

Senate No. 178
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Because a person of ordinary intelligence would not know what conduct is permitted and what is forbidden under Senate No. 178, it is plainly “void for vagueness” under both the state and federal constitutions. As presently written, the bill cannot—and will not—survive the constitutional challenge that will surely follow if it is enacted without significant clarification. Besides being incomprehensible to a person of ordinary intelligence, the bill presents several other constitutional concerns as well.

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Void for Vagueness

The due process provisions of the U.S. and Massachusetts constitutions forbid the enforcement of laws that fail to advise a person of ordinary intelligence what conduct is permitted under the law and what is forbidden. Senate No. 178 is a textbook example of such legislation because it is totally unclear whether the bill regulates the practice of interior design or simply who may use the title “Registered Interior Designer.” Language in the bill points in both directions, and even people with significant experience in interpreting interior design regulations—let alone a person of “ordinary intelligence” who lacks such experience—cannot be certain exactly what speech or conduct is covered by the bill.

Due Process/Occupational Freedom

The due process provisions of the U.S. and Massachusetts constitutions also recognize citizens’ right to earn an honest living in the occupation of their choice free from arbitrary or unreasonable government interference. It is well known and well documented that the push for licensing of interior designers comes not from consumers, regulatory officials, or others with an interest in protecting the genuine needs of the public, but from a small faction of industry insiders seeking raw economic protectionism in the form of anti-competitive occupational licensing laws. Time and again in state after state, this faction has failed to produce any credible evidence of public harm from the unregulated practice of interior designer. Indeed, after a 30-year lobbying campaign by this group, **only four states regulate who may practice interior design**. This underscores the fact that the only true basis for interior design regulation is pure economic protectionism for industry insiders, which is not a legitimate basis for occupational licensing.

Interstate Commerce

State laws that unduly burden interstate commerce violate the “dormant” commerce clause of the U.S. Constitution and will be struck down when the burden on interstate commerce substantially outweighs any “putative local benefits” produced by the challenged laws. If Senate No. 178 is interpreted to restrict the *practice* of interior design (rather than just use of the title “Residential Interior Designer”), it will have a significant adverse impact on interior designers and other businesses outside Massachusetts that do business with clients and other businesses inside the state. In order to survive a constitutional challenge from those designers and businesses, the state will have to demonstrate that Senate No. 178 provides genuine, concrete benefits to the people of Massachusetts that outweigh the burdens on interstate commerce. If any such evidence exists, it should be produced now and carefully evaluated for compliance with the U.S. Supreme Court’s *Pike v. Bruce Church* balancing test.