

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 5th Meeting of the 2019 Interim

November 20, 2019

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Wednesday, November 20, 2019, at 3:00 PM, in Room 154 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, Julian M. Carroll, Denise Harper Angel, Jimmy Higdon, Paul Hornback, Christian McDaniel, and Reginald Thomas; Representatives Tom Burch, Al Gentry, Thomas Huff, Matthew Koch, Chad McCoy, Jerry T. Miller, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, and Buddy Wheatley.

Guests: Julie Campbell, Kentucky Board of Cosmetology; Alan Hensley, Tom Veit, and Carson Kerr, Board of Real Estate Appraisers; H.E. Corder II, Kentucky Real Estate Authority; Brian Houillion and Isaac VanHoose, Board of Massage Therapy; Adam Haley, Kentucky Academy of Physician Assistants; Scott Helton and Johanna Hock, Kentucky Athletic Trainers' Society; Dr. Avery Schroyer, Physical Therapist in Lexington, Dr. Camille Skubik-Peplaski, Occupational Therapist, Eastern Kentucky University; Bryan Alvey and Eric Gregory, Kentucky Distillers' Association.

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

Minutes

The minutes from the October 2nd, 2019, meeting were approved without objection.

Kentucky Distillers' Association

Eric Gregory, President, Kentucky Distillers' Association (KDA), said the industry has had a successful year. He thanked the committee members for being strong advocates and looking to the future. He is preparing for a productive 2020 Session of the General Assembly. Bryan Alvey, Senior Director, Governmental and External Affairs, discussed the 2020 legislative priorities.

Mr. Alvey said the distillers are comprised of 40 distilleries across the state, and the industry continues to grow. There are now two barrels of bourbon for every person living in Kentucky, and 9.1 million barrels under roof. It is the first year that two million barrels have been produced in one year.

Mr. Alvey noted that Kentucky sourced grains aid family farmers. KDA distillers bought more than nine million bushels of corn and other grains in 2017 from Kentucky farmers. They also provide a boost for local schools and the economy. Distillers paid a record \$23 million in barrel taxes in 2018. The revenue from these taxes funds local schools, libraries, and public safety. The tax-assessed value of aging barrels is \$3 billion, and the value has more than tripled in the last ten years. The economic impact is an \$8.6 billion signature industry that provides over 20,100 jobs. It provides a \$1 billion payroll, with over \$2.3 billion in capital investment completed or planned by 2022.

Mr. Alvey said KDA guaranteed the Kentucky General Assembly that it would promote Kentucky bourbon in a safe and socially responsible manner. The KDA and Safe Ride Kentucky coalition partners have delivered more than 8,000 sober rides during major holidays. State-of-the-art Intellicheck AgeID software has caught more than 1,000 fake IDs at distilleries. Environmental safety and sustainability are top priorities.

Distilled spirits is the highest taxed industry in Kentucky; 34.4 cents of every \$1.00 output goes to taxes, more than all other 536 Kentucky industries. There are seven different taxes on every bottle of spirits in Kentucky. These include: aging barrel local tax, aging barrel state tax, case tax, state excise tax, federal excise tax, state wholesale tax, and state sales tax. Mr. Alvey said 60 percent of every bottle of spirits in Kentucky goes to taxes and generates \$190 million in local and state tax revenue, adding \$625 million in federal taxes.

Mr. Alvey discussed the escalating tariffs and trade wars causing significant impacts. He said overall export growth has slowed to five percent this year compared to a 25 percent average in previous years. European Union exports have plummeted nearly 40 percent to negative numbers compared to previous year. He stressed that there are no winners in trade wars.

Mr. Alvey said over 1.4 million visitors visited the Kentucky Bourbon Trail in 2018. There is every expectation that the record-breaking growth will continue.

The 2020 legislative priorities were outlined for the committee. They include: supporting parity in any shipping legislation; ad valorem tax relief; production equipment tax fix; local option precinct elections for distillers; funding for ignition interlock device legislation passed in the 2019 legislation session (Senate Bill 85); allow private barrel selection retail sales to go through distillery gift shops; wholesaler pass-through reform that allows distillers to pay their own taxes on gift shop sales; exclusive distillery bottlings

(2019 Regular Session House Bill 200); minimum standards of production; and allowing package beer sales at distillery gift shops.

Mr. Alvey encouraged the members to review the distilled spirits industry impact on local communities and jobs broken down by county and region in the handout. He thanked the committee for the legislative support that has helped transform the signature industry in the last five years. He noted there are 1,835 distillers now in all 50 states. He encouraged the members to remain engaged as more help is needed to keep Kentucky competitive. Kentucky cannot afford to lose its historic distilling monopoly.

Responding to Representative Wheatley, Mr. Alvey said he will have to get the specific numbers required to fund the ignition interlock device legislation, Senate Bill 85, passed in the 2019 Regular Session of the General Assembly. He said the funding is needed in order to run the program component through the transportation cabinet. He will get a proposal ready on the exact monetary amounts needed for this piece of the legislation. Mr. Gregory said the software that caught over 1,000 fake identification cards was for a one-year period.

Kentucky Athletic Trainers' Society

Scott Helton, MBA, LAT, ATC, President, Kentucky Athletic Trainers' Society, has over 25 years' experience working as an athletic trainer in Northern Kentucky as the Director of Sports Medicine and Athletic Training Services at St. Elizabeth Healthcare. His testimony today is reflective of his role at the Kentucky Athletic Trainers' Society, and not indicative of his position at St. Elizabeth Healthcare. He said athletic trainers work very closely with physicians, occupational therapists, and physical therapists. Physicians are the primary supervisor of athletic trainers, and he does not see this changing in the future.

Mr. Helton said athletic trainers are seeking changes in their practice based on their education and training. The definition of athlete has been used in the strictest sense for years, while athletic trainers have evolved in scope. Athletic trainers are seeking to treat more physically active individuals that can benefit from their services as duly qualified, licensed, and appropriately supervised healthcare providers. Extending their services outside of tradition is scary to some folks and is meeting resistance.

Mr. Helton emphasized that athletic trainers are recognized health care providers. They are educated with a minimum of a Bachelor's Degree by accredited educational programs, nationally certified by an independent board of certification, licensed by the Kentucky Board of Medical Licensure, and required to report approved continuing education credits to maintain both certification and licensure. Athletic trainers are supervised by medical doctors who are duly licensed to practice in Kentucky, and do not practice autonomously. The updated practice act is very consistent with what other states have successfully implemented with no known negative impact to patient care or health care payment models.

Dr. Johanna Hock, Assistant Professor, University of Kentucky, College of Health Sciences, said she supports the proposed changes to broaden the scope of athletic trainers and increase the patient population they are allowed to treat.

Mr. Helton said the ability to assist with the management of prescription and over-the-counter medications is imperative for athletic trainers to practice evidence-based medicine and gold standard practices. He said they are not trying to be pharmacists, but believes common sense should be incorporated when dealing with dispensing prescription medications. Modifications to allow athletic trainers to perform approved invasive procedures with supervising physicians is necessary to provide evidence-based and, potentially, lifesaving care. Allowing athletic trainers to utilize education and training to care for employment injuries under the supervision of physicians, occupational therapists, physical therapists, or chiropractors is consistent with practices in bordering states. Finally, the ability to seek reimbursement for athletic training services is imperative for those serving in this role and for those who employ athletic trainers.

Responding to Senator Hornback, Mr. Helton said athletic trainers are seeking to expand their scope to treat physically active individuals and broaden the definition of athlete. This would include citizens of the general population that are not affiliated with sports athletic teams.

Responding to Representative Burch, Dr. Hock said she is not comparing the athletic trainers program to occupational or physical therapy programs. She did say that the educational standards that have been determined by the ECU accrediting body ensure that students in the athletic trainer program meet a broad range of patient populations to discuss conditions that would be commonly seen in athletic training clinical practices. She said the autonomy is in place to build the program to meet those standards as it relates to evidence-based practice and the practice of athletic trainers. She noted occupational and physical therapists have different accreditation standards.

Responding to a question from Senator Higdon, Mr. Helton said these changes will not allow Medicaid to be billed for athletic trainer services. Medicaid was not billed in the past nor will it be in the future.

Responding to a question from Representative Miller, Mr. Helton said theoretically this proposed legislation would allow athletic trainers to open up an office, but he noted they cannot practice autonomously. Services provided by athletic trainers would still have to have physician referral and have physician guidance and oversight.

Response to Kentucky Athletic Trainers' Society

Avery Schroyer, Secretary, Kentucky Physical Therapy Association, said they are in favor of the athletic trainers being able to bill the athlete directly for their services of

athletic training. They also favor being able to care for a traumatic or acute injury to the athlete, such as the use of an epi pen, providing a saline wash, or checking a rectal core temperature as needed. However, the KPTA is against any measure beyond those specific services as their education does not support more invasive type of procedures.

Mr. Schroyer said regulations would need to be proposed to safeguard the public and KAPA believes the definition of athlete should remain as it currently is. There are concerns about the lack of supervision criteria with temporary licensing as it relates to physically active individuals. KPTA has no issues or concerns with their continuing education requirements or the requirements for the board.

Camille Skubik-Peplaski, PhD, President, Kentucky Occupational Therapy Association, said they have been working with the athletic trainers on the current legislation and they continue to have concerns with the language that moves away from treating athletes who are otherwise healthy individuals to treating individuals regardless of their health status. She said as an educator, and with a representative of the KPTA, they met with several athletic training educators and reviewed curriculum. It was determined that many of the curriculums are not in depth enough to treat individuals that are not athletes.

Dr. Skubik-Peplaski said the athletic trainers were provided with language that other states have used that will give them more flexibility in who they treat, but is still consistent with their educational training. She is supportive of the standardized form, which is a form of supervision for their athletic trainers. As a member of the licensing board, their current practice act does not give a lot of specifics on how things will be regulated regarding supervision and this regulation which protects the consumer and the practitioner. She is supportive of their ability to bill for their services for athletes.

Mr. Helton disagrees that their educational standards and training disqualifies them from treating physically active individuals, including those with diabetes, sickle cell anemia, or amputees. He said many athletic trainers have dealt with these health issues and this is their main disagreement. Chairman Schickel encouraged the two groups to work together to iron out their differences and seek a common resolution.

Kentucky Board of Cosmetology

Julie Campbell, Director, Board of Cosmetology, said they have proposed legislation to address the committee's concern in regards to home bound individual care, as well as event permits and creating a defined pathway to event permitting for things such as wedding venues, theaters, etc., for professional services outside of a salon environment. Senator Schickel said they are addressing the issue of homebound residents who need cosmetology services and the bill will hopefully advance during the 2020 Regular Session of the General Assembly. Responding to a question from Representative Miller, dry bars and blow drying services would not be affected by the new legislation as the new language

deals with individuals providing medical releases in the home, and not services provided in a licensed facility.

Board of Massage Therapy

Dr. Brian Houillion, Chair, Kentucky Board of Licensure for Massage Therapy, is requesting a statutory change to amend the fee structure that has not been amended since the creation of the Board in 2003. Currently, the Board does not generate enough revenue to cover its operational costs and must amend its fee structure to fulfill its statutory duties. They are funded solely through restricted funds generated from license/renewal fees and fines. The lack of funding negatively impacts the Memorandum of Agreement (MOA) in place with the Department of Professional Licensing. This could also leave the department with budgetary issues of its own, up to and including default, potentially impacting other DPL boards.

Isaac VanHoose, Commissioner, Department of Professional Licensing (DPL), said the DPL is funded solely through restricted funds from the boards it serves. Each biennium, licensing boards enter into a MOA with the department for administrative services. The cost of these services is determined through a formula based on the number of annual licenses, annual revenue, projected staff time, or a percentage of a full-time employee's time that is spent for that board.

Mr. VanHoose said the department charges only what is needed to cover its operational costs for the biennium. However, as department costs increase, so does the amount charged to boards. The DPL provides cost savings to boards that cannot afford to hire full-time personnel and pay operating expenses as well as boards that do not need a full-time employee. Savings are realized through lower licensing fees for licensees.

Mr. VanHoose said the board's current MOA with the department is for \$127,300 in each year of the biennium (fiscal year 2019 and fiscal year 2020). The MOA does not include other expenses such as investigative services, legal services, and per diem for travel for board members. While the board has taken recent emergency measures to cut costs, these expenses still accounted for roughly \$25,000 in fiscal year 2019. The cost of administrative services provided by the department is expected to increase roughly 15 percent due to increases in personnel costs (ARC will increase from 83.43 percent to 89.37 percent in next biennium) and the increase in rent resulting from the move to the new office building. They anticipated asking \$146,395 each year of upcoming biennium.

Responding to a question from Chairman Schickel, Dr. Houillion said he did not know why the fees were set in statute rather than regulation. He noted the fee structure was set in 2003 and has not been amended since. Chairman Schickel would prefer the fees to be set in regulation, and not in statute.

Responding to a question from Co-Chairman Koenig, Dr. Houillion said there are currently 2,200 licensees in massage therapy.

Dr. Houillion said the preferred method would be to amend statute to allow for the board to set fees in regulation. Proposed language could be: The board shall promulgate administrative regulations establishing a reasonable schedule of fees and charges for the issuance and restoration of licenses and certifications and for the renewal of licenses and certifications issued under this chapter. Currently, other boards operate under a similar statute, including: cosmetology; respiratory therapy; chiropractic examiners; and interpreters for the deaf or hard of hearing.

Dr. Houillion said a secondary approach would be to remove the \$50 application fee that is currently credited to the initial license fee for successful applicants. Increase the limit on initial license fee from \$125 to \$250 to adequately cover initial processing of applications and first biennium licensing period. The initial fee of \$150 will be increased incrementally over time. Increasing the limit on biennial renewal fee from \$100 to \$200 will generate the revenue needed to sufficiently fund operating without creating a substantial burden on licensees. The initial fee of \$150 will be increased incrementally over time.

Dr. Houillion said the secondary proposal is estimated to generate roughly \$60,000 of additional revenue and bring the board's annual revenue to approximately \$200,000 for the next four fiscal years. The additional revenue generated through periodic fee increases should be sufficient to cover the board's costs for the next 20 years.

Board of Real Estate Appraisers

Tom Veit, Executive Assistant, said the Kentucky Real Estate Appraisers Board respectfully requests for legislative action to amend its statutes for the following purposes: red tape reduction and cleanup, and compliance with appraisal subcommittee recommendations and other federal requirements. Mr. Veit said the red tape reduction will provide a more specific definition of a "federally related transaction." It eliminates the non-federal license and subsequent requirements, and clarifies language relating to the executive director's "veto" authority for administrative regulations relating to appraisal management companies. Subsequently, this cleans up House Bill 443 that created the Kentucky Real Estate Authority.

Mr. Veit said it will also place a statute of limitations (the licensee record retention policy contained in the Uniform Standards of Professional Appraisal Practice (USP) on filing complaints with the board and removes the word "permanent" from the descriptor of a licensee's file. Presently, there is no statute of limitations, and the board has received complaints that were based on conduct that occurred decades ago. This ensures that the licensee is still in possession of the case file and records with which to defend him or herself against a complaint. The new statute of limitations is five years after the preparation of the

appraisal or appraisal review assignment, or at least two years after the final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever expires last. Currently, a licensee has a permanent discipline file. This requires the board to maintain hard copies of all licensee records for purposes of records retention requirements.

Mr. Veit said the red tape reduction would also reduce the licensing and renewal fee for licensed or certified real property appraisers and eliminates the requirement that the board provide licensees with the current edition of the USPAP. It also adds three new fees.

Finally, the proposed legislation will make amendments to comply with recommendations made by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, which conducts compliance reviews on state appraisal programs. This will bring Kentucky's appraisal management company regulatory scheme into compliance with federal law. It is important because Kentucky's next compliance review will include, for the first time, review of the AMC regulatory structure. Noncompliant statutes could jeopardize Kentucky's AMC program, bringing the appraisal and lending industries to a grinding halt in Kentucky.

Kentucky Academy of Physician Assistants

Adam Haley, Director of Public Policy, Kentucky Academy of Physician Assistants (KAPA), and Andrew Rutherford, Vice President, KAPA, spoke about physician assistant prescriptive authority. KAPA has brought this bill before many entities previously and has amended the language in the proposed legislation to satisfy public concerns.

Mr. Rutherford said physician assistants have over 2,000 clinical hours prior to graduation. KAPA does believe in the strength of a physician led healthcare team, but identifies three benefits in removing the red tape and allowing them to write prescription: 1) ensures patients have the best care and allows rural patients to avoid travel to receive the care they need; 2) allows full transparency and will benefit the KASPER program and the use of controlled medications in identifying problematic providers; and 3) makes it easier for employers, such as hospitals, to hire physician assistants.

Chairman Schickel announced the committee will have a special approved meeting on Monday, December 16th, 2019, at 10:00 a.m. in Room 149 of the Capitol Annex.

Adjournment

With no further questions from the committee members, the meeting adjourned at 4:00 p.m.