

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 4th Meeting of the 2020 Interim

October 5, 2020

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Monday, October 5, 2020, at 10:00 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, Denise Harper Angel, Jimmy Higdon, Christian McDaniel, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Al Gentry, Thomas Huff, Matthew Koch, Nima Kulkarni, C. Ed MChad 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: Chris Crumrine, Director of State and Federal Relations, University of Kentucky (UK) College of Agriculture, Food and Environment; Dr. Seth DeBolt, Director, James B. Beam Institute for Kentucky Spirits, Professor of Horticulture, UK College of Agriculture, Food and Environment; Gabriel Brown, Mayor, City of Walton; J.D. Chaney, Executive Director/CEO, Kentucky League of Cities; Charles George, Executive Director, Wine & Spirits Wholesalers of Kentucky; Lester Sanders, President, Steve Stevens, Kentucky Association of Realtors; and J.D. Carey, Kentucky/Louisville Apartment Association.

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

Consideration of Minutes from the October 5, 2020, meeting

Senator Thayer motioned to approve the minutes from the October 5, 2020, meeting, and Representative Miller seconded the motion. The minutes were adopted by voice vote.

Alcohol Production Minimums for Educational Programs

Mr. Christopher Crumrine, Director of State and Federal Government Relations, College of Agriculture, Food and Environment, University of Kentucky, testified in person and introduced himself for the record. Dr. Seth DeBolt, Director, James B. Beam Institute

for Kentucky Spirits and Professor of Horticulture, UK College of Agriculture, Food and Environment, testified remotely that the Beam Institute was formed in 2019, a partnership between the University of Kentucky and Jim Beam, created with the goal of facilitating the growth of Kentucky's spirits industry. By supporting the development of Kentucky's workforce, promoting Kentucky as the production and innovation capital of the bourbon industry, and building effective alcohol awareness initiatives, this partnership will promote the welfare, prosperity and sustainability of Kentucky's spirits industry for generations to come.

Dr. DeBolt said the research activities at the institute are designed to address tangible needs of Kentucky's spirits industry. Experts from fields such as engineering, chemistry, business, law, horticulture, forestry, food science, and entomology are drawn together with the common goal of maintaining the welfare, prosperity and sustainability of Kentucky's spirits industry for generations to come. He said the goal is to elevate education and research and align their missions with Kentucky economy.

Mr. Crumrine said that in late March, the institute began manufacturing hand sanitizer for health care workers to help meet the need for this vital product. Those efforts have expanded, and to date more the \$150,000 in sanitizer has been produced for the University of Kentucky campus and greater community.

UK President Eli Capilouto provided bottles of sanitizer to all new university faculty and all SEC school presidents, including athletic directors, basketball coaches and football coaches. UK Board of Trustees members received a bottle. He noted this is an incredible effort to put vital sanitizer into the hands of the people who are working so hard to fight this pandemic. He looks for future collaborations and partnerships in the future with the institute and it has been suggested that the bottles may become collector's items.

Dr. DeBolt said the institute will not meet the distilling requirements established in Senate Bill 99 in the 2020 legislative session. UK is requesting a statutory exemption from the minimum distilling requirements, but not the licensing requirements. The reason for the exemption request is for education and research.

Responding to a question from Senator Thomas regarding distilling on campus or off-site, Dr. DeBolt said the distilling will be conducted on UK's campus close to the chemical and agricultural engineering departments on the corner of Cooper and Limestone.

Senator Higdon recognized his constituent, Brad Boswell, for his generous contribution to the project.

Server Age Limits

Mayor Gabriel Brown, City of Walton, testified in support of legislation that would lower the age for serving alcohol in restaurants from 20 to 18. The change would assist

rural cities with sit down restaurants by allowing young adults under 20 to be able to waitress or waiter and earn a living. It is logical for a server to be able to take a beer from the bar and deliver it to the restaurant table.

Senator Schickel asked if there was representation in person or remotely from the Alcoholic Beverage Control (ABC) staff. The ABC department personnel was not in attendance. He expressed his disappointment and asked that they be represented at future meetings.

Responding to a question from Representative Wheatley regarding soliciting urban area input from businesses affected by this legislation, Mayor Brown said he has discussed this with many business owners and stakeholders all across the area. This is a good economic deal for the state. He also presented the bill to the Kenton County Mayor's group and it was openly discussed and there were no negative comments.

Responding to a question from Senator Higdon about other states' laws regarding alcohol serving ages, Mayor Brown does not know the particulars on this issue in other states. Senator Schickel said he would like a written report from the ABC agency to address any problems or issues that might arise with the legislation.

HB 347 2020 RS - AN ACT relating to regulatory licensing fees

Kentucky State Representative Phillip Pratt said House Bill 347 expands the authorization to approve a regulatory fee licensed to counties that contain a city with a population larger than 20,000 that imposed a regulatory license fee prior to January 1, 2019. Any city or county that held a local option election between July 15, 2014, and July 15, 2017, may enact a regulatory licensing fee. He noted his city and county are in support of the legislation.

Mr. Chaney, Kentucky League of Cities, said this legislation is a correction to Senate Bill 29 that passed in the 2019 legislative session. The cities thought they were getting rid of the remnants of the old classification system, but it also took away the ability for places like Scott County, and twelve other counties, to impose a regulatory fee because they moved to a population basis when it was based on the cities within the counties.

Mr. Chaney said it also removed the ability of about 30 cities to impose the regulatory fee because there was not a window created with a two-year contemporaneous requirement. In total, 30 cities and 12 counties were left out of the ability to impose a regulatory fee, and this bill corrects it, but does not expand upon it.

Chairman Koenig supports the bill, but would like to see this extended to everyone who has a wet territory so they could impose the fee and regulate the property properly. He hopes to expand the legislation in the future to include property regulations of all alcohol sales in all areas. Senator Schickel asked if there was any opposition. There was no opposition to the legislation.

Changes to Existing Alcohol Statutes

Senator Higdon said 21 RS BR 254 allows the definition of quadricycle to be amended by removing the word “exclusively.” This would allow propulsion other than by human muscular power so they can use electric motors. There were no questions from committee members.

Senator Higdon said House Bill 415 seems to allow for more broad alcohol shipping than what was originally intended. The concept was to allow Kentucky producers and manufacturers to ship out-of-state, and out-of-state producers and manufacturers to ship in to the state of Kentucky. The retailers, wholesalers, and distributors asked to be excluded from the legislation at the time.

Charles George, Executive Director, Wine & Spirits Wholesalers of Kentucky, said the Wine & Spirits Wholesalers of Kentucky, the Kentucky Beer Wholesalers Association, the Kentucky Malt Beverage Council, Kentucky Association of Beverage Retailers, and the Kentucky Retail Federation seek clarification that importers are not allowed to directly ship foreign-made alcohol to Kentucky consumers pursuant to Kentucky’s new direct shipper law. Allowing importers to directly ship foreign-made products would greatly expand the intent of Kentucky’s direct shipping law, which should be limited to domestic manufacturers and domestic products.

Mr. George said House Bill 415 passed the General Assembly during the 2020 session, allowing the direct shipment of beer, wine, and spirits to Kentucky consumers. Throughout the committee and floor process, the bill was described as limiting shipments by an in- or out-of-state manufacturer or producer. In other words, any brewery, winery, or distillery located in the United States could obtain a Kentucky direct shipper license and ship products made at its facility to Kentucky consumers. In addition to specifically authorizing manufacturers to obtain a direct shipper license, HB 415 contained language allowing out-of-state suppliers to also qualify for a license. Suppliers include out-of-state manufacturers, wholesalers, distributors, and importers that are the primary source of supply for its products. In its proposed regulation, the ABC specifically allows importers to obtain a direct shipper license. Presumably, only out-of-state importers would be able to obtain a license, not those located in Kentucky. There are 79 entities that have an importer’s permit in Kentucky.

Mr. George said for a foreign-made alcohol product to be sold in the United States, it must be imported by a federally licensed importer. Kentucky wholesalers and distributors are required to purchase foreign products from an importer to sell those products to retailers.

Responding to a question from Chairman Koenig concerning European alcohol sales, Mr. George said a person would need to visit a retailer to purchase a European wine. Chairman Koenig said he does in fact know people who can order wines direct from other countries' websites. He noted national laws take precedence and people order champagne directly from France and tequila from Mexico. Mr. George said state laws can be more restrictive than the federal allowance.

Mr. George said there is no allowance in Kentucky state law to receive shipments from foreign countries. He said federal law may not specifically prohibit, but there is no allowance in state law. Representative Koenig said there are no state law restrictions and alcohol is already being shipped to Kentucky from Italy, France, and Mexico.

Responding to a question from Chairman Koenig regarding importer permits, Mr. George said he is referring to federal importer permits and not Kentucky importer permits. He also said this bill is a disadvantage for state wholesaler licensees and federal importer permittees. Mr. George said it was their wish to exempt wholesalers from the legislation. Chairman Koenig said it would be ideal for the in-state operations to be able to import alcohol from foreign countries to sell to Kentuckians. He noted they were removed from the bill against his better wishes. Mr. George clarified that the Wine & Spirits Wholesalers of Kentucky want this to be a domestic shipping bill.

Chairman Koenig said the bill was intentionally drafted to be different from any other state. While he respects the Wholesaler's position, his intent is to represent the 3,000,000 consumers who live in wet territories in Kentucky and provide them with as many options as possible. He scaled back the original version of the bill in order to obtain the number of votes needed for passage.

Senator Thayer said the change in the quadricycle bill seems reasonable. He also said it was premature to discuss changes to the direct alcohol shipping bill when it still has not been implemented. The ABC Department is in the process of promulgating the administrative regulations. He expressed disappointment with no staff from the ABC were in attendance and will not tolerate any organization trying to slow walk the implementation of this legislation.

Senator Thayer noted Kentucky distilleries have been hit hard during the pandemic. He said tourism and on premise sales are down across the board, which affects everyone in the three-tier system. The alcohol direct shipping bill will generate a revenue stream that

needs to be implemented for the distilleries as they fight to break out of this economic downturn resulting from the quasi lockdown and the pandemic.

Senator Higdon wanted the issue on the agenda to be vetted before the committee. He said this is a great bill for the bourbon industry, but there was concern about importers. It was his understanding that the intent of the legislation was for producers and manufacturers to ship out-of-state and for out-of-state manufacturers and producers to ship in-state. He reiterated that he is not complaining about the bill as it relates to the bourbon industry and the domestic production and manufacturing of spirits in Kentucky and across the country. His only concern was the adding of importers to the mix.

Senator Schickel said the wholesalers are always welcome before the committee. He expects the ABC department to be represented at future committee meetings.

Responding to Representative Miller regarding waiting on the ABC to promulgate the administrative regulations, Senator Schickel said he would be working on it. Representative Miller reiterated to Mr. George that he was always welcome before the committee. Mr. George said his organization is not trying to kill the bill. His changes are a good faith compromise to allow some levels of shipment and he does recognize the pain that some small distilleries are facing. Senator Schickel said the interim is for discussing these types of issues.

Senator Thomas said he is in support of on-line commerce as it pertains to alcohol. He thinks the bill will increase the future revenues for bourbon for the foreseeable future. He discourages any changes to the bill. It was also noted that federal law supersedes state law.

Jay Hibbard, Vice-President of Government Relations, Distilled Spirits Council of the United States, testified remotely. He said House Bill 415 required that suppliers be included and the definitions in the statutes include importers as a supplier, because this is the only way to get their product through the U.S. market. He said the legislature was clear on the intent of the legislation. He would infer that ABC has not implemented the rules, and importers are entitled to participate in this program by statute. He also noted this legislation affects primarily specialty products, and wine accounts for a very small percentage of alcohol being shipped. It is usually limited edition spirits, engraved bottles, or very rare items that are not readily available in stores.

Senator Thayer said craft breweries and small farm wineries are also struggling due to the pandemic. He wanted to emphasize it is not just the bourbon industry that has suffered. He and Chairman Schickel are strong supporters of the entire alcohol industry. He said allowing the shipment of alcohol will be helpful to the revenue stream, especially during the downturn of this pandemic.

The State of Real Estate in Kentucky

Lester Sanders, President, Kentucky Association of Realtors, said the association is a group of real estate licensees in the state of Kentucky. There are 21,503 licensees across the state, but 11,600 realtors involved in all aspects of real estate. A licensee does not mean a person is a realtor. Realtors have to belong to 1 of 20 associations across the state. It is important because realtors are required to adhere to a certain level of professionalism and to a code of conduct that is over 100 years old.

Mr. Sanders said real estate is deemed an essential business in the Commonwealth. It is clearly understood the impact of real estate has on the quality of life for Kentucky residents to be home owners rather than renters. He said the challenges due to COVID-19 have been tremendous, but strict guidelines were implemented on how to conduct real estate business in the Commonwealth to keep everyone safe.

Steve Stevens, Chief Executive Officer, Kentucky Association of Realtors, said Kentucky realtors are performing well despite the pandemic. He said homes sales in Kentucky have hit all-time highs the last three of four years, which can make inventory scarce. He noted 51,000 homes sold in Kentucky in 2019, which is a record. Kentucky is on track for another record year despite the pandemic.

Mr. Stevens said Kentucky metro area house prices are forecast to track the national market. Current local conditions support an estimated 7.7 percent increase in the next twelve months. Kentucky's housing market vitality, based on the nine metro housing markets which comprise it, is the same as that of the overall United States and ranks the state as twentieth in the nation. Recent changes in local conditions suggest the possibility of improvement in short-term performance. Housing affordability and first-time home ownership opportunities remain concerns.

Senator Schickel said the real estate industry has set an example of how a profession can operate during a pandemic and do so safely and successfully. He has been amazed at the volume of real estate being sold in Northern Kentucky. He noted each real estate agent is comparable to a small business. He understands the sacrifice and hard work it takes to be successful.

Responding to a question from Senator Thomas regarding changing opportunities for black realtors and black home ownership, Mr. Sanders said social injustice has opened the door for stark communication and educating the realtors of the inequities. There has been a group established within the organization to work specifically on diversity and inclusion issues at the state level. They are responsible for educating buyers, sellers, and potential buyers and sellers, on what to identify and how to move forward so all Americans can share in the American dream.

Responding to a question from Representative Gentry regarding data reflecting first-time home ownership, Mr. Stevens said he cannot give the specific information as it is not

broken down. He said certain states focus on first-time home buyers, but Kentucky needs to improve in this area. Kentucky needs to focus on lending incentives and first-time home buyer programs. Mr. Sanders noted as prices for homes continue to increase, it makes it more difficult for folks buying their first home to afford it. The price of home building materials increasing also affects housing affordability in a negative way.

J.D. Carey, Kentucky/Louisville Apartment Association, said property owners and landlords own over 350,000 rental units. Rental property contributes \$173 million in property taxes and provides many jobs for Kentuckians. He said rent collections have been stable, but since the pandemic, landlords are seeing a decline in rent payments received since unemployment and stimulus payments have stopped. Landlords and owners have seen a 3.1 percent decline in timely rental payments and have tried to implement flexible payment plans with renters, including waiving late fees, and helping the residents apply for financial assistance through non-profit agencies.

Mr. Carey said many landlords have gone without rental payments from tenants for up to seven months. This creates a significant hardship for landlords, especially as the percentage of tenants not being able to pay increases. Landlords are responsible for many operating expenses including federal, state, and local taxes; insurance; maintenance; and utilities that have to be paid whether they are receiving rental payments or not. He noted the multi-family apartment industry is the only sector of Kentucky's economy being asked to give away its product for free while still having to meet its obligations.

Mr. Carey said the number of families renting is at an all-time high. To meet demand, over 325,000 new apartment rentals would have to be built each year.

Senator Schickel said small landlords are in trouble and this is a crisis. He said this is the only industry being asked to give away its product for free and receive nothing in return. He said most landlords are not in a financial position to afford to do this.

Senator Higdon said there is a crisis in the rental industry and landlords are suffering because tenants cannot pay. Responding to his question, Mr. Carey said the ABCD classification system is based on rental prices from what the property generates from high-end living properties to affordable housing.

Senator Thayer said he would like for Governor Beshear's executive order allowing alcohol sales to go from restaurants to become permanent law. He will address the issue in statute in early January when the General Assembly convenes for legislative session.

With no further business before the committee, the meeting adjourned at 11:25 a.m.

