

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 6th Meeting of the 2018 Interim

December 10, 2018

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Monday, December 10, 2018, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Adam Koenig, 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, Denise Harper Angel, Paul Hornback, Dan "Malano" Seum, and Damon Thayer; Representatives Tom Burch, Al Gentry, Dennis Keene, Chad McCoy, Jerry T. Miller, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, Arnold Simpson, Diane St. Onge, Walker Thomas, and Susan Westrom.

Guests: Senator Max Wise, Representative Michael Meredith, Representative D.J. Johnson, Gail Russell, Acting Secretary of the Cabinet, Carmine Iaccarino, General Counsel, Public Protection Cabinet; Hunter Limbaugh, Wine Institute; Christy Trout, Commissioner, Alcohol Beverage Control; H.E. Corder, Chairman, Heather Becker General Counsel, Kentucky Real Estate Commission; Joe Gibbons, Chairman, Kentucky Board of Auctioneers; Allen Dossey, Purple Toad Winery; Eddie O'Daniel, Kentucky Wineries Association; Joe Sloan Rising Sun Winery; David Miller, VP & Assistant General Counsel, PGA Tour; Marc Wilson, Top Shelf Lobby.

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

Minutes

The minutes of the November 9, 2018, meeting were approved without objection.

AN ACT relating to reorganization

Gail Russell, Acting Secretary of the Public Protection Cabinet, said that, in the 1950s, five percent of America's workforce was required to have a professional license. Today, one-third of the workforce is required to have a professional license. This reorganization bill is different from last year's bill. During the interim the cabinet has been meeting with legislators, licensees, and licensing boards in order to make accommodations

for these groups that are affected by the bill. Committee members have been given a list of 15 items that have been changed from the old bill.

Some of the smaller boards have no plan for succession. They have only one executive director and that person has all personal knowledge regarding the business conducted by that board. This can create a problem if that person becomes ill or retires without notice. Another problem is trying to help constituents with board problems. The Public Protection Cabinet (PPC) has no authority over any board and therefore cannot assist with constituent issues.

The current bill, when enacted, would allow better management of procurement, finance and personnel issues. It would provide necessary state oversight to allow for anti-trust immunity that will protect the boards individually and as a whole. It allows for cross-board collaboration and an opportunity for best practices due to better communication with each other. Management under one major umbrella organization will provide cost savings and efficiency. Centralization of boards should also bring down the cost of fees.

Representative Koenig commented that the legislature creates boards and is responsible for making sure that there is proper oversight. As an example of the problem from lack of oversight he stated one Executive Director, who had run a board for decades, retired recently with no notice. Accounting had been kept in spiral notebooks at her home. Most board members have no idea about the North Carolina Dental Case that provides them personal liability should something not be done properly.

In response to a question from Representative Keene, Secretary Russell said the provision to cap board members' daily per-diem had been removed.

Representative Westrom commented that there is a huge barrier to information on the boards. However, there are a number of licensed professions where licensing fees do not generate enough revenue to have adequate funding for their offices. Some professionals, such as Art Therapy, cannot receive third party reimbursement without licensure. When the larger boards have a need they come to the legislature to address their issue and make a statutory change.

Senator Schickel commented that Secretary Russell and her staff have been open and honest and have tried to work with all parties involved.

In response to a question from Representative Miller, Mr. Iaccarino said the current bill draft mandates that the executive director appointment will be made through the cabinet secretary. There are four exceptions, the Board of Medical Licensure, the Board of Pharmacy, the Board of Nursing, and the Board of Accountancy. Secretary Russell said the licensed occupations have been grouped together by membership size. The bill will try to even the work load and have licensees paying similar fees for services they receive.

Russell Travis, M.D., neurosurgeon from Lexington, said he had been a member of the Kentucky Board of Medical Licensure (KBML) for 12 years, and served as president last year. He opposed Representative Koenig's bill in the last session. Speaking as someone experienced with a licensure board, boards are not challenged by the North Carolina Dental case. The KBML is an independent board with membership dictated by statute. The KBML does license other medical professions such as physician assistants, acupuncturists, athletic trainers, and surgical assistants. The board is given authority to discipline only licensees. Even when the board promulgates administrative regulations they are subject to legislative approval. As this bill currently stands the board will have to ask permission from the Executive Branch to write regulations. The legislature has granted immunity to the board under KRS 311.603, to act as a licensure board.

The KBML has sufficient state supervision. The board cannot act against a non-licensee. The board would have to request injunctive relief for judicial process. The board's actions are subject to multiple layers of board review as well as state review. After HB 1 and HB 333 were passed the board was asked to promulgate regulations. These were subject to oversight, and public comment. The legislature assures KBML structure, process, and procedures are compliant with the North Carolina Dental Board case. That case was an anti-trust case involving unilateral action against a non-licensee. The North Carolina Dental Board attempted to keep non-dentists from whitening teeth. Unless seeking an injunction in court, the KBML does not have authority over non-licensees. The case defines what "active state supervision" means including the legislative process and judicial review, which are already provided by our state legislature and judicial system.

There may be boards who have problems and need help; however, the KBML does not. In the case *Petrie vs the Virginia Board of Medicine*, the board has the authority to regulate chiropractors. Dr. Petrie was a chiropractor that was deemed to have gone above the medical practice acts of his license. Dr. Petrie was disciplined. The Supreme Court ruled that this was not a violation because the Virginia Board of Medicine is allowed to discipline licensees. Also, not even North Carolina has reorganized their boards since the dental case. In August 2017, the Kentucky US Federal Court, Eastern Division heard a case in which the KBML disciplined Dr. Beshear, and Dr. Beshear claims the discipline was anti-trust. The court ruled that it was not. The KBML is immune from anti-trust. In March 2017, the Attorney General ruled that KBML has active state supervision formulated by the Medical Practice Act. The legislature realized the importance of keeping a licensure board as an independent entity, not subject to political decisions or appointments that would affect its ability to carry out legislative intent.

Representative Koenig said he appreciated Dr. Travis comments. He said there are Supreme Court cases that do overrule legislative decisions. There are boards such as the real estate board who make sure that people who are acting as realtors actually are licensed.

Staff will confirm, and mail to the committee members, which boards have authority to penalize their members.

Dr. Travis said, concerning the reorganization bill, section two has language encouraging competition and eliminating unnecessary burdens in marketing. This is a major philosophical change for the KBML. It is not the board's job to encourage competition. The bill talks about active state supervision which the KBML already has. In Section Four, appointing an executive director who has to be approved by the Secretary of the Cabinet politicizes the position which is not appropriate. Another concern is legal counsel. The proposed bill does not allow for hiring legal counsel, but says legal counsel will be provided. The board currently has two attorneys who give legal advice and opinions that keep the board out of damaging litigation. Licensure has become more litigious.

The KBML employs five investigators who are former state police detectives and metro drug officers. These are critical to the KBML to investigate charts and give advice on licensees.

Senator Thayer said the bill did not pass the Senate last year and that Dr. Travis' comments should be considered. The committee should look at keeping the balance between the three branches of government.

Shipping of Wine

Senator Max Wise said wine shipment to Kentucky has been discussed in this committee previously. Only seven states, Kentucky included, do not allow direct shipment of wine. It is time for Kentucky to look at the direct shipment of wine. Constituents who visit other states such as California and Oregon, want to ship wine home but are told the winery cannot ship into Kentucky. Most Kentucky wine cannot be found in large box stores.

Hunter Limbaugh, South Region Wine Institute, said this legislation is needed. The number of wineries that exist now is well over 10,000. It is also difficult for wineries to find representation at the wholesale level. Even with HB 400 passing last year, it still does not allow direct shipping unless you are at the winery when ordering, or if the customer joins a wine club.

Representative St. Onge commented that on a recent trip to California she visited wineries within two miles of each other. One said they could ship, the other said they could not. Kentucky's laws are confusing.

Senator Schickel said citizens continue, consistently, to talk to him about shipping wine. The legislature has a responsibility to take a serious look at this issue in the upcoming session.

Alcohol in Dry Territories

Representative Michael Meredith said everyone knows that is illegal to buy alcohol in a dry territory. However, most people do not know that is illegal to consume, transport through, or even have alcohol in your house in a dry territory. His draft legislation will allow alcohol at private events and in homes. This draft would allow wedding venues in dry territories to serve, but not have a cash bar, so a family could provide alcohol at their private event.

Christy Trout, Commissioner of the Department of Alcoholic Beverage Control (ABC), said a literal reading of the law prohibits someone in a dry territory serving alcohol to guests in their home. Also, if there was a private event, the law as it stands now says you may not purchase your own alcohol, and consume your own alcohol, or serve it to others if you live in a dry territory. The goal of this bill is to modernize the law to allow someone to serve alcohol in a dry territory, at a private event.

Representative Palumbo suggested that on page two, lines 22 and 23, the language “that has been rented for a private event that is not open to the general public” include “where a private event is held.” Someone might not rent a facility but just be using a facility. Commissioner Trout responded that one option the ABC was considering was to have language that defines the facility as “not a public place.”

In response to Representative Gentry, Representative Meredith said liability was not an issue because the facility can require the person renting the facility to carry liability insurance.

In response to a question from Senator Thayer, Representative Meredith said if a state park facility was rented as a private event this draft would apply. Commissioner Trout added that if some language was changed state parks would be included.

In response to a question from Senator Hornback, Representative Meredith said Kentucky does not license bartenders. However, most venues require that a bartender be hired at an event. Commissioner Trout said Server Training in Alcohol Laws and Regulations (STAR) is available on line. The exam for this training is also online.

In response to a question from Senator Schickel, Representative Meredith said he has lived in dry territory all his life. The key to this bill draft is that the alcohol must be purchased legally so that it is still coming through the three tier system. It is not sold in a dry territory so there would be no cash bars at an event in a dry territory.

In response to a question from Representative Koenig, Commissioner Trout said if a licensed caterer is providing the alcohol then the venue may not need a license.

Mechanical Systems

Representative D.J. Johnson said Representative-Elect Matt Cook will be the primary sponsor of the bill in the up-coming session. In the 2018 Regular Session, HB 328 had three purposes. One was to allow for licensed mechanical engineers with two years of experience to satisfy the experience requirement for a Master HVAC applicant. This would reduce paperwork. The second item would be to eliminate certain requirement for HVAC license examinations. This is a duplicative process that requires registration with the third party giving the exam and application to state government. Third, inspector applications to a local jurisdiction to become a certified building inspector cannot be filled out until the person is already in the position. The bill would like to reduce administrative processes for HVAC certification.

Kentucky Real Estate Commission

H.E. Corder, Executive Director of the Real Estate Authority said the commission would like to expand the licensure period to two years. Improving the quality of continuing education is also an issue.

Heather Becker, General Counsel for the Real Estate Authority, said changing licenses from one year to two will require a change in how fees are issued. They would need a fluctuating fee with a cap rather than an automatic fee. Also, the term “escrow license” will be changed to “inactive license.”

Kentucky Board of Auctioneers

Joe Gribbons, Chairman of the Kentucky Board of Auctioneers, said last session HB 368 passed the House. The board would like to have the same bill this year with one change. The change would be to change injunctive relief for a non-licensed person violating the statutes to be moved from Franklin County to the county in which the violation occurs or the county of the residence of the violator. The bill will also define “escrow account.” In statute currently the term is used, but is not defined. They would also like to have discretion to waive “high school diploma” in certain situations where an individual can demonstrate that they have life experience and competency. Also, to allow the board can discipline licensees within 30 days. Currently there is no time limit for submitting requested documentation to the board. Also, to define an Auction House as being in a fixed location rather than on-line, and to clarify “bid minimum.”

Kentucky Wineries Association

Allen Dossey, owner of Purple Toad Winery, said the wine industry in general provides the state \$1.1 billion in tax revenue. Small farm wineries also increase tourism. Wine making skills are continually improving. One of the main challenges in the industry is production limits. There are two licenses, a small farm winery license and a winery license. The winery license does not allow on-premises tastings, consumption, or sales. The industry would like to have that changed in statues.

The industry is also asking to raise the gallon limit on small farm wineries from 100,000 to 500,000 gallons. When a winery reaches the limit it prohibits that business from growing. The wholesale tax exemption helps wineries who make less than 50,000 gallons of wine. However, small farm wineries who make more than 50,000 gallons now receive an expensive tax bill. Therefore, the industry is requesting a tax exemption at the 100,000 gallon level. The industry would also like to be able to sell wine at 11:00 AM. Visitors to wineries would like to be able to purchase before 1:00 PM. Small farm wineries would like to be able to self-distribute. There are other states who do this, particularly to restaurants. The wine industry would also like 4% of the wholesale excise tax on wine sold in Kentucky to be used to help with funding for the wine council, the state enologist, the state viticulturist and wine marketing.

The wine association has consulted with the ABC who cannot endorse the requested changes. However, ABC saw no regulatory issues subject to the final bill draft.

Representative Miller commented that he saw no reason not to compete with other states.

In response to a question from Representative Westrom, Mr. Dossey said there is a lot of money in the wine industry.

Representative Koenig clarified that Kentucky has been able to ship for quite a while, before other states were able to. Also, the reason for the gallon cap was because of the advantage of a different tax rate.

In response to a question from Senator Thayer, Mr. Dossey said Purple Toad is bumping against the 100,000 gallon cap. Purple Toad has contracted with Wal-Mart in three states. In 2016, 100,000 gallons was plenty; however, now the winery is in Kroger, and in Liquor Barn in five states. There are probably five to seven other wineries who are also approaching the 50,000 gallon cap. For some wineries going over the 50,000 gallon limit is cost prohibitive because of the wholesale tax.

In response to a question from Representative Koenig, Mr. Dossey said the local fiscal court cannot allow wineries to open earlier due to the state mandate of 1:00 PM. Also, production of more than 100,000 gallons is not allowed on a small farm winery license.

Data Integrity in Sports Wagering

David Miller, Counsel for the PGA Tour, said sports betting can provide Kentuckians another way to enjoy the games they love, while also generating revenue for the state. Betting does create risks for the consumer as well as sports, so it should be considered carefully. The leagues ask that legislators consider five principles. These

principles help in promoting the integrity of sport, protecting consumers and generating revenue for the state and the business.

First, any bill must protect the integrity of sports. One event of match fixing or betting corruption can devastate a league for generations. Sharing information with leagues is essential for integrity monitoring, assisting league investigations and giving the league some voice in bets being offered to avoid bets that are susceptible to match fixing. Second, use official data supplied by leagues. The official source is the most secure data and gives consumers confidence. In-play betting, or live betting, is becoming more popular. In golf there would be shot by shot betting. An unofficial source could give inaccurate measurement for a tee to green drive. Often off-shore websites put illicit software on official websites to “scrape” information to turn around for betting. Third, legislation should offer mobile betting. Churchill Downs offers the Twinspires app with success. It is estimated that it could double revenue in Kentucky. The fourth point is supporting legislation that requires operators have self-exclusion programs for problem gamblers. Advertise responsibly and promote responsible betting. Fifth, the PGA Tour is asking that legislation include a royalty of .25 percent of the bets that will be paid by the operators to the leagues. For every \$100 bet the operator would pay .25 cents to the leagues.

There is precedent for a royalty. In horse racing under the interstate horse racing act, a host track received a percentage of bets placed at other tracks. When a bettor at Saratoga places a bet at Keeneland, Keeneland receives a percentage of that bet from Saratoga. Ultimately the PGA Tour believes that sports betting will be more successful in Kentucky if there is a partnership created with leagues, operators and the state.

In response to a question from Representative St. Onge, Mr. Miller said there would not be a royalty paid when a bet is being placed inter-track. The American Gaming Commission released a study conducted by Oxford Economics, which projected Kentucky to generate \$9.4 million in tax revenue without mobile betting and \$18.6 million with mobile betting.

In response to a question from Representative Koenig, Mr. Miller said the PGA Tour would not be asking for a royalty for people who could use real-time information to make a wager. Piracy and web scraping are yielding unofficial data. The PGA Tour feels that people should not be allowed to come into their tournaments and take information without paying a royalty. Las Vegas is a very small part of the overall betting market. In-play betting has grown with the rise in technology in the last 10 years. The state of Nevada has not paid a royalty. The PGA Tour is taking a comprehensive look at the best model for promoting integrity, protecting consumers, and generating revenue. When Representative Koenig asked if royalties were paid for sports bets in Europe Mr. Miller said yes, but just in France.

Representative Koenig yielded to Senator Schickel for the reading of the resolution in honor of Senator Joe Bowen retiring.

Representative Koenig read a resolution in honor of Representative Arnold Simpson retiring.

There being no further business, the meeting was adjourned at 12:07 PM.