OCCUPATIONAL LICENSING CONSUMER CHOICE ACT

The Occupational Licensing Consumer Choice Act is model legislation that permits any individual to practice a profession or occupation without a valid state occupational license, so long as that individual discloses that fact to prospective consumers. Furthermore, the model law would allow an individual practicing a profession or occupation without a valid state license to assert the disclosure as a judicial defense to any regulatory enforcement of state occupational licensing laws and regulations.

Proponents of the Consumer Choice Act believe that professional and occupational licensure limits an individual's freedom of enterprise, imposes regulatory burdens that outweigh public protection or benefit, and unfairly limits competition and entrance into professions and occupations. Proponents argue this model act gives entrepreneurs, business owners, and individuals the economic freedom to pursue and operate their desired profession or occupation unconstrained from the regulatory burdens of state licensure.

The profession of landscape architecture opposes the Consumer Choice Act model as too broadly permitting individuals to practice professions that have a significant, substantial, and documented threat to public health, safety, and welfare; including landscape architecture, which necessitates a state license to protect public health, safety, and welfare.

Key Elements of Consumer Choice Act

- Allows individuals to practice a profession or occupation without the need of obtaining a professional license from the state.
- Allows a non-licensed individual to engage in a profession by providing a “non-license disclosure” to consumers prior to entering into an agreement for service.
- Provides defense to the enforcement of any licensing regulation, civil or criminal, if a “non-license disclosure” was properly rendered.
- Provides that the Consumer Choice Act supersedes all other statutory provisions of the state.

Key Elements of Concern

- States have the constitutional right and responsibility to protect the health, safety, and welfare of the public.
  - The Consumer Choice Act attempts to elevate an individual’s freedom of enterprise over a state’s right to protect the collective public’s health, safety, and welfare.
- The Model Act is written to supersede all other statutory provisions of the state.
  - The Model essentially deregulates highly technical and skilled professions, such as landscape architecture, architecture, and engineering, which will lead to incompetent practice resulting in serious injury, death, and/or severe economic hardships for individuals, communities, and governments.
- Unscrupulous actors will easily be able to practice highly skilled professions that impact the state's public, health, safety, and welfare.
  - State authorities will have a hard time bringing civil or criminal action against these unscrupulous actors, due to the “non-license disclosure” provision.
  - Unscrupulous actors will have a legitimate defense to any civil or criminal licensing regulation and would be entitled to reasonable costs and attorney’s fees incurred in asserting such a defense.