

SUBJECT: Expanding regulation of the practice of interior design

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Flores, Geren, Isett, Goolsby, Hamilton, Jones, Quintanilla, Thompson
0 nays
1 absent — Miles

WITNESSES: For — Dan Lee, American Academy of Healthcare Interior Designers; Donna Vining, Texas Association for Interior Design; (*Registered, but did not testify*: Amanda Kendall, Pat Campbell McLaughlin, Julie Reynolds, Marilyn Roberts, and Rosa Salazar, Texas Association for Interior Design)

Against — Yvonne Castillo, Texas Society of Architects; Donna Stockton Hicks, Interior Decorators of Texas; Jeff Koellman, Texas Institute of Building Design; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Clark Neily, Institute for Justice; Bonnie Snow, Interiors by Decorating Den; Kathy Dodson. (*Registered, but did not testify*: Sandy Senter, Senter Design; Heather Toolin, Interior Decorators of Texas; Patricia V. Turner, P A Turner and Co; Susan Barnett; Annette Currah; Robert Steven Hicks; Priscilla Laffey; Kris Miller; Mary Paul; Patrick J. Sutton; David White)

On — Scott Gibson and Gordon Landreth, Texas Board of Architectural Examiners; (*Registered, but did not testify*: Cathy L. Hendricks, Texas Board of Architectural Examiners)

BACKGROUND: Occupations Code, ch. 1053, provides for the regulation of the profession of interior design by the Texas Board of Architectural Engineers (TBAE). The chapter prohibits unregistered persons from representing that they are an “interior designer” or using that term to describe services they offer or perform. TBAE is charged with establishing standards and qualifications for the issuance and renewal of certificates of registration conferring the title of interior designer to successful applicants. A grandfather clause allowed individuals who had practiced as an interior designer at least six

years prior to 1991 to obtain a certificate of registration in lieu of meeting testing and other requirements.

Registration requirements established by TBAE include graduation from an accredited interior design degree program, completion of a supervised two-year internship, and successfully passing the National Council for Interior Design Qualification (NCIDQ) examination.

Occupations Code, sec. 1051.001 defines “interior design” as:

- the identification, research, or development of a creative solution to a problem relating to the function or quality of an interior environment;
- performance of a service relating to an interior space, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or
- preparation of an interior design plan, specification, or related document about the design of a non-load-bearing interior space.

Federal law, 42 U.S.C., sec. 12181, defines a “public accommodation” generally as a private facility used for the purposes of lodging, serving food or drink, entertainment or exhibition, public events, sales and retail establishments, professional offices and other service providers, education or daycare, exercise or recreation, or social services.

DIGEST:

CSHB 1985 would prohibit persons not registered as an interior designer from engaging in the practice of interior design for direct or indirect compensation or from representing that they engage in interior design unless any services rendered were supervised by a registered designer. In order to renew a certification, an interior designer whose registration was grandfathered by previous statutory amendments would have to complete at least 15 hours of board-approved continuing education requirements and either pass section one the NCIDQ exam or demonstrate 20 years of board-approved interior design experience. Renewal also would be available for anyone who passed examinations required for registration as an architect. Changes affecting the renewal of certificates of registration would take effect September 1, 2011.

The bill would exclude from the prohibitions it would establish:

- persons licensed by major state agencies and who engage in activities related to that certified occupation;
- an employee of a retail establishment who provides consultations regarding interior decorations or furnishings for residential homes on the premises of the establishment or for the furtherance of a retail sale;
- an individual who is a member of a state or national building designers' organization whose members are required to complete at least eight hours of continuing education per year on topics related to design and code compliance; or
- a person who provides decorative services or assistance in the selection of surface materials, window, wall, or paint coverings, paint, surface-mounted fixtures, or loose furnishings.

Decorative services or assistance selecting interior items could be provided only if the selected items were for a building not intended for public accommodation, as defined by 42 U.S.C., sec. 12181, and were not in a location subject to regulation under governing fire codes.

CSHB 1985 would require each interior design office to employ a designer who was responsible for the work performed at that location and who supervised each unregistered person working in the office. All designers would have to practice in compliance with applicable building and fire codes. If a person knowingly violated a provision relating to the regulation of interior designers, that person would be subject to a misdemeanor and a fine ranging from \$250 to \$5,000.

The bill would clarify that applicants would have to pass the NCIDQ examination prior to registration and hold a professional degree in interior design conferred by a program accredited by the Council for Interior Design Accreditation or a board-recognized equivalent. Licensed designers also would have to complete NCIDQ's Interior Design Experience Program prior to certification. Out-of-state applicants who were licensed to practice by meeting requirements equally or more stringent would be eligible for reciprocal certification.

The bill would require TBAE to adopt rules to implement and enforce new provisions by February 1, 2008. Except as otherwise noted, the bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1985 would provide the interior design profession with a much-needed “practice act” that would allow for the regulation of important design decisions that could threaten the health, safety, and welfare of the public. Particularly in commercial settings, improper design decisions regarding the use of materials can lead to a number of hazards, such as fires, obstruction of exits, barriers to the mobility of the disabled, and toxic fumes. Registered interior designers ensure that proper flame-resistant materials are used in finishes and furnishings for commercial projects. Statistics show that more people die in fires as a result of inhaling toxic fumes and smoke than from the flames themselves.

Regulated interior designers are required to have the adequate education and experience to avoid hazards associated with the construction and design process. In the absence of a practice act, TBAE does not have the necessary enforcement authority to protect the public interest. Without the ability to regulate and discipline a profession, the agency cannot protect the public from incompetent or unethical designers. A practice act would provide consistent and clear standards of practice embodied in comprehensible and enforceable statutory provisions.

The current title act, which prohibits unregistered individuals from using the term “interior designer” to describe their work or their qualifications, does not effectively regulate design practices in the state. Design professionals are required to understand and adhere to a number of complex codes, including building, fire, and accessibility codes, intended to enhance the safety and accessibility of public and private spaces. Professionals who work with important design standards that have clear, demonstrable effects on the public well being should be subject to regulation. The title act allows unregistered individuals to escape these regulations by avoiding use of the term “interior designer.” A practice act as embodied by CSHB 1985 would draw a sharp distinction for consumers, delineating those who have substantial knowledge of codes and other design standards. This would encourage fair competition among practitioners, who would be appropriately distinguished by qualifications and not through a technicality of title.

CSHB 1985 would be a measured approach to establishing a practice act without placing undue burdens on interior decorators and other trade professionals. The bill would not apply to interior consultants who practice through their employment with a retailer or with the oversight of a

registered interior designer. Activities relating to the interior arrangement of a single-family residence that involved the selection of surface materials and other basic interior modifications would be excepted from regulation. Building designers and other state licensees also would escape incidental regulation on interior design-related activities in which they engage as part of their trades. These exceptions would help reduce and eliminate unintended consequences on related design practices that do not pose immediate hazards to the public interest.

Currently registered interior designers could renew their licenses by taking continuing education classes related to building codes and other safety matters and passing the related portion of the NCIDQ examination. This measure would help ensure that registered designers who were grandfathered before the examination requirement was introduced as part of registration could retain their licenses and receive critical education. Grandfathered designers would have until 2011 to comply with the additional provisions.

CSHB 1985 would give TBAE the flexibility to craft striking a balance between protecting the public interest and allowing for the continuation of interior decoration practices that do not pose safety and other hazards to consumers. The board of TBAE comprises a mix of architecture and design professionals and public representatives who are very aware of and concerned with the needs of licensed and unlicensed practitioners. The bill would allow for a process by which TBAE could adopt rules to adopt a set of standards that would be fair and workable for multiple parties.

Municipalities rarely have the resources to ensure that relevant codes are appropriately enforced, especially when plans and improvements are made by unregulated professionals. TBAE needs flexibility in the administration of penalties because some unauthorized and unethical design practices can have major public repercussions, such as decisions related to the design of a hospital or nursing home. Enforcement penalties for less consequential infractions would not change. CSHB 1985 would provide for additional regulation and enforcement where it is critical — in the practice of designing interior commercial and home improvements.

**OPPONENTS
SAY:**

CSHB 1985 would have a severe, negative impact on thousands of unlicensed home decorators in Texas. The bill at once would stiffen requirements for registration as an interior designer and sharply limit the range of activities in which decorators and other unlicensed professionals

could partake. No person who was not a registered designer could accept compensation for interior design practices, which include, “identification, research, or development of a creative solution to a problem relating to the function or quality of an interior environment.” The breadth of this definition effectively would prevent anyone who fell outside the narrow exceptions the bill from being employed to work on interior environments.

Unregistered individuals would be prohibited from doing any type of work in a building intended for “public accommodation” or involving a structure governed by local fire codes. This effectively would limit unlicensed practitioners to working in single family residences and duplexes. The range of activities in which unregistered decorators could engage in these structures also would be limited and very vaguely defined. Language in the bill, such as “surface materials,” could be subject to a number of interpretations. Wide discretion would be granted TBAE, the board of which includes four architects, landscape architects, and a registered interior designer, to adopt rules determining which types of activities would require a license. Home decorators would be assured no direct input in this decision.

The bill could have far-reaching, unintended consequences for people engaged in design-related activities in homes, small businesses, offices, schools, retail establishments, stores, and other small commercial establishments that do not have the resources to afford the services of a registered designer. Interior designers must have degrees from accredited programs, a supervised internship, and successfully must complete a complicated, national exam. This would put small-scale decorators who worked part time or were located in smaller cities and towns that offered no accredited program in the difficult situation of deciding to abandon their profession, go to work for a retailer, or relocate for an intensive educational program.

The bill also would threaten licensees who were exempted from meeting examination and other requirements by grandfathering provisions contained in previously enacted legislation. Grandfathered interior designers, who constitute the majority of licensed designers in Texas, would have to take continuing education courses and a portion of the national exam unless they could prove they had 20 years of interior design experience. This would represent an additional administrative burden for very little added value to those highly experienced design professionals.

CSHB 1985 would have a disproportionate impact on small businesses and decorators who work part time for supplemental income or in non-metropolitan areas. The bill would make exceptions for other licensees, whether or not their certification was directly relevant to interior design, and inappropriately would exempt retailers. Unlicensed decorators could legally work for a retail store, such as Home Depot, but would be subject to possible penalties for engaging in similar consultation activities outside of their employment. Penalties stipulated in the bill, which could range from \$250 to \$5,000 and a misdemeanor, are unduly harsh and broad. A fee of this amount is on level with a class A misdemeanor, which is issued for crimes including burglary of a vehicle, types of animal cruelty, resisting arrest, and unlawful restraint. The prospect of receiving such stiff penalties could deter honest, well-meaning home decorators from engaging in activities that have no public safety consequences.

Municipalities adopt codes, including fire codes, residential construction codes, commercial codes, and others, to ensure the safety of structures, structural features, and interior construction. Interior decorators who deal with improvements that could pose safety concerns would have to comply with all applicable codes and, in most cases, attain building permits and inspections from municipal authorities. This process ensures safe construction standards for all people, whether or not they engage in interior decoration or design practices as a profession. If unlicensed individuals were subject to using hazardous materials as part of construction and design activities, then those materials should be more carefully regulated. Imposing strict regulations on unlicensed practitioners would do little to promote safety and much to increase the cost of design services.

NOTES:

According to Legislative Budget Board estimates, approximately 230 licensees in fiscal 2012 would not renew under the new eligibility requirements set by CSHB 1985. This would translate to a loss of \$46,000 in general revenue-related funds for that fiscal year.

The companion bill, SB 832 by Lucio, has been referred to the Senate Business and Commerce Committee.