



April 3, 2008

The Honorable Mark Ridley-Thomas, Chair  
Senate Business, Professions and Economic Development Committee  
Room 2053, State Capitol  
Sacramento, CA 95814

Attn: G.V. Ayers, Consultant

Re: Senate Bill 1312 (Yee/Calderon) California Interior Practice Act

Dear Senator Ridley-Thomas:

On behalf of the National Kitchen & Bath Association (NKBA), an international trade association representing all facets of the Kitchen & Bath Industry and its 4,908 Members in the State of California who employ designers, manufacturers, installers, wholesale distributors and numerous other related trades, please accept this letter expressing opposition to Senate Bill 1312 which for the first time will establish a state mandated license for the practice of interior design. As the recipient of the last years Legislator of the Year Award from the California Small Business Association, we know that you are vitally concerned about the disproportionate impact that licensing bills such as this have on small businesses who are struggling to stay in business, especially in this very difficult economic climate. This bill will do absolutely nothing to provide further protection to the public beyond the safeguards already existing to ensure the "health, safety, and welfare" of the public and will be devastating to the design community, while at the same time limit consumer freedom of choice and make access to interior design services beyond the financial reach of many members of the public.

The National Kitchen & Bath Association does not believe that there is any compelling need to add to the State's regulatory scheme and license interior designers, especially given the impact on the many thousands of employees in California who, under the definition of "interior design" set forth in the proposed bill, would be prohibited from practicing their profession by the broad sweep of this law. This Bill would for the first time restrict many thousands of designers in the State of California from practicing a profession in which they have engaged in

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without complaint for years. In fact, California already has in place a voluntary certification regulation which identifies those interior designers who meet testing, education and experience established by the California Council for Interior Design Certification ("CCIDC") which has been operating since January 1992 as the organization responsible for administering the requirements of the Certified Interior Designers Law under Chapter 3.9, Section 5800 of the California Business and Professions Code. Some 3,000 Certified Interior Designers already practice in the State of California under this regulation. Proposals similar to the one advocated here were advanced at the time of the creation of the CCIDC and were rejected by the California state legislature as being too exclusive and costly, limiting the ability of a large number of competent designers to work and continue to earn a living.

The Senate Bill 1312 broadly defines interior design as any service to enhance the quality and function of an interior area, including the formulation of designs, analysis of client's needs and goals, drawings, and specifications, furniture layout, selection of materials. These are services that have been performed for decades by various designers, decorators, contractors, retail showrooms and tradespersons which will now, if this bill were to be passed, be prohibited unless the stringent and burdensome requirements of the act are met. This bill would have far-reaching ramifications beyond what a simple reading of the proposed legislation would indicate.

The primary objections that NKBA has are centered on three specific issues, each of which is explained in greater detail in the body of this letter:

- Senate Bill 1312 does nothing to further the protection of **public health, safety, and welfare**. The citizens of California are appropriately and adequately protected in the built environment by the State's architectural and engineering practice acts and existing building codes, as well as the existing Interior Designers Law under Chapter 3.9, Section 5800 of the California Business and Professions Code.
- Senate Bill 1312 does nothing to increase **consumer protection** and it could lead to added regulation and increased consumer confusion and cost.
- Senate Bill 1312 will necessarily bar many future designers and decorators from having the opportunity to practice design in the State of California due to the prohibitive educational and singular testing requirements of the bill.

## **Public Health, Safety, and Welfare**

The NKBA firmly believes that the purpose of licensure is to protect the public and that one of state government's top responsibilities is to safeguard its citizens. Regulation by nature limits entry into a profession, makes it more difficult for those already working in the industry to compete and should be reserved for professions and occupations that, if unregulated, pose a serious threat to public health, safety, and welfare. In other words, to take the serious step of restricting the marketplace, thereby impacting the ability of persons to compete effectively, a state must determine whether a profession provides services that *directly* and *significantly* affect the public health, safety, and welfare.

This bill does nothing to achieve its purported purpose of safeguarding the public health, safety and welfare. Its sole purpose is to protect the interests of a select few within the interior design industry who meet the self-imposed educational and testing requirements of the bill and in no way promotes or advances any rational, justifiable or necessary public policy. If anything, this legislation presents a threat to the public health, safety and welfare in that it implies to the public that the person certified thereunder is in fact regulated by the State of California when in truth, the state has very little authority over the practice of that individual and the requirements for licensing. The requirement of passage of an independent, private exam, the NCIDQ exam, as the gateway into the profession assures that the State will have no say in who is permitted to practice interior design, and will effectively transfer that power to some third party over whom you have no authority or control.<sup>1</sup>

In addition, Senate Bill 1312 is anti-competitive in that it favors one group of interior designers over other members of the interior design community and, again, does so without serving any identifiable, valid public policy. This bill seeks to bestow upon one segment of the interior design industry a potential commercial benefit that is attendant with state regulation. It is reasonable to presume that consumers may attach value to the state certification, thus placing non-certified interior design professionals at an unfair competitive disadvantage.

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<sup>1</sup> The National Council for Interior Design Qualification, headquartered in Washington, DC, is independent body, not bound by the laws or regulations of the State of California. This group has total control over the requirements of who is eligible to sit for their exam, the charge to take (and re-take) the test, and the annual cost of maintaining certification.

## **Consumer Protection**

Proponents of Senate Bill 1312 contend that the measure is a needed form of consumer protection. However, this bill adds nothing to the level of protection in the built interior environment afforded to California citizens.

There is no indication that poor interior design work is a problem for California consumers. What is the showing of "public health, safety and welfare" that is currently unprotected in the State and which is not being adequately addressed by existing California law (e.g., the existing Interior Designers Law, consumer protection statutes, building codes, licensing of contractors, plumbers and electricians)? How many consumer complaints have been filed in California because of the failure to regulated interior designers? Virtually every study on interior design legislation has concluded that there was no compelling need for regulation and in fact, that such laws actually harm the public. In fact, since 1988, six state agencies have examined the need for titling and/or licensing laws for interior designers and all six found no benefit to the public, concluding that consumers already possessed the means to make informed decisions about interior designers. Most recently, the Governors of Colorado and Indiana vetoed legislation which was much less restrictive than that which is being proposed here, citing a lack of public need<sup>2</sup>. As Indiana Governor Daniels stated in his veto message to the legislature:

Government has a legitimate role to play in the regulation of certain business occupations and professions. To protect public health and safety, for example, it makes sense for the state to require individuals seeking to practice certain occupations to be certified or licensed, in order to ensure that they meet minimum qualifications or skill levels. However, government must be careful to exercise such powers in a restrained and limited way, in order to avoid limiting competition in occupations where no significant public health or safety concerns are involved. Licensing, certification, and registration standards necessarily restrict entry to and participation in the occupation or profession being regulated, so the burden of proof must fall on those who seek to create or extend such barriers to entry.

In the case of [the proposed title act], I find that this burden of proof has not been met. I can find no compelling public interest that is served by the

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<sup>2</sup> In those states, the Governors vetoed title acts which regulated the use of a title such as registered or certified interior designer; no one was prohibited from engaging in the practice of interior design as is the case with Senate Bill 1312. Still, the Governors found no compelling justification to regulate an industry which has engaged in business for so long without concern or complaint.

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establishment of new registration requirements for interior designers as contained in [the bill] ... **Indeed, it seems to me that the principal effect of [the bill] will be to restrain competition and limit new entrants into the occupation by requiring that they meet new educational and experience qualifications previously not necessary to practice their trade.**

Veto Message of Indiana Governor Mitchell E. Daniels, Jr. on Senate Enrolled Act 490, May 2, 2007 (emphasis added).

Likewise, a study conducted in 2007 examined interior design licensing laws and concluded that this type of law:

artificially inflates consumer prices, erects unnecessary barriers to entry into a profession, gives government-imposed advantages to those already practicing and fails to derive any social benefit ... except for those who seek to create a monopoly.

D. Carpenter II, Ph.D., *Designing Cartels: How Industry Insiders Cut Out Competition*, The Institute for Justice (2007) at p. 26.

In fact, only 3 states which have considered interior design legislation have adopted practice acts such as the one being proposed here ... all of which were adopted years ago without a great deal of forethought or opposition from NKBA and other interior design organizations.<sup>3</sup> Of those states that have considered any sort of interior design licensing and did adopt a regulatory statute, the vast majority regulated use of a title only, such as "Certified Interior Designer" (California and New Jersey) or "Registered Interior Designer" (Georgia); there were no other limitations on the practice of interior design. That is currently the regulatory enactment in California.

Similarly, there is no evidence that the public desires additional regulation. California consumers already have the means to verify the credentials of interior designers through verification of membership in existing private sector interior design professional associations, such as the National Kitchen & Bath

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<sup>3</sup> A fourth state, Alabama, had an interior design practice which was less restrictive than what is being proposed in California, however in October, 2007, that State's Supreme Court declared the legislation unconstitutional, stating, that the Act "imposes restrictions that are unnecessary and unreasonable upon the pursuit of useful activities" and that the restrictions "do not bear some substantial relation to the public health, safety, or morals, or to the general welfare, the public convenience, or to the general prosperity." *State of Alabama v. Lupo*, \_\_\_\_ So.2d \_\_\_\_, 2007 WL 2966823 (Ala.) citing *Scott & Scott*, 844 So. 2d at 594 (quoting *Friday v. Ethanol Corp.*, 539 So. 2d at 216).

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Association, the American Society of Interior Designers, the Interior Design Society, the International Interior Design Association, the International Furnishings and Design Association, the Home Furnishings Independents Association, the Organization of Black Designers and the International Council of Interior Architects and Designers. Indeed, the qualification standards for membership in many professional associations, particularly our Certified Kitchen and Certified Bath Designers, are more stringent than the licensing criteria contained in Senate Bill 1312. In the State of California alone, there are 236 individuals who have been certified as kitchen and or bath designers by NKBA; 96 persons have passed the Council for Qualification of Residential Interior Designers exam and another 52 applicants are pending for that certification. We would submit that no industry is more readily accessible to the public than the interior design profession. Aside from the organizations listed above, there are numerous consumer publications, websites and television programs (and networks such as HGTV) which educate the public on the role of interior designers and the qualifications of the various disciplines. Surely, the public does not lack the ability to make informed choices about who they retain for design services.

As mentioned previously, California citizens also have the provisions of the Certified Interior Designers Law under Chapter 3.9, Section 5800 of the California Business and Professions Code, which has served the public since 1991 without concern or complaint, as well as the State's consumer protection laws to pursue damages in relation to a violation of deceptive trade practices or other forms of economic harm. It should be recognized that it is not the public, or any consumer advocacy group, or division on consumer affairs that is calling upon the State to regulate unlicensed interior designers. Rather, it is a small group of interior designers themselves who are asking that the State anoint them in order to give a select few a competitive and economic advantage over others. From a regulatory standpoint, this is counter to everything that licensure is supposed to be about and we are concerned with the concept of creating new regulations that are not being championed by or on behalf of the consumer.

Recently, in his nationally syndicated column, George F. Will urged lawmakers to refrain from passing interior design licensing bills by decrying the "government-abetted aggression by 'interior designers' against mere 'decorators', or against interior designers whom other interior designers wish to demote to the status of decorators." In his editorial, Mr. Will concluded:

Commercial interests solicit regulations to obtain commercial advantage, as with titling laws. Such laws are instances of rent-seeking.

Beyond the banal economic motive for such laws, they also involve a more bizarre misuse of government. They assuage the status anxieties of particular groups by giving them the prestige, such as it is, that comes from government recognition as a certified profession.

But government licenses professions to protect the public and ensure quality. It licenses engineers and doctors because if their testable skills are deficient, bridges collapse and patients die. The skills of interior designers are neither similarly measurable nor comparably disastrous when deficient. Perhaps designers could show potential clients a portfolio of their work, and government could trust the potential clients to judge. Just a thought.

George F. Will, *Wallpapering With Red Tape*, Newsweek, March 22, 2007.

In October, Justice Parker of the Alabama Supreme Court, in declaring unconstitutional that state's interior design practice act, echoed Mr. Will's comments about the role of the state in mandating that one particular segment of interior designers be hired:

Not only are [the unlicensed designer's] rights to contract and to engage in her chosen occupation at stake in this case, but also the rights of the people of Alabama to contract with her. If a homeowner or businessperson wants to express himself by decorating his home or his office in a certain way, and if that person believes [the designer] can best provide the design that he desires, the State should not tell that person that he may not contract with [the unlicensed designer] merely because [the designer] lacks state certification or an academic degree. **Nor should this Court embrace the paternalistic notion that the average citizen is incapable of choosing a competent interior designer without the State's help.**

State of Alabama v. Lupo, \_\_\_\_\_ So.2d \_\_\_\_, 2007 WL 2966823 (Ala.) (Parker, J., concurring) (emphasis added).

There are a number of other issues to be considered in looking at Senate Bill 1312. For example, the bill identifies the "NCIDQ" exam as the only exam that tests for minimum competencies in interior design, completely disregarding the other design exams that have been recognized by California for well over 15 years. How many designers in the State of California have actually passed the NCIDQ exam and thus would be able to provide interior design services under the new law?<sup>4</sup> In order to even sit for the NCIDQ exam, one must graduate from

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<sup>4</sup> Despite repeated requests by NKBA, NCIDQ refuses to release that information.

a particular specified degree program and intern for a period of anywhere from two to four years under the direct supervision of a NCIDQ certificate holder or architect. Then, and only then, would an applicant be granted the “privilege” of taking a test which is the most costly interior design exam available<sup>5</sup> and which has an historically low rate of passage (approximately 40%). Given the costly and restrictive eligibility requirements to even sit for that exam, how many future interior designers in the State of California will be discouraged from seeking employment given their up-hill battle in competing with those select few licensed interior designers? To condition licensure on the passage of only one, independent exam over which the State has no input or control, which is extremely costly, difficult to pass and which has eligibility requirements which many cannot possibly meet, would be a disservice to the many interior designers who wish to practice their profession as they have done for so many years in the State and to those future designers who will find themselves unable to work competitively in California.

The National Kitchen & Bath Association would urge you to seriously consider all the ramifications of such sweeping legislation and its potential impact on the many thousands of employers and employees in California. We estimate that there are at least 205,000 workers who may be impacted in some way by this legislation and who would now be faced with having to defend their right to perform “interior design services”. As mentioned above, the NKBA has 4,908 kitchen and bath professionals as members of our organization. The Interior Design Society has over 400 active interior design members in California, most of whom have never taken the NCQID exam and most likely would be unable to do so under the examination eligibility requirements. Kitchen and Bath Design News reports that there are 5,290 kitchen & bath design firms in California. Our salary survey of NKBA members indicates that each dealership employs an average of 8 employees, so that would mean that kitchen and bath design firms employ some 42,320 workers in the State. Qualified Remodeler Magazine lists 8,018 general remodelers in Chicago, all of whom perform “interior design” services as defined by the bill. Assuming that those firms are the same size as kitchen and bath dealerships (and in fact, they are probably larger), that would mean that an additional 64,144 workers are impacted by this bill. Contract Magazine lists 4,363 interior designers as subscribers. Assuming an average of four employees, that's 17,452 employees. Solid Surface Magazine lists 451 fabricators and Wood & Wood Products Magazine identifies 3,664 cabinet and other woodworking shops in California. Our research shows that they employ an

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<sup>5</sup> For example, the cost of NKBA's Certified Kitchen Designer exam is \$400, and the cost to take the Certified Bath Designer exam is \$200 if you've already passed the written portion of the test. The cost to take the CQRID exam is \$650. In contrast, the NCIDQ exam costs between \$825 and \$1,120 with retakes given the low probability of passing all three parts in one sitting.

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average of 18 employees, so that's an additional 74,070 workers. Home Depot has 132 stores in California, Lowe's has 95 stores in the State and 84 Lumber has 13 locations. Assuming a conservative 10 employees in their kitchen and bath departments, that is an additional 2,400 workers potentially impacted by this bill. We estimate another 131 home centers in the state with approximately 248 stores located in California. Estimating a total of 8 employees doing interiors per store, that is another 1,984 employees. Although there is no accurate way to measure the total number of independent interior designers and decorators that work in the State, we can safely assume that it numbers in the thousands.

The salaries of those workers have a huge impact on the California economy. Also, we should factor in the salaries of the support staff working with those designers (installers, bookkeepers, order clerks, etc.). According to America Career Net's estimate of the average earnings of interior design workers in California (\$47,700), that's about \$9.7 billion in earnings per year. Also, consider the dollar value of and taxes generated by the thousands of commercial and residential projects those individuals work on, which is surely in the millions (if not billions) of dollars.

As you can see, passage of this bill would have a severe impact on the interior design community and the problems it will cause will resonate throughout the economy of California. It should also be remembered that neither the public nor consumer advocate groups have submitted this legislation; rather, it has been presented by a small group of interior designers in an effort to protect their economic self-interest and erect a barrier to entry into a profession which, for decades, has not required any governmental oversight.

On behalf of the National Kitchen & Bath Association, we would like to thank you for your consideration of our position and the concerns that have been raised. Of course, if we can provide any additional information or testimony, we would be pleased to do so.

Sincerely,



Edward S. Nagorsky, General Counsel  
National Kitchen & Bath Association  
ESN:mt

Cc: Senate Business, Professions and Economic Development Committee  
Members  
Senator Leland Yee