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**Federal Trade Commission**

Office of the Regional Director  
8303 Elmbrook Drive  
Dallas, Texas 75247  
(214) 767-7050

AUTHORIZED

April 17, 1987

The Honorable Joe L. Heaton  
Oklahoma House of Representatives  
State Capitol, Room 502  
Oklahoma City, Oklahoma 73105

Dear Mr. Heaton:

We are pleased to submit this letter in response to your request for comments on House Bill 1432, the "State Drycleaning Regulation Act of 1987."<sup>1</sup> This proposed legislation provides for the licensing and regulation of dry cleaning, dyeing, and pressing firms; establishes the State Dry Cleaners' Board; and empowers the Board to set minimum prices for dry cleaning services on a county-by-county basis. In view of the likelihood that this bill will increase the costs of services to consumers without providing countervailing benefits, we recommend that it not be adopted.

The Federal Trade Commission is charged with preserving competition and protecting consumers from deceptive and unfair business practices.<sup>2</sup> During the past decade, the staff of the Federal Trade Commission has carried out studies of occupational regulatory systems in jurisdictions throughout the country and has analyzed the effects of regulations on competition and consumers. Our goal in the occupational regulatory area has been to identify and seek the removal of those restrictions that unnecessarily impede competition and increase costs.

Few Benefits

We oppose the enactment of House Bill 1432. We recognize of course that Oklahoma may have a legitimate interest in regulating those occupations for which the lack of training, experience, and professional judgment can result in serious public harm. We are unaware of any evidence, however, that the absence of regulation of dry cleaners is likely to threaten the health or safety of

<sup>1</sup> These comments represent the views of the Dallas Regional Office and the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission and do not necessarily represent the views of the Commission itself. The Commission has, however, voted to authorize the staff to submit them to you.

<sup>2</sup> See 15 U.S.C. §§ 41 et seq.

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consumers. Indeed, although dry cleaners were at one time licensed in several states, including Oklahoma,<sup>3</sup> we believe that no state currently licenses members of this industry.

If it is true that no compelling health or safety interest justifies regulation, then competition in the marketplace is likely to insure that dry cleaning firms perform satisfactory services. In a competitive market, businesses that provide quality goods and services at a fair price will gain a reputation and prosper over those that do not. This is particularly true in industries like dry cleaning, where the product or service is relatively inexpensive, the subject of frequent or repeat purchases, and consumers can easily evaluate the quality of the service they receive. In these situations, there are particularly strong, market-driven incentives for businesses to provide quality goods and services and to deal fairly with the public. Simply put, consumers who are dissatisfied can take their business elsewhere.

Thus, licensing or other regulation should not be necessary as a means of eliminating incompetent dry cleaning firms from the marketplace. In fact, the bill's grandfather clause would ensure that the bill itself would have no impact whatever on firms currently in the market.<sup>4</sup>

#### Reduced Competition and Increased Prices

We believe that House Bill 1432 would create barriers to entry into the dry cleaning industry. Our experience tells us that these barriers are likely to lead to higher prices for consumers and a decrease in the number of dry cleaners from which consumers may choose. Economic studies have shown that licensure can also result in reduced output of services, limited accessibility of those services to consumers, and lower quality.<sup>5</sup> Lower income consumers are particularly likely to be harmed by these efforts.

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<sup>3</sup> Plott, Occupational Self-Regulation: A Case Study of the Oklahoma Dry Cleaners, 8 J. L. and Econ. 195 (1965).

<sup>4</sup> Section 8 of the bill.

<sup>5</sup> See, e.g., M. Friedman, Capitalism and Freedom (1962); Stigler, The Theory of Regulation, 2 Bell J. of Econ. 3 (1971); Maurizi, Occupational Licensing and the Public Interest, 82 J. of Pol. Econ. 399 (1974); J. Phelan, Regulation of the Television Repair Industry in Louisiana and California: A Case Study, Staff Report to the FTC (1974); Benham and Benham, Regulating Through the Professions: A Perspective on Information Control, 18 J. L. and Econ. 421 (1975); Carroll and Gaston, Occupational Restrictions and the Quality of Service

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In the dental field, for example, empirical studies have concluded that licensure and barriers to interstate mobility affect prices, and that in states restricting the number of practicing dentists, both dental service prices and dental incomes are higher than those in states without restrictions.<sup>6</sup> Evidence on the effects of licensure and training requirements for another consumer service industry, television repair, is presented in a 1974 FTC staff report, Regulation of the Television Repair Industry in Louisiana and California. The report found that the price of television repair was higher in New Orleans, where repairers were subject to training and licensure requirements, than in either Washington, D.C. or San Francisco, two markets without entry restrictions. Although the quality of tv repair service was not considered by the report, the incidence of fraudulent parts replacement was examined. Such fraud was found to be no less frequent in New Orleans, notwithstanding the restrictions, than in Washington, D.C.<sup>7</sup>

The specific licensing proposal involved here seems particularly likely to restrict entry into the dry cleaning business. The bill would give to the State Dry Cleaners' Board, which is made up of three members, all of whom must be engaged in the cleaning, dyeing or pressing business, a broad grant of authority to impose licensing standards. Although operators currently in the industry are entitled to be licensed by virtue of the grandfather clause, the bill requires new license applicants "as a prerequisite to obtaining such license, to comply with such reasonable standards as may be deemed necessary by the Board for the protection of the public health and safety . . . ."<sup>8</sup> [Emphasis added.] The Board could interpret the "reasonable standards" language in the bill to include subjective examinations, or to require an unduly high passing grade or to recognize only certain types of training as satisfactory to merit

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<sup>6</sup> See, e.g., Shephard, Licensing Restrictions, 21 J. L. and Econ. 187 (1978); Conrad and Shelton, The Effects of Legal Constraints on Dental Care Prices, 19 Inquiry 51 (1982).

<sup>7</sup> See also Effects of Restriction on Advertising and Commercial Practice in the Professions: The Case of Optometry, FTC Staff Report (1980).

<sup>8</sup> Section 4(A)(7) of the bill.

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licensure. Such practices might have the anticompetitive effect of further limiting entry into the dry cleaning business.<sup>9</sup>

The legislation would also restrict the range of choices available in the marketplace. It would allow the State Dry Cleaners' Board to deny licenses to applicants who have attained a reasonable competence level but who nonetheless have lower skill, training or experience levels than others. Some consumers, however, may wish to use dry cleaners that employ less experienced personnel or that employ individuals with less specialized skills or training, because these cleaners would be expected to charge correspondingly lower fees. Competitive pressures would make it likely that the services offered by these cleaners would remain at an acceptable level of quality.

Price Fixing

The bill may also harm consumers by empowering the State Dry Cleaners' Board to establish minimum prices for cleaning, dyeing, and pressing services on a county-by-county basis.<sup>10</sup> Under the regulatory scheme of the bill, the Board could adopt price schedules that have been agreed upon by 75% of the cleaning, pressing, and dyeing firms in a county, thereby setting prices at higher than competitive levels. A study of the now-abolished Oklahoma Dry Cleaners' Board (which had identical authority) concluded that the Board's price fixing activities had the effect of requiring Oklahoma consumers to pay more than they otherwise would for those services.<sup>11</sup>

Price fixing also would reduce the incentive for firms to strive for efficiency because firms no longer would have to compete with one another on the basis of price. Even if a firm did become more efficient, there would be no competitive pressure to pass on the cost savings to consumers.

By permitting the Board to set prices, this bill may result in many of the evils that have caused price fixing by private

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<sup>9</sup> Until California abolished its dry cleaners' board in December, 1986, the board gave examinations to license applicants. Pass rates for the examinations were typically between 50 to 60%. The Register (Santa Ana, Calif., Apr. 8, 1985), at A14; The San Diego Tribune (Apr. 3, 1985), at B-16.

<sup>10</sup> Sections 16 and 17 of the bill.

<sup>11</sup> Plott, supra note 3, at 222. Professor Plott was unable to quantify exactly how much Oklahoma consumers were overcharged for dry cleaning services.

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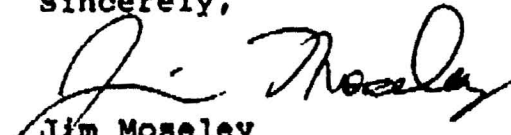
agreements to be condemned by Congress<sup>12</sup> and the courts.<sup>13</sup> Such pricing arrangements are designed to eliminate an important form of competition<sup>14</sup> and have long been held to be per se violations of the antitrust laws.<sup>15</sup> As the Supreme Court said in United States v. Socony-Vacuum Oil Co., price fixing is a threat to the "central nervous system of the economy."<sup>16</sup> Although in some circumstances state action to fix prices may be lawful<sup>17</sup>, price fixing in general should not be encouraged.

### Conclusion

In summary, we believe that House Bill 1432, the State Drycleaning Regulation Act of 1987, may well raise the cost of cleaning services without offering countervailing benefits to consumers. We therefore recommend against its enactment.

We appreciate this opportunity to present our views. We have referred to several studies and other materials. We would be happy to supply copies of these if you so desire, or to provide any other assistance.

Sincerely,

  
Jim Moseley  
Regional Director  
Dallas Regional Office

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<sup>12</sup> Section 1 of the Sherman Act, 15 U.S.C. §1. Price fixing also is banned by Section 5 of the FTC Act, 15 U.S.C. § 45.

<sup>13</sup> See, e.g., United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); United States v. Trenton Potteries Co., 273 U.S. 392 (1927); United States v. Addyston Pipe & Steel Co., 85 F. 271 (6th Cir. 1898), modified as to decree and aff'd, 175 U.S. 211 (1899).

<sup>14</sup> United States v. Trenton Potteries Co., 273 U.S. 392, 397 (1927).

<sup>15</sup> See, e.g., Citizen Publishing Co. v. United States, 394 U.S. 131 (1969).

<sup>16</sup> 310 U.S. 150, 224 n.59 (1940).

<sup>17</sup> See California Retail Liquor Dealer's Association v. Midcal Aluminum, Inc., 445 U.S. 97 (1980).