

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 2nd Meeting of the 2020 Interim

July 30, 2020

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, July 30, 2020, at 10:30 AM, in Room 171 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 Julie Raque Adams, Tom Buford, Denise Harper Angel, Jimmy Higdon, Christian McDaniel, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Tom Burch, Al Gentry, Thomas Huff, Matthew Koch, Nima Kulkarni, C. Ed Massey, Chad McCoy, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Rachel Roberts, Sal Santoro, John Sims Jr, Susan Westrom, and Buddy Wheatley.

Guests: Marc Guilfoil, Executive Director, Jennifer Wolsing, General Counsel, and Ken Jackson, Commissioner Kentucky Horse Racing Commission (KHRC); Jim Averitt, Vice President, Amanda Stephens, President, and Randy Donohue, Member, Kentucky Harness Horseman's Association; Joe Costa, President & Chief Executive Officer, The Red Mile; Mike Ziegler, Executive Director of Racing, Churchill Downs; Allyson Taylor, Commissioner, Alcoholic Beverage Control Board; and Julie Campbell, Board Administrator, Kentucky Cosmetology Board.

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

Consideration of Minutes from June 26, 2020, meeting

Representative Moser motioned to approve the minutes from the June 26, 2020, meeting, and Senator Schickel seconded the motion. The minutes were adopted by voice vote.

Implementation of 2020 Regular Session House Bill 415

Ms. Taylor discussed the status of the administrative regulations being promulgated in response to House Bill 415. She introduced the Secretary of the Cabinet Kerry Harvey and Joshua Newton, ABC Board, who were available remotely to answer questions. Ms.

Taylor noted that three goals were used as the basis for drafting the regulations. The ABC Board did not have a preconceived agenda. The three primary goals were to implement legislative intent, respect the three-tier system, and ensure that the Kentucky producers and suppliers are on the same footing with out-of-state producers and suppliers. She said it is important that all entities follow Kentucky law.

Ms. Taylor said all stakeholders were consulted before the drafting of the administrative regulations. She said conference calls were held with local and national associations, including the United States Distillers and the Wine Institute. She noted the ABC Board is willing to make changes to the regulations as public comments are accepted.

Responding to a question from Chairman Koenig, Ms. Taylor said the timeline is on schedule for promulgation of the regulations. LRC staff said they should be on the agenda for the Administrative Regulations Committee October 2020 meeting. She said final adoption will depend on how many public comments there are and how extensive the changes are. The computer system will be functional to apply for the licenses as soon as the regulation is approved.

Senator Higdon said his constituents have concerns that there is language contained in the administrative regulations that would allow out-of-state wholesalers and distributors the ability to ship products into Kentucky, and this was not the legislative intent. Chairman Koenig said the ABC Board is open to making additional changes and listening to input. Senator Higdon reiterated that out-of-state distributors do not need to be included.

Senator Raque Adams said she is hearing concern that out-of-state importers will be included in the regulation language, and she cautioned against this. Chairman Koenig said questions should be about process and not specific language at this time.

Senator Thayer said House Bill 415 was the most important bill the Kentucky General Assembly passed last session. He noted revenue streams are important for the bourbon industry right now as they have been hit hard by the Covid-19 pandemic and rioting in our downtown cities. He encouraged the ABC Board to follow the statute and legislative intent when finalizing the regulations.

Senator Thomas said he is a member of the Administrative Regulations Subcommittee and looks forward to hearing the administrative regulations at the October meeting.

Agency Amendment to 201 KAR 12:030 on Military Reciprocity

Julie Campbell, KCB Board Administrator, explained the amendment to 201 KAR 12:030. Representative Koch made the motion to accept the agency amendment, and Senator Schickel seconded the motion. Motion carried by voice vote and the amendment was adopted.

Kentucky Horse Racing Commission

Marc Guilfoil, KHRC Executive Director, and Jennifer Wolsing, KHRC General Counsel, explained the administrative regulations. Ms. Wolsing said the KHRC is seeking approval for numerous proposed regulatory amendments, all of which passed 8-0 at the racing commission in December of 2019, and passed unanimously at the Administrative Regulations Subcommittee meeting in June of 2020 with no deficiencies. She said the regulations are seeking to establish a new Harness Horseman's Association called the Kentucky Harness Association (KHA).

Ms. Wolsing said Kentucky stands on the brink of substantial improvements to its standard bred industry. The Red Mile, Churchill Downs, and Keeneland have collectively spent over \$250 million in physical plants to help build a Standardbred circuit. Currently, the commission only allows for one harness horseman's association, the Kentucky Harness Horseman's Association (KHHA). The KHHA has been in place for over 40 years, but during this time the industry has become much more diverse in its population base. The commission believes that the industry could benefit from having additional representation to ensure that all groups are represented across Standardbred racing. This precedent and its benefits are particularly evident in the Thoroughbred industry.

Ken Jackson, KHRC Commissioner and owner of Kentuckiana Farms, said harness racing is in a really good position. He noted Churchill, Keeneland, and the Red Mile, in collaboration, have put over a quarter of a billion dollars in harness racing. This is unprecedented anywhere else in the world, and this type of investment needs to be protected. Three racetracks should never be allowed to fail again in Kentucky.

Joe Costa, President and Chief Executive Officer, The Red Mile, said he is supportive of the KHRC decision to allow for the formation of an additional horseman's organization with the regulation change. It is important to help the industry grow and allows for more voices and greater representation in the industry.

Mike Ziegler, Executive Director of Racing, Churchill Downs, said Churchill is supportive of the regulations as well. He is excited about the success of the sport in the future.

Senator Thayer said he has had the pleasure of working with the harness industry since 2005, when the Breeder's Incentive fund was passed. He said the business is strong and he has friends on both sides of the issue. He noted friction and competition is good for all industries and is supportive of the regulations.

Responding to a question from Representative Miller regarding problems in the Standardbred racing industry, Mr. Jackson said the regulation will allow another organization to potentially advocate for the industry and enter into agreements with the

racing associations. It also allows a representative for that organization to sit on an advisory committee that decides how funds should be spent and distributed for the betterment of the entire industry. He noted that the new organization helps to better prepare for the future and to ensure purse funding is spent the proper way to advance the racing and breeding industry.

Responding to questions from Senator Higdon regarding transparency, Ms. Wolsing said there is representation of the harness industry on the KHRC. Senator Higdon said his constituent, Mr. Jim Averitt, Vice President, Kentucky Harness Horseman's Association (KHHA), did not feel the KHRC posted the regulation on the agenda prior to the meeting in a transparent manner. He said there was no notification to their organization that notified them that another group was being formed in direct competition with their efforts.

Ms. Wolsing explained the process of the KHRC for notification of meetings and agenda items. She said there was a public notice and comment period and a public meeting where people could voice concerns or positive comments, and they accepted written comments. The KHRC sent out a statement of consideration to people who had requested this through open records. She also noted their subcommittee meeting was open to the public as well so she felt like the KHRC had provided ample notice of the regulations.

Responding to a question from Representative Burch, Ms. Wolsing said comments were solicited from racing associations on the regulations about any needed amendments to the language. Representative Burch believes all the interested parties need more time to work together and iron out their differences. Mr. Jackson said the KHHA is opposed because they do not want any other group to have input on the industry but themselves. He encourages members of the KHHA to get involved with the new organization. It will be run professionally, and will foster the growth of the harness industry. He noted it is time for change, and the thoroughbred industry has embraced having more than one organization call the shots.

Chairman Koenig said the regulations followed the correct process. They will go into the effect at the end of the meeting instead of waiting for the 90-day time period.

Representative Westrom said she is very concerned that the new Kentucky Harness Association is operating with no social media contacts, no website or by-laws, and no membership list. She said three people representing the harness industry is not enough to protect its interests, and she does not like division in an industry.

Chairman Koenig allowed testimony for opposition to the regulations. Mr. Averitt, Vice-President, Ms. Amanda Stephens, President, KHHA, and Mr. Randy Donohue, member, KHHA, testified that they are in strong opposition to the regulations being proposed by the KHRC. Mr. Averitt alleged that Mr. Jackson had a majority of the votes already in place before the meeting started and insisted the KHHA did not receive a formal

notice that the new association was being created and would be in direct competition with KHHA. The changes would allow the KHA to negotiate with the race tracks and serve on an advisory panel that helps to determine how millions of tax payer dollars are spent within the Standardbred industry.

Responding to a question from Chairman Koenig, Mr. Averitt said he does not believe the KHRC violated the open meeting records law. He does believe there was not appropriate due process, and that the Thoroughbred industry is not in support, as previously stated in the meeting. He asked Chairman Koenig to distribute a letter to the members. The Chairman allowed for one letter to be distributed but denied the second letter as he had not reviewed the document.

Mr. Averitt stressed to the committee that the proposed changes only benefit the tracks (Red Mile and Churchill Downs) at the expense of thousands of rank and file horsemen. It would allow the racetracks to pit the two competing associations against each other, which would result in a financial race to the bottom for the horsemen.

Mr. Donohue asked if there were criticisms or complaints of the KHHA. He said it is of utmost importance to keep the historical racing dollars in Kentucky. It is not in the best interest of Kentucky to write a blank check to the state's program as the money tends to go out-of-state. A blank check to a group that is unknown can be problematic. Ms. Stephens added that the KHA's group of three representatives is not representative of diversity of the industry.

Senator Thayer said that Mr. Averitt's testimony is offensive and he owes an apology to the committee members. The administrative regulations have followed the correct process and the timeline is even more inclusive to public comments now that the review period has increased from 30 to 90 days.

Senator Higdon said the Averitt family is a well-known harness racing family who are well respected in his district. He said their concerns are valid and they feel the hearing was in name only and the vote was taken by the KHRC without full notice and disclosure to all interested parties.

Responding to a question from Senator Thomas, Mr. Averitt said the KHHA will lose money due to this change and creation of a new organization. Senator Thomas said business competition is good for the industry.

Responding to a question from Representative Westrom, Mr. Averitt said that the KHHA will not be able to work with the KHA for the good of the industry. Ms. Stephens said the KHHA should have been formally contacted before the KHA was created.

With no further business before the committee, the meeting adjourned at 11:50 AM.

