

## **CodeRed Alert and Call To Action**

### **Broker Registration Exemption Legislation June 2019**

***BOTTOM LINE:*** The only bill that contains our language that is currently before the US Congress is HR 609, The Small Business Mergers, Acquisitions, Sales and Brokerage Simplification Act of 2019

*All previous Senate (S) and House (HR) bills have died.*

***GET INFORMATION*** on HR 609 and the M&A / Business Brokers registration exemption issue at these links

**DOWNLOAD JOINT ASSOCIATION SUPPORT LETTER** **DOWNLOAD HR 609 SUMMARY**

**DOWNLOAD BIEF CFC UPDATE** **DOWNLOAD THE LIST OF BIEF-CFC SPONSORS**

**THE HILL PERSPECTIVE ARTICLE – A UNANIMOUS BIPARTISAN BILL**

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***ACT NOW: Call, write or email your US Representative to tell them to sponsor and support HR 609 and the introduction of a matching Senate bill.***

***Get Contacts & Email Your Senators & Representatives – Use This Link***

**Be Heard - Contact Congress Now!**

***Your help is urgently needed!***

Your Senators' support is critically important to sponsor and support a Senate companion bill to H.R.609, the Small Business Merger & Acquisitions Sales and Brokerage Bill of 2019.

Our challenge now is also to continue building support in the House for H.R. 609.

***H.R. 609 needs co-sponsors and supporters, and it needs you to tell your Senators and Representatives getting this legislation is important to you and other constituents.***

As a business or M&A broker, you will be explicitly exempted from requirements to register under federal securities law, subject to very realistic conditions and imposing nothing new on you that

does not already apply today. This requires passing the U. S. House Bill H.R. 609 and a companion Senate Bill.

### **You Can Impact Your Future!**

H.R. 609, The Small Business Mergers, Acquisitions, Sales and Brokerage Simplification Act of 2019, is nearly identical to earlier bills beginning with HR 2274, which was introduced in the 113th Congress and UNANIMOUSLY voted out of the House Financial Services Committee, 57-0, and ultimately passed UNANIMOUSLY by the full House, 422-0. We hope for a similar result for H.R. 609 and a counterpart in the Senate.

A joint industry coalition of professional associations and professionals, the IBBA and M&A Source, side by side with AM&AA and regional associations, have worked diligently to help create this opportunity for our profession, our customers and clients.

If you are in support of this endeavor, please **contact your Senators'** offices immediately by letter, phone and email to ask them to support a Senate companion bill to the H.R. 609 recently passed by the House of Representatives. Please consider calling on your support staff, associated brokers, family or others in your network to do the same.

### **A Brief History of an Important Issue for M&A and Business Brokers**

As a result of the Great Depression, Congress passed securities laws in 1933 – 1934 establishing the SEC to oversee and regulate the sale of securities. The 1933 and 1934 laws had noble intentions. An exceedingly complex web of laws, regulations, rules, registrations, court cases and interpretations developed over the next eighty years.

It was widely, but not universally, accepted until 1985, that transferring control in an operating business was not transferring a security, under the “Sale of Business Doctrine”. In 1985, this changed with the Supreme Court Landreth Timber vs. Landreth ruling. In essence, the ruling was one of “form trumps substance”, so the transfer of stock was a transfer of a security simply by looking at the definition contained within the Securities Acts. The inveterate Sale of Business Doctrine was decommissioned.

A securities offering requires extensive disclosures and compliances with complex laws. This is necessary and appropriate in large transactions when securities are sold to the public. When a transaction is not large, it will not support compliance with the securities laws.

The current “one size fits all” regulatory/legislative environment puts owners at risk if their transaction morphs from an asset sale into a stock sale. This can occur due to advice of other transaction professionals, e.g. attorney recommendations regarding transferring contracts or accountants restructuring the deal to minimize the tax ramifications of the sale to the owner.

Owners of small to medium sized companies should enjoy quality representation when they are ready to bring the businesses that often comprise the majority of their net worth to market!

The House of Representatives voted and unanimously approved H.R. 2274, January 14, 2014 by a vote of 422 – 0. This legislation was reintroduced in the House of Representatives in 2015 as H.R. 686, then in 2017 as HR 477, and is now pending as HR 609. It has real potential to create an environment encouraging rather than discouraging successful transitioning of ownership for small to mid-market companies, the majority of businesses providing jobs and growth in the U.S.A.

We need your support to turn this potential into reality. You can reach out to your Congressional Representatives, and all the Representatives in your state, to let them know in your own words:

Our current and future clients should be able to realize the value of the companies they have built as they move on to another phase of their lives. Owners encounter and deal with numerous difficulties in the ordinary course of running their businesses. If they also have to try to bring their company to market without the aid of M&A Brokers, professionals who should comprise an important part of their support team, in an inefficient market, owners are likely to:

- Lose their focus on operating their business,
- Fail to meet their customers’ needs triggering declining revenues while pursuing a quality acquirer,
- Alternatively, focus on operations and profitability while bypassing potential buyers for their company,
- Come to market without providing the necessary information potential buyers need as a basis for an offer.

The difficulties inherent in the sale process can cause owners simultaneously trying to run and sell their companies to literally close down operations.

Many businesses that cannot successfully transition to new ownership will be forced to close particularly as the baby boomers want to retire.

This constitutes a loss not only for the Owner, but also the loss of jobs for existing employees, diminished availability of goods and services for customers, a negative impact on the local economy, and diminished tax revenues for the community.

Small through mid-size companies constitute the “backbone of our economy.” The vast majority of companies in this country do not generate earnings that will justify the fees necessitated by compliance with Broker Dealer regulations.

Some of the significant progress to date through the efforts of proactive members of a broad industry coalition include:

- The 2014 SEC M&A Broker No Action Letter,
- FINRA’s exemption for fee sharing for licensed broker dealers with certain M&A Brokers (which went into effect mid-August 2015),
- The recent Broker Exemption – Texas Administrative Code
- NASAA’s proposed Model Rule for M&A Brokers,
- The current bill HR 609 which has been introduced in the House of Representatives.

John Johnson wrote in IBBA & M&A Source Newsletters: “Today there is cause for optimism that one or more improvements may be realized. . . People who have looked closely recognize this is a win, win, win, win, win . . . practical solution to an unfair and impractical “form over substance” conundrum.”

If H.R. 609 is passed in the House, with a companion bill are passed in the Senate, and signed into law, this legislation will provide an exemption from federal securities registration to M&A Brokers who:

- Do not raise capital, handle the funds or the securities, nor sell stock in public companies,
- Deal with eligible private companies having from zero to \$250 million in revenues, or zero to \$25 million in EBITDA, and
- Follow clearly specified, non-obtrusive, real-world protocols.

As noted, “This common sense cure eliminates many non-productive requirements, threats, costs and burdens imposed under current law on our profession, business owners and buyers. It may be our profession’s only real opportunity to dramatically uplift our working environment while reducing the risks of allegations a business broker needed to be securities licensed as they serve

business buyers and sellers. H.R. 609 (as its predecessors would have) restores the wisdom lost with decommissioning of the Sale of Business Doctrine.

***You have a unique opportunity to impact the regulatory and legislative landscape for our industry.***

- *Reach out to your Congressional Representatives and their Legislative Aides or Directors, explaining the regulatory dilemma that exists today, and the viable resolution now at hand.*
- *Who do you know, who may be willing to sponsor or support a similar bill in the Senate?*
- *Support the effort with contributions and/or pledges to defray the ongoing legal expenses incurred to move this effort forward.*
- *Stay tuned for the latest, breaking news on the legislative front.*

***Your help is essential in order to reach and cross the goal line!***

Please contact the following to find out how you can help.

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