



HB 3878: Correcting a Serious Design Flaw

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Key Points

- The state has no compelling interest in criminalizing interior design, nor does doing so preserve the public health and welfare. Nearly 95 percent of all complaints against interior designs relate to licensing violations.
- Overcriminalization of actions that are not morally blameworthy is unnecessary and improper; no one should have to fear gaining a criminal record, spending time in jail, or facing a significant fine merely for practicing interior design without a license.
- Occupational licenses more broadly are not an area where the state often should be involved. A free market can sort out such bad actors without unnecessary government influence and intervention in the marketplace.

In recent years, there has been a growing chorus of concern being raised across the country as to the effects that occupational licenses have on individuals trying to enter the workforce to ply a trade of their choosing. Not only are those seeking employment in fields that require a license compelled to acquire a certain amount of education or practical experience—which can be quite expensive and take years to complete—they must also bear the burden of paying costly fees to receive the license itself before working even a minute.

The state of Texas plays an indecorous role in this debate by criminalizing the practice of interior design without a state license. However, HB 3878 eliminates the criminal penalty, restoring a sense of proportion to a regulatory regime that has little to do with public health and safety. Though the industry claims that some of its services “[are vital to public health, safety and welfare](#),” a 2008 Institute for Justice report shows that the public sees things a bit differently:

Consumer complaints about interior designers to state regulatory boards are extremely rare: Since 1998 an average of 1 designer out of every 289 has received a complaint for any reason. Nearly all of those complaints (94.7%) concern whether designers are properly licensed—not violations of public health, safety, or welfare ([Institute for Justice](#), 2).

Needing an occupational license in order to work was a historically rare necessity. In the 1950s, only five percent of the nation’s workers required one. Today, this number has ballooned to nearly one in three—as occupational licenses have become less a vehicle for ensuring public safety or protecting against charlatanry, and more a tool used to reduce potential competition for entrenched industries.

Another troubling element common among occupational licenses is the tendency to criminalize those who don’t obtain them, which has led to various absurdities that have been publicized in national news. In Tennessee, for example, a part-time police officer faced six months in jail and a \$1,000 fine for working as a hair shampooer in her spare time without a shampooing license ([Haugen 2016](#)). Meanwhile, in Arizona, a man recently faced the state’s highest non-felony offense for giving haircuts to the homeless without a cosmetology license ([Haugen 2017](#)).

This sort of creeping overcriminalization—or using criminal law to punish behavior that isn’t obviously morally blameworthy—contributes to a perception that government is setting itself against otherwise innocent citizens who are simply trying to earn a living for themselves.

HB 3878 would repeal Subchapter H of the Texas Occupational Code governing interior designers, which creates a Class C misdemeanor offense for non-interior designers who portray themselves as a “registered interior designer,” or for those who otherwise violate a standard of conduct under that chapter ([HB 3878](#)).

Creating a criminal penalty for this behavior—not to mention creating a criminal record, which can further handicap an individual's ability to work in the future—is no more effective than simple market forces can be in deterring it. Nor does criminalizing it confer better quality for or better protect the end consumer. Those seeking the services of an interior designer—whether registered or not—are more than capable of judging the competency of that individual before receiving such service.

Simply put, denying continued patronage is a far faster and effective means of discouraging any unscrupulous practices, and avoids making another criminal out of someone who designs interiors without registering for permission first. A free market can sort out such bad actors without unnecessary government influence.

References:

Carpenter, Dick M. 2008. [Misinformation and Interior Design Regulation](#). Institute for Justice.

Haugen, Michael. 2017. "[In Arizona, One Man Faces Criminal Penalties for Cutting the Homeless' Hair Without a License](#)." Right on Crime, February 10.

Haugen, Michael. 2016. "[In Tennessee, Occupational Licensing Laws Are Criminalizing Hair Shampooing](#)." Right on Crime, May 6.

[HB 3878](#). 2017. Introduced. 85th Texas Legislature (R).

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