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UNITED STATES OF AMERICA
 FEDERAL TRADE COMMISSION
 DALLAS REGIONAL OFFICE

Office of the Regional Director

May 3, 1989

The Honorable O.H. Harris,
 Chairman
 Senate Economic Development Committee
 State of Texas
 P.O. Box 12068
 Austin, Texas 78711

COMMISSION AUTHORIZED

Dear Senator Harris:

We are pleased to respond to the invitation of the Senate Economic Development Committee to comment on Texas Senate Bill 454, the "Interior Designers Licensing Act."¹

The proposed legislation, if enacted, would establish a State Board of Interior Design and provide for the licensing of interior designers. The proposed law would prohibit certain uses of the title "interior designer" by unlicensed persons, although unlicensed individuals could perform interior design services. The type of voluntary licensing scheme contained in the proposed legislation can benefit consumers by providing useful information concerning service quality. In the case of interior designers, however, such information may be available through private certification organizations and, indeed, the proposed legislation incorporates some of these organizations' certification standards. Consequently, you may wish to consider whether state-operated certification would provide net benefits to consumers.

I. Interest and Experience of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive practices in or affecting commerce. 15 U.S.C. § 45. Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. The Commission has sought to improve consumer access to professional services by initiating

¹ These comments represent the views of the staff of the Dallas Regional Office and the Bureau of Competition of the Federal Trade Commission and do not necessarily represent the views of the Commission or any individual commissioner.

antitrust enforcement proceedings.² The staff of the Commission has studied the regulation of licensed professions³ and has submitted comments to state legislatures and administrative agencies concerning various issues of occupational licensing and regulation,⁴ including the licensing of interior designers.⁵

² See, e.g., Massachusetts Board of Registration in Optometry, [FTC Complaints and Orders Transfer Binder] 5 Trade Reg. Rep. (CCH) ¶ 22,555 (June 21, 1988); Rhode Island Board of Accountancy, 107 F.T.C. 293 (1986) (consent order); Louisiana State Board of Dentistry, 106 F.T.C. 65 (1985) (consent order); American Medical Ass'n, 94 F.T.C. 701 (1979), affirmed, 638 F.2d 443 (2d Cir. 1980), affirmed mem. by an equally divided court, 455 U.S. 676 (1982); American Dental Ass'n, 94 F.T.C. 403 (1979), modified, 100 F.T.C. 448 (1982), 101 F.T.C. 34 (1983) (consent order).

³ See, e.g., Jacobs et al., Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); Hailey, Bromberg, and Mulholland, Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983); Bond, Kwoka, Phelan, and Whitten, Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

⁴ Within the past few years, Commission staff has submitted comments on rules of professional conduct or regulations governing architects, attorneys, chiropractors, dentists, dry cleaners, electricians and electrical contractors, funeral directors, optometrists, pharmacists, physical therapists, physicians, real estate brokers, and others.

Among other comments submitted during the current Texas legislative session, we have submitted a comment at the invitation of Representative Glenn Repp on H.B. 252, the proposed "Electrician and Electrical Contractor Licensing Act." Letter from Thomas B. Carter, Director, Dallas Regional Office, Federal Trade Commission, to the Honorable Glenn Repp, Texas State House of Representatives (March 13, 1989).

⁵ Letter from Jim Moseley, Director, Dallas Regional Office, Federal Trade Commission, to the Honorable Garrey Carruthers, Governor of New Mexico (March 18, 1987).

II. Analysis of Senate Bill 454

If the bill is enacted, persons qualified by six years of combined professional education and experience and satisfactory completion of an examination prescribed by a State Board of Interior Design could seek licenses to practice "interior design."⁶ The principal competitive effect of the bill would be that persons not holding licenses would be barred from using the term "interior designer" on any card, sign, telephone directory advertisement, or other form of identification but would be permitted to perform interior design services.

The proposed legislation provides for a voluntary licensing, or certification, program. Under certification programs, only persons who meet specified requirements may identify themselves as being members of a particular profession, or as certified in a particular occupation. Noncertified persons are not, however, barred from practicing the profession. In contrast to what is proposed, under a mandatory licensing system, only individuals who obtain a license from the state may lawfully engage in the practice of the licensed occupation.⁷

A certification program can benefit consumers. In some cases, consumers may not have the technical qualifications to evaluate the quality of service provided by a specialized professional. For example, a consumer may be unable to determine whether her investment failed because her financial planner was incompetent or of for some reason that did not reflect on the quality of the planner, such as the limitations of economic predictions. If consumers cannot evaluate quality, producers may provide lower quality services than consumers desire. A certification program can benefit consumers by providing useful information about quality in a form that most consumers can readily understand.

Private certification programs can provide many of these benefits. For example, private certification mechanisms for many medical specialties provide useful information to consumers by identifying specialists who have met certification criteria. Consumers who value board certification may choose practitioners on that basis, but noncertified persons are not significantly

⁶ The state certification board would be empowered to revoke licenses if fraud or other abuse occurred, keep files of addresses of practitioners, receive consumer complaints, and require continuing education for practitioners.

⁷ This distinction was first covered in depth in M. Friedman, Capitalism and Freedom 144-49 (1962). By excluding unlicensed persons, mandatory licensure inhibits entry into the profession and thereby restricts competition.

hindered in their ability to practice the specialty. Consequently, private certification offers some benefits to consumers and imposes virtually no costs on society.

A state-certification mechanism can offer the benefits of a private program, but it also may impose costs on consumers.⁸ The program proposed in S.B. 454 may impose costs because noncertified interior designers would not only be prohibited from holding themselves out as certified (or licensed) interior designers, but they would be prohibited altogether from identifying themselves as interior designers. To the extent that the term "interior designer" is a widely used phrase that consumers commonly associate with providers of interior design services and no substitute term exists to provide the same information to consumers, the prohibition may diminish the ability of noncertified designers to compete and increase the search costs of consumers who desire to use the potentially lower quality and lower priced providers of interior design services.

When a private certification mechanism already provides the quality information that consumers may value, the additional benefit of a state program may be quite limited, and the program may therefore impose costs that are greater than its benefits. We urge you to consider whether S.B. 454 offers consumers significant benefits in view of the existence of organizations such as the American Society of Interior Designers (ASID) and the Institute of Business Designers (IBD), each of which limits membership to individuals meeting criteria that include education, professional experience, and satisfactory completion of an examination prepared by the National Council for Interior Design Qualification (NCIDQ).⁹ Both ASID and IBD are nationally recognized professional associations.

III. Conclusion

The benefits of voluntary licensing by the state may be quite limited where the state program is duplicative of private

⁸ Government certification programs may reduce consumer information, if they displace private certification programs that would gather and provide greater information.

⁹ Section 14 of the proposed legislation establishes standards for education and experience that are no more stringent than the standards employed by ASID for certification. Additionally, Section 15 of S.B. 454 provides that "The board may adopt by rule the examination of the National Council for Interior Design Qualification or a comparable examination." This suggests that state certification would not offer benefits in addition to those of the private program.

certification mechanisms. S.B. 454 also may increase consumers' search costs by preventing unlicensed professionals from identifying themselves by a term that consumers associate with the profession and for which no common substitute exists. You may wish to consider whether the costs of S.B. 454 exceed its benefits in light of the availability of private certification programs for interior designers.

Sincerely,

Thomas B. Carter

Thomas B. Carter
Director
Dallas Regional Office