

4-23-07

Analysis of HB 807, The Interior Designers Licensure Act.

Referred to Committee on Professional Licensure, April 19, 2007

Initial Observation Notes:

A.

This bill is discriminatory under the Federal Americans with Disabilities Act (ADA) and for that reason should be thrown out.

Section 12, Unprofessional Conduct, Sub Section (7), page 16, line 18, gives the board the right to find a person guilty of unprofessional conduct based on a mental or physical condition.

Section 13, Sanctions, Sub Section (a) (ii), page 17, line 19 “Discretionary” sanctions afford the board the right to demand an individual submit to the counseling and/or medical treatment of a physician or psychologist designated by the board under the guise as a public safety measure.

Compiler’s note: Mental and physical disabilities and conditions do not prevent an individual from providing professional or ethical services and are not described in the qualifications of an individual to provide the bill’s definition of interior design services. The proposed board is not made up of medical personnel.

B.

This bill is based on fallacious and misleading information and for that reason should be thrown out.

Section 2, Purpose, page 2, line 15, states the “General Assembly declares that the purpose of this act is to protect all citizens of this Commonwealth occupying public and private interior spaces by providing for interior design licensure”.

Section 3, Definitions, page 4, line 12, defines interior design, by specifically excluding services as they materially affect life safety and fire protection components in a building. The preceding lines 5 through 11 further enumerate excluded building components that materially comprise life safety and fire protection disciplines.

Compiler’s note: This bill makes no mention of adherence to buildings codes and completely disregards the ADA. A complete understanding of the interrelationship of the ADA and other applicable building and life safety codes is imperative in the design of buildings, the spaces they contain and in the protection of its inhabitants. If life safety and fire protection is excluded from interior design, from what is this bill protecting the citizens of the Commonwealth?

The following is a point-by-point analysis in order as listed in the bill. Please see commentary provided at the end.

Section 1. Short Title. No Comment.

Section 2. Purpose. See Initial Observation Note B, above.

Section 3. Definitions, page 3, line 4, “Council” The Council for Interior Design Accreditation, CIDA, is the recently renamed organization formerly known as FIDER. This accrediting organization is one of several national accrediting organizations approved by the Department of Higher Education for the purpose of accrediting art and design school curricula. CIDA or the “Council” does not offer, provide or administer a professional interior design exam. CIDA does not define interior design professional practice.

Section 3. Definitions, page 3, line 9, “Diversified interior design experience... as defined by CIDA”. It is National Council for Interior Design Qualification or NCIDQ, which defines the skills, tasks and the industry standard complete definition of the profession of interior design, not CIDA.

NCIDQ is the national standard of interior design practice and is the clearinghouse for continuing education transcripts. NCIDQ provides and administers the industry standard interior design professional exam in North America and is the organization referenced in the other states and jurisdictions having achieved interior design legislation.

Section 3. Definitions, page 3, line 25 through page 4, line 13, “Interior design” The definition uses passive descriptions such as: creative, applied (decorative) and social context. Creative and decorative artistic designs completed within changing social contexts should not be legislated or controlled by governmental agencies.

This passive definition of interior design has excluded all those components of a building that pertain to life safety issues that would warrant consumer protection and licensure.

See Initial Observation Note B above.

This passive definition also excludes most services and project phases currently offered by interior designers in an open market, unregulated business environment.

The blanket elimination of plumbing and electrical components from the definition takes away the ability of an interior designer to design public and private restrooms/bathrooms as well as food service/ kitchen facilities. It further takes away the designers ability to select lighting fixtures/devices, provide lighting design services and design reflected ceiling plans as well as power/data/voice locations.

The definition limits an interior designer to selecting colors, furniture and movable equipment and takes away a designers ability to design floor plans and locations of non-

load bearing interior walls; it appears only to reference just the first few lines of a very lengthy NCIDQ complete definition of interior design with the balance removed by the writers of this bill.

Section 3. Definitions, page 4, lines 14 through 27, “Interior design services” limits services to the preliminary and conceptual phase of a design project.

It excludes the schematic, design development, construction documentation, bid negotiation, installation, construction observation and post occupancy phases of the design process.

Section 4. Board, page 5, line 14 through page 8, line 17, Based on the fundamental misunderstanding of the complex building design and construction process, the accreditation and examination criteria currently in place and the limited scope of services given to designers as demonstrated by this proposed bill, any bill passed would be better served by the inclusion of a restructured joint board comprised of both architects and interior designers.

There is no mention of term limits or placing the board subject to evaluation, review and termination by the Sunset Act such as the architects’ law states. The architects’ board requires seven years of professional experience prior to appointment while this bill proposes only five years.

Section 4. Powers and duties of the board, page 8, line 26, “To issue and distribute a universal seal”. A universal seal is an ambiguous and unknown term; architects and engineers are granted a seal that is limited to their respective profession upon the receipt of licensure registration for use in a specific state jurisdiction only.

There is no description of the allowable uses of the seal as outlined in the architect’s law.

The seal of a registered architect or a professional engineer is required on construction documents in order to secure building permits and approvals.

As the definition of interior design services in this bill does not include the production of construction documents, for what public safety purpose would a professional seal, and by extension would professional licensure be required?

Section 4. Powers of the board, page 8, line 28, “To contract with the council to administer an examination...”. The Council is defined by this document as CIDA. CIDA does not administer an examination. It is not necessary for the board to contract with any party and incur cost to the Commonwealth to administer a test as it is the individual interior designer that that applies directly to NCIDQ in order to qualify for exam eligibility.

Section 4, Powers of the board, page 8, line 9, “Setting fees for liability insurance required by licensed interior designers”. State law does not require liability insurance for

architects, engineers or interior designers. The amount of liability insurance coverage needed by an individual is a function of project size, scope and construction cost.

Liability insurance providers set the cost and amount of insurance coverage required based on a review of a design firm's projected and historic activity and is out of the preview of a board.

Section 6, License required, *page 10, line 9*, "Exemption—An applicant who files an application within 30 days...pending a decision on the application".

This is an open-ended grandfather clause with no skill level qualifier and gives any applicant an opportunity for licensure consideration.

Section 7, Application, *page 10, line 19 through 30, page 11, line 1 through 8*, "Qualifications". The bill requires that only baccalaureate graduates limited to CIDA accredited schools (leaving out graduates of many accredited schools) are eligible however there are several following grandfather clauses beginning on *line 26* and continuing to *page 11* that allow individuals with no formal education to qualify.

This also presents a considerable administrative and ethical dilemma.

Line 24 states that an undergraduate program must have secured CIDA accreditation at the time of an individual's graduation or by ten years in the future of that time. If, at the end of ten years, the graduating institution has chosen not to secure CIDA accreditation in addition to its already existing accreditation, will the board have to chase down that individual and revoke the certification it previously bestowed, through no fault what so ever of the interior designer?

Section 8, Examination, *page 12, line 17*, "...an applicant must pass the council's exam". This section references an exam that does not exist by the provided definition of "Council".

Section 8, Examination, *page 12, line 18*, "Exemption". This is a grandfather clause allowing certain individuals with to fail or forgo one third of the exam.

Based on the titles of exam sections provided, it appears to reference NCIDQ's exam. The third part that an individual is allowed to fail or forgo is the design/drawing practicum section although an interior designer's definition by this bill is to design and to produce drawings.

Section 9, Licensure, *page 13, line 6*, "An applicant who does all of the following has a license in interior design or similar practice....."

Define similar practice. Does this mean that a licensed contractor with no formal design education but qualifies through one of the grandfather clauses based on years of

diversified experience, or applies within thirty days of the approval of this bill can become a licensed interior designer?

A grandfather clause for registered architects wishing to provide interior design services should be clearly stated to avoid any ambiguity and loop holes.

Section 9, Licensure, page 14, line 4, "...a transcript prepared by the council for the board". CIDA does not keep, maintain or distribute individual interior designer transcripts.

Section 10, Continuing Education, No Comment.

Section 11, Title and utilization, page 15, line 23, This clause goes to the core of title protection however the volume of exemptions, listed in Section 16, given to individuals renders this clause impossible to enforce.

Section 12, Unprofessional conduct, page 16, line 18, "Inability to practice interior design...by reason of an illness...or a mental or physical condition"

See Initial Observation A above.

The discriminatory nature of this clause is breath taking.

Section 12, Unprofessional conduct, page 16, line 28, "Conduct outside of but resulting from the professional relationship which the board, by regulation, declares to be unprofessional".

This clause seeks to sanction an individual for behavior not related to the practice of interior design by use of a rule that is unwritten, and is at the personal discretion of members of the board.

This type of clause allows for a blacklisting or witch-hunt type of atmosphere and is in and of its self, unprofessional.

Section 12, Unprofessional conduct, page 17, line 8, "Failure to encourage the principles of environmental sustainability".

Designing in a manner that is sustainable is admirable but not required by law.

The ability to design a project that meets environmental principals is driven by the client, budget and program and is often out of the interior designer's control.

This clause is analogous to requiring that designers that do not encourage the principles of good taste be sanctioned for misconduct.

Section 13, Sanctions, page 17, line 19, The board may (SIC) “require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board”.

See Initial Observation A above. This is truly unconscionable.

Section 13, Sanctions, page 17, line 22, “Administer a public reprimand”. Does this include flogging in the town square?

Section 13, Sanctions, page 17, line 23, Impose an administrative penalty of up to \$10,000”.

The architect’s law lists fines of \$500, \$2,000 and \$5,000.

Section 14, Injunction, page 18, line 30 through page 19, line 1 through 10, “The board may seek injunctive relief in a court of competent jurisdiction to enjoin: a licensee from violating this act or a regulation issued under this act”.

According to the text proposed in this bill, the board may sue an individual for cash or criminal penalty, for failing to design according to environmental principals or declare an individual mentally incapacitated.

Section 15, Criminal Penalties, page 19, line 11, Second and third degree misdemeanors. It is unknown to this writer at this time if this clause follows existing Pennsylvania law or if the authors of the bill have arbitrarily identified these activities as misdemeanors and therefore offers no comments.

Section 16, Exemptions, page 20, line 12, “An employee of a retail establishment providing consultation regarding decoration or furnishings...”

This clause will cause significant confusion for the consumer as the scope of interior design services to be protected by licensure previously outlined on *page 4, line 16 through 18*, includes consultation regarding furnishings.

As *Section 11, page 15, line 20 through page 16, line 2*, clearly outlines protected title and language regarding the use of terms associated with interior design, what will exempt individual call themselves and how can this be enforced?

Comment: This bill appears to have been written by an individual or group of individuals that is anti interior design.

While all new legislation should require adherence to current laws, the tenor of this bill seems to have a preoccupation with finding individuals guilty of criminal activity, and substance abuse as a public safety service.

Who knew there has been a marauding band of felonious interior designers needing to be publicly, legally and financially reprimanded?!

The fact that the authors of this bill think that it is acceptable to impose them selves on the healthcare system and pass opinion on an individual as it relates to activities wholly outside their area of expertise is astonishing.

The number of exemptions, the illogical and inconsistent qualification requirements, the consistent mis statement of the responsibility of CIDA and the severely limited scope of services allowed to an interior designer is enough to question the value of perusing such an activity.

Interior design legislation will be the most successful if it is written in a manner that is parallel to the architects' law. Presumably legislation is most important for those interior designers that wish to have their own firms rather than work as staff designers for some one else. There is no mention of firm ownership, firm names and reciprocity with other jurisdictions.

This is the third or fourth attempt to pass interior design legislation in Pennsylvania and it looks like a desperate, last ditch effort to get something passed with hopes of getting things fixed later.

What if it gets passed as is and the language doesn't get fixed?

Be careful what you wish for.