

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 6th Meeting of the 2022 Interim

November 17, 2022

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, November 17, 2022, at 10:00 AM, in Room 154 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, Jason Howell, Christian McDaniel, Gerald A. Neal, Michael J. Nemes, and Damon Thayer; Representatives Kevin D. Bratcher, Tom Burch, Patrick Flannery, Thomas Huff, Matthew Koch, C. Ed Massey, Jerry T. Miller, Ruth Ann Palumbo, Phillip Pratt, Killian Timoney, and Susan Westrom.

Guests: State Representative Nima Kulkarni; Carl Sims, Deputy Program Director, The Council of State Governments; State Representative Norm Thurston, Utah House of Representatives; State Representative Nancy Tate; Jim Bradford, Deputy Garrison Commander of Fort Knox; Mike Robinson, GIS Specialist for the Lincoln Trail Area Development District; Brigadier General (Retired) Jim Iacocca, President/CEO Knox Regional Development Alliance; Jason Underwood, Managing Director, Capitol Strategies; Frank Fina, Sr., Pace-O-Matic; Chad Carmichael, Carmichael Music & Vending; Wes Jackson, Kentucky Merchants and Amusement Coalition, Lexington Cue Club; Bob Heleringer, General Counsel, Prominent Technologies, LLC; Adam Haley, Staff Contact, Kentucky Academy of Audiology; Greg Brotzge, Government Affairs Consultant, Hearing Aid Association of Kentucky; and Chauncey Morris, Kentucky Thoroughbred Association, Kentucky Thoroughbred Owners & Breeders.

LRC Staff: Wendy Craig, CaraBell Preece, and Lisa W. Moore

Approval of Minutes from October 27, 2022, meeting

Senator Howell motioned to approve the minutes from the October 27, 2022, meeting and Representative Timoney seconded the motion. Motion carried and the minutes were approved by voice vote.

License Reform for Non-Citizen Immigrants

Chairman Koenig participated in a national consortium studying licensing reforms and improvements. He said the conference was beneficial to looking at end results. Representative Nima Kulkarni said licensing reform for non-citizen immigrants is a solution to end the workforce crisis facing the Commonwealth. Barriers that immigrant and refugee professionals face in the United States have a serious impact on the workforce and specific sectors with worker shortages. State governments have made strides to lower these barriers.

Representative Kulkarni said there is a pool of potential workers that are in the state that have work authorization, but are chronically underemployed or unemployed in their chosen field of education and experience. Refugees is a specific population of immigrants that have not chosen to come to the United States on their own accord, but were displaced or forced to leave their home and did not collect transcripts, official diplomas, research certificates, etc. that would verify their experience in the home they left. Settlement camps also cause large gaps in work history for refugees prior to settling in the United States.

Carl Sims, Deputy Program Director, The Council of State Governments (CSG), showed members a PowerPoint and said CSG is a region-based membership organization that fosters the exchange of insights and ideas to help state officials shape public policy. He noted the projected in-demand professions commonly requiring licensure: healthcare, personal care, and community and social services. Contributing factors to the workforce shortages in these areas is workforce participation rates, demographic trends, and pathways to employment/licensure. In Kentucky, the hospital job vacancy rate is at 17.1 percent. An estimated 14 percent of the current nursing workforce in Kentucky is nearing retirement age.

Mr. Sims said the United States immigrant population makes up 13.75 percent of the total population and 17 percent of the national workforce. In Kentucky, the immigrant population makes up 4 percent of the total population and 5 percent of the state's workforce. Economic and social costs of licensure may involve overly burdensome requirements; creates additional costs for licensees; may contribute to workforce shortages; reduces access to services; and inhibits ability of professionals to move and practice across state lines.

State Representative Norm Thurston, Utah House of Representatives, said that Utah residents, immigrants or nonimmigrants, who have work permission, should be allowed to obtain jobs that they are trained and qualified to perform. Government should not get in the way of workers performing jobs they know how to do. Immigrant specific barriers to licensure include lack of recognition of foreign credentials, lack of knowledge about licensing, skills gaps and costs, and English proficiency. He said learning English should not be a deal breaker to employment and Utah created a new office of Professional Licensure Review and provided the resources to allow the review of

regulations across the state and identify what barriers are keeping workers who are trained and skilled from getting jobs.

Representative Kulkarni concluded that creating task forces, dedicating state offices, and building community partnerships is a good state policy strategy. She said modifying licensing requirements and addressing skill gaps and English language proficiency are good first strategies. These steps improve communications license applicants and reduce overly burdensome barriers to licensure to fill critical need jobs.

Responding to a question from Chairman Koenig, Representative Thurston said Utah focused on competency-based outcomes instead of inputs to ensure workers could perform a specific job. Utah has focused on working with refugee communities to eliminate language barriers and allowing flexibility for documentation requirements. It is important to value the refugees' job skills and not allow the license to be the reason they are not working.

Responding to a question from Representative Westrom, Representative Thurston said Utah has not utilized the transcription software that changes one language into another, but may consider doing so in the future. He said they do use an online interpreter to help with telephone and in-person communications. Representative Westrom said it demonstrates courage to move from another country into the United States.

Responding to a question from Representative Miller regarding a shortage of CDL drivers, Representative Thurston said there are federal requirements involved with commercial driver licensing. States should focus on teaching the skills to drive a truck, in addition to the worker learning English.

Responding to questions from Senator Douglas regarding public safety and career pathways, Representative Kulkarni said the proposed legislation will not make it easier for this population to obtain citizenship, and oversight and safety will not be overlooked. Pathways to an occupation can be eased whether it is language, time, or cost. Refugees can be a tool to fill shortages and gaps in Kentucky's workforce needs while learning English simultaneously.

Senator Douglas noted that identifying this population as a potential pool of workers is fine, but legislators are tasked with ensuring public safety of the citizens. There are also many people in this country who have worked hard for many years to obtain these jobs. Representative Kulkarni assured the committee that this group will target job shortages and this will not make employers more inclined to offer this group of people a job, nor does it make it easier for anyone to obtain a job. Chairman Koenig clarified that barriers to employment should be lowered without sacrificing public safety in order to give people the opportunity to work and live the American dream.

Representative Koch said he is supportive of the issue. Immigrants can fulfill a need and contribute value to the workforce.

Senator Nemes said this can be a great idea and he hopes people that are here can stay and be successful. He did caution to ensure that a worker's experience and knowledge is valid without being provided background credentials.

Military Installation Real Estate Disclosure

Representative Nancy Tate presented about the need for a noise disclosure in the sale of real estate in proximity to Fort Knox and Fort Campbell as a protection for military communities. She is proud to support the armed services and this topic is a priority of the Department of Defense. Fort Knox is Kentucky's number one economic engine second only to UPS.

Jim Iacocca, President/CEO, Knox Regional Development Alliance, testified via Zoom that his organization is charged with protecting Fort Knox and supporting soldiers and their families. Fort Knox is a crucial component of Kentucky's economy, employing 22,000 people to become the second largest employer in the state. He said acknowledging being located close to a military installation is the right thing to do for Fort Knox and the homeowner.

Mike Robinson, GIS Specialist for the Lincoln Trail Area Development District, provided some background information for the need of the military installation. Jim Bradford, Deputy Garrison Commander of Fort Knox, said the objective of proposed legislation is to ensure that Fort Knox continues to maximize its readiness and training capacity. Fort Knox needs to be able to work with real estate agencies and organizations as well as homebuyers that are procuring residential and commercial land.

Responding to a question from Senator Howell, Mr. Bradford said they do receive easement requests and handle those through the real property and real estate agreement with some involving the United States Core of Engineers. He noted they are not seeing any challenges or friction working through the processes. Noise issues from neighboring land owners are handled through voice complaints and they strive to work with civic leaders in the area to inform public of certain events. Real estate sellers and homebuyers need to be aware of what they are purchasing.

Responding to a question from Chairman Koenig, Representative Tate said House Bill 89 was introduced in the 2022 Regular Session and needs some modifications. Mr. Bradford said the term military installation is specifically defined as Fort Knox and Fort Campbell. Mr. Robinson said they are working with real estate agencies, but an eight-mile distance seems reasonable for the homeowner to acknowledge noise and other issues of living near either base.

Chairman Koenig stated that one concern is if this is put into statute, is that every person who sells a house in the state of Kentucky will have to indicate whether they live within ten miles of one of those two installations. It is a regionally specific issue that should be able to be fixed locally and not require legislation. This would also modify disclosures to include issues that are external to the home, which is not the case now.

Responding to a question from Senator Nemes, Mr. Bradford said Fort Knox will remain a partner to the communities with respect to training and providing notification and information to residents and community leaders in the area. There is a historical residency that is familiar with Fort Knox, but some new residents do not know the history of Fort Knox or its intentions for the future. The purpose of the disclosure is to be sure the homebuyers understand they are procuring a home next to an active military installation that is providing readiness for the Army and the Department of Defense. Representative Tate does not believe the disclosure language will cause a decrease in property value in the area. It has not lowered property values in other states that have added real estate disclosures for military installations.

Tax and Regulatory Structure for Games of Skill

Jason Underwood, Managing Director, Capitol Strategies, provided an overview of the industry and support for games of skill. Frank Fina, Pace-O-Matic, said it is the leading software company across the United States. He said regulating and taxing legal skill games eliminates illegal gaming distributors and operations. It provides the state with additional tax revenue and affords Kentucky small businesses and fraternal clubs a certainty to earn supplemental revenue. Roughly 80 percent of profits and revenue from the games stay in the states in which they operate.

Mr. Fina said the skill game industry is working with Senator Howell and other legislators on legislation for the 2023 Regular Session of the General Assembly to introduce that will further define, regulate, and tax the legal skill game industry in Kentucky. Key provisions include providing regulatory authority to the Kentucky Department of Revenue and enforcement authority to the Kentucky State Police. It establishes licensing fees for skill games, distributors, operators, and establishments of each game and sets a six percent tax rate. Most of the tax revenues collected go to the general fund, with percentages going to the county and local governmental bodies where games are located. It limits gameplay to those 18 years of age or older, and establishes strong civil penalties to discourage the unlawful sale, distribution, or play of illegal gambling devices and unlicensed skill games.

Wes Jackson, Kentucky Merchants and Amusement Coalition, Lexington Cue Club, and Chad Carmichael, Carmichael Music & Vending, both spoke in support of legalizing skill games in Kentucky. Skill games, and the revenue they generate, have become a lifeline for many small businesses, clubs, veteran groups, and fraternal

organizations in Kentucky. The gray machines provide entertainment to customers and create supplemental income for family establishments across Kentucky.

Bob Heleringer, General Counsel, Prominent Technologies, LLC, testified in favor of regulating games of skill. He said Kentucky's skill games are legal as is and should not be considered gray games. The game machines are located in over 60 Kentucky counties, are very popular with Kentucky citizens, and help small business owners pay income taxes and donate to charitable causes. Prominent Technologies is working with House and Senate leadership on proposed legislation for the 2023 Regular Session of the General Assembly that will license and tax the games. He said this is a win/win for Kentucky taxpayers.

Malcolm Chair, AMVETS, Commander of American Legion, spoke in opposition to the games of skill. His organizations contribute over \$2 million back to the community to provide for veterans through charitable gaming. The gray machine games cause unfair competition and do not provide revenue back into the communities.

Senator Thayer is in opposition to the legalization and regulation of the gray games. He will support Representative Timoney's bill of making games of skill illegal in the Commonwealth. There are three types of legalized gambling in Kentucky: pari-mutuel; the lottery; and charitable gaming. They all serve higher purposes and pay taxes. He opposes any effort to legalize a unique business model that is illegal, and believes it would create a terrible precedent. Historical Horse Racing (HHR) machines started out with multiple favorable court rulings and a tax rate established by the General Assembly in the 2014 revenue bill. HHR was determined to be pari-mutuel by a court opinion, regulated by the Kentucky Horse Racing Commission, and taxed by the General Assembly.

Responding to a question from Representative Pratt, Mr. Fina said retailers are in 100 percent compliance with every applicable local and state law. Many locations are ABC regulated and accustomed to selling age restricted products. Representative Pratt said retailers in his district are not aware of the reporting requirements of legalizing these machines and had no idea their license was at risk. Mr. Fina asked Representative Pratt for a list of store locations that are not aware of requirements.

Responding to a question from Representative Palumbo, Mr. Fina said they are operating in several VFWs and other fraternal clubs. He does not see a scenario where these organizations would lose their charitable license or tax status by operating legal skill games. Representative Palumbo would like to tour the businesses in Lexington.

Responding to questions from Representative Timoney, Mr. Fina said no Kentucky judge has ruled on a legal definition for the games. Representative Timoney said they are still considered gray machines until a court decides and issues a legal

definition that they are in fact games of skill. Mr. Fina will get the amount of revenue generated by the machines in Kentucky to the committee members. Representative Timoney is disheartened that charitable gaming venues are closing because of the competition from the gray machine locales. Fraternal clubs and other locations have expressed preference to not have children playing the games in their venues.

Responding to a question from Representative Flannery regarding age requirements, Mr. Fina said it is a national policy decision to not allow players under 21 to play the games of skill.

Responding to a question from Representative Koch on machine payouts, Mr. Fina said the maximum payout per machine is \$4,000. Almost 90 percent of the money played in the machine goes back to the player, but this varies by machine. He also noted they are operating legally in Virginia due to court injunction.

Senator Howell said it is beneficial to hear all sides of testimony on the issue. He is a strong supporter in helping small businesses to be successful.

Responding to a question from Senator McDaniel, Mr. Fina said there has been one seizure of games in Kentucky and they voluntarily returned them after motions were filed in the court of jurisdiction. Senator McDaniel believes the General Assembly needs to take another look at this and realize what businesses this helps before making any rash decisions.

Dispensing of Hearing Aids

Adam Haley, Staff Contact, Kentucky Academy of Audiology and Greg Brotzge, Government Affairs Consultant, Hearing Aid Association of Kentucky, explained the over-the-counter (OTC) hearing aids final rule that went into effect in October 2022. The final rule primarily established a category of OTC hearing aids that consumers aged 18 years or older, with perceived mild to moderate hearing impairments, can purchase without the involvement of a hearing care professional. In order to conform with this final rule, Kentucky law needs to be updated. They are working on legislation for the upcoming session as well as working with licensure boards to form a committee to determine what regulations need to be updated as well. Mr. Brotzge does not anticipate any conflicts updating the statutes as organizations have worked closely together on this issue. It will not affect over-the-counter sales in any manner. There were no questions from committee members.

Turf Races/Kentucky Thoroughbred Development Fund Program

Representative Koch and Chauncey Morris, Kentucky Thoroughbred Association and Kentucky Thoroughbred Owners & Breeders, said the industry's future looks bright with year-round racing on the horizon in Kentucky. However, there is a concern that turf

sires are losing their edge in the sport and it was expressed that amendments to KRS 230.400(5)(a) be made through future legislation to open this field.

Other Business

Chairmen Schickel and Koenig honored retiring committee members with citations.

Adjournment

With no further business before the committee, the meeting adjourned at 12:00 p.m.