

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 3rd Meeting of the 2018 Interim

September 14, 2018

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Friday, September 14, 2018, at 10:00 AM, in Room 129 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Joe Bowen, Tom Buford, Julian M. Carroll, Denise Harper Angel, Jimmy Higdon, Christian McDaniel, Dan "Malano" Seum, and Damon Thayer; Representatives Tom Burch, Jerry T. Miller, C. Wesley Morgan, Kimberly Poore Moser, David Osborne, Ruth Ann Palumbo, Phillip Pratt, Arnold Simpson, Walker Thomas, and Susan Westrom.

Guests: Senator Stephen Meredith; Charlie Corbett, Vice President, Bob Weiss, Executive Director, Home Builders Association of Kentucky; Senator Alice Forgy Kerr; Ainslie Walton, cosmetologist; Julie Campbell, Administrator, Kentucky Board of Hairdressers and Cosmetologists; Representative Joe Fischer; Father Stef Bankemper; Sidney Fogle, Funeral Directors Association of Kentucky; Kevin Sabet, PhD, Director, Drug Policy Institute, Assistant Director, University of Florida College of Medicine, Division of Addiction Medicine; Michael Fletcher, MD, President, Kentucky Society of Addiction Medicine.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Susan Cunningham.

Minutes

The minutes of the August 24, 2018, meeting were approved without objection.

SB 207 – AN ACT relating to causes of actions for building code violations, sponsored by Senator Stephen Meredith.

Senator Meredith said this bill was an effort to help the building industry recover from the previous recession and remove obstacles for affordable housing for Kentuckians.

Charlie Corbett, Vice President of the Home Builders Association of Kentucky, said that expecting a perfect outcome in building a home was an unreasonable expectation due to many factors that include terrain, materials, weather, and other issues. He stated that KRS 198B.130 requires perfection because it allows for recovery of attorney fees in lawsuits for violation of the Uniform Building Code by not allowing for normal defects or benign non-conformance, and provides incentive for litigation rather than reconciliation or remediation because it allows attorney fees to be added to the monetary award.

Mr. Corbett said that the building code has grown significantly during the last 20 years. The new building code manual includes international codes. Eliminating the recovery of attorney fees in suits when a certificate of occupancy is issued by a licensed inspector will incentivize builders in rural areas of the state to have inspections performed during the construction process. This will give a reasonable assurance that the home meets or exceeds consensus based standards.

Bob Weiss, Executive Vice President of the Home Builders Association of Kentucky, said the attorney fees would only be eliminated in areas that enforce the building code and issue a certificate of occupancy.

In response to a question from Representative Koenig, Mr. Corbett said rural areas that do not adopt the building code and do not issue a certificate of occupancy would not be required to pay attorney fees that people in urban areas, who have inspections and a certificate of occupancy, would be required to pay. Mr. Weiss said that a structural inspection is necessary to for a certificate of occupancy.

In response to a question from Senator Buford, Mr. Weiss said that about one-third of the counties in Kentucky do not have code enforcement inspectors to issue final occupancy certificates. Senator Buford said he felt language in the bill might be found unconstitutional.

SB 183 – AN ACT relating to cosmetic services, sponsored by Senator Alice Forgy Kerr.

Ainslie Walton, cosmetologist, said that she has been a small business owner for five years. Thirty-two percent of the licensees in the cosmetology industry are self-employed small business owners. Legislation limits cosmetologists from expanding the industry. Current law requires cosmetologists, nail technician, or esthetician to practice in a licensed salon. If they have a client who has become home-bound, they are not permitted to go to that person to render a service. Mobile salon units are not permitted.

Mobile units would make it possible to service the home-bound community. Recent studies show that the nation's home-bound population is 5.6 percent. There is a need for more mobility for the individual cosmetologists as well as mobile units. A mobile unit would not be different than a mobile dental clinic, or mobile massage unit, which are

already authorized. All have equal or higher sanitation standards and inspections, and all are legal in the state of Kentucky.

The younger generation requires changes in the way businesses provide services. Uber, Amazon, and food trucks require small businesses to adapt in the way services are delivered. There are 30 other states, including the contiguous states, that allow mobility of individual cosmetologists and mobile salons.

Julie Campbell, Administrator, Kentucky Board of Hairdressers and Cosmetologists, said the board is fundamentally and completely against this legislation. She understands the need to serve infirm individuals' needs, however there is a high risk to those individuals because of their medical conditions. A mobile salon is very dangerous. There are no resources for oversight and human trafficking in this industry makes it highly dangerous. This will put the public at risk regarding safety and infection control. The proposed inspection schedule defeats the purpose of surprise inspections.

HB 601 – AN ACT relating to the disposition of human remains, sponsored by Representative Joe Fischer.

Representative Fischer said that, under his bill, funeral directors would have the option to inter ashes if cremated human remains are unclaimed for two years. If they choose to do inter, they could deliver the remains to a bona fide religious society, veterans organization, or civic group for the sole purpose of interment, burial, entombment, or placement in a columbarium to allow a proper burial. Funeral directors would be required to keep records of the disposition or transfer for 10 years.

Father Stef Bankemper, a priest in the Covington Diocese, said he had recently become aware that there were unclaimed remains in funeral homes. He said that the Catholic Church is responsible, through the corporate works of mercy, to see that all remains are buried with dignity.

In response to a question from Senator Schickel, Father Bankemper said this bill regards only cremated remains and not bodies. Sidney Fogle, Executive Director for the Kentucky Funeral Directors Association, said that the Funeral Directors Association had no problems with the legislation.

In response to a question from Representative Simpson, Sidney Fogle said certain counties have funds to bury the indigent. Funeral directors contact family, but they sometimes are reluctant to come forward due to lack of funds or other reasons.

Representative Simpson said that there should be language to require the funeral director to notice a family if there is an actual address so that remains are available to be picked up.

Opposition to Medical Marijuana

Kevin Sabet, Ph.D, President of Smart Approaches to Marijuana (SAM), Director, Drug Policy Institute, Assistant Professor, University of Florida College of Medicine, Division of Addiction Medicine, said that after the legalization of marijuana in Colorado in 2013 it became clear that the medical marijuana industry was growing toward commercializing the heavy use of marijuana. Top academic experts from around the country, as well as Operation Unite in Kentucky, have discussed the issue and agree that marijuana legalization should be evidence based and not based on emotions. SAM is not about criminalizing users or denying medicine that could be helpful for people who have terminal illnesses, and people with a severe disability or illness that may gain some comfort from the components of marijuana. However, science, not politics, should determine medicine. Voting on medicine is a strange precedent, only seen once before with Laetrile.

There are separate issues, often conflated, in the legalization of marijuana. The plant is highly complex, with hundreds of components in it. Science has revealed a few uses of these components, however there is little known about most of the components of the plant, such as effects produced when they are together or when isolated. Experience with marijuana is very different than the experience with opium and the poppy plant in that the poppy is a far less complex plant.

All the questions about medical marijuana are difficult to answer. Opium is not smoked to get the effects of morphine. Willow bark is not chewed to get the effects of aspirin. He questioned why there is a need for whole plant-based applications for marijuana. There are marijuana based medications that have passed FDA muster. There are many groups researching the benefits of marijuana for medical use. There could and should be exceptions made for people who have terminal illnesses. This is a very limited subset. Marijuana is a schedule one drug. The FDA recently performed an exhaustive eight factor analysis of the scheduling of marijuana, with zero input from the Department of Justice. This review found no basis to reschedule the entire marijuana plant. It is grown in different ways, and there are unknown components. Mr. Sabet said he is a proponent of expanding research to make it easier for researchers to study the plant.

Examples of marijuana-based drugs include Cannabidiol. It has been approved, and it is an active component in marijuana. Another product, Marinol which is THC, the psycho-active component in marijuana, has been available for 30 years. This product has been effective for nausea related to cancer chemotherapy. This is one of the strongest areas where THC has been found to be effective. Another synthetic of THC is Cesamet (nabilone) and a third Epidiolex Cannabidiol (CBD) used to treat a few very rare disorders. The Department of Justice has not yet scheduled Epidiolex. Sativex, an extract of marijuana, has been approved in 28 countries but not in the United States for lack of patients who will enter clinical trials. Epidiolex has been approved for use with children who have Lennox-Gastaut Syndrome and Dravet Syndrome.

It is a mistake to think marijuana approved for medicinal use will be easily regulated. It is difficult at the state level to provide enough resources to regulate and ensure there are no contaminants. There is a mistaken idea that there is a difference between medical and recreational marijuana. In Colorado, after marijuana was legalized, stores put a curtain in the middle of the recreational store to separate identical inventories. People who want to purchase medical marijuana should go to their pharmacists or physician. Psychologically, in the short term, it is possible that THC could help people feel better from some diagnosis. Long term studies show that heavy use for depression and anxiety are associated with schizophrenia.

There have been infomercials that promote marijuana as a cure-all for multiple ailments. There is some promise with the medical potential of the components of marijuana, but claims being made outside the bounds of science. Many groups are trying to sell CBD drugs without going through the FDA process. Those drugs have no safety assurances. Random testing of approximately two dozen CBD products sold on Amazon and other online venues show that the products do not contain the CBD that the label claimed. Rather, these products contained THC, heavy metal, mold, pesticides, and bacteria.

Surveys reveal that the average user of medical marijuana is an otherwise healthy, usually young male, with no history of life threatening disease. When a state legalizes marijuana there is a cycle beginning with medical marijuana. Home growing gives cover for the black market. Legalization increases supply and lowers the price and the black market undercuts the legal price and therefore thrives. There are adulterated products in the black market often laced with Fentanyl. There are more locations as a result of legalization of medical marijuana. This leads to acceptance of marijuana, and then recreational marijuana is made legal.

Legalization leads to issues such as crime and youth use. The alcohol business is now getting into the pot business because the products are used together. If an employee tests positive for marijuana he can say to the employer they cannot prove they were high when they were on the job because THC marijuana is fat soluble and stays in your system longer than alcohol.

There are also many regulatory failures due to cartels using a license to cover for other operations. There is a misconception that if something is legal it is regulated. However, the industry puts profits before health. Foreign cartels are taking full advantage.

There are companies that promise seed to sale tracking of plants, but there are worrisome loopholes in this business. Law enforcement is constantly devoting resources to prevent sales to minors. Edibles are increasing due to the decline of smoking. Top researchers have debunked the theory that if marijuana is legalized the opioid use will decrease.

Michael Fletcher, M.D., President of the Kentucky Society of Addiction Medicine, said that, as an addiction medicine physician, there need to be safe guards in all jurisdictions where marijuana has been or may be legalized. The American Society of Addiction Medicine (ASAM) does not support the legalization of marijuana and recommends that jurisdictions that have not yet legalized this take caution and not adopt a policy until more can be learned from the natural experiments now underway in places where marijuana is legal. ASAM does support research monitored by safety regulations through FDA research and post-marketing processes. ASAM's position on cannabis-based products and other drug delivery modalities is that they are outside the normal practice of modern medicine and should be subject to the same efficacy and safety standards applicable to all other prescription medications. ASAM rejects smoking as a way of drug delivery. To clarify recent statements that Senator McConnell is seeking to have marijuana changed from C1 to a C2 medication, this is misleading and inaccurate. The policy regarding the legalization of hemp as an agricultural product should not be confused with the legalization of marijuana.

In response to a question from Senator Schickel, Mr. Sabet said there is no data on the number of claims for disability being filed by young males. Drugs are all used together creating an addiction epidemic. It is his position that marijuana should not be legalized. If legalized, Louisiana and perhaps New York and New Jersey have more successful models regarding legalization of marijuana.

Senator Seum opined that if marijuana were legalized for medical use it would be safer to go to a store than a patient purchasing "off the street." Mr. Sabet responded that he is sympathetic to his situation as he also has family members with conditions who may benefit from medical cannabis.

In response to a question from Representative Moser about testing individuals for their level of marijuana intoxication, Mr. Sabet said there are tests in development. THC metabolizes differently in the body than alcohol, and different people react in different ways, making it difficult to prove impairment.

In response to a question from Senator Carroll, Mr. Sabet said law enforcement is able to tell the difference between a hemp plant versus the THC plants and how to regulate growing laws.

In response to a question from Senator McDaniel, Mr. Sabet said there are regular lawsuits, either by employees who feel they have been discriminated against or employers who claim there is damage to their business, as a result of drug use, often with marijuana. In the current environment, someone has something they think is legally prescribed, which it is not until the Controlled Substances Act is amended.

Representative Westrom commented that this topic has been around for 30 years and is continually avoided by the federal government and the FDA. The federal government does not want to rock the boat in the vast pharmaceutical industry that is a multi-million dollar industry and the general public is not getting a fair shake.

In response to a question from Representative Miller, Dr. Fletcher said less regulation is better but there are always unintended consequences with legislation. It is a tough call and the doctor/patient relationship is key. A majority of patients who shoot heroin at some point previously smoked dope. Access to care and getting reimbursement from people who are uninsured is a component.

In response to a question from Representative Osborne, Mr. Sabet said Alaska legalized a grow-your-own medical marijuana bill but repealed it in 1990 and recriminalized marijuana. Daily use is on the rise because there is an industry pushing the medical use idea.

In closing Dr. Fletcher commented that cannabinoid receptors one and two were discovered less than 20 years ago. Research and development of drugs takes a long time. Good research has only been possible recently.

There being no further business, the meeting was adjourned at 11:30 AM.