

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 2nd Meeting of the 2019 Interim

August 21, 2019

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Wednesday, August 21, 2019, at 3:00 PM, in Room 171 of the Capitol Annex. Representative Adam Koenig, Co-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 Julian M. Carroll, Denise Harper Angel, Christian McDaniel, Damon Thayer, and Reginald Thomas; Representatives Tom Burch, Al Gentry, Thomas Huff, Matthew Koch, Nima Kulkarni, C. Ed Massey, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, and Buddy Wheatley.

Guests: Gene Cole, Kentucky League on Alcohol & Gambling Problems; Marc Manley, Executive Advisor, and Greg Wells, Chairman, Kentucky Board of Licensure for Long-term Care Administrators; Vince Gabbert, Vice President and Chief Operating Officer, Keeneland; Chauncey Morris, Executive Director, Kentucky Thoroughbred Association, Elisabeth Jensen, Executive Vice President, Kentucky Equine Education Project.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore

Minutes

The minutes from July 19, 2019, meeting were approved without objection.

Long-term Care Administrators' Temporary Permits

Greg Wells, Chairman, Kentucky Board of Licensure for Long-term Care Administrators, said the board of directors voted to amend 16A.070 related to temporary permits for individuals in the process of obtaining their license as a Long-term Care Administrator. The board is requesting that a temporary permit be valid for a period of time not to exceed nine months, changed from the current six-month period of time.

Mr. Wells said nursing facilities are required by law to have a licensed, long-term care administrator at all times. When a vacancy occurs, it can be difficult to obtain a licensed long-term care administrator within the typical 30-day resignation timeframe. The facility may be able to hire an interim administrator if a full-time person was not identified prior to the resignation. In this situation, the facility can request that a temporary permit be issued to the individual that has met the minimum education, but not the management experience that would be required.

Per administrative regulation 201 KAR 6:030, the temporary permit applicant must meet all the normal application requirements with the exception of the six months management experience required to obtain full licensure. The board is requesting a change to the statute as the regulations require an applicant to have six months of management experience, but by statute a temporary permit is only valid for six months and it cannot be renewed. He noted this allows very little room for error for the applicant to meet the current licensure requirements. Extending the time period of the temporary permit from six to nine months will help applicants to gain the required experience, and time to prepare and pass the licensure test. In addition, the board can only approve the applicants that have already fulfilled the statutory and regulatory requirements, thus the temporary permit holders license can expire while waiting for final approval of their full licensure application.

Mr. Wells said there are two options to correct the situation. The first is to amend the statute to reduce the management experience required to obtain full licensure, or the second is to amend the statute to extend the amount of time the temporary permit can be used. The board believes extending the length of time a temporary permit can be used from six to nine months allows the applicant a more reasonable amount of time to gain the required management experience while completing the application process towards full licensure.

In response to a question from Representative Burch, Mr. Wells said it would be more detrimental to the patient and the facility to have no one in the position rather than someone new and eager to learn. The individuals have met the minimum educational requirements, they just lack the management experience.

Sports Wagering in Kentucky

Vince Gabbert, Vice President and Chief Operating Officer, Keeneland, thanked Chairman Koenig and Representative Gentry for their leadership on sports wagering this past session. He said House Bill 175/HCS 1 is in great shape to be a vehicle to move this issue forward in the upcoming session. He noted 18 states have implemented some sort of sport wagering with New Jersey leading the way. Indiana will join these states and be in position to take its first wagers on September 1, 2019.

He noted New York has failed to pass sports wagering and that has allowed New Jersey to reap the benefits. He added an anecdotal side note that Monmouth Park, a horse

track in New Jersey, has experienced a 16 percent increase in its simulcast wagers since implementing sports wagering. He said Chairman Koenig's intent is his piece of legislation is to drive more people to the racetracks and to protect the tracks. The racetracks have the facilities and infrastructure ready to start taking wagers as soon as the legislation is passed. Additionally, he noted there is stair step tax rate in the legislation that allows for a 10 percent tax revenue at the facility, versus an online tax of 14 percent if people bet on their cell phone or a home computer. He said Chairman Koenig's bill, as drafted, could realize about \$20 million in tax revenue for the state. He urged the members to pass this bill during the 2020 Regular Session of the General Assembly.

Responding to a question from Senator Carroll, Mr. Gabbert said the Kentucky Horse Racing Commission would be the appropriate venue to administer and monitor sports wagering in Kentucky. He said the excellent staff, with their level of expertise, could monitor and administer the program flawlessly.

In response to a question from Representative Wheatley, Mr. Gabbert said there are two pots of money at the racetracks for simulcast and live wagering. He said sports wagering will also generate incremental revenue for the racetracks through the sales of food and beverage, sales tax, and the creation of new jobs for tellers. In addition, Mr. Gabbert explained Kentucky can still beat Ohio in implementing sports wagering, but other neighboring states have already passed this legislation. He said mobile geo fencing would be the ideal way to target residents from other states in order to reap the tax benefits of their wagering.

In response to a question from Representative Gentry, Mr. Gabbert spoke strongly against a tax increase on historical racing machines at the racetracks. He noted this is an exciting time for the horse racing industry. Kentucky has seen an increase in horse field size and record purses due to revenue generated by historical racing, with Ellis Park in Henderson leading the way. He said Keeneland is anticipating record purse sizes this fall and Churchill Downs has already revealed allowance races this fall over \$100,000, which is more than competitive with all the other racing jurisdictions. He added that the training centers at the racetracks are at full capacity as a direct result of historical racing. The effective tax rate on historical racing, even though it is a pari-mutuel wager and taxed at the one and a half percent of total handle, is nearly twenty percent of the track's revenue from historical racing. He said the joint venture with the Red Mile racetrack was over \$45 million in 2015. The joint venture with Churchill Downs in the western part of the state will be over a \$200 million investment. He said there is no benefit in applying an additional tax on historical racing which is producing and growing revenue for the state.

Representative Gentry stressed the importance of keeping the mobile betting application in the legislation. He said data from other states shows the importance of mobile betting. People in Kentucky are already making sports wagers on their phones. He noted the success of Derby City Gaming in Louisville, despite the hit it took when casino

gambling was legalized in southern Indiana. It has recovered some of the discretionary spending money being spent by Kentucky residents who travel across the bridge to gamble. Mr. Gabbert agreed that people who want to bet on sports are already doing it and Kentucky is just not benefiting financially from the tax revenue.

In response to questions from Chairman Koenig, Mr. Gabbert said all pari-mutuel wagering is taxed on the handle, so even though the pari-mutuel tax rate is 1.5 percent it is paid right off the top and does not change by profit amount for the facility. The pari-mutuel tax helps fund the Kentucky Thoroughbred Development Fund and many other programs besides the contribution into the General Fund. He believes in paying a fair share of tax, but the current tax rate is appropriate for this type of product.

Mr. Gabbert said an eight horse field size is ideal. He said the demand is great and Churchill needs more space to build additional backside facilities due to the high demand for barn space. He said most training facilities in the state are at capacity and owners really would like to keep their horses here instead of shipping them somewhere else to be trained. The residual effect for keeping more horses here is that it generates more jobs, which provides more income to the state.

Senator Thayer commented that there is a good chance to create a bipartisan coalition and pass this legislation out of the Senate next session, especially if it passes out of the House of Representative with strong support. He adamantly opposes any tax rate increase on historical horse racing. He said there is no reason to penalize this growth industry that has been on an upswing for several years while other industries are struggling. He noted these are the good old days for the horse racing industry.

Responding to questions from Senator Thayer, Mr. Gabbert said the tax rate established in Chairman Koenig's legislation is very fair and appropriate compared to neighboring states. He does not feel the tax rates will prohibit participation or stifle growth. The 10.25 percent on-site tax is in line with other states, and the 14 percent online tax rate is appropriate because people will pay for the convenience in placing the wager. He said some people will pay the higher tax rate and still place bets on their phone even though they are physically at the facility because it is a social event in a social setting. Senator Thayer agreed with Representative Gentry on keeping the mobile online component in the legislation.

Mr. Gabbert also responded that they would do the sports wagering installation at the Red Mile, with some small installation at Keeneland only during live racing. Senator Thayer agreed with the installation plan and said he believes the Kentucky Horse Racing Commission is the appropriate regulatory agency. He would not be in favor of administering it under the Kentucky Lottery Corporation, or a new government entity.

Senator McDaniel cautioned the committee to never look at revenue and then work towards policy on any legislation. He said working out the language to make the legislation good public policy should be the first priority and the revenue piece will work it itself out. He also noted the Senator Carroll had prefiled a bill on sports wagering and is a good source of knowledge on the subject.

In response to a question from Senator McDaniel, Chairman Koenig said this is the bill he plans to move forward in the 2020 Regular Session of the General Assembly with a few tweaks. He gave his assurance that there would be no integrity fee in the legislation and Senator McDaniel was pleased. Senator McDaniel cautioned that this is not a panacea and for folks to have patience to yield better results in the long-term as this bill advances forward. He thanked Chairman Koenig for his hard work on the issue and said he felt confident that he and Leader Thayer could iron out their differences to move the bill forward.

Representative Gentry noted for the record that he did not support the idea of a tax increase on historical racing. He noted a few of his Republican colleagues had suggested this increase. Senator Thayer responded that he heard him and understood.

Senator Thomas commented that that he supports the bill and any expansion to the Red Mile. He noted his constituents in Lexington love to frequent the Red Mile racetrack, and it is always very crowded.

Mr. Gene Cole, Assistant Executive Director, Kentucky League on Alcohol & Gambling Problems, testified against the legislation. He noted the detriment in peoples' lives who get addicted to gambling. He said there is no guarantee how much revenue will be produced from gambling, and asked if there was language earmarked in the legislation that all revenue proceeds would be directed to help solve Kentucky's pension crisis. He asked about a provision for gambling addiction and recovery, and prohibiting minors from placing wagers on their cell phones utilizing geo fencing. He summarized by asking if the increased horse field sizes increase danger to the horses.

Representative Koenig thanked Mr. Cole for his comments and opinions.

Chauncey Morris, Executive Director, Kentucky Thoroughbred Association, discussed current labor challenges for the equine industry. Mr. Morris said grooms play an important role on the farm, with Kentucky producing a little under 10,000 foals a year. He said as the economy has started to recover in the United States and Kentucky, the horse farms are having to pay their workers at least 20-30 percent above the minimum wage.

Mr. Morris said the horse industry has utilized a Hispanic labor force for many years just as other agriculture sectors in the Commonwealth have. These workers tend to be particularly good with livestock. The H2-A program is uncapped, but allows only seasonal

versus year-round agriculture workers. He said legal programs tend to decrease illegal immigration from Mexico. He noted 55.8 percent of H2-A certified workers are located in North Carolina, Washington, Florida, Georgia, and California and the products primarily made are tobacco, apples, oranges, peanuts, and one other crop.

Mr. Morris said the H2-B program is capped at 66,000 people, however Congress allowed the addition of 30,000 workers in 2019 as temporary, non-agricultural workers. He said these workers are predominantly used in hospitality and tourism in larger states, and are also utilized by trainers. Kentucky and the equine industry are working on creating a pipeline of these workers for a local labor source in the community. One such example is the partnership and collaboration with Locust Trace AgriScience Center in Lexington.

Mr. Morris compared statistics of Kentucky's foal crops compared to neighboring states. He also discussed the different jobs and salaries within the industry and its direct economic impact.

Ms. Elisabeth Jensen, Executive Vice President, Kentucky Equine Education Project (KEEP), said KEEP's primary mission is to advocate for issues that impact the economics of the horse industry. She said horse farms and trainers have communicated over the last few years that the biggest challenge to their success is an adequate workforce and labor supply. She said it is a critical issue, and is hampering growth within the industry. These are jobs that cannot be mechanized or computerized and will require a living, breathing person.

Ms. Jensen said a partnership was created last year with the Kentucky Chamber Workforce Center to develop an equine workforce talent pipeline to study and fulfill the needs in the industry. She said the project was funded by Churchill Downs, Keeneland, Kentucky Downs, and the Race for Education within the Kentucky Horse Council.

Ms. Jensen discussed some monetary figures of the equine industry's impact on Kentucky. She said \$5.2 billion is the annual state impact of the horse industry, with \$2.75 billion contributing to the gross domestic product of the state. The equine industry produces 60,494 direct and indirect jobs, and is the number one impact on Kentucky's economy, including tourism.

Ms. Jensen said since 2015, Kentucky has seen 55,143 new jobs and 20.2 billion in new business investment. She noted there are 1,191 new or expanded facilities in the state. Kentucky's equine talent pipeline can include farms, trainers, veterinary, equine transportation, and feed mills. She has reached out to employers all across the state to determine worker needs.

Ms. Jensen said feedback was received from several central Kentucky farms and they have identified grooms, night watchmen, and barn foremans as their most critical

positions, while also being their most difficult to fill and retain. As far as equine transportation and shipping, four Kentucky companies have identified CDL drivers and dispatchers as their most critical positions while also being their most difficult to fill.

Representative Koch thanked the presenters for highlighting the labor issues and noted the problems are not unique to the thoroughbred industry or to Kentucky. He said most local farms want to grow and hire more people and the workforce is just not there. Mr. Morris said the farms are not the problem, but finding the people to take care of them.

Responding to a question from Chairman Koenig, Mr. Morris said that the H2-A workers are uncapped, but the public policy problem is that the contracts are not year-round. This is problematic because businesses need the workers for longer amounts of time, and Kentucky loses out to the other states who can employ them for longer periods of time.

Representative Pratt discussed his business and said he had to pass up many projects due to the lack of manpower. He has 38 employees, and eleven of those are H2-B status. He said the H2-A and H2-B worker program are extremely valuable programs that need to be sustained. He noted many American workers fail to show up, and 72 percent fail the initial drug testing. He has no issues with his H2-A and H2-B workers, and they are required to pass background checks. He pays over \$19,000 a year to bring legal H2-A and H2-B workers to his business and work and return home in ten months. He said it is money well spent as America has a real workforce problem.

Senator McDaniel concurred that there are many regions in the Commonwealth with major employment issues. He is experiencing the same type issues as Representative Pratt with his business, and said we need to figure out a way to match employees in desolate regions with no jobs to places where employers cannot find employees to hire. Many farms in his area cannot even find workers for \$15/hour.

In response to Representative Burch, Representative Pratt said he does offer healthcare benefits to his workers and pays most of them over \$20/hour. Representative Burch said most workers will be loyal and work hard if they can make a proper living with healthcare benefits and a good hourly wage.

Representative Miller said he supports strong borders and liberal guest worker programs. He is a strong supporter of H2-A and H2-B workers. In response to a question from Representative Miller, Mr. Morris said Kentucky cannot rely on legal overseas workers, but needs to be proactive and have a trained local workforce that can be promoted and retained within the enterprise. He discussed taking care of workers through a 3400 insurance trust and offering programs to help fight substance abuse issues.

Ms. Jensen discussed the second phase of the partnership with the Kentucky Chamber of Commerce and how it assists finding resources for employees. She said this

includes bringing back veterans or previously incarcerated folks, and exploring all avenues to find local talent to bring to work on our horse farms.

Responding to questions from Representative Kulkarni, Mr. Morris said the partnership with Locust Trace AgriScience Center is designed to establish a worker pipeline and design courses to meet the minimum training requirements for workers in the equine industry. He also said one Kentucky private college and two public universities are offering equine degrees. He noted that many horse farms value experienced workers in entry and executive level positions. Representative Kulkarni discussed the many different types of VISA programs and the problems associated with those. She discussed how establishing a local pipeline would be beneficial, as well as partnerships with universities.

Ms. Jensen said KEEP is working with Locust Trace and horse farms in the area to develop a minimum skillset that all employers should expect workers to possess. Representative Kulkarni wants to work with this workforce issue in a more detailed manner at the state level. Ms. Jensen said Locust Trace was developed based on the number of young people that identified they had an interest in working in agriculture.

With no further business before the committee, the meeting adjourned at 4:30 p.m.