate, specifically noting the New York State Administrator and Agent Contacts (a routine update that is the subject of many comment letters) and the text of the New York state-specific addendum (which has had language changes in recent years). The OAG also recommended that franchisors ensure that certain information is accurate on the application pages, such as the auditor's consent date and auditor's report date (i.e. that such dates are on or after the issuance date of the FDD), correlating the issuance date of the FDD with the date of the signed and notarized certification page, and ensuring that New York is checked off on the list of states in the consent to service of process.

On the OAG's side, the OAG stated that it will review and issue deficiency comments on renewal applications that are in final form but filed before audited financial statements are available. Such applications must be filed within 75 days after the close of the franchisor's fiscal year end and must be complete within 120 days after the close of the franchisor's fiscal year end. To request early review, the application cover letter must include the subject line "No Audited Financials—Early Review Renewal Application" and clearly state that the application is nearly finalized but the audited financial statements are not yet available. The franchisor must also send an email to the OAG, alerting it of the early review request. The application should exclude an FDD issuance date, a certification page and an auditor's consent. Applications missing additional required documents will not be reviewed early.

The OAG will issue deficiency comment letters on items that are not impacted by audited financial statements. If there are no other comments, a standard comment will be issued for the franchisor to add an FDD issuance date as well as provide audited financial statements for the most recent fiscal year, an auditor's consent and a certification page, which must be uploaded to the NASAA online registration portal. Franchisors who are subject to a pending investigation or enforcement matter with the OAG are not eligible for early review.

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In addition, franchisors can request that the OAG prioritize an application if there is a pending franchise sale by sending an email (and uploading such email to the NASAA online registration portal) to the OAG requesting such priority review.

The email must also include an affirmation signed by the franchisor that provides the following information about the pending sale:

1. Name, address and telephone number of the prospective franchisee
2. The anticipated price and credit terms

Once the OAG accepts a renewal application, the franchisor should provide the prospective franchisee with a redline comparing this version to the last-registered version that the franchisor may have used to offer a franchise for sale.

For established systems with predictable renewals, expedited programs can deliver meaningful benefits, including:

1. Shorter periods during which franchise sales must be stalled
2. Streamlined comment periods for responding to state regulators
3. Predictable timelines in states with historically long response timelines

Hopefully, these two expedited programs reflect a broader trend in franchise regulation, particularly for those franchisors with limited modifications to the franchise system year-over-year.

Negative Members' Equity in Franchise Systems: What It Signals to Regulators and Prospects



Jarina Duffy
Shareholder
Philadelphia

Key Takeaways

- Negative members' equity in a franchisor's audited financials is a scrutiny point, not a standalone conclusion, and may reflect growth strategy, leverage or operational distress depending on context.
- State regulators and prospective franchisees may view negative equity as a sign of undercapitalization, potential insolvency risk or insufficient resources to support current and future franchisees.
- Franchisors should address negative equity proactively through financial context, working-capital support, disciplined growth explanations and preparation for possible state conditions such as escrows, deferrals, bonds or guarantees.

Financial statements rarely tell a simple story. In franchising, they tell a strategic one. When a franchisor's audited financials reflect negative members' equity, the immediate reaction from regulators and prospective franchisees may often be concern. But negative equity does not always mean financial distress. In some cases, it reflects rapid expansion, leveraged growth or sponsor-driven structuring decisions.

Members' equity (or shareholders' equity) represents the residual interest in the entity's assets after liabilities are deducted. In early-stage franchise systems, negative equity may result from issues such as startup losses, debt-financed expansion and excessive distributions to owners. In some cases, brands growing rapidly may operate for years with negative equity. And, while that status may be comfortable for the franchisor's owners, state regulators in certain states (namely, California, Illinois, Hawaii, Maryland, North Dakota, South Dakota, Virginia and Washington) may have a different opinion.

As part of the review process for state franchise registrations, state regulators evaluate the audited financial statements included in Item 21 of the franchise disclosure document (FDD) to determine whether the franchisor can support its current and future franchisees. Specifically, state regulators may focus on whether the franchisor has sufficient current assets to meet short-term obligations and whether initial fees and ongoing royalties will be lost to insolvency. A franchisor may have negative equity yet maintain strong working capital and positive operating cashflow (e.g., through recurring royalty streams), which may potentially mitigate a state regulator's equity concerns. On the other hand, persistent and increasing financial losses may show an increased risk that the franchisor is unable to provide training and meet its other obligations owed to franchisees. While it is unlikely that negative equity alone will trigger registration denial, state regulators may, as a result of negative equity, impose an impound condition requiring initial franchise fees to be deferred or placed in escrow, the franchisor to obtain a surety bond, or a guaranty by a franchisor's parent or affiliate.

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Regulators are not the only audience reviewing Item 21 and its financial statements. Sophisticated prospective franchisees know how to review the financial statements to assess the franchisor's financial health. Prospective franchisees may raise questions regarding whether the franchisor is undercapitalized, whether the support infrastructure is adequately funded, whether the franchise system is dependent on new franchise sales to survive and whether the franchisor is headed toward bankruptcy. These issues may be more present in emerging brands, but not always. Prospective franchisees should not assume that a franchise system that has existed for several years is beyond having these issues.

Negative members' equity warrants concern by a prospective franchisee when it is coupled with operating losses without revenue growth, heavy reliance on franchise sales for liquidity, significant short-term debt, vendor payment delays, inconsistent performance results in Item 19 and weak sales trends. If royalty revenue does not cover operating expenses and franchise fees are required to fund operations, the business model may be unstable.

On the other hand, negative members' equity may be a sign of growth within the franchise system and be less of a risk when coupled with significant investment in technology, marketing infrastructure and field support. Also, in situations where the franchisor is owned by private equity, negative equity may reflect leveraged recapitalization or distribution strategies rather than operational weakness. Additionally, it is important to remember that a franchisor entity often lacks intangible assets as the primary asset is generally the brand itself, which may be internally developed and minimally reflected on the balance sheet.

Negative members' equity in a franchise system is a data point that invites scrutiny by both state regulators and prospective franchisees. When addressed strategically, negative equity can be explained as part of a disciplined growth story. When ignored, it can delay registrations, slow development and undermine credibility. Ultimately, state regulators seek assurance that franchisees' initial fees and ongoing royalties will not be lost to insolvency. And prospective franchisees seek confidence that the franchise system has the capital to invest in growth and support its current and future franchisees.



Regulatory Focus Sharpens on Franchise Brokers



Jess A. Dance
Shareholder
Denver

Key Takeaways

- Franchise broker regulation is expanding from state-specific regimes to a potential national model, with NASAA considering registration, presale disclosure and recordkeeping requirements for brokers and representatives.
- New broker rules could affect franchisor sales processes by making it unlawful to use unregistered brokers and creating rescission, damages, indemnification or registration risks for noncompliance.
- Franchisors should review broker relationships, sales protocols and disclosure processes now, especially for California, New York and Washington activity, before additional states adopt similar requirements.

A growing number of states are turning their attention to franchise brokers. Now, that state-level momentum has moved to the national stage, with the North American Securities Administrators Association (NASAA) considering a proposed model law that could reshape franchise broker regulation across the country.

New York and Washington have long required franchise brokers to register with state franchise administrators before offering or selling franchises. In September 2024, California amended its California Franchise Investment Law to require franchise brokers to comply with annual registration and additional presale disclosure requirements. California's new broker registration and disclosure requirements are scheduled to go into effect on July 1, 2027.

Against that backdrop, the NASAA is considering a proposed NASAA Model Franchise Broker Registration Act. If adopted by NASAA, the proposed law would be a model for states to use to regulate franchise brokers and their representatives through registration and presale disclosure obligations.

NASAA's Proposed Model Franchise Broker Registration Act

NASAA, an association that includes state franchise regulators, has been contemplating franchise broker regulation for some time. After first proposing a model act in 2024, NASAA solicited comments on an updated version of the proposal in 2025.

As currently drafted, NASAA's proposed Franchise Broker Act lists various prohibited practices and would require franchise brokers and their representatives to register with a state before offering or selling franchises; provide a presale "disclosure statement" before engaging with a prospective franchisee about a specific franchise opportunity; and maintain specified records. It would be unlawful for a franchisor to use the services of a franchise broker or franchise broker representative that is not registered in the relevant state.

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NASAA's proposed model law focuses on franchise brokers and their representatives, defined as:

"FRANCHISE BROKER": a person or entity "that directly or indirectly engages in the business of the offer or sale of a franchise and receives, or is promised, a fee, commission or other form of consideration" from a franchise system. The term "franchise broker" does *not* include: a franchise broker representative; a franchisor, subfranchisor, franchisor affiliate or their officers, directors or employees; or a current franchisee so long as such franchisee does not receive fees, commissions or other forms of consideration valued at more than $5,000 in a calendar year.

"FRANCHISE BROKER REPRESENTATIVE": a natural person (other than a franchise broker) "who represents a franchise broker in effecting or attempting to effect the offer or sale of a franchise." It can include partners, officers and directors of a franchise broker, as well as employees or consultants involved in franchise sales or solicitations but does not include an individual involved only in clerical or administrative acts.

Proposed Broker Registration Requirements

Under NASAA's proposed Franchise Broker Act, both a franchise broker and a franchise broker representative must be registered with the relevant state before offering or selling franchisees in that state. Franchisors may not use an unregistered franchise broker or franchise broker representative.

As part of the annual registration process, a franchise broker or representative must submit a completed application — NASAA envisions a short, uniform application form — consent to jurisdiction, venue and service of process in the relevant state and pay a registration fee. NASAA anticipates issuing a proposed model form of application. NASAA's proposal further contemplates that a state may impose an examination, minimum experience, continuing education and/or minimum financial or insurance requirements as part of the registration process.

Unless a state imposes a different time period, broker registrations would be tied to a particular calendar year expiring on Dec. 31.

A state may deny, suspend or revoke the registration of any franchise broker or franchise broker representative, including if the broker or representative has been convicted of certain crimes, engaged in dishonest or unethical practices, is insolvent or fails to comply with applicable franchise sales laws.

Proposed Broker Disclosure Requirements

Under the proposed act, a franchise broker or franchise broker representative must first provide a prospective franchisee with a "disclosure statement" before engaging about a specific franchise opportunity.

The disclosure statement must contain disclosures regarding:

1. Material litigation
2. How the franchise broker or representative was compensated in the previous calendar year
3. Any other information the particular state requires

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NASAA envisions the disclosure statement will be just a few pages long and contain a mix of general statements specifically prescribed by NASAA about working with franchise brokers and the mandated broker-specific disclosures. NASAA anticipates issuing a proposed model form of disclosure statement.

A state may require the disclosure statement be filed before it can be used.

Additional Compliance Requirements

Under the proposed act, every franchisor broker and representative must keep and maintain a complete set of books, records and accounts related to any offers and sales of franchises for five calendar years.

Where NASAA's Proposed Model Act Stands

NASAA solicited comments on its proposed Franchise Broker Act in 2025. NASAA is currently reviewing all comments and considering whether to present the proposal, in its current or revised form, to the NASAA Board of Directors for potential adoption by the NASAA membership.

California's Franchise Broker Law: A Preview of What's Ahead

NASAA's updated proposed model act followed closely on the heels of California Senate Bill 919 (California Franchise Broker Law), which California Governor Newsom signed into law on Sept. 24, 2024. Officially titled the "Franchise Investment Law: Franchise Brokers," it amends the California Franchise Investment Law (CFIL) to require franchise brokers to comply with annual registration and presale disclosure requirements.

Once effective, the California Franchise Broker Law will require franchise brokers to register with the California Department of Financial Protection & Innovation (DFPI) before attempting to offer or sell a franchise in California. In this regard, the California Franchise Broker Law is similar to the existing franchise broker registration laws in New York and Washington. However, the California Franchise Broker Law imposes an additional presale disclosure obligation upon all franchise brokers. Specifically, a franchise broker may not communicate with a prospective franchisee about investing in a franchise opportunity until the franchise broker first provides the prospective franchisee with a copy of the broker's disclosure document.

The broker registration and disclosure requirements are scheduled to go into effect on July 1, 2027.

Various details regarding California's new broker registration and disclosure regime remain to be sorted out, and we expect California will issue official guidance over the coming year. Below is a summary of the California Franchise Broker Law as it currently stands.

Scope of California's Franchise Broker Law

The California Franchise Broker Law applies to franchise brokers. It defines a "franchise broker" as "a person who directly or indirectly engages in the business of the offer or sale of a franchise, regardless of the title used by the person or any organization with which they are affiliated and receives or is promised a fee, commission or other form of consideration from a franchisor, subfranchisor, franchisee or affiliate of a franchisor, subfranchisor or franchisee." Common titles for a "franchise broker" may include franchise seller, broker network, broker organization, franchise sales organization, consultant and coach.

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The following are *not* considered a "franchise broker":

- Franchisor, subfranchisor or area representative, or their officers, directors or employees
- Employee of an affiliate of a franchisor or subfranchisor
- Franchisee of the offered franchised brand (unless the franchisee operates a franchise broker business)

The California Franchise Broker Law revises the California Franchise Investment Law to restrict who may be involved in a franchise sale. Only a person listed in Item 2 of a franchisor's FDD that is registered in California; a licensed real estate broker or real estate salesperson; a licensed broker-dealer or agent under California Corporate Securities Law of 1968; or a person registered as a "franchise broker" can be involved in a franchise sale in California.

California Broker Registration Requirements

Once the California Franchise Broker Law becomes effective, it will be unlawful for a franchisor broker to offer or sell any franchise in California unless the franchise broker is currently registered with the DFPI. Registration will require an annual filing. To register, a franchisor broker must file the following online with the Commissioner of the DFPI:

- A copy of the franchise broker's Uniform Franchise Broker Disclosure Document, the form of which is currently still under development
- Payment of the applicable registration fee, currently $450 for a registration application or $50 for an amendment
- Copies of any financial securities, insurance policies or other additional documents or exhibits required by the Commissioner

A franchise broker's registration filing is effective upon filing a complete application and paying the applicable registration fee. Registration filings will expire on Dec. 31 of the year in which they were filed.

A registered franchise broker must amend its registration with the DFPI in the event of any "material change" in the information contained in its filed Broker Disclosure Document. The requirement to amend upon a material change does not mean that the franchise broker must constantly update or revise the Broker Disclosure Document throughout the year. The requirement to amend is based on the same materiality standard applicable to franchisors under the CFIL. Also, the California Franchise Broker Law provides that the Commissioner may, at some point in the future, issue a rule that further defines what is to be considered a "material change" for those purposes and the circumstances under which an amended Broker Disclosure Document must be filed.

We expect the DFPI to issue regulations over the coming year expanding the list of specific materials that must be included as part of a broker's annual registration filing, the required disclosure document format and clarifying what constitutes a "material change" that requires an amendment filing.

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California Broker Disclosure Document

Before communicating with a prospective franchisee about a potential franchise investment, a franchise broker must first provide the prospect with a copy of the broker's completed Broker Disclosure Document.

While the precise requirements for a Broker Disclosure Document are yet to be determined, it will include at least the following:

- A franchise broker cover page that contains standardized language regarding franchise brokers, including the types of sellers; the broker's role in the franchise sales process; services a broker might provide; different ways a broker might be compensated; and examples of questions a prospective franchisee might ask a franchise broker.
- Details about the franchise broker, including legal name, trade name, year and state of formation, principal place of business, owners, directors and officers, contact information and the franchise broker's broker network or franchise sales organization.
- The franchise broker's professional experience during the last five years, including, but not limited to, employers, principal positions, each position's location and the month and year of each position's start date and end date.
- Administrative, civil or criminal actions alleging that the franchise broker, or an owner, officer or director of the franchise broker, violated any franchise, antitrust or securities law, or committed fraud, unfair or deceptive practices, or similar violations, whether pending or resolved, within the last five years.
- The industries of the brands the franchise broker represents and how many brands within each industry the franchise broker represents.
- A description of the services performed by the franchise broker.
- How the franchise broker is compensated, including, but not limited to, how the amount of any consideration the franchise broker receives is calculated.
- Whether a broker network, broker organization or franchise sales organization may receive any additional consideration.
- The brands for whom the franchise broker sold a franchise anywhere in the U.S. or its territories during the last calendar year for which the franchise broker received or is entitled to receive compensation, including, but not limited to, the total number of units sold for the brand.

We expect the DFPI to issue regulations over the next year specifying the formatting and content requirements for Broker Disclosure Documents, including prescribing mandatory language for the required cover page.

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Additional California Compliance Requirements

A registered franchise broker must keep and maintain a complete set of books, records and accounts of each California franchise offer for five calendar years after such offer.

Risks of Noncompliance Under California Law

A franchise broker who fails to comply with the California Franchise Broker Law may be liable for damages to the franchisee, subfranchisor or franchisor, as well as indemnification to the franchisor. A franchisee who worked with the broker may seek rescission of the franchise for a broker's willful violations. In addition, the Commissioner may issue a stop order suspending or revoking a franchise broker's registration for violations.

Looking Ahead: Likely Direction of Franchise Broker Regulation

If NASAA moves forward with adoption of its proposed model act, though not binding in any state, many franchise registration states have traditionally followed NASAA's franchise-related recommendations. Accordingly, we anticipate that various franchise registration states will amend their franchise sales laws to impose registration and presale disclosure requirements on franchise brokers and their representatives.

That national trajectory is already taking shape in California. Given purported efforts between NASAA and California to align the California Franchise Broker Law with NASAA's model Franchise Broker Act, do not be surprised if California's eventual regulations may mirror the substantive requirements of NASAA's model Franchise Broker Act, at least in part. This will remain an issue to watch.

Franchise Conflicts Mediation: Lessons and Observations from the Past Year



Joyce Mazero
Global Franchise & Supply Network Co-Head
Dallas, Denver

Key Takeaways

- Effective franchise mediation depends on more than settlement numbers; mediators must build trust, manage emotion, identify core interests and help parties move beyond rigid positions.
- Timing, preparation and candid evaluation can determine whether mediation creates settlement momentum or reinforces entrenched positions, especially when discovery is incomplete or attorneys' fees exposure affects leverage.
- Parties should prepare for mediation with aligned issues, realistic settlement authority, candid assessments of case weaknesses and proposed settlement terms that can be refined during the proceeding.

Most mediators agree that the most effective mediation strategies involve a combination of communication techniques, focusing on core interests of the parties instead of rigid positions and actions by the mediator to structure and manage processes and emotions.

A neutral and objective mediator must follow core guiding principles to build an environment of trust and confidence to promote open communication and safety for the parties. The parties should feel comfortable talking candidly about issues. These guiding principles include:

1. **Active listening by the mediator**, giving full attention to each party, using clarifying questions and summarizing what has been said to ensure understanding and empathy, with a focus on validating the parties' feelings and identifying the root cause of the conflict.
2. **Reframing negative, hostile or contentious statements** and rephrasing them in a neutral and objective way to diffuse tension and promote constructive thinking.
3. **Focusing on interests, not positions**, to make it easier to find common ground and creative solutions.
4. **Separately conducting private caucuses with each party** to explore underlying emotions, discuss sensitive issues and manage expectations without the pressure of the other party's presence.
5. **Brainstorming options for mutual gain**, encouraging the parties to generate a variety of potential solutions without criticism to move the parties beyond their initial demands.
6. **Setting ground rules and establishing clear expectations** for communications, creating a respectful, safe and productive environment.
7. **Reality testing and managing expectations** to help the parties understand the strengths and weaknesses of their cases and the potential risk of going to trial — Best Alternative to a Negotiated Agreement (BATNA) — to ensure a more realistic perspective and encourage compromise.

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8. **Bridging the interests of the parties** to find common ground or ways to connect parties' interests and create opportunities for mutual gain.
9. **Ensuring client involvement** to allow the parties to tell their story and give them ownership over the outcome.
10. **Using narrative mediation**, which includes helping the parties re-author the story of their conflicts to see it from a different perspective.
11. **Using transformative mediation** to enable the parties to recognize their differences and improve their relationship, with the secondary goal of reaching a settlement.
12. **Conducting evaluative mediation**, in which the mediator offers opinions on the merits of the case, similar to a settlement conference, to better realistically appraise the parties' cases.

By combining these strategies, mediators can effectively guide the disputing parties toward durable, mutually beneficial resolutions in a positive environment.

But timing is critical. If mediation takes place too early, the parties may not have a sufficient understanding of the strengths and weaknesses of the other sides' positions to make realistic demands and offers. On the other hand, if mediation occurs after the parties have completed most of discovery, the parties' emotional and monetary investment will have solidified their positions and will make settlement more difficult.

There is also that middle ground where some discovery has been exchanged, but the parties have never really talked live about the dispute and are unfortunately working with incomplete information and perhaps mistaken assumptions about the case. This is even more the case where a prevailing attorneys' fees provision applies. If timing is not optimal because the mediation took place too early, as driven by contract provisions or court order, it is advisable to keep the mediation open and reconvene it later in the proceeding.

Against the backdrop of these core guiding principles, there is the reality of the mediation experience that mediators must navigate.

Below are a few examples:

- If counsel has oversold the value of a party's case to his or her client, the mediator may end up delivering a negative viewpoint about the case that is unsupported by such party's counsel. Both counsel and the party may come to resent the mediator, and the mediation will fail. It is normally more effective to talk to counsel separately and discuss the mediator's thoughts on the case, including showing counsel any evidence from the record supporting this viewpoint.
- Aligning on issues in mediation is important, and a constructive pre-mediation conference with counsel will help create clarity around such issues. Without alignment, the mediation should be postponed. Pre-conferences are also essential information-gathering tools. Each counsel and client typically reveals their interests and goals, which helps the mediator evaluate that information in advance and compare it to the record to determine how realistic the desired outcomes are.
- At a very early stage, some attorneys convey that they do not believe in the benefits of mediation and see it as just another mandatory step to get to court. These lawyers normally demonstrate little respect for the mediator's work and do not value the time the mediator invests in preparing for the

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mediation. In these circumstances, the mediator may need to determine if the mediation should proceed at all (if that is an option). Most cases will require the mediator to review the purpose and benefits of mediation with the parties and discuss how letting go of any biases and fully engaging is the only way to get value out of the proceeding. I have had mixed results, with most counsel electing to fully engage, even if initially reluctant.

- Mediation statements also tend to read like trial briefs and omit any information about problems with evidence or other challenges the party has with its case. Some mediation statements are regurgitations of the pleadings and even just attach motions and other pleadings. This reflects the counsel's and client's unrealistic viewpoint of the case, normally accompanied by unrealistic demands and rigidity. This discourages candid discussion about the dispute, even though attorneys clearly know that a mediator is obligated to keep information confidential and will not, without permission, disclose information to the other side. A candid discussion with counsel about his or her case is paramount for the mediator to provide a fair evaluation of the case and foster a fair settlement. It also helps if counsel has confidence in the evaluative skills of the mediator and confirms that to the client. Again, if this happens, a separate, candid discussion with counsel can sometimes loosen the rigidity of counsel's approach to the mediation.
- Challenges in mediation occur when the mediator does not understand what the parties really want because pre-mediation conferences have not occurred or counsel is withholding information. Money is sometimes not the primary issue and additional support, accommodations or apologies can go far in facilitating a settlement. A mediator will never know unless he or she has the opportunity to probe the facts of the case and the parties' emotions.
- It is important to have party representatives with decision-making authority present; however, many counsel bring representatives who have to make calls to higher-ups that are not present to settle a matter. Absence of decision-makers, at least those easily available by phone or online, will cause unnecessary delays in the settlement process and derail the parties' momentum — especially if counsel and the parties have agreed on an abbreviated mediation proceeding.
- Each party should be able to justify the basis of their offer in rational terms. To do otherwise will just prompt demands and counters without a reasonable basis, which again derails the mediation effort. This often happens when counsel and the client have not thoroughly read their own documents or are parroting demands from higher-ups that are not present, based more on emotion than fact.
- It is important to facilitate a discussion with each side about the potential outcomes if the case does not settle. The unknowns of even the best planned proceeding should be discussed with the parties, including the stress, time and monetary drain that disrupts the lives of everyone involved. A mediator may have expected a party's counsel to have already explained this — but if the counsel and the party's position is rigid, it is likely not the case. It is important to remind the parties of what

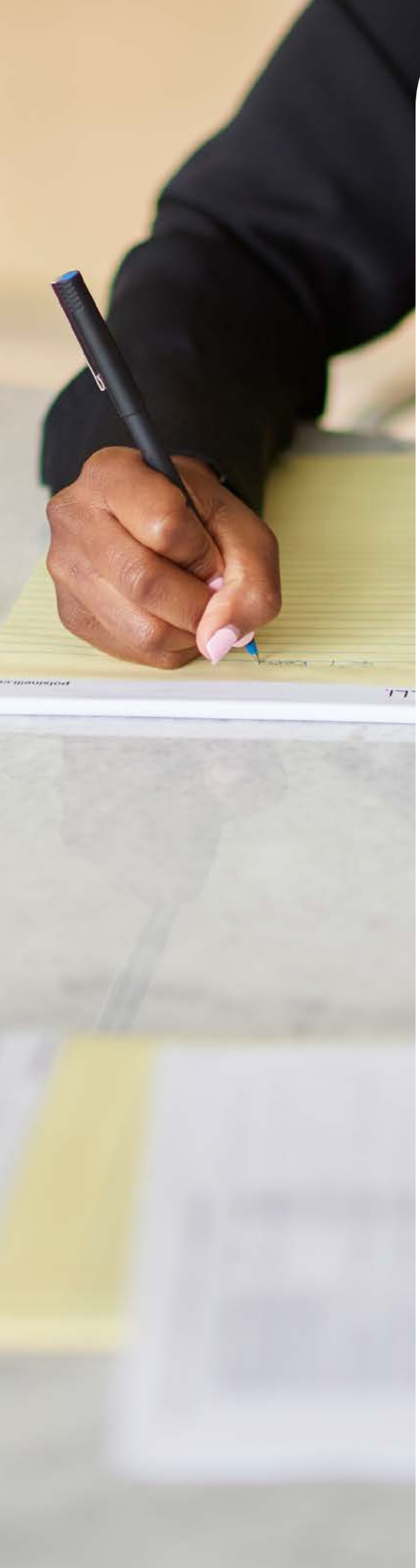
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happens if a party loses and if the losing party is required to pay the other party's attorneys' fees and damages. Or, if a party wins and the other side appeals and/or has no readily accessible assets to execute on, or files bankruptcy or other exigencies, like important witnesses becoming unavailable or undependable. These and similar scenarios may all affect the outcome of the mediation.

- The mediator should review and be involved in preparing the settlement agreement terms to avoid the parties realizing they left out terms of the settlement or prevent buyer's remorse later, both of which can derail completing the settlement process. Many times, a well-prepared counsel comes to the mediation with a form of settlement terms that can be adjusted at the mediation.
- Mediation sometimes becomes important in the middle of negotiations when parties have reached a stalemate. It takes an "aware" counsel to see this, but it can be enormously helpful if the parties have assumed rigid and unmoving positions in a deal that otherwise makes sense to close. This requires special skills from a mediator, as there is normally no looming litigation and parties should be required to carefully consider the next best result if the deal fails, including the time, stress and money so far invested.
- One of the more difficult challenges for a mediator is facilitating a discussion solely about monetary relief when the parties are not negotiating within a reasonable range of each other. Sometimes that range looks unreachable. The mediator should prompt a discussion to help the parties agree on a more reasonable range. Questions that help include asking the responding party to identify a number as a counter to a demand. For example, if the responding party believes that the demanding party is not negotiating in good faith and cannot articulate an understandable rationale for the demand, a mediator can suggest that the responding party identify a number, which if offered by the other side, would suggest the other side is serious about getting to a resolution. If, once the mediator has a sense of the negotiable range, the range is unrealistically broad, the mediator may ask if one party would be willing to go to a certain number if the other party were to make a similar move — narrowing the range to one in which the parties can realistically negotiate.

Even if the mediation does not result in a settlement, the work done in mediation is valuable. If the parties can take a breath, stand back and objectively evaluate their claims, the first mediation can form the basis for a productive second mediation or continued settlement discussions. The experience of the first mediation should provide the parties and their counsel with a basis for more objectively evaluating the benefits of the process and the risks of not settling.



Noncompete Covenant Update



Len MacPhee
Global Franchise
& Supply Network
Co-Head
Denver

Key Takeaways

- Franchise noncompetes remain generally enforceable when reasonable restrictions on conduct, duration and geography, but state worker-focused noncompete laws and evolving court skepticism are affecting franchise enforcement strategies.
- Preliminary injunctions are becoming harder to obtain when franchisors lack specific evidence of irreparable harm, including harm to efforts to refranchise or recapture the affected market.
- Franchisors should tailor noncompete, confidentiality and employee-access provisions to state law and consider sale-of-business principles and evidence of market harm when seeking to enforce post-termination restrictions.
- Significant change in Virgina under the Virgina Retail Franchising Act prohibiting inclusion of non-competes in franchise agreements.

While the law around enforcing noncompete covenants in franchise agreements continued to ebb and flow in 2025, most of the reported cases reflect relatively consistent application of the legal standards that have been present for years: in most states, with some variations, courts will find a noncompete covenant in a franchise agreement valid and enforceable if the restrictions are reasonable and no more restrictive than necessary to protect the legitimate business interests of the franchisor in:

1. The restricted conduct
2. The duration
3. The geographic scope

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However, as more states join the ranks of those enacting laws restricting enforcement of noncompete clauses in employment agreements (and sometimes independent contractor agreements) relating to "workers," and some courts appear to be increasingly vigilant in the proof of what is a reasonable scope and increasingly skeptical of proof of irreparable harm in the preliminary injunction context, noncompete clauses in franchise agreements are impacted. That is, new laws and changes to existing noncompete laws impact noncompete covenants in franchise agreements. Several issues are emerging in the wake of those state laws and the evolving level of disfavor of courts to enforce noncompete covenants.

In recent years, multiple states have tightened the enforceability in the employment context and generally, these state statutes only carve out minimal exceptions for the sale of the business and sometimes highly compensated individuals. States with recently enacted laws preventing or limiting the enforcement of noncompete covenants in the past several years include Colorado, Illinois, Maine, Maryland, Minnesota, New Hampshire, Oregon, Rhode Island, Virginia, Washington and California, which added to its statute in 2024. Several other states are considering new legislation and some states' courts have reduced the enforceability of noncompete covenants through decisions. Where and how a franchise agreement covenant not to compete fits into the employment-oriented noncompete law is often uncertain and unpredictable.

In the context of franchise agreements, there have been some recent developments as well. In February 2025 and updated Feb. 26, 2026, the North American Security Administrators Association issued a "NASAA Franchisor Advisory" on noncompete covenants in franchise agreements which did not promote per se invalidating such clauses, but rather advocated for very narrowly drafted noncompete covenants in franchise agreement – "narrowly drawn and reasonable scope, duration and territory." In addition, Virginia passed a law banning noncompete clauses in franchise agreements, effective July 1, 2026. Specifically, the Virginia General Assembly recently enacted amendments to the Virginia Retail Franchising Act providing that after July 1, 2026 franchisors are prohibited from including a noncompete provision in a franchise agreement, subject to minimal exceptions.

Notwithstanding this dynamic, for the most part, 2025 saw franchisors successfully enforcing post-termination noncompete clauses against former franchisees to the same degree as has traditionally been done in most states. Multiple courts in various states, including Minnesota, Nebraska, Washington, New Jersey and Massachusetts, enforced noncompete clauses against former franchises who had formed competing business in the territory of the former franchise. Notably, (1) most of these cases were in the context of preliminary injunctive relief, and the franchisors presented evidence of irreparable harm by showing the former franchisee not only competed, but also continued using trademarks or trade secrets, including customer lists;[1] and (2) while these cases occasionally included states with noncompete laws, generally, the more favorable rulings in enforcing noncompete covenants are in states without those

1. *Waxing the City Franchisor LLC v. Katularu*, 2024 WL 3887109 (D. Minn. Aug. 20, 2024); *Calzone King, LLC v. Midwest Dough Guys*, LLC 2024 WL 4008117 (D. Neb. Aug. 30 2024); *Snap Fitness, Inc. v. Scenic City Fitness*, Inc. 2024 WL 4528877 (D. Minn. Oct. 18, 2024).

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statutes. Likewise, as discussed below, franchisors were not successful in the absence of those factors, particularly when seeking preliminary injunctive relief.

With that backdrop, three areas of note include heightened scrutiny of the elements to obtain preliminary injunctive relief, relaxed standards to enforce noncompete covenants involving the sale of a business and issues relating to employees of franchisees.

Preliminary Injunctions

Enforcing noncompete covenants through a temporary restraining order (TRO) or preliminary injunction, however, is becoming harder, based on recent cases. A primary procedural effort to enforce a noncompete is through preliminary injunctive relief. Virtually all jurisdictions require that a movant establish that it has a reasonable probability of success on the merits and that it will suffer irreparable harm if the preliminary injunction is not granted. Courts increasingly are requiring the franchisor to present evidence that the franchisor is actively planning to re-franchise or open a company unit in the same market, as well as evidence that the existence of a former franchisee competing in that market makes refranchising or opening difficult and that the harm this causes is unquantifiable. While courts continue to receive evidence of other types of irreparable harm that have traditionally supported granting a preliminary injunction — for example, the loss of control over use of trade secrets and confidential information; loss of goodwill; potential harm from customer confusion associated with a former franchisee's competition; and potential harm to the brand caused by the message sent to other franchisees that they will not be stopped from breaching terms of the agreement — the plan and ability or inability to recapture the market and customers (i.e. goodwill) appears to be a growing driver in the ability of a franchisor to obtain a preliminary injunction. And courts require greater specificity and proof through specific evidence to show irreparable harm.[2] Likewise, some courts have rejected or discounted language in the franchise agreement in which the parties agree that a breach by competing is irreparable harm.[3] Some courts also have found that the presence of the liquidated damages clause in a franchise agreement defeats a finding of irreparable harm. In the past two years, courts in Indiana, Michigan, New York, North Carolina and Colorado have denied preliminary injunctive relief on the basis that the franchisor did not establish irreparable harm.

Sale of a Business

Given the above-described rise in skepticism to enforce noncompete covenants against employees or workers, an available argument to enhance the ability to enforce noncompete covenants against former franchisees relates to the law in many jurisdictions that enforcement of noncompete covenants in the context of a sale of a business is subject to less rigorous standards. Many states draw a distinction between noncompete covenants signed by

2. In Showhomes Franchise v. Estes, No. 2026 WL 597705 (M.D. Tenn. March 3, 2026); *Cookie Dough Bliss Franchising, LLC v. Feed Your Soul Minnesota, LLC* 2023 WL 4901292, * 2-3 and *VetCheck LLC v. Hartley-Thomas Grp., LLC* 2025 WL 860110, at *5-10 (finding, among other things, that the respective franchisors' asserted irreparable harm, including inability to refranchise, customer confusion, and lost good will too speculative to justify injunctive relief.). See also, *Pool Scouts Franchising, LLC v. Stuart Road Corp.* 2025 WL 961675 (E.D. Va Mar. 31, 2025).

3. See e.g., *Toastique Holdings, Inc. v. C&G Rest. Holdings, Inc.* 2025 WL 1455542 (D.D.C. Jan. 19, 2025) and *JTH Tax, LLC v. Agnatnt*, 62 F. 4th 658, 661, 673-74 (2d Cir. 2023). But see, *Rooterman, LLC v, Belegu*, 2025 WL 1088043, at *6 (D. Mass April 11, 2025) and *JTH Tax, LCC v. Morrell* 2024 WL 4905422, at *12 (M.D. Fla. Sept. 18, 2024) (finding that agreement to irreparable harm for breach of noncompete in franchise agreement is evidence of and can lend additional weight to a finding of franchisor's irreparable harm).

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employees or workers and noncompete covenants between businesses, particularly in the sale of a business when goodwill is conveyed from seller to buyer. In the context of the sale of a business, courts are more likely to enforce a covenant not to compete. There are good arguments for applying that standard in the context of a former franchisee who had been using the system, intellectual property and goodwill of the franchisor under a license and loses the right to use the franchisor's system, intellectual property and goodwill upon expiration or termination of the franchise agreement; especially if the former franchisee had territorial protection or exclusive rights in a territory and now the franchisor is in position to use its intellectual property and trade on that goodwill in that territory. When the defendant is the former franchisee, the sale of a business standards may be applied and that would remove the matter from the prohibitions or heightened restrictions on enforcing noncompete covenants in the employment context. This is an argument that should be invoked by franchisors and explored in many cases, and while the authors are not aware of significant cases discussing this issue in the last year, we and others have been successful in this argument in recent years and advocate for broader application of this position in many states.

Franchisee Employees

Another issue franchisors face relating to noncompete covenants — and one franchisors should consider in structuring the terms in their franchise agreements regarding protections of trade secrets and confidential information — relates to employees of franchisees, especially because of the above-described new laws or amendments. Franchisors face a challenge when the former employees of a franchisee leave the franchisee and form a competing business in the



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franchisee's territory. Franchisee employees, especially management level employees, must be permitted to gain access to the franchisor's confidential information.

Accordingly, franchisors should include requirements in the franchise agreement that franchisees have appropriate agreements with their management-level employees who receive training and gain access to trade secrets and confidential information. While joint employer concerns have caused many brands to stop the practice of direct agreements with franchisee employees, it is appropriate to include in the brand's standards a form of agreement that the franchisee must enter into with its employees as an attachment to the franchise agreement and expressly state that it is a breach of the franchise agreement for the franchisee not have such agreements in place. Subject to the applicable state law, those agreements can have noncompete clauses and make the franchisor a third-party beneficiary. However, those agreements — because they are between an employer (the franchisee) and a worker — are subject to the above-described laws placing significant restrictions on the enforceability of the employment noncompete. Thus, the requirement that a franchisee have such agreements with its employees must be subject to state law and the franchisees must be required to know the law of their respective jurisdiction. Where a noncompete clause in the employment agreement is prohibited or not enforceable, the franchisor would need to exempt those franchisees and only require agreements with confidentiality protections and, if permitted, non-solicitation clauses.

These issues are system-specific and driven by state law. Polsinelli's Global Franchise and Supply Network attorneys are available to assist with drafting and enforcing noncompete covenants.

How Franchisors Have Navigated Tariff Policy, Supply Chain Fluctuations and Legal Developments



Alissa M. Chase
Associate
Washington, D.C.

Key Takeaways

- The Supreme Court's rejection of IEEPA-based tariffs shifted the 2026 trade-law focus from tariff validity to refund administration, while the administration pursues other tariff authorities.
- Tariff volatility can increase costs, disrupt supply chains, complicate pricing and affect expansion planning for franchise systems that rely on imported equipment, goods, packaging or fixtures.
- Franchisors and franchisees should coordinate with customs brokers and trade counsel, preserve refund rights, review tariff risk allocation in contracts and strengthen supply chain contingency planning.

The year 2025 marked a dramatic and contentious shift in United States trade policy. President Trump, invoking the International Emergency Economic Powers Act (IEEPA), enacted sweeping tariff measures affecting imports from major trading partners and virtually every country in the world. These actions sparked an array of legal challenges and produced profound uncertainty for businesses, including the franchising industry, which relies heavily on global supply chains. This article traces the major tariff policy actions of 2025, judicial and administrative responses and the economic and sectoral impacts, especially on franchisors and franchisees — then assesses the legal and strategic terrain at the start of 2026.

Introduction

Tariffs occupy a central place in the constitutional and statutory architecture of U.S. trade law. Under Article I, Section 8 of the U.S. Constitution, Congress possesses the power to "lay and collect Taxes, Duties, Imposts and Excises," including tariffs. Traditionally, the executive branch has administered tariff schedules established by Congress, primarily through the Harmonized Tariff Schedule of the United States (HTSUS) and specific legislative delegations such as Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. However, in 2025, the executive branch, under President Trump, invoked IEEPA to impose broad tariff measures in a manner unprecedented in scale and scope. These measures raised fundamental questions about executive authority, separation of powers and the rule of law in trade governance.

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2025 Tariff Measures: Executive Orders and Policy Changes

Executive Actions Under IEEPA

Beginning in early 2025, the Trump Administration issued a series of executive orders imposing high tariff rates on imports from major U.S. trading partners. These actions included:

1. "FENTANYL" TARIFFS: The executive orders invoked IEEPA's emergency powers to impose tariffs of 25% on goods from Mexico and Canada and significant duties on Chinese imports to address national emergencies related to drug trafficking and migration.
2. "LIBERATION DAY"/"RECIPROCAL" TARIFFS: A broader set of "reciprocal" tariffs announced on April 2, 2025, often referred to as the "Liberation Day" tariffs, which implemented a 10% ad valorem duty on all imports, with higher country-specific rates up to 50% for certain trading partners.
3. BRAZIL TARIFFS: President Trump imposed additional 40% *ad valorem* tariffs on certain goods from Brazil as a mechanism to respond to actions of the Government of Brazil that the President believed infringed the free expression rights of U.S. persons and violated human rights.
4. INDIA "RUSSIA OIL" TARIFFS: In August 2025, President Trump issued an executive order imposing additional 25% tariffs on most goods from India in response to India's purchases of Russian oil and petroleum products, which the President determined was undermining efforts by the U.S. and other allied countries to respond to Russia's invasion of Ukraine.

Bilateral and Multilateral Trade Frameworks

The Trump Administration used this escalating tariff policy to engage countries in trade negotiations. For example, a proposed *Agreement on Reciprocal, Fair and Balanced Trade* with the European Union envisioned disciplined tariff regimes as part of a broader framework. That agreement, announced in August 2025, established 15% tariffs on EU imports and reduced tariffs on certain U.S. exports, indicating ongoing efforts to balance protectionist impulses with trade diplomacy. By the end of 2025, President Trump announced "reciprocal trade agreements" or "framework deals" with the UK, EU, Japan, South Korea, Vietnam, Cambodia, Malaysia, Thailand, Ecuador, Guatemala, Switzerland and Liechtenstein. Those deals were followed in early 2026 by a slew of additional announcements regarding deals with Taiwan, Argentina, El Salvador, North Macedonia, Bangladesh, India and Indonesia. In general, these deals focused on market access, non-market practices and non-tariff trade barriers, economic security and, in some cases, purchase or investment commitments.

Judicial and Administrative Responses

Court of International Trade Decision

On May 28, 2025, the U.S. Court of International Trade (CIT) handed a landmark ruling in *V.O.S. Selections, Inc. v. Trump*, holding that the administration's broad tariff measures exceeded President Trump's authority under IEEPA. The CIT emphasized that IEEPA does not authorize the imposition of tariffs on such a sweeping scale, particularly where Congress has not delegated such authority and where an "unusual and extraordinary threat" — the statutory trigger for IEEPA — was not adequately demonstrated. Consequently,

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the CIT permanently enjoined enforcement of many of the challenged tariffs.

Appeals and Further Litigation

The government appealed the CIT decision. The U.S. Court of Appeals for the Federal Circuit largely upheld the lower court's reasoning, affirming that the tariffs exceeded presidential authority and highlighting separation of powers concerns. The appellate ruling allowed the challenged tariffs to remain in place during the pendency of further litigation, reflecting judicial recognition of the profound economic implications of immediately suspending the measures while legal review continued. The government appealed to the Supreme Court, which granted certiorari in late 2025.

In addition to the CIT case, similar challenges to the tariff actions were brought in various federal district courts. Led by California and a coalition of 12 other states, several states challenged the tariff actions on constitutional separation of powers grounds and under the Administrative Procedure Act. These lawsuits underscored widespread concern among state governments about the economic impacts of presidential tariff measures unsupported by clear congressional delegation. A California district court judge dismissed the state's lawsuit against President Trump's tariffs, which it then appealed to the ninth circuit. The ninth circuit stayed consideration of this case until after the Supreme Court issues a decision in *V.O.S. Selections, Inc. v. Trump*. Meanwhile, two small businesses brought a separate case challenging the tariffs in the District Court of the District of Columbia (*Learning Resources, Inc. v. Trump*). The court in that case issued a preliminary injunction, which was later stayed when the case was granted review before the Supreme Court prior to judgment.

Supreme Court Considerations and Ongoing Litigation

In November 2025, the U.S. Supreme Court held oral arguments in *V.O.S. Selections v. Trump* case (*consolidated with the Learning Resources, Inc., et. al. v. Trump* (Docket No. 24-1287, argued Nov. 5, 2025). The central question before the Court was whether the statutory language of IEEPA — specifically, the phrase "regulate … importation" — includes the power of the President to impose tariffs because that is a power granted to the Congress by Article I of the U.S. Constitution that was not explicitly delegated to the President in the statute. Observers noted that the Court's decision could have sweeping implications not only for trade policy but also for the balance of powers between the legislative and executive branches. The Supreme Court issued its decision on Feb. 20, 2026: The Court held that IEEPA does not authorize the President to impose tariffs and found unlawful all of the tariffs imposed by President Trump in 2025 pursuant to IEEPA. The Supreme Court, however, did not address the issue of remedy, remanding the case to the CIT to deal with the question of refunds.

Economic and Legal Effects on the Franchise Industry

The franchising sector, comprising thousands of businesses across retail, hospitality, food service and other industries, felt the ripple effects of tariff policy through cost pressures, supply chain disruption and legal uncertainty.

Direct Cost Impacts

Most franchise systems rely on imported goods to some degree — from kitchen equipment and packaging for restaurant franchises, to

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merchandise and fixtures for retail franchises. The 2025 tariff measures substantially increased the cost of imported goods, forcing franchisors to reassess pricing structures and forcing some franchisees to absorb costs or pass them on to consumers.

Tariffs also created particular stress for sectors like the fitness industry, which is largely populated by franchises that rely on specialized equipment often manufactured abroad. In such cases, higher tariffs have translated into elevated capital expenditures, potentially delaying or even halting expansion and renovation plans.

Supply Chain Disruptions and Strategic Responses

Tariff volatility complicated forecasting and inventory planning. Franchisors with centralized procurement faced the dual challenges of managing increased duty costs while maintaining consistency of supplies across franchised units. Where feasible, many sought to mitigate tariff burdens by diversifying supply chains, including sourcing domestically or shifting to tariff-advantaged countries. These adjustments often required renegotiating supplier contracts and close collaboration between franchisors and franchisees to allocate cost burdens and mitigate operational disruptions.

Competitive and Consumer Market Effects

Tariff-induced cost increases contributed to upward pressure on prices for consumers. In competitive franchise markets, the ability to absorb or pass on tariff costs became a strategic differentiator, with larger franchisors potentially better positioned to negotiate bulk pricing or integrate tariff risk pricing into long-term planning.

Legal and Compliance Uncertainty

The litigation over tariff authority generated significant uncertainty in 2025, with importing- businesses importing goods facing ambiguity about whether tariffs would ultimately be upheld or invalidated — and whether past duties would be refunded if courts struck down the measures. This uncertainty affected cash flow planning and risk management. Some companies even entered secondary markets to sell tariff refund claims at discounted values to hedge funds, reflecting the speculative nature of potential refunds.

Franchisors and franchisees alike were urged to maintain meticulous records of tariff payments and to consider formal customs protests as a precautionary step to preserve refund claims if tariffs were later invalidated.

Current Status

Following the Supreme Court ruling holding the IEEPA tariffs unlawful, the legal discussion for importers focuses on the refund process: who will be eligible for refunds, how the refund process will be administered and the timing of refund disbursements. The CIT indicated its commitment to a speedy resolution of the issue without requiring every importer to file a case in court by issuing an order on March 4 directing U.S. Customs and Border Protection (CBP) to liquidate all unliquidated entries without IEEPA duties, making it clear that the court expected the government's "immediate compliance." The order also specified that CIT named one judge, Judge Eaton, to preside over all IEEPA refund issues to prevent inconsistent decision-making.

In response, CBP provided information to the court detailing the physical human

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and computer system limitations that made it unable to comply with the Judge's order immediately on March 4, noting that over 71 million entries were subject to IEEPA tariffs, with over 700,000 individual entries scheduled to liquidate by March 6 and approximately 333,000 additional entries the following week. CBP instead proposed a plan to effectuate an efficient, electronic administration of the refunds that the agency estimates it can have ready for use in 45 days. The system rolled out on April 20 and thousands of importers received refunds within the first month. There remain issues to resolve in the coming months with particularly complex entries and finally liquidated entries, but the CIT is pushing the government to act expeditiously and CBP appears to be working continuously to add new functionality to enable refunds on complex entries subject to multiple duty regimes or free trade agreements.

Franchisors and franchisees, however, have not seen the end of the tariff-driven business volatility: After the Supreme Court issued its ruling finding the IEEPA tariffs unlawful, President Trump utilized Section 122 of the Trade Act of 1974 to impose new 10% tariffs on most goods imported into the U.S. Section 122 authorizes the President to impose temporary import surcharges of up to 15% for a maximum of 150 days to address fundamental international payments problems, unless extended by an Act of Congress.

In addition, the President directed the U.S. Trade Representative (USTR) to initiate investigations of most major trading partners under Section 301 of the Trade Act of 1974. Section 301 would provide an avenue for President Trump to reimpose tariffs on a country or industry basis when the tariffs imposed under section 122 expire. As expected, the USTR imposed section 301 tariffs on many countries on July 24 for failure to implement or enforce bans on goods of forced labor, just as the section 122 tariffs elapsed. The section 301 investigations on structural excess capacity and production in manufacturing sectors and certain country-specific investigations remain ongoing.

At the same time, strategic trade decisions, such as the status of the trade deals negotiated in 2025 and early 2026; the delayed implementation of certain China semiconductor tariffs until June 2027; and the inaction in response to a number of ongoing section 232 investigations, indicate that the administration is balancing tariff policy with economic and diplomatic considerations.

Outlook for 2026

Potential Outcomes Following the Supreme Court Decision

The outcome of the Supreme Court case and subsequent CIT actions indicate that importers can recover some or all of the IEEPA duties paid, but they will need to coordinate closely with their customs brokers and trade counsel so that they are prepared to participate in the refund process when it becomes available. And, even though the Supreme Court found the imposition of IEEPA tariffs unlawful, franchised businesses should expect the Administration to continue to explore the use of other legal authorities, such as Section 301, Section 232 or Section 122, to reimplement at least some of the tariffs originally implemented under IEEPA. In short, 2026 promises much of the same trade pressures as 2025, but the element of surprise regarding tariffs has been replaced by virtual certainty that imports likely will be subject to at least some tariffs this year.

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Strategic Considerations for the Franchising Industry

Franchisors and franchisees should:

1. **Enhance supply chain resilience:** Diversify suppliers and establish contingency sourcing to manage future trade policy volatility.
2. **Prepare legal and compliance resources:** Track tariff litigation closely; coordinate with customs brokers and trade counsel to analyze entries where tariffs were paid and file protests, if necessary, to preserve refund rights; and engage customs counsel to interpret complex tariff classifications.
3. **Review contractual risk allocation:** Negotiate supplier and franchise agreements to clarify responsibility for costs arising from tariff changes, including escalation clauses, force majeure considerations and clauses detailing the allocation of tariff refunds.
4. **Evaluate pricing strategy:** Evaluate pricing adjustments that reflect cost changes without eroding demand, using market data and scenario analyses.

Conclusion

The tariff developments of 2025 represented a defining chapter in U.S. trade policy, testing the limits of executive authority and exposing businesses to elevated legal and economic risk. For the franchise industry, the implications have been tangible, from increased costs and supply chain complexity to legal uncertainty over tariff legitimacy and potential refunds. The Supreme Court decision finding the IEEPA tariffs unlawful marked a major turning point in this saga, but it is far from over. As the legal framework continues to evolve, franchisors and franchisees must remain vigilant, strategic and legally savvy to navigate the shifting terrain of franchise, global supply chain and trade law in 2026 and beyond.



Editorial Board



Joyce Mazero
Global Franchise &
Supply Network Co-Head
jmazero@polsinelli.com



Jarina Duffy
Shareholder
jduffy@polsinelli.com



Len MacPhee
Global Franchise &
Supply Network Co-Head
lmacphee@polsinelli.com



Alissa M. Chase
Associate
achase@polsinelli.com



Jess A. Dance
Shareholder
jdance@polsinelli.com

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