



100 N. Central Expressway
 Suite 500
 Dallas, TX 75201
 (214) 787-8503

UNITED STATES OF AMERICA
 FEDERAL TRADE COMMISSION
 DALLAS REGIONAL OFFICE

Office of the Regional Director

May 8, 1989

The Honorable Jim Horn
 House of Representatives
 State of Texas
 P.O. Box 2910
 Austin, Texas 78769-2910

COMMISSION AUTHORIZED

Dear Mr. Horn:

We are pleased to respond to your invitation to comment on Texas House Bill 1579, relating to the regulation of landscape architects.¹ The proposed legislation would amend an existing statute that restricts the use of the title "landscape architect" to individuals licensed in the profession by the Texas Board of Architectural Examiners. House Bill 1579 would further regulate the profession by limiting the practice of landscape architecture primarily to persons licensed by the Board.

If enacted, the bill is likely to inhibit entry into the profession and restrict competition among providers of landscape design services. It may, therefore, limit consumer choice and cause the price of landscape design services to rise. The Legislature may wish to consider these anticompetitive effects in determining whether to enact this bill.

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 proceedings² and conducting studies concerning various facets of the regulation of licensed professions.³ In addition, the Commission's staff has submitted comments to state legislatures and administrative agencies on various issues involved in occupational licensing and regulation.⁴

II. The Proposed Legislation

Article 249c of Vernon's Texas Civil Statutes currently restricts the use of the title "landscape architect" to persons licensed in the profession by the Texas Board of Architectural Examiners. The existing statute establishes qualifications for licensure, including specified combinations of education and

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 have submitted comments on rules of professional conduct or regulations governing architects, attorneys, chiropractors, dentists, dry cleaners, electricians and electrical contractors, funeral directors, interior designers, optometrists, pharmacists, physical therapists, physicians, real estate brokers, and others.

During the current Texas legislative session, at the invitation of Representative Glenn Repp, we have submitted a comment on H.B. 252, the proposed "Electrician and Electrical Contractor Licensing Act." See 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).

experience, as well as satisfactory completion of an examination prescribed by the Board. The Board is authorized to discipline licensees and to adopt additional regulations necessary for administration of the law.

Although unlicensed individuals may not represent themselves as "landscape architects," the current law does not prohibit them from rendering landscape planning and design services. In addition, the law contains express exemptions for agronomists, horticulturists, gardeners, caretakers, nurserymen, and others, as well as persons making plans for their own property.⁵

If enacted, House Bill 1579 would extend the regulation of the profession by restricting the practice of landscape architecture to persons licensed by the state. The bill contains a detailed definition of the "practice of landscape architecture" and prohibits the performance of these activities by anyone other than licensed landscape architects or persons exempt from the provisions of the bill. It also reduces the categories of exempted persons to sellers of horticultural products and individuals planning landscape design for their own property. Agronomists, horticulturalists, foresters, gardeners, and caretakers would no longer be exempt.⁶

III. The Costs and Benefits of Occupational Licensing

The rationale for occupational licensing traditionally has been to guarantee a minimum quality standard in the provision of services. Proponents generally argue that occupational licensing is necessary to correct an informational imbalance between service providers and consumers. Because licensed occupations often provide services that require highly specialized, technical expertise, it is thought that consumers may lack the information and resources to evaluate the quality of services. For example, an unsuccessful litigant may be unable to determine whether a lawsuit failed because the case lacked merit or because the lawyer was incompetent. A patient whose treatment fails to cure an illness similarly may be unable to determine whether the treatment failed because of the limitations of medical science or the failings of the doctor. If consumers cannot evaluate quality, producers may provide lower quality

⁵ The law also provides that it does not apply to professional engineers, building designers, surveyors, or architects; nor does it affect any laws relating to those occupations.

⁶ H.B. 1579 Sec. 2(b) (Feb. 28, 1989).

services than consumers desire.⁷ Licensing thus may be necessary to raise service quality above the level that would prevail in an unregulated market.

This argument in support of mandatory licensing may not be entirely convincing in all instances. Although consumers may have less information on quality than producers, they often receive adequate information from a variety of sources.⁸ Consumers can assess quality on the basis of their own purchase experience and the experience of friends, relatives, or neighbors, information provided by sellers or by various consumer-oriented publications, and inferences drawn from the length of the seller's experience in business.⁹ Where voluntary certification exists, the fact that a supplier is or is not certified may convey to consumers information on service quality.¹⁰ Similarly, in some industries, there are trade associations with selective admission criteria designed to ensure that all members meet certain competency standards. Membership in such an organization may provide an assurance to consumers that the services are rendered by a qualified professional. Consequently, the marketplace for services may generate

⁷ See Leland, Quacks, Lemons, and Licensing: A Theory of Minimum Standards, 87 J. Pol. Econ. 1328 (1979); Leland, Minimum-Quality Standards and Licensing in Markets with Asymmetric Information, in Occupational Licensure and Regulation 264 (S. Rottenberg, ed., 1980).

⁸ S. Young, The Rule of Experts: Occupational Licensing in America 17 (1988).

⁹ Id. at 17-18. Many products that consumers commonly purchase, such as microwave ovens, personal computers, or automobiles, are technologically complex. Although very few consumers understand the mechanisms that make these products operate, they nevertheless are able to make judgments concerning some aspects of product quality, principally through the sources described above.

¹⁰ Under a voluntary certification program, only persons who meet certification requirements may identify themselves as being certified, but noncertified persons are not barred from practicing the occupation. In contrast, under a mandatory licensing system, only individuals who obtain a license from the state may lawfully engage in the practice of the licensed occupation. Even in industries where the market cannot furnish sufficient information on service quality to consumers, a state-supported certification program may provide them that information without imposing on them the types of costs associated with licensing. See M. Friedman, Capitalism and Freedom 144-149 (1962).

sufficient information to enable consumers to make informed judgments about service quality without the imposition of licensing.

A fundamental objection to licensing and related governmental restrictions on professional practice is that they often fail to achieve their stated purpose of raising quality. Empirical research, including studies by Commission staff, indicates that licensing may not increase the quality of services offered to consumers.¹¹ Even when mandatory occupational licensing does increase the quality of services offered by licensed practitioners, it does so at a cost. By restricting the supply of practitioners and raising the cost of entry into licensed occupations, mandatory licensing tends to increase the price of services to consumers.¹² In addition, by raising the cost and limiting the availability of services, licensing tends to induce some consumers to do without the services or to rely on self-help. Consumers' tendency to use self-help measures when the cost of services is raised or the supply is limited, in turn, may result in a reduction of the overall quality of services

¹¹ For example, a study of the relationship between licensing and fraud in the television repair industry in three cities found that licensing failed to reduce the incidence of fraud compared to an unregulated market. J. Phelan, Bureau of Economics, Federal Trade Commission, Regulation of the Television Repair Industry in Louisiana and California: A Case Study (1974). The study also found that the cost of repairs was higher in New Orleans, which imposed a licensing requirement, than in San Francisco and Washington, D.C., which did not. In addition, the study found that the incidence of fraud was 60 percent lower in San Francisco, where repair personnel were not licensed but where a state agency performed unannounced investigations of repair facilities, than in New Orleans, where repair personnel were licensed.

Another study by Commission staff found that the quality of eye examinations by optometrists was similar in the various jurisdictions studied, even though the stringency of their regulations differed. The Case of Optometry, supra note 3; Bond, Kwoka, Phelan & Taylor, Self Regulation in Optometry: The Impact on Price and Quality, 7 Law & Human Behav. 219 (1983).

¹² See, e.g., Shepard, Licensing Restrictions and the Cost of Dental Care, 21 J.L. & Econ. 187 (1978); Television Repair Industry, supra note 11.

actually consumed even when that portion of the services delivered by the licensed occupation increases in quality.¹³

Another common argument in favor of licensing is that purchasers of low-quality professional services may impose significant costs on third parties. For example, a person suffering from a contagious disease who is treated by an incompetent physician may transmit the disease to others who did not deal with the incompetent physician. While this argument has theoretical appeal in some cases, its actual relevance to any particular occupation should be examined closely. (See below for a discussion of landscaping.) In addition, overly restrictive licensing regulations may themselves give rise to the same type of concerns. This could occur where licensing so restricts the supply of providers of a particular service that many consumers engage in self-help as described above. As a result, incompetent self-administered work by consumers could impose costs on third parties.

IV. Analysis of House Bill 1579

By supplanting the existing scheme that only limits the use of the title "landscape architect" with a licensing system that restricts the practice of landscape architecture, House Bill 1579 may lead to higher prices and fewer consumer choices because it would inhibit entry into the profession of landscape design and restrict competition among providers of landscaping services. It is likely that some individuals desiring to become landscape architects would be deterred by the costs of fulfilling the proposed prerequisites for licensure and would choose not to engage in the occupation. Thus, the legislation may have the

¹³ Studies have shown that restrictive licensing of electricians was associated with a higher rate of death by electric shock, apparently because more consumers resorted to self-help. Carroll & Gaston, Occupational Restrictions and the Quality of Service Received: Some Evidence, 47 South. Econ. J. 959 (1981); Carroll & Gaston, Occupational Licensing: Final Report (1977). See generally Carroll & Gaston, Occupational Licensing and the Quality of Service: An Overview, 7 Law & Hum. Behav. 139 (1983); Hogan, The Recommendations, 7 Law & Hum. Behav. 117 (1983).

Another study has shown that houses tended to remain unsold for longer periods in areas with restrictive licensing of real estate brokers. Occupational Licensing: Final Report, supra. The increased duration of availability for sale is correlated with a lower ratio of brokers per capita. See Occupational Restrictions, at 970-973.

effect of removing from practice those individuals who have less experience or skill and who are likely to charge lower fees.

There are differences among the skill levels required for different landscaping projects. Planning a park for an urban area or designing for an industrial client who needs holding ponds for cooling water used in processing seems quite different from planning a pleasing garden for an individual's residence. Expertise essential to landscape design and supervision for a large commercial or institutional client may be unnecessary for designing and installing an environment for a private residence. The current law already requires a total of seven years of education and experience; the more stringent licensing requirements may make this requirement more burdensome. The Legislature may wish to consider whether these education and experience requirements are necessary or desirable for all landscape jobs.

Consumers benefit when they are permitted to find and employ professionals with the skill levels appropriate to particular tasks. Some consumers may wish to employ practitioners with less education or experience who may accordingly charge lower fees. Generally, competition in the marketplace, especially in light of the existing regulatory scheme, will ensure the appropriate levels of quality in the provision of landscape architecture. Landscape designers who are unable to provide the quality of services desired by consumers will be unable to survive.

Although the Legislature may conclude that certain landscaping projects pose health, safety, or environmental concerns,¹⁴ it may be that the existing scheme is sufficient to address any of these concerns and does not impose the particular harmful effects on consumers that a more restrictive scheme may impose. If the Legislature determines that the public interest would be served by some mandatory licensing scheme despite its potential adverse effects, the Legislature may wish to consider distinguishing among types of landscaping projects and requiring that landscape architects be licensed only to perform the selected tasks deemed to warrant strict regulation. Other projects could be regulated differently or exempted from regulation altogether.

V. SUMMARY

Although occupational licensing may benefit consumers when it responds to failures in the market, licensing also imposes costs and may have anticompetitive effects, which injure consumers. House Bill 1579, if enacted, may limit competition

¹⁴ This may be true in the case of drainage onto adjacent properties or the installation of footbridges.

and raise the cost of landscape design services. In determining whether to impose additional regulatory constraints on the practice of landscape architecture, the Legislature may wish to consider these potential anticompetitive effects.

We are pleased to have the opportunity to present our views on H.B. 1579. Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Carter", with a long horizontal flourish extending to the right.

Thomas B. Carter
Director
Dallas Regional Office