

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

## **Minutes of the 3rd Meeting of the 2020 Interim**

**August 25, 2020**

### **Call to Order and Roll Call**

The 3rd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Tuesday, August 25, 2020, at 10:30 AM, in Room 171 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 Julie Raque Adams, Tom Buford, Julian M. Carroll, Denise Harper Angel, Jimmy Higdon, Paul Hornback, 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, Dr. Bruce Howard, Equine Medical Director, Kentucky Horse Racing Commission (KHRC); Senator Alice Forgy Kerr; Representative Lisa Willner; Dr. Bob Browning, Former Pastor, First Baptist Church, Frankfort; Daniel Mingo, Cole Cuzick and Joseph Backholm, Kentucky Family Foundation; Dr. Clara Fenger, North American Racetrack Veterinarian Association, and Zach Meiners, Chronicle Cinema.

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

### **Consideration of Minutes from the July 30, 2020, meeting**

Representative Burch motioned to approve the minutes from the July 30, 2020, meeting, and Representative Huff seconded the motion. The minutes were adopted by voice vote.

### **Kentucky Lottery Corporation: New Method for Drawing Numbers**

Chairman Schickel deferred the lottery discussion to another meeting as the number of individuals requesting to speak on the other topics on the agenda had increased and the committee's allotted time was limited. He apologized for the inconvenience.

## **Consideration of Administrative Regulations**

Referred Administrative Regulations Reviewed by the Committee Pursuant to KRS 13A.290:

### **PUBLIC PROTECTION CABINET. Kentucky Horse Racing Commission**

810 KAR 002:090. Temporary unsuitability of licensed premises.

810 KAR 004:030. Entries, subscriptions, and declarations.

810 KAR 005:060. Entries and starters.

810 KAR 008:010. Medication; testing procedures; prohibited practices.

810 KAR 008:020. Drug, medication, and substance classification schedule and withdrawal guidelines.

810 KAR 008:030. Disciplinary measures and penalties.

810 KAR 008:070. Bisphosphonates.

### **Those in favor of the administrative regulations**

Chairman Schickel said he is in support of the administrative regulations, and noted that they will go into effect upon conclusion of the meeting and before the Kentucky Derby.

Senator Thayer discussed the Equine Research Council's collaboration with Dr. Bruce Howard, Equine Medical Director, KHRC, on Kentucky's medication reform and the regulations. Over 16 years ago, Kentucky had a problem with stacking drugs in the thoroughbred industry. He noted the reform has occurred over numerous Horse Racing Commissions and several gubernatorial administrations. He fully supports the administrative regulations.

Senator Higdon said the Standardbred horse industry should be treated differently than the Thoroughbred horse industry. He emphasized that they should be categorically separate in all aspects.

Dr. Howard testified in favor of the administrative regulations and said they are starting a proposal towards a compromise. He said the regulations eliminate furosemide on race day for two-year olds in 2020, and will begin the elimination on stakes horses in 2021. By adopting this compromise, Kentucky can come into alignment with the rest of the racing world and help lessen the negative public perception that exists concerning medication issues in racing. It will also minimize the argument that furosemide enhances performance by causing fluid elimination, which reduces a horse's weight before a race by an estimated 10-20 pounds. He said the issue will continue to be monitored and findings reported to the Commission on a regular basis to see if changes need to be made.

### **Those against the administrative regulations**

Senator Hornback is concerned, if Lasix is banned, other illegal drugs will be used in its place. He said Lasix is relatively safe and helps with bleeding. He feels the administrative regulations are being rushed and not many other states have this in place. It

is hard to compare to European races as they race on grass and the United States races on dirt. He feels the administrative regulations need some more vetting and this could be a detriment to Kentucky's claiming races.

Dr. Clara Fenger, North American Racetrack Veterinarian Association, urged the committee members to vote to find the administrative regulation deficient on behalf of two groups she is representing: the private practitioners in the Commonwealth who are gatekeepers for the health and welfare of the racehorses, and the majority of the horsemen and women of the Thoroughbred and Standardbred horse industry. She said science should drive policymaking. Data suggests that the banning of Lasix will increase horse deaths. She cited that if a horse breaks its leg, exercise-induced pulmonary hemorrhage (EIPH) is almost always present. She has been involved in the Kentucky Thoroughbred industry for over 28 years as a regulatory and practicing veterinarian, owner, and breeder.

Responding to a question from Senator Hornback, Senator Thayer said the regulation bans furosemide across the board for two-year old horses on race day. It will also ban furosemide in stakes races for the very best horses. Most young two-year old horses have not even bled yet and therefore do not need the Lasix treatment. There is a movement to remove it completely from all races, but this was a compromise. He said there is no Lasix ban from claiming races. Certain groups will block any sensible medication reforms because they refuse to compromise or acknowledge the change in public opinion.

Responding to a question from Representative Miller regarding the number of horse deaths in relation to the use of Lasix, Mr. Howard said he does not have the exact numbers. He said four horses were ruled to have died of EIPH, which is a low number out of 189,000 starters. He said he would share the raw data of the study period with Ms. Fenger and her colleagues. Ms. Fenger said she is interested in the raw data for the thresholds.

Representative Koch said this subject is very concerning. Kentucky is the horse capital of the world and it is important to keep its prime product competitive throughout the world. He said 80 percent of the yearlings raised in Kentucky will end up leaving the state.

Responding to a question from Representative Koch, Mr. Howard said he does not have wagering numbers available from Ellis Park. However, he has heard anecdotally the handle at Ellis Park has increased over previous years due to online and remote wagering.

Responding to a question from Senator McDaniel regarding the ability to accurately track the increased cases of EIPH with the absence of latex, Dr. Fenger said yes, it is possible to track with accuracy, but the KHRC does not provide them with all the information. Mr. Howard said the HRC publishes the mortality rate and reviews for every horse and disagrees with Dr. Fenger's assessment. If there is no comment in the mortality review on the lungs it is because the pathologist found no significant findings. Dr. Howard

does not believe the number of horses dying with EIPH will increase due to the absence of Lasix. Senator McDaniel asked the KHRC to keep everyone apprised of the updated statistics.

Responding to Senator McDaniel's question regarding a horse getting bumped from the Kentucky Oaks or Derby race this year due to a medication in its system, Dr. Howard said he provided the interested parties with the information of the regulation changes well in advance. He also noted the Lasix rule will not be effect for anything this year except two-year olds. Stakes race horses will not be affected by the regulation change until 2021. Dr. Fenger said there is published data that horses can test positive for steroids even if they were not administered to them. She said the sensitivity of the drug testing in horse racing can detect levels of drugs in horses from other horses through casual contact, and this increases the chance for a drug stacking violation.

Representative Meredith said there is a large divide among horsemen and regulators in the horse industry. He said we need to track the data closely to ensure legislators made the right decision. It is best to be leary of public opinion on livestock issues and do what is best for the horse.

Responding to a question from Representative Burch regarding drug testing in horses, Mr. Howard said it is a constant battle to detect new designer drugs on the market in the horse, but they are screened for over 1,500 substances. Representative Burch said a long-term study should be conducted on Lasix and its effectiveness and benefits in horses before banning. Dr. Howard said studies show different findings on both sides of the Lasix issue. Some studies find Lasix is not effective in helping the horse, and others say it helps to control the bleeding.

### **Discussion of Conversion Therapy**

Senator Alice Forgy Kerr explained the proposed bill draft 21 RS BR 99 that she and Representative Lisa Willner have co-sponsored for the 2021 General Assembly session. Senator Kerr says she views the bill as a pro-life piece of legislation. Conversion therapy is the term used to describe therapy that claims to change a gay person into a straight person or to stop a person from being transgender. In actuality, it has no scientific basis. Instead, it is often based on outdated and false theories such as the false notion that being gay is caused by bad parenting. Most conversion therapists falsely blame parents for a child being gay or transgender, even though there is zero evidence for such claims. She noted the practice of conversion therapy has been outlawed in 22 states and in four countries. She noted while many people hope to "pray the gay away", homosexuality is something most believe people are born with. Research shows that children subjected to conversion therapy have a seven times higher suicide rate.

Representative Lisa Willner said she taught developmental psychology and is well versed in social and emotional development. She said the research is robust and the

evidence is clear. Efforts to change a person's sexual orientation or gender identity are not effective and these efforts are associated with severe and deadly consequences. Every leading medical and mental health organization in the country and Kentucky has concluded that conversion therapy is dangerous. It does not work, and it can cause life-threatening harm to minors. Other associated risks to minors include: drug use, engaging in unsafe sex, loss of faith, anxiety, panic attacks, depression, self-harm, and many others. She noted this is a bi-partisan effort supported by policymakers across the political spectrum, as well as religious leaders.

Representative Willner said the proposed legislation prevents state-licensed providers from engaging in conversion therapy with minors. It does not, however, keep all groups from practicing and engaging in these dangerous activities. It will prevent public dollars from being distributed to any agency in the Commonwealth offering conversion therapy practices. Finally, another important step is to provide evidence-based information to inform agencies of the risks associated with conversion therapy to minors.

Zach Meiners, Chronicle Cinema, testified before the committee about his experience of being a gay youth and conversion therapy. He said the therapist inflicted trauma upon him and he would beg God to make him straight. None of the therapists that he worked with in conversion therapy were actually licensed. The long-term effects of the practices are real and damaging. He experienced chronic depression and anxiety, being disconnected from your own sexuality and body, not being able to trust himself, or trust others. He feels lucky to be a survivor, and said conversion therapy is a shame-based practice that strips people of all of their identities. He urged the committee members to pass the proposed legislation in the 2021 Session of the Kentucky General Assembly.

Dr. Bob Browning, Former Pastor, First Baptist Church, Frankfort, said this is his 51<sup>st</sup> year in ministry, and he is opposed to conversion therapy. He said many people he has counseled and met over the years did not make a conscious decision to become gay. He urged the committee members to remember one lesson and always put a name, face, place, or story with an issue when confronted with making a big decision.

Daniel Mingo, Founder and Ministry Director of Abba's Delight, spoke in favor of conversion therapy. Abba's Delight is a Christian ministry which assists born-again believers and families and friends of those who are gay-identified, to resolve the conflict of the effects of homosexuality on their lives. Pastors and churches receive assistance as well in ministering to those in their congregations whose lives have been impacted by homosexuality. Mr. Mingo became a born-again Christian at age 17, yet for nearly 30 years secretly involved himself in homosexual activity through anonymous encounters.

Mr. Mingo said intensely pursuing discipleship in Jesus while dying to the temptations of same sex attractions proved a monumental inner conflict, yet he neither took on a gay identity nor immersed himself in the gay culture. Realizing he had been feeding a

sexual addiction for nearly 30 years, he went into recovery in 1993 through mentor counseling and attending support and recovery group meetings, and continues that overcoming process today.

Mr. Mingo discussed problems with the proposed legislation. He said the bill can hurt the people he counsels that no longer want to experience homosexual desires. As presented, it offers protections to minors and vulnerable adults from coercive practices and aversion therapies by licensed counselors, but these techniques have not been practiced by professionals for decades already, as is evidenced by the total absence of lawsuits or revocation of licenses.

Mr. Mingo said one of his primary concerns of this legislation is that it will censor counseling to only those with unwanted same sex attractions and gender dysphoria. These same individuals can receive help if they want to be gay, but if they want to lead a heterosexual life following their religious convictions, they are out of luck. He said this is discrimination. All people should have the choice to pursue counseling options that align with their personal life goals and not be under government control.

Mr. Mingo said if this bill is passed it would violate the guaranteed first amendment rights to free speech for secular counselors, pastoral counselors, and any professionals whose beliefs are not in agreement with this bill's one-sided makeup. The bill also takes away the basic rights of parents to freely choose the care they deem best for their children. Kentucky should not make it illegal for Christians to provide licensed, professional care.

Cole Cusick, Family Foundation, said the First Amendment of the United States Constitution states that Congress should make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech. He said passing the bill would violate both the United States and Kentucky Constitutions. It seems like it is promoting a ban on conversations of faith and for the minor to talk to a trusted person of leadership that shares their same religion.

Joseph Backholm, attorney, Family Research Council, said the legislature is not the best body to understand the best needs of a child. He has 13 years in Washington State dealing with this issue in a very different political climate. He said coercion and abuse of clients, regardless of their age, is inappropriate and should not be allowed. Public opinion cannot and should not determine public policy.

Mr. Backholm said the proposed legislation interferes with the right of self-determination for individuals. Parental rights should play an important part in determining the care and treatment for their children. He said the definition of conversion therapy includes sexual orientation and gender identity, which are radically different scenarios. Affirmation of gender identify includes surgical intervention which in many cases could harm and eliminate the fertility of a child. He said the proposed legislation is just an attempt

to regulate speech and hinders therapists from exploring different option in treating clients' desires.

Responding to a question from Representative McCoy regarding licensing boards, Representative Willner said boards have communicated to her that it would be very helpful to have clarifications in statute. They cannot write regulations unless there is a statute to provide the framework so the licensing board has limited tools if no statute is in place.

Representative Palumbo said she supports the bill and would like to see it pass the Kentucky General Assembly in the 2021 Session. She commended Mr. Meiners for this personal testimony.

Responding to a question from Senator Thomas regarding preventing parents and religious leaders from having discussions with their children about sexual identification and orientation, Mr. Mingo said the bill does not prevent conversations between parents and children, but it does prevent them from getting professional therapeutic help. Senator Thomas said he co-sponsored the bill in the 2020 Session with Senator Kerr. He supports the bill and would like to see its passage in 2021.

Senator Schickel said he has a concern about a double standard in the bill. He said children seeking heterosexual therapy is fine, but not homosexual. He is not an attorney, but he sees that language potentially being a double standard. All of the choices are deeply personal, and people are passionate about the issue on both sides.

Senator Raque Adams said parental rights can be taken away from any parent if they are not acting appropriately. For example, if a parent is a drug addict, he or she can lose the right to raise a child and make decision for the future. She plans to be a co-sponsor on the legislation with Senator Kerr.

Responding to a question from Senator Nemes regarding conversion therapy being an effective tool to treating homosexuality and the ramifications, Senator Kerr reiterated that studies show individuals subjected to conversion therapy are seven times more likely to commit suicide. She also noted that any minister can offer counseling to any person, whether they are gay or not. Mr. Mingo responded that conversion therapy has proven to be an effective treatment, although the mainstream media is unlikely to report it as such. Many people have walked away from a homosexual lifestyle utilizing conversion therapy.

With no further business before the committee, the meeting adjourned at 11:45 a.m.