INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 5th Meeting of the 2020 Interim

November 20, 2020

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Friday, November 20, 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.

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

Approval of Minutes from the October 5, 2020, meeting

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

Kentucky Restaurant Association

Stacy Roof, President/CEO, Kentucky Restaurant Association, discussed the on-going issues that have impacted restaurants since the beginning of COVID-19 in March 2020. One in six restaurants are expected to permanently close, which negatively affects many communities. With no federal aid in sight, Ms. Roof would like to see the proposed legislation 21 RS BR 343 become permanent law. The proposed bill will help restaurants to stay afloat in tough financial times. It resembles Senate Bill 150 from the previous legislative session.

Ms. Roof said consumers have responded favorably to the alcohol to-go sales that has been in effect under Governor Beshear's executive order. She said it has helped operators sell their inventory with the to-go food orders. Distillers and craft brewers are also supportive of the legislation. This is a lifeline that is much needed for struggling restaurants.

Ms. Roof said many of the over 7,000 hospitality businesses across Kentucky, including restaurants, taverns, bars, distilleries, retail sales operations, and tasting rooms have been closed or operating under reduced capacity for months, causing over 114,000 employees to be laid off or furloughed since the COVID-19 outbreak. This equates to 76 percent of restaurant operators having laid off or furloughed employees. She noted that 37 percent of operators say it is unlikely their restaurant will still be in business in six months without an additional relief package from the federal government.

Shannon Stiglitz, Senior Vice-President, Government Affairs, Kentucky Retail Federation, said it is expected to take two to five years for restaurants to overcome the financial hardship created from the pandemic. Many businesses have made significant economic investments to their facilities during the pandemic including ventilation systems, sanitizer, and plastic shields. Alcohol to go can provide restaurants with more net revenue than to-go food orders alone. Operational costs for restaurants are at an all-time high and any innovative ideas to make money are impactful.

Chairman Schickel said the proposed legislation is a good, commonsense lifeline. He said the Alcohol Beverage Control (ABC) Board is in support and has not identified any problems with the legislation. Some definitions may have to be tweaked in the future.

Senator Thayer said he has empathy for the restaurants in the Commonwealth. Governor Beshear's decision to close these establishments for three weeks is disastrous. He could have very easily reduced capacity size in restaurants rather than shutting them down completely and killing them economically. He would love to co-sponsor the alcohol to-go bill with Chairman Schickel and reiterated he hopes the shutdown is only three weeks and does not extend through Christmas.

Responding to a question from Representative Burch regarding restaurant liability for selling alcohol to go, Ms. Roof said prevention is never 100 percent, but there are many safeguards built into the legislation to keep consumers and businesses safe and free from liability. Similar to the wine to go bill that was passed many years ago, the container has to be sealed and not be within reach of the driver. It is the driver's responsibility to ensure the guidelines are followed. Ms. Stiglitz noted that drinking and driving is still against the law regardless of the fate of this bill. Representative Burch said Governor Beshear is trying to protect Kentuckians and he would like to see the restaurants remain open in a safe environment.

Kentucky Guild of Brewers

Senator Julie Raque Adams said Kentucky microbreweries, or craft brewers, have been a growth industry in Kentucky. There are currently 88 Kentucky craft breweries, with five new breweries in the planning stage. Twenty-four microbreweries have expanded, or are in the process of expanding. The breweries generate $872 million in annual economic activity to the Commonwealth. In 2019, Forbes ranked Kentucky in the top two states in the nation for growth and economic impact of microbreweries.

Senator Adams said the Kentucky Guild of Brewers (KGB) is asking the Kentucky General Assembly to update antiquated laws that do not align with current market practices, and to get government out of the way of business so they can compete and grow in both domestic and global markets. This industry has never come before the General Assembly seeking money, or reducing oversight. Instead, current and past requests have been to remove obstacles that have hindered growth or access to markets. She will resubmit Senate Bill 321 from the last session in the 2021 Kentucky General Assembly. It will permit limited self-distribution for microbreweries of up to 2,500 barrels, and addresses the inequities that exist in the statutorily required contractual arrangement between microbreweries and beer distributors. The proposed legislation does not seek to give microbreweries an advantage over distributors, but levels the playing field for both the microbrewer and the distributor.

Charlie Hamilton, President, KGB, said Kentucky's craft brewers provide more than 1,000 Kentucky jobs and, prior to COVID, had increased their employment by 15 percent. Amidst the pandemic, they have been forced to furlough or lay off many employees. Industry members have still invested an additional $16.2 million in Kentucky this year, despite the pandemic and the delayed expansions. Continued growth (although slowed due to COVID) is occurring in new markets. Exporting has occurred to over 40 states and 20 different countries.

Mr. Hamilton thanked the committee members for the legislative change to the sales and use tax on manufacturing equipment during the 2019 Regular Session. Microbreweries are more than just manufacturers in the Commonwealth. Beyond being a manufacturing growth industry in Kentucky, the KGB members operates "tap rooms," and many operate full service restaurants. Like other on-premises retailers, such as restaurants and bars, the KGB is part of the state's hospitality and tourism industry.

Last year Louisville received national notice as a craft brewery destination city. Kentucky tap rooms are tourist destinations and local community hubs for residents. The KGB is a member and the Brewgrass Trail experience, and brings numerous festivals and partners for the Kentucky Proud beer series.

Mr. Hamilton said each year, the KGB has come before the General Assembly and various committees to provide updates and have been able to report significant growth, increased production, millions in investments and job creation and sustained commitment to the local communities and local charitable organizations, but not this year. COVID is impacting all industries but has hit independent craft brewers particularly hard. All small independent locally owned businesses require significant capital investment to open. Microbreweries are the smallest producers.

Adam Watson, Government Relations, KGB, said pre-COVID craft brewers had the highest growth, but now those same local or regional breweries are suffering the greatest impacts from COVID. Nationally, two percent of all microbreweries will not reopen. They have lost three in Kentucky, and at least ten are identified “at risk”. A 13 to 32 percent decrease is forecasted in product trade, which will have impact on materials, and beer sales. On-premise draughts were down 80 to 90 percent in past COVID months. It has started to recover some, only down now 25 to 40 percent. Overall, sales are likely to be down 50 percent according to the national Brewers Association.

Mr. Watson said financial impacts are vast especially with civic unrest and the closure of downtown Louisville. The impacts on other-premise retailers, such as other restaurants and bars, and grocery stores all have an impact on the industry. The closures, reduced capacity, limited hours of operation, and the mandatory curfew all impact supply in local markets which are key priorities.

Mr. Watson said on-site sales are down, volume is down, distributor orders are down, and there has been complete cancellation of events. Additionally, operational costs have increased with increases in raw materials and sourcing. There have also been can shortages, and a decrease in the availability of CO2. Businesses that could pivot to carry-out have done so. Profits this year will be substantially down, if any are realized at all, limiting reinvestment and expansions. The alcohol shipping bill, if it would have been enacted, would have helped to offset losses. Other states have shown that on-line sales can provide a lifeline. Despite PPP and limited operations, layoff and furloughs still range from 10-80 percent of the workforce. Many workers faced difficulty in getting Unemployment Insurance benefits. Although growth is still up, it was the slowest growth in the 11 quarters reported.

Mr. Watson said COVID-related restrictions on businesses included mandated closures, then 25 percent capacity, then 50 percent required capacity reductions, no bar service, and service only at tables, which adds additional costs. Modifications to outdoor spaces for those who have them, have been costly. There has also been a mandated curfew. He said the KGB members are doing all they can to assure compliance with the Healthy at Work Guidelines, and all Executive Orders. Much work is left to do to rebuild customer confidence and hopefully regain customers once fully reopened. It is imperative to be able to safely reopen at normal capacity.

Mr. Watson discussed legislative changes needed by the craft brewery industry during the 2021 Regular Session. They included contract equity and seeking to assure current contracting provisions are equitable to both parties, and adopting nationally accepted standards related to brand value. He said the KGB supports limited self-distribution, not to exceed 2,500 barrels. In other states who utilize self-distribution, this has been a lifeline for microbrewers. Finally, align statutory provisions with modern business practices, while reducing barriers. This applies only to beer, and there is not a similar statute for wine or distilled spirits. Changes would only apply to contractual distribution agreements between microbrewers and beer distributors.

Kentucky Distillers' Association

Bryan Alvey, Senior Director of Governmental and External Affairs, Kentucky Distillers' Association (KDA) discussed 2021 legislation session priorities. Bourbon is very popular, but the on-going trade war has hindered global growth. The trade war with China and the European Union is threatening distilleries across the United States and in Kentucky. Kentucky spirits exports are down more than 30 percent through the first half of 2020, after years of double-digit growth, and exports are on track to be their lowest in a decade. The Kentucky Bourbon Trail visitors made nearly 2 million stops at 37 participating distilleries in 2019. More than 70 percent of those visitors came from outside the state. The top issue for bourbon tourists is direct-to-consumer shipping. The COVID pandemic has also hit distilleries hard, as sales at bars and restaurants have plummeted and smaller distilleries struggle to keep their doors open.

The KDA supports several initiatives to attract more visitors to the state and help distilleries reach their "Napa Valley" potential, especially as they rebound from the pandemic. The KDA will continue to advocate to modernize and streamline Kentucky's new Direct-to-Consumer shipping laws, and to reform distillery gift shop sales to remove wholesale taxes on bottles that never pass through a wholesaler, a privilege that wineries and breweries already enjoy. The KDA supports allowing the sale of private barrel selections and exclusive bottles at distillery gift shops, a privilege already given to wineries, breweries, and distillers around the world. Finally, the KDA supports making retail cocktails-to-go and bottle sales at restaurants permanent, continuing the temporary success of these sales during COVID.

Mr. Alvey said distilling is the highest taxed among all 532 manufacturing industries in Kentucky. Kentucky is only one of two states with a wholesale tax on alcohol (South Dakota is the other at two percent). Kentucky ranks fifth highest among all market states in spirits taxes. Kentucky is the only place in the world that taxes aging barrels of spirits.

The KDA supports several initiatives to streamline and reform spirit taxes. He suggested exploring ways to make Kentucky's antiquated tax system on alcohol more efficient and effective in today's marketplace. The KDA opposes any effort to increase alcohol taxes, and supports eliminating the barrel tax, or giving distillers full relief from this discriminatory tax.

Kentucky distilleries rose to the challenge during the COVID crisis and began producing and donating hundreds of thousands of gallons of much needed hand sanitizer for hospitals, first responders, and front-line workers. The KDA supports initiatives to provide liability protection for distilleries and other businesses that provided temporary and targeted relief during the shortage of PPE and other critical goods and services.

Kentucky distilleries buy more than nine million bushels of corn and other grains from Kentucky farmers, which is more than half of all distillery corn purchased. As those grains are cooked and fermented in the distillation process, spent grains are a byproduct that is left over. These byproducts are perfect for feeding livestock on the farm and other agricultural applications. The KDA believes that distillers grains should not be classified as industrial waste, especially since petroleum byproducts are not classified as an industrial waste. Distillers spent grains and other byproducts are agriculture in nature and should be listed that way in state environmental regulations.

Senator McDaniel said direct shipping can be a lifeline for businesses hard hit by the pandemic. He is introducing a bill in January that will remove direct shipping from any regulatory or taxation process for the next year. He said Kentuckians want this and deserve this service. Direct shipping can also save struggling businesses from closing.

Senator Thayer discussed the importance of removing artificial barriers from free enterprise. He said the wish list from KDA gets longer, but Kentucky has come a long way from the prohibition days.

Kentucky Board of Embalmers and Funeral Directors

Greg Lakes, Chairman, discussed proposed legislation changing the fee structure so the board can be self-sustaining. They tend to have a deficit each year and have to ask the state for assistance. These small fee structure changes would make the office self-sustaining and bring the office into the 21st century.

Responding to a question from Chairman Schickel regarding licensees and fee structures, Ms. Christie Moffett, Executive Director, said the licensees pay the fees. The licensees include embalmers, funeral directors, and funeral establishment. Mr. Lakes said the Funeral Directors’ Association has endorsed the proposed legislation and is in support of the fee structure change. Chairman Schickel recommended ensuring that all licensees have bought in, or the legislation can quickly turn unviable.

Senator Thomas said the Kentucky Board of Embalmers and Funeral Directors should have the latitude to set the fees to be self-sustaining as they see fit. He said this would be very similar to the Kentucky Bar Association deciding its fee schedule, and attorneys’ fees can change year to year depending on need.

Department of Charitable Gaming

Jacob Walbourne, Deputy General Counsel, and Doug Hardin, Staff Attorney, Public Protection Cabinet, discussed the legislative priorities for the Department of Charitable Gaming. Mr. Hardin said the most important item in the 2021 Regular Session is a change to KRS 238.536, commonly known as the 40 percent rule. The 40 percent rule is a rule that requires the net receipts from charitable gaming to go to the charity as opposed to paying for charitable gaming itself. All net proceeds have to go to a charitable purpose, but this provision provides the charities with leverage when negotiating leases and buying charitable gaming supplies, by ensuring 40 percent of the net proceeds go to the charity.

Mr. Hardin said COVID-19 has reduced the number of charitable gaming players that are engaged in gaming at this time. He noted financial reports have not been released for calendar year 2020, but they are estimating a fourfold increase in the number of charities that may be negatively impacted by this statutory requirement. This equates to about 10 percent of charitable gaming licensees, and this number could still increase. Due to these factors, they are requesting a one-year suspension of the 40 percent rule for calendar year 2020. Other items he discussed were “clean-up” issues.

With no further business before the committee, the meeting adjourned at 11:40 a.m.