

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

## Minutes of the 5th Meeting of the 2023 Interim

October 16, 2023

### Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on October 16, 2023, at 11:00 AM in Room 154 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Representative Matthew Koch Co-Chair; Senator John Schickel Co-Chair; Senators Donald Douglas, Amanda Mays Bledsoe, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Emily Callaway, Mike Clines, Daniel Fister, Patrick Flannery, Al Gentry, Keturah Herron, Thomas Huff, Nima Kulkarni, Ruth Ann Palumbo, Phillip Pratt, Tom Smith, and Killian Timoney.

Guests: Shelly Funke Frommeyer, State Senator; Jason Nemes, State Representative; Mary Kathryn DeLodder, Director, Kentucky Birth Coalition; Nancy Galvagni, President, Kentucky Hospital Association; Dan Goulson, MD, Vice President of Medical Affairs, St. Joseph Hospital; and Allana Oak, MD, St. Elizabeth Healthcare; Sydney Shaffer, American Lung Association Student Advocate, Scott County; Griffin Nemeth, Youth Advisory Board Coordinator, #iCANendthetrend, University of Kentucky; Anthony Weaver, MD, Internist (Retired), Former Associate Professor, Internal Medicine, University of Kentucky College of Medicine; Jack Mazurak, Director of Governmental & Regulatory Affairs; Chris Nolan, Legislative Consultant, Kentucky Distillers' Association; Gex Williams, State Senator; Alison Depenbrock, Owner, Kentucky River Tours, Frankfort; and Ryan Underwood, American Association of Marriage and Family Therapy.

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

### Approval of September 28, 2023, Minutes

Representative Flannery motioned to approve the minutes and Senator Douglas seconded the motion. Motion carried and the minutes were approved by voice vote.

### Freestanding Birth Centers

Senator Funke Frommeyer, Representative Nemes, and Mary Kathryn DeLodder explained the proposed legislation relating to freestanding birth centers. The centers are small health care facilities, separate from a hospital, and utilized for childbirth while using a midwifery and wellness model. Centers are staffed by licensed and qualified staff who care for healthy women with healthy pregnancies, and are equipped to provide routine care and initiate emergency procedures. Freestanding birth centers are integrated into the healthcare system, work with qualified obstetric/pediatric consultants, and have a relationship with a hospital that provides acute obstetric care.

Ms. DeLodder said families travel out-of-state to utilize freestanding birth centers in Indiana, West Virginia, and Tennessee. Kentucky is one of only eight states that does not have a birth center. Statistically, birth centers achieve better outcomes than hospitals on quality measures such as Cesarean rate for low-risk women, elective delivery prior to 39 weeks, and breastfeeding. The centers use fewer medical interventions, which saves health dollars and reduces the risk of complications.

Freestanding birth centers can be a substantial savings for Medicaid. The Strong Start for Newborns and Mothers program shows a savings of about \$2,000 per birth at birth centers. While birth centers are not hospitals, the centers do not compete with hospitals. Midwifery care is the exclusive model of birth centers. Eighty-five percent of pregnancies are low-risk and do not need expensive medical interventions in a hospital. Birth centers are relatively small (usually 2-4 beds) and are essentially outpatient. Patients typically spend less than 24 hours at the center.

Representative Nemes noted that this legislation passed the House Licensing, Occupations, and Administrative Regulations Committee last session 18-0, with two pass votes. He feels the legislation is much improved after implementing changes from the Kentucky Hospital Association and other parties. He argued that market protectionism could be the reason why there is still opposition to the bill.

Senator Funke Frommeyer said Senate Bill 67 had bipartisan support last session. The bill passed out of the Senate Licensing, Occupations, and Administrative Regulations Committee with nine yea votes and two no votes. Adjustments were made, including reducing bed size and addressing malpractice insurance issues.

Responding to a question from Chairman Schickel, Senator Funke Frommeyer said stakeholders have met and changes have been made to the bill since last session. Chairman Schickel appreciates all the stakeholders' patience in getting the legislation passed.

Responding to a question from Representative Bratcher regarding why the legislation has not passed, Senator Thayer said it did not have the votes necessary to pass in the Senate last session.

Responding to a question from Representative Flannery, Senator Funke Frommeyer said the midwives would need to answer how many Cesarean (C-section) births are typically required, as hospitals are the only facilities equipped to provide C-section births. Ms. DeLodder said Kentucky has a 30 percent C-section rate, which is high, but she would get him an exact figure.

Responding to a question from Representative Flannery, Representative Nemes said home births are legal in Kentucky, and freestanding birth centers would be safer than home births. Representative Flannery expressed concern about the health and well-being of mother and child and being able to transfer to a hospital should an emergency arise. Representative Flannery requested statistics on how often surgical intervention is necessary in childbirths.

Responding to a question from Senator Mays Bledsoe regarding the relationship between the birth centers and hospitals, Ms. DeLodder said the bill requires the birth centers to be accredited, and have transfer plans in place to the hospital when needed. The accreditation establishes that birth centers have written policies and procedures for preplanned obstetric/pediatric consultations, transport services, and obstetric and newborn care in licensed hospitals. The number of hospitals that will have a transportation agreement is not identified in the accreditation or the bill. The Cabinet for Health and Family Services could address the transportation issue further through administrative regulations.

Nancy Galvagni, President, Kentucky Hospital Association; Dan Goulson, MD, Vice President of Medical Affairs, St. Joseph Hospital; and Allana Oak, MD, St. Elizabeth Healthcare, spoke in opposition to the legislation. Ms. Galvagni is not opposed to birth centers, but recommends locating them close to a hospital. Hospitals are equipped to deal with critical issues, such as hemorrhaging of the mother. The bill does not require a transportation agreement between the birth center and the hospital. It also removes birth centers from the certificate of need, weakening the licensing agreements and jeopardizing the health of mothers and babies.

Dr. Oak is not anti-birth centers or midwives. She feels the bill does not provide a safety net for mothers and babies. Highly integrated agreements should be in place between hospitals and birth centers as catastrophic events can and do occur during childbirth.

She noted that babies are two times more likely to die during childbirth outside of a hospital.

Dr. Goulson said time is critical if something goes wrong during birth. Consequences can arise within minutes and time can be an issue in a hospital if a fetus becomes distressed. He encouraged the committee to keep time and safety in the forefront of any freestanding birth center legislation.

Responding to a question from Chairman Schickel regarding parent birthing options, Dr. Oak said patients can have home births geographically anywhere in Kentucky. She wants to ensure the safety of mothers and babies for mothers who are high-risk. She supports low-risk mothers having their babies in birth centers.

### **T-21 Minimum Sales Age Enforcement**

Sydney Shaffer, American Lung Association Student Advocate, Scott County, and Griffin Nemeth, Youth Advisory Board Coordinator, University of Kentucky, spoke on the dangers and consequences of children becoming addicted to nicotine and the growing number of children using electronic cigarettes or other electronic vapor products. Ms. Shaffer brought awareness to local elected officials and other community figures to help develop policies to protect kids from nicotine addiction and related diseases. While federal and state law prohibit the sales of nicotine to youth under 21 years old, 23.6 percent of Kentucky kids report being sold nicotine products directly from stores. Kentucky laws need to be enforced and noncompliant stores should face consequences.

Mr. Nemeth said the #iCANendthetrend movement at the University of Kentucky is a peer-to-peer tobacco prevention education program designed to encourage young people to not use vape products. College facilitators travel across Kentucky to elementary, middle, and high schools to educate students on the social and financial effects of vaping. The Kentucky youth e-cigarette rate among high schoolers has surpassed the national rate of adult cigarette usage. He attributed the higher statistics to social media advertisements to young people and Kentucky retailers not following the law. Enforcement agencies must identify stores and conduct annual compliance checks to ensure that there are no sales to underage individuals. For those entities that refuse to comply with Tobacco 21 laws, stiff penalties must be enforced. The efforts of adjacent states such as Indiana, Ohio, and West Virginia to combat youth nicotine access have worked.

Anthony Weaver, University of Kentucky Medicine, said nicotine harms developing brains and the electronic cigarettes and vape products have dangerous chemicals in them, including weed killer, antifreeze, heavy metals, and nicotine. He noted long-term

effects are not yet known, but there is very likely to be significant long-term consequences to using these products. Enforcement of the Tobacco 21 law is essential to protecting our children's health.

Responding to a question from Chairman Schickel, Dr. Weaver said Delta-8 THC is a form of cannabis that can be put into an e-cigarette. However, his focus is nicotine e-cigarettes, which comprise 99 percent of the products. There is confusion if the Delta-8 e-cigarettes are legal to sell to the public as they are made with two different substances.

Co-Chair Koch congratulated Ms. Shaffer on her presentation. He encouraged her and other students to stay involved and keep up the good work.

Representative Timoney said vaping among youth is out of control. He said schools are struggling to monitor vape product usage among students. Vaping at school has become as much of a problem in the classroom as cell phone usage.

Responding to a question from Representative Timoney, Mr. Nemeth said many parents understand their children are using these products, but they do not know how to properly address the issue. Parents are looking to teachers and administrators for guidance on how to handle the vaping issue. Dr. Weaver reminded the committee that children are addicted to nicotine, and would likely try to get the products without parent's permission. Representative Timoney concluded that the vaping products are a Pandora's box, and nicotine will lead to other things as it is easily exchangeable within the device. Parents should be reinforced to take charge of their children and set clear rules and consequences.

Responding to a question from Senator Mays Bledsoe regarding expansion of the University of Kentucky peer-to-peer program, Mr. Nemeth said expansion is the goal, but the difficulty in expanding the program is finding people willing to educate and advocate against the products.

Senator Mays Bledsoe said children are selling e-cigarettes laced with hard drugs, such as fentanyl, on Snapchat and other social media outlets. She said it is very easy for kids to hide vaping as it has no smell.

Senator Douglas said the Delta-8 THC is a dangerous isomer. The Kentucky General Assembly will need to address the Delta-8 THC issue, as the Ohio legislature did in the past couple of years by banning isomers in cannabinoids. He noted many vaping

products are produced outside of the United States with no clear designation of the chemicals in them.

### **Kentucky Distillers' Association**

Jack Mazurak, Director of Governmental & Regulatory Affairs, and Chris Nolan, Legislative Consultant, Kentucky Distillers' Association (KDA), testified that bourbon is doing well in Kentucky. Distilleries are operating or being constructed in 41 counties. Bourbon's rising success the last decade has been supported and propelled by legislation authorizing new privileges, ensuring competition, and strengthening responsibility initiatives.

Kentucky Distillers' Association's top legislative priority is limited self-distribution for craft distilleries with a Class B distiller's license. It is vitally important that craft distilleries be able to self-distribute a limited amount of their products as they are building their brand and getting started. The sales through limited distribution would bridge the gap until they become a Class A licensee and attract wholesalers. Bourbon is working with the beer and wine producers on an agreement, and hopes to bring an agreed solution to the session standing committees.

Mr. Nolan said the General Assembly passed the most impactful vintage spirits law in 2017, making Kentucky the premier tourism destination for the best bourbon libraries in America. Visitors can sample vintage bourbons released over the years that will never be crafted again in the same way. Adjustments to the law need to be made, such as linking this privilege to a separate license, increasing reporting for more transparency, creating an educational training component, and addressing penalties for violations.

Co-Chair Koch supports the self-distribution for craft distilleries. He said it is important for new start-up businesses to be able to move their product and not rely on others to distribute.

Senator Thayer supports both measures, as the limited self-distribution and the vintage spirits act remove artificial barriers to free enterprise. He said the language needs to be clear in statute so the ABC Board has no problem with interpretation and enforcement. He urged the Kentucky Distillers' Association to find bill sponsors for both items and get them introduced early in the 2024 Regular Session.

Responding to a question from Representative Banta, Mr. Nolan said their proposals do not hinder retailers from getting bourbon and adds no more restrictions. Retailers should have easier access to bourbon products, while adding transparency to existing laws so that everyone can see product movement.

Representative Palumbo supports all legislation to help Kentucky's signature industry and urged her colleagues to support the measures.

Mr. Mazurak said the ABC is currently required to destroy spirits that are confiscated once legal proceedings are exhausted. He suggested 2024 legislation to allow the ABC Board to auction off spirits for charity rather than destroying them.

Mr. Nolan said parity needs to be addressed for the new Ready To Drink (RTD) cocktails in both taxes and purchase access. Kentucky taxes RTDs on the base alcohol content, whether it is malt, wine, or spirits. The spirits pay a much a higher tax rate, and the KDA is requesting parity in this area. The KDA also supports sales of spirit-based RTDs in the same places as beer and wine products, such as grocery and convenience stores.

### **Riverboat Alcohol Sales**

Senator Williams said his proposed legislation will allow an alcohol license on riverboats to serve 40 passengers instead of 100 on navigable waters in or adjacent to Kentucky. This change promotes economic development on the Kentucky River. He said Kentucky River Tours has difficulty obtaining 100 person boats due to the lock size on the Kentucky river. Alison Depenbrock, Captain, Kentucky River Tours, Frankfort, said the Kentucky River is a gem and she is proud to provide tours for out-of-state and local customers. Bourbon tastings on the water are very popular with her clients, and experiencing the bourbon trail by boat provides a unique experience to learn about the Kentucky river's influence on the history of bourbon.

Responding to a question from Senator Douglas, Ms. Depenbrock said the Kentucky river locks are made for smaller barges which are 150 feet long, while the Ohio River has much bigger locks that can accommodate big paddle boats. Chairman Schickel noted for the record that the Alcoholic Beverage Control (ABC) Board was contacted about the meeting, but were not in attendance.

### **Marriage and Family Therapists**

Ryan Underwood, private citizen presenting for his father, Tom Underwood, said marriage and family therapists play a part in keeping families together. Marriage and family therapy is solution-focused and designed with an end in mind. Therapy is relatively brief, about 12 sessions, and has specific and attainable therapeutic goals.

Mr. Underwood said marriage and family therapists treat a wide range of serious, clinical problems, including depression, marital problems, anxiety, individual psychological problems, and child-parent problems. Many counties have a severe mental health

provider shortage. A licensure compact with other states will ease the entry of qualified therapists moving to Kentucky, and increase access to therapy. Kentucky has adopted licensing compacts for license portability for experienced mental health counselors and psychologists. A licensure compact would ensure commitment to public protection, and require that any out-of-state therapist looking to obtain licensure in Kentucky must be in good standing with a valid and unrestricted license in another state or territory. The licensure compact will not cost Kentucky anything and will provide a small increase in revenue as out-of-state therapists will be required to pay full licensure fees to practice in Kentucky.

Chairman Schickel said marriage and family therapists need to provide the committee specific language to review. He said Kentucky is a sovereign state and that needs to be balanced with the convenience offered by an interstate compact.

### **Adjournment**

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