

# INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

## Minutes of the 2nd Meeting of the 2018 Interim

August 24, 2018

### Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Friday, August 24, 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 Tom Buford, Denise Harper Angel, Jimmy Higdon, Dan "Malano" Seum, and Damon Thayer; Representatives Al Gentry, Chad McCoy, Jerry T. Miller, C. Wesley Morgan, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, Arnold Simpson, Diane St. Onge, Walker Thomas, and Susan Westrom.

Guests: Representative Chad McCoy; Representative Diane St. Onge; Representative Jason Nemes; Jamie Montalvo, Executive Director KY4MM; Ashely Taylor, Managing Partner, Herbal Healing; Anthony Cotto, Executive Advisor, Office of Legal Services, Department of Public Protection.

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

### Minutes

The minutes of the July 20, 2018 meeting were approved without objection.

### Charitable Gaming

Representative Chad McCoy told members that HB 425 had passed the committee as well as the full House in the last session. The bill sought to help veterans groups resolve an issue relating to pull tabs. As a method to raise money, veterans' groups use charitable gaming, including pull tabs. However, a previous bill passed the General Assembly and inadvertently restricts the frequency for using pull tabs. He intends to prefile another version of HB 425, to remove this restriction. The Charitable Gaming Commission is in agreement with the change.

## **Proposed Legislation on Medical Marijuana**

Representative Diane St. Onge told members that she and Representative Jason Nemes are developing legislation legalizing the medical use of marijuana, but she went on to say that the bill is not a path forward for legalization of recreational marijuana. It will not be a source of tax revenue source for the state. The proposed bill is intended to treat illness and people in the last stages of their lives, people whose quality of life has been considerably diminished. This will be an alternative means of treatment. Home-grown marijuana will be limited to six plants and six seedlings because the cost of going to a dispensary could be prohibitive for some clients. Being able to home-grow in a regulated framework reduces the cost. The distance to get to a regulated dispensary can also be a factor for some patients. The quality of the product is assured in a homegrown plant. Most states are moving to allowing home-growing of marijuana plants for medical use.

The proposed bill will remove the list of ailments that qualify for medical marijuana. The general feeling is that it is best left to physicians to recommend what they feel will help alleviate symptoms. Other states are also looking to change the list of medical conditions to doctor approved conditions. The intent of this legislation is to be a solution for patients with nausea or extreme pain that their physician believes will be helped by medical marijuana. The legislation will allow for a city or a county to opt-out of marijuana sales at the local level.

Representative Jason Nemes said this bill is different than 2018 Regular Session HB 166. This is a medical bill. There will be a regulatory agency created, the Department of Cannabis Administration. It will be the department's job to ensure that physicians are doing their part and not over-prescribing. There will be no sharing. Doctors will have to register in order to certify that their patients' need this type of treatment. They will have to notify the Kentucky Board of Medical licensure that they intend to make these certifications. This will be similar to the KASPER (Kentucky All Schedule Prescription Electronic Reporting) system today.

The prohibition on cooperation between law enforcement has been removed. HB 166 did not allow federal and state law enforcement to cooperate. In the 2019 proposed legislation, if a patient shares, sells, or otherwise violates their right to have a card, the patient will lose their card and could also be prosecuted. There will be no smoking in public or in public accommodations. Land lords are allowed to prohibit marijuana growing on property they own.

The previous bill allowed for possession of a 90 day supply of product. The proposed bill will limit supply to 30 days. The bill restricts home-growers from having the ability to become a distributor. The intent of a home-grown marijuana option, is for people that cannot afford to purchase from a distributor, the ability to have access to marijuana, especially since insurance does not cover the cost of medical marijuana. There will be no

marketing that will be colorful and attractive to children. There is also a prohibition for buying across state lines. If your state does not have medical cannabis you are not allowed to come to Kentucky to buy medical cannabis. If you are from a state such as Ohio, that does have a program, you can come to Kentucky and purchase 10 days' worth of product.

There will be no "medical use" defense. If you do not have a card and are in possession of cannabis during a traffic stop you are in violation of the law and you can be prosecuted.

The Chamber of Commerce has provided language to protect employers from liability in a court of law.

Regarding licensing, there will be two licenses, one for the individual and one for a business. In order for an individual to get a card they must have a legitimate physician to patient relationship. That physician will certify that this patient has a condition that will be helped by medical cannabis. This document will be filed at the Department of Cannabis Administration for a patient to receive a card. The card enables them to purchase marijuana products from a dispensary. The card will also allow the patient to self-grow. That information will be given to law enforcement.

Four business areas will be authorized to be licensed: the cultivator, who grows the product; the processor, where the raw material is made into a product; the dispensary which is essentially a store front to sell the product; and a safety compliance facility that ensures the safety of the product. These can be separate or combined into one company. Licensure will require that 60 percent of your company's ownership will be made up of Kentucky residents for at least three years. There will be three tiers depending on the business's gross receipts.

There are federal law issues as well as Kentucky Medical Association opposition regarding the proposed legislation. The sponsors believe that medical cannabis can help some people and government should not stand in the way of people who are trying to help themselves or their children.

Representative Wesley Morgan stated that in the past he had worked for the Bureau of Alcohol, Tobacco and Firearms as well as the IRS Criminal Investigations Division. During the last 50 years the federal government has spent 40 trillion dollars on drug enforcement without success.

In response to a question from Representative Moser, Representative Nemes said Colorado has a different scheme than which is being suggested for Kentucky. The cases are not anecdotal, they come from studies around the world, including Israel. In Kentucky there is a recent history of doing what is right for the citizens. Even if studies have not been completed, action can still be taken. Hemp legislation was passed before it became legal

federally. “Right to Try” legislation gets in front of the study process and the FDA accreditation process. The cost to implement the legislation is unknown. Representative St. Onge said the intent of the legislation is to allow the program to become self-sustaining.

In response to a question from Senator Schickel, Representative Nemes said patients will not be allowed to smoke cannabis in public. It will not be illegal to smoke it in one’s home.

In response to a question from Representative Westrom, Representative St. Onge stated that she has also visited facilities in Colorado and California and agrees that the environment was clinical and is very sterile.

In response to a question from Representative Koenig, Representative Nemes said if a patient self-grows from home, the plants must be inside, in a locked facility. Law enforcement will have a register of who is allowed to grow and who has a prescription or a card, and would not be able to enter a home without probable cause. He added that physicians do not prescribe, but rather recommend that their patient will benefit from medical cannabis. Law enforcement will be allowed to enter a business that sells medical marijuana.

Representative St. Onge added that employers cannot discriminate against hiring someone who is using medical marijuana. Businesses would be able to establish whether or not authorized employees would be allowed to use medical marijuana on premises. Regulations would be established for hazardous duty employees to prohibit medical marijuana use.

In response to a question from Representative Palumbo, Representative Nemes said if the proposed bill passes, medical marijuana will be legal across the Commonwealth of Kentucky. However, if a city or county jurisdiction does not want medical marijuana businesses, they can “opt-out” and businesses will not be able to come to that area to grow and sell medical cannabis. Local communities that opt-out of medical marijuana businesses, then the locality will be ineligible for receipt of tax revenue.

In response to a question from Representative Gentry, Representative Nemes said some of the language in the proposed legislation was supplied by the Chamber of Commerce to protect employers’ liability. If an employee, while on the job, hurts themselves or a customer there are protections in place. Based on employer guidelines for hiring, a person cannot be singled out for drug testing. Nor can an employer not hire someone because they have a medical marijuana card. A portion of the revenue will be distributed to the state for self-sustaining the administrative oversight of the program and a portion of the revenue will be distributed to local law enforcement. There is no expected revenue gain for the state.

Senator Seum commented that several doctors have asked for this legislation. As a cancer survivor, Senator Seum stated that using conventional medication such as oxytocin does not relieve nausea.

Representative Miller commented that, in a survey of his constituents 84 percent were in favor of medical marijuana. Regulation of FDA approved medication has resulted in unintended consequences.

Senator Schickel encouraged Representative Nemes and Representative St. Onge to file a bill.

In response to a question from Senator Thayer, Representative Nemes said CBD oil from hemp can be used for some, but not all of the recommended conditions. The full effect of the marijuana plant is helpful in ways that the CBD oil derived from a hemp plant is not. The doctor will decide which method will best suit the patient. Also, businesses will not have the right to tell law enforcement that they cannot come in to the business without probable cause. There must be probable cause for law enforcement to come into an individual home to perform a search.

### **Kentuckians for Medicinal Marijuana**

Jamie Montalvo, Executive Director of Kentuckians for Medicinal Marijuana thanked Representatives Nemes and St. Onge for their presentation. Many family members have been affected by cancer and have consumed cannabis to help with the side effects of chemotherapy. In most instances, the marijuana has been smoked. Thirty-one states have defended patients' rights to cannabis. There is an ongoing debate as to which is more beneficial, oil or flower. Having access to the flower allows use of cannabis in any form. In many states only cannabis oil is regulated, which patients do not use due to expense and lack of insurance coverage. Also, in most cases the exact product used in a pill or oil form is unknown. It is known that smoking marijuana eases pain and nausea.

CBD oil was legalized in 2014. These oils are being sold across the state. By federal definition hemp must be below 0.3 percent THC. Patients are using CBD in oil, pill, and vape form. Continued use of these products has a side effect of people testing positive for marijuana. People are losing jobs and even child custody. People consuming a legal product in this state are testing positive for consumption of an illegal product.

Regarding SB 118 and HB 166, both have been discussed by multiple groups across the state. A program was proposed to be managed by a health department at an estimated cost of \$2 million to \$4 million. Money collected from fees for licenses would cover this.

In 2000, Colorado's legislature defended patients' rights to cannabis. Ten years later, Colorado allowed for the sale of medical cannabis. SB 118 addressed issues such as

driving impaired and other issues that came to light after Colorado passed their legislation. Nationally, there are 16,000 arrests per year for marijuana possession. However, there has not been a single recorded death from marijuana use. SB 118 proposed strict regulations for medical cannabis use and distribution. Because marijuana has not been approved as a medicine, it is now being called marijuana for qualifying conditions. A physician will recommend the use of cannabis, much like recommending using an ace wrap or ice for a sprain. The federal government is allowing states to regulate cannabis. Qualifying conditions that were deemed too broad have been tightened.

Medical cannabis bills from last year were an “opt-in” on home-grown so local communities were not forced to spend money to prevent having sales in their community. With “opt-out,” however, local communities are forced to spend money to avoid having medical marijuana. Some communities will be for the bill because it will bring in jobs, excise tax revenue, and enforcement rights. Patients who opt to grow will have to get a license and notify the state of their intent to home-grow. They will also have to notify the local sheriff. There will be a fee to register with the local sheriff. If they are caught selling marijuana, the local law enforcement does have the right to intervene.

In response to a question from Representative Moser, Mr. Montalvo said a prescription would put a doctor’s DEA license at risk, therefore physicians make a recommendation. This has been upheld by the Supreme Court. Additionally, medication prescribed and obtained over the counter have an LD50 level. The LD50 level of cannabis has not been determined because you cannot overdose from cannabis. You can however overdose from Tylenol and other prescribed medications. Cannabis is a botanical, not a factory-produced pill and there are too many variables that can happen to a botanical for the FDA to approval of qualifying conditions. The flower is the weakest form of cannabis. The oil is the concentrated form, and takes many flowers to produce even a small vial for use. There are potential side effects when using cannabis but none of them is death.

Representative Moser opined that there is a need for more research and tighter controls. Mr. Montalvo responded the GW Pharmaceuticals has a patent pending for use of cannabinoids in treatment of cancer.

Ashley Taylor, Managing Partner for Herbal Healing, said there will be different licenses for medical marijuana. One for a medical marijuana center which, is the dispensary. One for cultivation, where cannabis is grown. Another for infused products, these are products that have been extracted from the plant. There will also be a license for the testing facility. Cities will be allowed to license individuals. This is a separate fee from what is paid for the state license.

The proposed legislation would create 15 districts within Kentucky that will decide the number of licenses issued in each of the business sectors. In other states the Marijuana Enforcement Tracking Reporting Compliance (METRC) is the system that is used. Using

this system is a requirement to get a license, and there is a monthly fee to use the software. Each plant is tagged and this tag stays with the plant through its entire life line. The tags have a radio frequency so that authorities will be able to wand the room and the plants' identification information will appear on a screen. This automates the inventory in each room where plants are being kept or processed. After the plant is harvested from its stalk, the plant tag will become a package tag. When the product is transferred to another company, a manifest goes with the package. No product goes to the consumer without being tested. This ensures that the product has no outside contamination such as pesticides or mildew. Each packing facility follows OSHA, EPA and the Department of Agriculture guidelines. Also, a list of ingredients are on each package as well as an estimate of the onset of action. This lets the patient know the approximate window for feeling the effect of what has been ingested.

Each person that comes into the industry must first have a background check and be registered with the state. There will be a support badge which is issued to entry level workers and a key badge which is issued to a decision maker. There is a charge for the badge and it must be renewed every two years. There are security cameras in each facility.

Eric Crawford, Kentuckians for Medicinal Marijuana, commented that there are 50 years' worth of research on medical marijuana from Israel. Looking at some other states, their cost is very prohibitive. In closing he quoted Thomas Jefferson, "if people let the government decide what foods they eat and what medicines they take, their bodies will soon be in as sorry a state as are the souls of those who live under tyranny."

### **Administrative Regulations Discussion**

Anthony Cotto, Executive Advisor, Office of Legal Services, Public Protection Cabinet was present representing the Board of Auctioneers, the Board of Barbering and the Board of Licensure for Private Investigation. He said HB 443 passed in the 2017 general session creating the Kentucky Real Estate Authority in the Public Protection Cabinet. This brought together four boards governing all the licensees that are central to real estate transactions, including the Board of Auctioneers. In reviewing regulations for the auctioneers it was discovered that the Board of Auctioneers had failed to properly incorporate some fees within regulations. Therefore, fees are not being increased within the amended regulations, but the regulation is being amended to reflect fees that are already being charged. Senator Schickel thanks Mr. Cotto for his testimony.

There being no further business to come before the committee the meeting was adjourned at 11:48 AM.