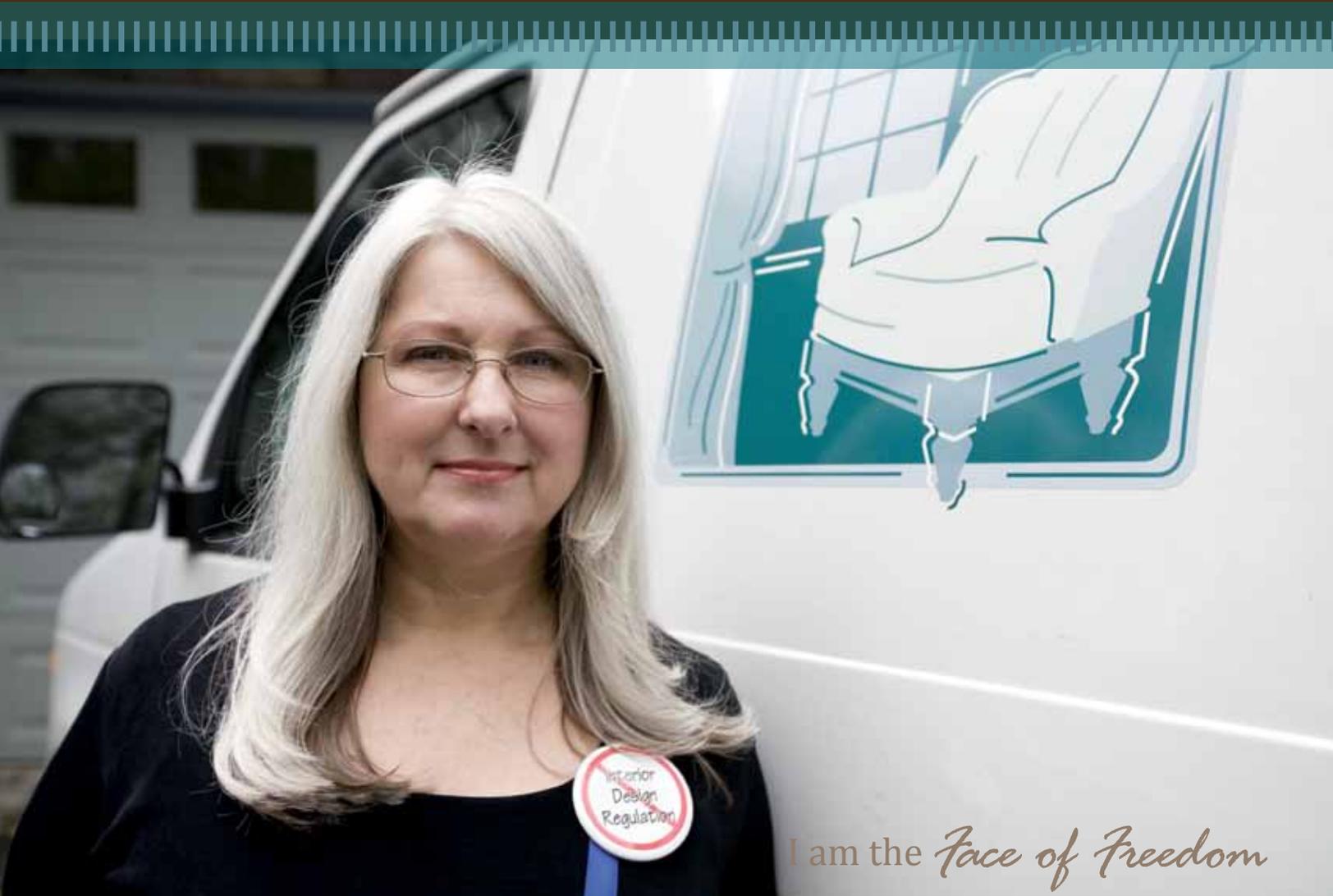


Illegal by Design

How Interior Design Laws Put Designers Out of Business and Endanger Consumers

By Shaka Mitchell and Justin Owen

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I am the *Face of Freedom*



Faces of Freedom



A new law has been proposed in the Tennessee General Assembly that will require anyone wishing to practice interior design to first obtain a bachelor's degree and a state-issued license. The proposed law is being sold to legislators as a necessary measure to protect public health and safety, but this could not be further from the truth. This proposed statute will effectively build a wall around those that can meet the new requirements, shutting out the many that cannot. In addition to stifling entrepreneurs, it will also harm consumers. If the bill passes, several things are likely to occur. First, industry insiders will be able to practice interior design with little competition due to the fact that relatively few people will be able to meet the harsh statutory prerequisites. Next, this insulation will allow insiders to decrease their work quality without the fear of losing business while simultaneously charging higher prices for their services. Finally, those that cannot meet the stringent requirements will be limited to calling themselves "interior decorators," which will inadequately describe their services, causing them to lose many of their clients and potentially putting them out of business.

The imposition of licensing requirements like those proposed in Tennessee harms designers, consumers, and all citizens alike. As the Institute for Justice, a nonprofit public interest law firm, has found, "In states where interior designers are regulated, consumers are paying higher prices for design services, fewer entrepreneurs are able to enter the market, and blacks, Hispanics and those wishing to switch careers later in life are being disproportionately excluded from the field."¹ Ironically, the American Society of Interior Designers (ASID), and its state-based off-shoot, the Tennessee Interior Design Coalition (TIDC), two groups that claim to represent interior designers, are leading the charge to impose this new law.

Lowering the Curtain on Designers



Anna Aycock,
Design Consultant & Artist

Brentwood resident Anna Aycock has been an Allied Member of ASID for nearly 10 years, so she was surprised to learn that that ASID, a group that is happy to collect her dues, is just as happy to put her out of business.

Anna moved to Tennessee in 1991 with her husband and, being a self-starter, immediately taught herself the skill of faux painting. Faux painting began as a form of replicating materials such as marble and wood with paint, but has come to encompass many other decorative finishes for walls and furniture.² Once proficient in the art, Anna began teaching classes at the Williamson County Recreation Center.

The classes were the perfect marriage between her training as a teacher (Anna obtained a Bachelor's degree and teaching certificate from the prestigious Agnes Scott College) and her skill as an artist. It was only a matter of time before Anna's work garnered statewide and even national attention. Her work was originally featured in *The Tennessean* in 1996, and has since appeared in *House and Home* magazine, *Nashville Interiors*, HGTV's "Our House," and TNN's "Crook 'N Chase," to name a few.

Anna says that with three children this was the "perfect Mommy job."³ There were times when the painting and other design work brought her family nearly as much income as her husband's work as a civil engineer consultant. Anna found that her talents were not limited to faux painting and her work expanded to consulting on a range of design

projects. This shift was not only practical, but medically necessary. Over time, Anna had become highly allergic to paint. "I was exhausted from painting and it started to affect my health. I've had to accept that I can't be around paint."⁴

The proposed changes in the law would limit Anna's ability to be a designer and consult on projects. And because of her health condition, sticking to paint alone is not an option. She says, "I don't want the stress of having to defend my livelihood. These laws are not about health and safety; they are about protecting a few people from competition."

"There are tons of faux painters now [as compared to the early 1990s] but I would never try to block someone else from doing this work just to shield myself from competition."⁵ Alas, ASID and TIDC have no qualms doing just that.

Not only will the new law harm designers like Anna, it will also exclude older entrepreneurs that took up interior design later in life from the practice, as designers over the age of 40 are 12 percent less likely to have college degrees in states where a degree and license are mandatory.⁶

Such is the case with Bellevue's Bohnne Jones. Bohnne owns an independent franchise of Interiors by Decorating Den. After spending most of her career in the healthcare industry, Bohnne decided to pursue her lifelong dream of working on her own. She purchased her own business by cashing



Bohnnie Jones,
Interiors by Decorating Den



in her 401(k) retirement fund. Even though she lacks a college degree, Bohnne has become an extremely successful businesswoman who is passionate about her work. She now has clients all over Middle Tennessee and has traveled throughout the United States to serve her clients.

Bohne understands the health and safety codes and carries millions of dollars in liability insurance. However, if this new law passes, she will be forbidden from providing her services. Sadly, that is just part of the problem. With obvious frustration Bohnne says, “If prohibited from running my business, I’ve not only lost my job, I’ve lost my retirement.”⁷ In her 50s, Bohnne is not in a position to switch career fields, nor can she be expected to return to school to obtain the license that the proposed law will require. Bohnne is typical of designers that came to design as a second or third career. As the data indicates, Bohnne is one of many entrepreneurs that will be shut out of the field by the proposed law’s disparate impact on older designers and minorities.



Stringent Design Laws

The State of Tennessee already has a monopoly on the term “*registered interior designer*.”⁸ In order for a person to call herself an interior designer, she must meet several onerous requirements. Although she may be completely competent and qualified to do the work, a person practicing interior design without meeting these requirements faces up to six months in prison and a \$500 fine.⁹

In order to use the term “registered interior designer,” a person must attend an accredited interior design school and obtain on-the-job training for a total period of six years.¹⁰ Upon completion of the experience requirements, the candidate must sit for a two-day examination at a cost of \$720. This is nearly double the amount a person pays to take the Tennessee bar examination to become an attorney.¹¹ Finally, the interior design candidate must pay \$55 to register, plus \$140 every two years in renewal fees.¹²

In addition to possible jail time and increases fines, the proposed law would impose even more requirements on interior designers under the new licensing scheme. If it passes, anyone seeking to prepare non-structural interior design plans (for spaces of 5,000 square feet or more or in buildings taller than three stories) will be forced to obtain a bachelor’s degree in interior design from an accredited school and then perform 3,520 hours of interior design practice.¹³ Those unable to obtain a degree from an accredited school will be forced to perform 7,040 on-the-job hours.¹⁴ That amounts to working 40 hours a week for nearly three-and-a-half years before becoming a licensed interior designer. Regardless, to become a qualified interior designer, all candidates must receive a total of six years of coursework and hands-on experience.¹⁵ Such requirements would allow current interior designers to exploit candidates by forcing them to work for lower wages than they would otherwise receive in order to achieve the experience requirements.

Those who cannot meet these mandates and obtain a license will be forced to use the more limited term “interior decorator” or some other designation, thus making them unable to compete on a level playing field with their peers. This limitation also raises First Amendment issues by preventing designers from accurately speaking to their abilities and experience.¹⁶

Protection of All or Just a Select Few?

TIDC and ASID both assert that the licensing scheme is necessary to protect the health, safety, and welfare of Tennesseans. However, the facts show otherwise.

The Institute for Justice has undertaken extensive study of the interior design industry. The study shows “that there is no threat to public health, safety or welfare requiring government regulation of the interior design industry,” as evidenced by the fact that only three states and the District of Columbia require interior design licensure.¹⁷ Consumer complaints filed with the Better Business Bureau against interior designers are very rare. Of the complaints, 95 percent relate solely to licensure, i.e., complaints alleging that designers failed to meet the licensure requirements or failed to pay the requisite licensure fee before practicing. In fact, since 1998, only one out of every 5,650 designers has received a complaint for *any* other reason, including complaints related to health, safety, or welfare.¹⁸

Another way to gauge health and safety concerns for a given industry is to look at the number of lawsuits filed against members of that profession. In the past *century*, only 52 lawsuits have been filed against interior designers nationwide.¹⁹ The vast majority of these lawsuits “dealt with breach of contract issues, while very few addressed safety or code violations.”²⁰

As one Tennessee interior designer recently exclaimed, “No one has ever died from ugly!”²¹ This comports with the notion that interior design is a highly subjective field with extremely little, if any, danger to consumers. Forcing consumers to select from a few protected designers will limit their choices and stifle creativity. This, coupled with increased prices, will damage the industry and place unnecessary burdens on consumers, eventually dampening our state’s economy.

Most consumers are unconcerned with supposed health, safety, or welfare issues. They are more interested in the designer’s “style and their work,



Design by Tanna Miller,
Trends and Traditions / Design Nashville

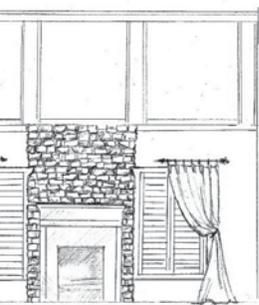
not the degree they hold or whether they passed any test.”²² Simply put, the work speaks for itself. Tanna Miller, a single mother in Brentwood and former member of ASID, has never had a single client ask about her certification. Rather, her clients are solely focused on Tanna’s ability to deliver a quality and unique service. It is her innate creativity, not her certification, that has helped build an impressive client base, which includes top executives from companies like IBM, Smith & Wesson, and Murphy Tractor & Equipment Co. For this reason, Tanna is “furious” that the same interior design associations that once represented her are now trying to keep her from doing something she has “been able to do since fifth grade.”²³

Neither TIDC nor ASID has ever pointed to a single incident where an unregulated interior designer actually harmed consumers. To the contrary, when the Washington State Department of Licensing examined deaths due to home fires, it found that none “were due to building code violations, much less violations due to errors made by unregulated interior designers.”²⁴

One might wonder why the groups that purport to protect Tennessee’s interior designers would seek to do so much unnecessary harm to their members. As Nobel Peace Prize winning economist Milton Friedman once noted, “[t]he pressure for

[stringent occupational licensing laws] invariably comes from members of the occupation itself” rather than consumers.²⁵ These industry insiders understand that they can limit the practice of interior design to a chosen few, eliminating their competition and allowing them to raise prices. “In regulated states, the number of interior designers fell by an estimated 1,300 between 1990 and 2000, demonstrating that regulation is limiting economic opportunity in interior design.”²⁶ Interior design associations have been lobbying for licensure of the practice in 13 states since 2005, precisely so they can stamp out competition.²⁷ Interestingly, the proposed licensure law would potentially put two-thirds of ASID’s Tennessee members out of business, because those “Allied” members do not meet ASID’s arbitrary standards.²⁸

While these associations lobby tirelessly for more restrictive laws, several states have begun conducting reviews of their existing interior design regulations. Beginning in 1988, five states have examined the need for such regulations. “All five found no benefit to the public and concluded consumers already possess the means to make informed decisions about interior designers.”²⁹ In fact, associations like the Interior Design Society, which does not push for legislative barriers, can easily and more effectively establish self-certification requirements. These private associations “help designers and other professionals distinguish themselves without needless government oversight that serves only to keep out aspiring entrepreneurs.”³⁰ States like California have realized this alternative and refuse to impose government mandates on the industry’s professionals.³¹ ASID believes that it is easier to lobby members of the General Assembly than compete on the merits of their work



A Dangerous Scheme

Assuming *arguendo* that regulations did actually protect health, safety, or welfare, such regulations might still do more harm than good. One result of licensing schemes is higher prices (because competition is cut out). As prices rise, many consumers decide to design their own homes and offices. It is obviously safer to have an experienced interior designer familiar with safety codes remodeling homes and offices, even absent formal certification, instead of complete novices.

Imagine a person who needs electrical work done on his home. If the state in which he lives has extremely stringent regulations on electricians, it is likely to cost much more to hire an electrician than in a state with more lenient standards. It is therefore more probable that the homeowner will forego this added cost, instead choosing to fix the electrical problem on his own. The danger of this is apparent, but such dangers will only rise as the availability of experienced electricians declines. The same could be said for increasing the regulatory schemes surrounding interior designers. Thus, a licensing law like the one proposed in Tennessee could very well harm the same consumers it is supposed to protect.

Conclusion

Interior design regulations—particularly licensing acts—pose great harm to current and aspiring interior designers as well as consumers. Limiting the practice of interior design will force many talented and able Tennesseans to sit on the sidelines as a lucky few thwart competition and drive prices higher. The net effect for consumers is fewer choices but greater costs. Further, the possible harm done by do-it-yourself consumers to avoid higher expenses outweighs any hypothetical health, safety, or welfare assertions made by industry insiders.

During such a bleak economic climate, political leaders should remove obstacles to entrepreneurs, not erect new ones. Increased regulation of the interior design industry will not expand job opportunities. In fact, the new law would do just the opposite, to the detriment of all Tennesseans. This is not the time to enact laws that will increase consumers' costs and threaten the jobs of hardworking Tennesseans. Now is the time to turn back the tide of increased government regulation that puts entrepreneurs out of business and endangers consumers.



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4. *Ibid.*
5. *Ibid.*
6. Harrington, "Designed to Exclude." p. 9.
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9. Tenn. Code Ann. § 62-2-105(b)(2) (2008); Tenn. Code Ann. § 40-35-111(e)(2) (2008).
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20. *Ibid.*
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22. Dick Carpenter, Ph.D., "Designed to Mislead: How Industry Insiders Mislead the Public About the Need for Interior Design Regulation." Institute for Justice, September 2008.
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24. Harrington, "Designed to Exclude." p. 3.
25. Milton Friedman, "Capitalism & Freedom." p. 120.
26. Harrington, "Designed to Exclude." p. 1.
27. Carpenter, "Designing Cartels." p. 22.
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31. *Ibid.*

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“Faces of Freedom” is a campaign to educate Tennesseans on the problems of government regulation and barriers to prosperity. By providing real-life stories by real-life citizens, Tennesseans can better understand the implications of bad law and bad policy.



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