Political economists from Adam Smith to Milton Friedman have noted the efforts of various business groups to pass occupational licensing laws, purportedly out of concern for the public’s welfare. In his Fall 2006 Regulation article “A License for Protection,” Morris Kleiner detailed the results of those efforts in the United States: a patchwork of certification, registration, and licensing laws across more than a thousand occupations.

There is a fourth distinct form of occupational regulation that falls between registration and full-scale licensure: titling laws. Such laws allow practitioners to provide services without a license, but deny them the ability—and the First Amendment right—to communicate openly to the public about those services. For instance, title acts bar anyone who offers any of the myriad services that constitute “interior design” from calling her or himself an “interior designer” without first receiving government approval. Typically, titling laws also ensure that the process of gaining this approval is arduous.

As research into the interior design industry reveals, titling laws serve as a stepping-stone to full licensure of an occupation. Because legislators typically see titling laws as less restrictive than licensure, industry leaders pursue them as an initial and more acceptable form of regulation. Once those laws are in place, insiders then seek to transform them into full licensure.

Legislatures want to say who is an “interior designer.”

**Designing Cartels Through Censorship**

**By Dick M. Carpenter II and John K. Ross**

Institute for Justice

The forces arrayed against her would have surprised neither Smith nor Friedman. In this case, the American Society of Interior Designers (ASID) leads the charge to regulate the industry and place its members at the head of state-created cartels controlling entry into the occupation. Born in 1975 out of a fusion of two professional associations, the ASID, which has some 20,000 members and 48 chapters in the United States and Canada, aims to enact so-called “right-to-practice” or “practice acts” in all 50 states. Such laws, the most stringent form of occupational regulation, require would-be designers to obtain a license from a state board to perform “interior design”—a term that encompasses a broad array of services.
As a means to that end, the ASID and its allies often push title acts, intermediate measures that allow anyone to perform interior design services but prohibit those without government approval to use the term “interior design” to describe what they do. Unlicensed individuals can call themselves “interior decorators” or another similar appellation.

While perhaps not as immediately pernicious as an outright ban on working, title acts are nonetheless a significant infringement on the First Amendment right of entrepreneurs to speak truthfully about the services they provide. The laws pose a real, practical obstacle to designers trying to communicate to customers through advertising in yellow pages, on websites, or even on business cards.

In a less restrictive form, title acts may allow individuals to call themselves interior designers but not “registered interior designers” or “certified interior designers.” Intended to appear innocuous, the laws prevent no one from working or advertising. Nevertheless, they often establish state boards—tellingly composed primarily of established practitioners—who happen to be members of the ASID or other pro-regulation professional associations—to register interior designers. From there, industry insiders lobby for more and more authority.

Alabama passed the country’s first interior design title act in 1982, forcing Diane Lupo to stop calling herself an interior designer and instead tell clients she is an “interior decorator.” Then, after Alabama’s practice act passed in 2001, even recommending shades of paint without a license became a Class A misdemeanor and the Alabama State Board of Registration fined Lupo for illegally working as an interior designer. From 2002 to 2006, the board cited another 282 designers for violations of the state’s interior design regulations.

## CONSOLIDATING POWER

Since 1982, 22 states and the District of Columbia have enacted title or practice acts. Bills creating new or tightening existing regulations were introduced in 11 states in 2003, 11 states in 2006, and 12 states in the 2007 legislative season. These gambits everywhere and always trace back to the ASID and its allies.

Statutes and proposed statutes vary from state to state. Some allow state boards latitude to enact their own standards, others write them into law. Often, bills or proposed bills exempt groups with powerful lobbies. Alabama, for example, exempted hospitals and home improvement retailers. Some include grandfathering clauses for existing designers. Nonetheless, the regulatory thicker has several commonalities. Most importantly, title and practice acts create, or lay the groundwork for, a single channel to enter the occupation and place enforcement in the hands of a captured regulator. Securing a license or permission to use a title rests upon completion of examination, prescribed education, and specific experience requirements.

### Table 1

<table>
<thead>
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<th>Restraint of Trade</th>
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<tr>
<td><strong>States with license or title laws for interior design:</strong></td>
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<tr>
<td><strong>License laws</strong> Alabama*, District of Columbia, Florida, Louisiana, Nevada</td>
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*Alabama’s license law was struck down by the state supreme court in 2007.
In more than 30 years of advocating for regulation, ASID has yet to identify a single incident resulting in harm to anyone from an unlicensed interior designer.

In more than 30 years of advocating for regulation, ASID has yet to identify a single incident resulting in harm to anyone from an unlicensed interior designer.
person indoors directly relates to interior design and thus constitutes a case for regulation. This includes horrific tragedies like the 2003 Rhode Island nightclub fire that killed 100 people. Needless to say, exhaustive investigation of the accident does not even remotely support any claim that interior design regulatory boards did not see a connection either—they refused to pass interior design regulations in 2005.

In an article for the Interior Design Legislative Coalition of Pennsylvania (idlcpa), a state lobbying ally of the ASID, claims that 11,000 fatalities and 300,000 disabling incidents occur every year because of slip-and-fall accidents—intimating that licensure could prevent those accidents. Surely, one could compare serious slip-and-fall accident rates in states with regulations to those without, but this has not been done. In a pamphlet entitled “10 Ways Interior Designers Save Lives,” the idlcpa further suggests only licensed interior designers can mitigate “poor ergonomic conditions,” appreciate “the psychology of color,” select energy efficient lighting, “harmonize the way the built environment is constructed working in correlation with the natural environment,” and specialize to meet a wide variety of consumer needs.

In Michigan, the Coalition for Interior Design Registration seeks a practice act that its members claim would “eliminate the restraint of trade” and give “the consumer a choice” in “an expanded marketplace.” The Texas Association for Interior Design does not want the public to trust unlicensed designers who may not know “that often used items in a work area need to be within reach to avoid awkward body movements.”

The ASID also points that “legal recognition” for interior designers establishes a minimum competency. To test this proposition, the Institute for Justice gathered complaint data from Better Business Bureaus and found that the 5,006 interior design companies we sampled received, on average, 0.20 complaints per company from 2004 through 2006. Disaggregating states by regulation type, we found that the more stringent the regulation, the more consumers complain—albeit it is still an extremely infrequent occurrence. In states with practice acts, there were 0.37 complaints per company. In states with no regulation, interior design firms received only about half as many complaints—0.19 per company. Since 1998 an average of one out of every 5,650 designers has received a complaint for reasons other than licensure. In states with practice acts, there were 0.37 complaints per company. No member of the public demanding protection from unqualified designers appeared in the story, nor did a design-

firm.

Data from state interior design regulatory boards in 13 states also showed that complaints of any kind against interior designers are extremely rare. Moreover, the overwhelming majority—nearly 95 percent—are related to licensure (whether the designer is properly licensed by the state), not the quality of service. Meaningful consumer complaints are so rare as to be nearly nonexistent. If licensure resulted in higher-quality practitioners, we should have seen the opposite trend.

There is simply no evidence that designers shielded from market pressures yield better, safer services. This is consistent with studies of producers in other industries. According to Indiana governor Mitch Daniels, who vetoed interior design legislation in May 2007, “The marketplace already serves as an effective check on poor performance; designers doing inadequate work are more likely to be penalized by negative customer reaction than by a government agency trying to enforce arbitrary and subjective qualifications standards.”

**If at First You Don’t Succeed**

Even without evidence, the ASID has scored some legislative victories. Currently, three states and the District of Columbia have practice acts and 19 states have title acts on the books. Key aspects of an ASID campaign include testifying at relevant hearings, legislative training seminars, and the funding of state-level affiliates (separate from the ASID’s state chapters) that exist solely to agitate for regulation. Allies can rely on the ASID for advice on building a coalition and implementing a lobbying campaign. The group’s website provides state-specific form letters addressed to legislators, as well as fundraising tips, materials on the “need” for regulation, and other advice (“hire a lobbyist”).

The ASID’s most salient strategy, however, is dogged persistence. When bills fail, they are often re-filed in a somewhat watered-down form until something passes. Then more rigid bills are introduced. In New York, for instance, where the first bid to regulate interior designers via a practice act took place in 1979, the lobby finally shepherded through legislation restricting use of the title “certified interior designer” in 1990. Industry insiders have since moved to bar the use of the title “interior designer” without a license. Former governor George Pataki vetoed those attempts in both 2004 and 2005. Similar bills have been re-filed in 2006, 2007, and 2008.


Of the states that saw action in 2007, bills in eight states—Indiana, Minnesota, Mississippi, New Hampshire, New York, South Carolina, Tennessee, and Texas—failed. Bills in the remaining four states—Massachusetts, Michigan, Ohio, and Pennsylvania—are carrying over to this year’s legislative sessions. In 2008, bills have been taken up again in Indiana, Mississippi, New York, and South Carolina and new legislation has been filed in California, Connecticut, Hawaii, Illinois, Minnesota, Nebraska, Oklahoma, Tennessee, and Washington State.

States spared for the present will surely be battlegrounds in the future. In December 2007, The Oregonian newspaper published an article examining efforts to bring interior design regulation to Oregon. The article quoted the leaders of regional and state-level pro-regulation groups, an ASID statement, and university professors whose programs are accredited by the cartel. No member of the public demanding protection from unqualified designers appeared in the story, nor did a designer opposed to regulation. To date, Oregon legislators have passed neither practice nor title act, but not for lack of opportunity. The article notes legislators that failed in 1997 but neglects to mention the practice act that failed in 1999 and title acts that failed in 2001 and 2003.
Limiting the right to use a particular title is tantamount to creating a monopoly on free speech that violates the rights of entrepreneurs.

Thus a legal strategy is an essential complement to legislative advocacy. Already, legal efforts are bearing fruit. In addition to the Alabama Supreme Court victory, New Mexico softened its titling law in 2007 in response to a lawsuit the Institute for Justice brought on behalf of New Mexico designers. In Texas, IJ has filed a federal First Amendment challenge to the state’s titling law.

Indeed, the interior design industry’s approach of pursuing titling laws as a first step toward licensure creates an important opportunity to bring First Amendment law to bear on legal regimes that restrict economic liberty—the right to earn an honest living in the occupation of one’s choice. To limit, by government force, the right to use a particular title to members of a state-approved cartel is to create a monopoly on speech that violates the rights of entrepreneurs to communicate truthful information to potential customers.

The industry’s incremental tactics also provide a rare peek into the real-world process of rent-seeking by established interests. The long-term effects of occupational licensing and incentives to pursue it are just as Smith and Friedman predict, but the path to cartelization is not always as clear cut—forcing some cartels to settle for censorship first.

Readings

- “A License for Protection,” by Morris M. Kleiner. Regulation, Vol. 29, No. 3 (Fall 2006).
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