

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 2nd Meeting of the 2022 Interim

July 21, 2022

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 21, 2022, at 11:00 AM, in Room 131 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 Donald Douglas, Jimmy Higdon, Gerald A. Neal, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Al Gentry, Thomas Huff, Matthew Koch, C. Ed Massey, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, and Killian Timoney.

Guests: Speaker Pro Tem David Meade; Josh Summers, CEO, Kentucky REALTORS; Justin Landon, CEO, Lexington-Bluegrass Association of REALTORS; Tom Wright, Financial Officer, and Sherry Sanders, Charitable Gaming Chair, AMVETS of Kentucky, Post 1; John Park, DVM, Steve Wills, DVM, and Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners.

LRC Staff: Bryce Amburgey, Jasmine Williams, Wendy Craig, CaraBell Preece, and Lisa W. Moore

Approval of Minutes from June 2, 2022, meeting

Representative Koch motioned to approve the minutes from the June 2, 2022, meeting, and Representative Timoney seconded the motion. Motion carried and the minutes were approved by voice vote.

Veterinarian Licensing

Representative Koch said the new bill draft in members' folders has been thoroughly vetted through a series of stakeholder meetings held across the state, and changes were incorporated. Ms. Michelle Shane, Executive Director, Kentucky Board of Veterinarian Examiners (KBVE), said nearly 30 years have passed since the last substantial updates to the Kentucky Veterinary Medicine Practice Act ("the Practice Act"). In today's changing medical and technological landscapes, the Practice Act is due for modernization.

KBVE invested more than a year conducting an in-depth review of two national Practice Act Models (PAMs) from the American Association of Veterinary State Boards (AAVSB) and the American Veterinary Medical Association (AVMA). Both PAMs have input from national veterinary medicine and regulation experts. Additionally, the board looked at existing laws in surrounding states and consulted with the leadership of the Kentucky Veterinary Medical Association (KVMA) and the Kentucky Veterinary Technician Association (KVTa). The KBVE took the best model components and feedback and merged them with the board's mission in Kentucky to update the Practice Act. Ms. Shane explained the modernization highlights to the members via a PowerPoint presentation.

Dr. Steven Wills, Chairman, KBVE, said they are trying to stay in the forefront of the profession and will continue to educate the public on the changes. Dr. John Park, Board Member, KBVE, said this is a changing profession and improvements need to be made in order to protect the animals and keep them safe. Representative Koch noted that the bill would be introduced in the Kentucky General Assembly 2023 Regular Session.

Senator Thayer discussed veterinary shortages, particularly in rural communities and food animal or mixed animal practices. Updates to the Practice Act are worthy of consideration, and he feels there is room to find agreement among all parties. Pushback will come mainly from out-of-state and corporate interests, including animal rights groups.

Responding to a question from Senator Thayer, Dr. Wills stated that the proposed changes would not increase barriers to becoming a veterinarian, and there will be no additional licensure requirements. He disagrees with easing the shortages by requiring veterinarians who utilize taxpayer money to fund their education in Auburn and Tuskegee, Alabama, to return to Kentucky and work for a certain number of years. He noted Kentucky does not make this unfair requirement for other professions. Senator Thayer said it might be needed on a temporary basis to address the vet shortages. Dr. Wills said scholarship recipients could be contractually required to return to Kentucky to work.

Responding to a question from Representative Moser, Ms. Shane said all veterinarian facilities need to be confirmed and located before identifying key shortage areas. The allied professional permits will provide public and patient protection related to allied professional services on animal patients, and will allow clients an avenue for recourse when services result in harm or death to the patient. It will ensure that allied professionals receive proper training and maintain continuing education for work on animals.

Responding to Senator Thomas, Ms. Shane said the animal cannot speak for itself and the in-person annual visit can help doctors identify diseases early. The Veterinary-Client-Patient Relationship (VCPR) will have a once per year in-person visit requirement.

Dr. Park added that the entire Kentucky veterinary community agrees with the changes. Large online companies and animal rights activists are seeking to lift the in-person VCPR requirement nationally. Online pharmaceutical companies want to provide prescriptions without ever setting foot in Kentucky or providing follow-up care. Lifting the in-person VCPR requirement could result in the following: opportunities for drug diversion and abuse; veterinarians discouraged from staying in food animal work; and failure to promptly identify, diagnose, and quickly contain high-consequence diseases.

Responding to a question from Representative Timoney, Ms. Shane said no one solution will be a cure-all for the recruitment and retention of veterinarians. It will remain difficult to recruit small animal veterinarians. Many Kentuckians attend Auburn or Tuskegee Universities in Alabama through a reciprocity agreement in place with Kentucky which makes it hard to get those folks back to Kentucky to work. She did note a partnership between Lincoln Memorial University and Auburn to get students to return to work in Kentucky. She mentioned Ohio State University, Virginia, Maryland, Purdue, and vet colleges in Tennessee as other possible nearby locations for Kentucky students to receive a veterinarian degree.

Responding to a question from Representative Meredith, Ms. Shane said there are disparities between large and small animal veterinarians. Shortages are greater in rural areas and more specific to large animal needs, but shortages are common throughout the field. One idea to address the issue would be to lower the GPA for entry into large animal vet school in an effort to get more enrollees who could still have long-term success.

Real Estate Wholesaling

Speaker Pro Tem David Meade said wholesaling in real estate has become a problem across the country. One of the most misunderstood issues involving wholesaling real estate has to do with the assignment of contract strategy. In this type of transaction, it is critical to understand that marketing the right to a contract can only occur after a contract is secured with the existing property owner. No person may market a home if he or she does not have a real estate license.

Many first-time wholesalers enter this profession seeking an assignment of contract arrangement because it affords them the lowest barrier of entry into wholesaling. There are essentially no costs involved because as the wholesaler, a person is not conducting the actual transaction on a piece of real property. He or she is acting only as the middleman who collects a fee when the contract is assigned to another party.

With double closing or wholesaling, a wholesaler engages in two separate purchase contract transactions, one with the original owner and the other with a real estate investor often prearranged through the wholesaler's buyer list. Many times, these are cash buyers who are looking for foreclosure bargains or potential rental property they can add to their portfolio. Many times, the transactions take place the same day with a double close.

However, wholesaling to an end buyer may involve a longer time frame, but is typically still a relatively short time frame to complete the real estate purchase.

Speaker Pro Tem Meade said wholesalers believe they have found a loophole in Kentucky by creating an equitable interest in the property when they put down a \$500 deposit or option, and then they have the right to sell the property by owner. He has added some brief language to a bill that will be introduced in the 2023 Regular Session of the Kentucky General Assembly to mitigate this problem.

Mr. Justin Landers, CEO, Lexington-Bluegrass Association of REALTORS, said the bill is about consumer protection. For most Americans, real property will be the largest asset they own. Buying a home is how many Kentuckians build generational wealth, send their children to college, and buy health care in their senior years.

Mr. Landers said the Kentucky Real Estate Commission (KREC) establishes that a real estate licensee in Kentucky owes a fiduciary duty to their clients. There are not many professions that have a legal fiduciary obligation, and they must put the needs of their clients above their own. In addition, the KREC requires that a real estate licensee owes a duty to any consumer of good faith and fair dealing, not just a client.

Mr. Landers said Speaker Pro Tem Meade's bill will further define real estate brokerage. It will make it unlawful for any person who is not licensed as a broker or agent to advertise for sale an equitable interest in a contract for the purchase of real property. Wholesaling has increased in the last three years because of rising property values. Some homes have increased \$125,000-\$200,000 in that time period.

Responding to a question from Representative Bratcher regarding the term "wholesaler," Mr. Josh Summers, CEO, Kentucky REALTORS, said wholesaling is not purchasing a property, renovating it, and then reselling it. This practice is sometimes called "flipping," and that has nothing to do with wholesaling. It is not closing on a property and then reselling it, as that is called buying low and selling high. Finally, it is also not simply assigning a contract to another party, as this happens all the time between business entities or family members. Wholesaling is entering into a contract, selling the paper to someone else for a profit, and pocketing the difference of the original sale price. It typically targets distressed properties or people facing foreclosure.

Responding to questions from Representative Flannery, Mr. Landon responded this bill would not prevent a double closing but would prevent the marketing of equitable interest in a contract before the closing without utilizing a real estate licensee to advertise the property. The legislation does not make it more difficult for property to be bought and sold. It seeks to ensure that everyone is treated fairly as the law requires when someone is making money between a buyer and a seller. Speaker Pro Tem Meade said this is not a free market or a "for sale by owner" issue. This bill applies the fiduciary duties that should be included when bringing a buyer and seller together.

Representative Palumbo thanked Speaker Pro Tem Meade for protecting Kentucky consumers and asked to co-sponsor the legislation.

Responding to Senator Thomas, Speaker Pro Tem Meade said some telemarketer calls are wholesalers and others are real estate agents. He reminded members to add their telephone numbers to the “no call” list.

Responding to a question from Representative Gentry, Speaker Pro Tem Meade said this proposed legislation does not affect finder fees between retailers because the retailer’s intent is to buy the deed. He explained that it only affects the advertising of property and would not affect investment companies who buy properties for retail value, or finder fees among retailers.

Representative Koch said the wholesalers are preying upon a vulnerable population that may not be familiar with the real estate market, such as widows and the elderly. Some have gone as far as to offer to pay for loved ones’ funeral expenses, or cash money. Chairman Koenig said it is the duty of this committee to provide proper public protection, while not hurting the free market.

Representative Pratt expressed his appreciation for the bill and its protection against consumer predators. He mentioned the annoying and redundant phone calls, texts, and post cards that he receives offering these types of services.

Responding to Senator Nemes, Speaker Pro Tem Meade said wholesalers are looking for people who do not understand how the market works. Senator Nemes flips houses and would like to see a copy of the contract during these transactions. He asked to meet with Speaker Pro Tem Meade for some follow-up questions.

Representative Meredith said as a property owner, he receives various cash offers monthly in the mail. He feels the wholesalers prey up the elderly, widowed, and people unfamiliar with the real estate market.

Charitable Gaming

State Representative Kevin Bratcher explained the proposed legislation regarding the deposit of gross receipts for smaller charitable organizations conducting charitable gaming events. Tom Wright, Financial Officer, AMVETS of Kentucky, Post 1, said that by statute a deposit must be made every two days following an event. An event could be a picnic or a night at the races, and the profit is immediately deposited. Each day of daily pulltab sales is deemed a separate event, whether it uses paper or electronic pulltabs. He referred members to a spreadsheet in their folders showing weekly deposit schedules. The bill draft would require weekly deposits and would help with budgeting and accounting.

Responding to a question from Chairman Koenig, Representative Bratcher said charitable gaming regulators have not been available to discuss the issue. The moneys in question are very low amounts, and he feels the groups can be trusted with a few hundred dollars for a couple of days until they make a deposit.

Responding to a question from Representative Banta about definition clarification with charitable gaming, Mr. Wright said he had spoken with Stephanie Ledford, Fiscal Officer, Kentucky Department of Charitable Gaming, and she said the law requires pulltabs to be a daily event. Sherry Sanders, Charitable Gaming Chair, AMVETS of Kentucky, Post 1, said making three deposits in a week can leave them short of paying out pulltab wins because the money is in the bank. Representative Bratcher said the bill will be filed in the 2023 Regular Session of the General Assembly and he hopes for a vote to end this operational nightmare.

With no further business before the committee, the meeting adjourned at 12:10 p.m.