

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 2nd Meeting of the 2024 Interim

July 31, 2024

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on July 31, 2024, at 11:00 AM in Room 154 of the Capitol Annex. Representative Matthew Koch, 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 Julie Raque Adams, Donald Douglas, Denise Harper Angel, Jason Howell, Christian McDaniel, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Emily Callaway, Mike Clines, Daniel Fister, Patrick Flannery, Al Gentry, Samara Heavrin, Thomas Huff, Kevin Jackson, Nima Kulkarni, Michael Meredith, Amy Neighbors, Ruth Ann Palumbo, Phillip Pratt, and Tom Smith.

Guests: Andy Deloney, Senior Vice President and Head of Public Policy, Distilled Spirits Council of the United States; Shannon Stiglitz, Senior Vice President for Government Affairs, Kentucky Retail Federation; Chris Nolan, MML&K Government Solutions; Scott Lindsey, Vice President, Rafferty's, Incorporated; David Danielson, Owner/Chef, äta Restaurant; Whitney Frommeyer, One Stop Liquors, Bellevue, Kentucky; and Brian Edwards, Thoroughbred Liquors, Murray, Kentucky.

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

Approval of Minutes of the June 20, 2024, Meeting

Representative Fister motioned to approve the meeting minutes of June 20, 2024, and Senator Douglas seconded the motion. Motion carried on a voice vote.

Discussion of Ready to Drink Alcoholic Beverages (RTD's)

Shannon Stiglitz, Senior Vice President for Government Affairs, Kentucky Retail Federation, said consumers are confused about which RTD products may be sold in grocery and convenience stores versus retail package stores. Consumer demand and customer satisfaction are driving tremendous innovation and transformation in the RTD category.

Chris Nolan, MML&K Government Solutions, said the Kentucky Distillers' Association (KDA) is responding to consumer demand by offering innovative products and providing the products consumers want to purchase and enjoy. He thanked the committee for its support in addressing alcohol issues over the last 15 years.

Andy Deloney, Senior Vice President and Head of Public Policy, Distilled Spirits Council of the United States, said RTD products are low alcohol by volume (ABV), typically 14 percent or below. They are usually single serve in a can or bottle and made with malt, wine, sugar, or spirits, and in tremendous demand by consumers. They are not full-proof spirits bottles, or any different from beer. Public policy regarding beverage alcohol should not differentiate between distilled spirits, wine, and beer. It sends the dangerous message that some forms of beverage alcohol are "safer" than others.

Mr. Nolan said the KDA has sought horizontal and vertical parity and alcohol is alcohol. It makes no sense to restrict spirits RTDs from a store given a malt/beer RTD with eight percent ABV, for example, has the exact same alcohol content as a spirits RTD with eight percent ABV. Drinking responsibly and in moderation depends on how much alcohol is consumed, not whether that drink is made of beer (malt), sugar, wine, or spirits. Kentucky law puts distilleries and consumers at a disadvantage. At eight percent ABV, the Kentucky tax rate on spirits-based RTDs is more than 22 times the malt and sugar-based state tax rate. Kentucky does not allow spirits RTDs to be sold alongside beer seltzers with the same alcohol content. West Virginia, Ohio, Indiana, Illinois, and Missouri all allow spirits RTDs in grocery stores.

Mr. Deloney said 32 states allow spirits-based RTDs sales in grocery stores, and 30 of those states allow convenience stores to sell spirits-based RTDs. Fifteen states allow only beer and/or wine sales in grocery stores, and three states have no form of alcohol in grocery or convenience stores. The industry is seeking fairness on spirits-based RTD products and 86 percent of consumers agree that spirits RTDs should be sold where beer/malt and sugar RTDs are sold. Ms. Stiglitz reiterated that some customers will not buy the product if it is not readily available to purchase in common venues such as grocery stores.

Whitney Frommeyer, One Stop Liquors, Bellevue, Kentucky, testified against RTD sales in grocery and convenience stores. Rather than worrying about increased competition, she is concerned about minors having access to these alcohol products.

Responding to a question from Senator McDaniel regarding winners and losers on both sides of the issue, Mr. Nolan said liquor stores may continue to sell RTD products, and there is no data correlating decreased liquor store sales if RTD's are sold in in grocery and convenience stores. Expanding the marketplace offers RTD products to more customers and can increase sales in liquor stores. Ms. Stiglitz said grocery and convenience stores are

the only entities that cannot get a quota retail package license. Competition exists and provides consumer benefits, such as maintaining equitable and fair pricing. No data has ever shown a statistically significant impact on the number of liquor retailers in a state that has expanded sales. Many other businesses, such as nail salons and florists, are selling wine and spirits to provide more satisfying customer experiences. She noted the only two entities that cannot sell these products are stores that sell more than 10 percent staple groceries, excluding soda, candy, tobacco, and alcohol, or stores that sell gasoline or lubricant oil.

Mr. Deloney said when prohibition ended, the states were given the authority to regulate beverage alcohol traffic as they saw fit. Alcohol regulations have changed vastly since 1933 and lawmakers and regulators should adjust laws and regulations as the marketplace evolves.

Responding to a follow-up question from Senator McDaniel regarding taxes, Ms. Stiglitz said even if the consumption tax is lowered on the product, more revenues are generated because new customers are buying the products.

Senator Thayer said many new members will be joining the Kentucky General Assembly before the 2025 Regular Session. Members are fatigued with alcohol issues and fights. Many commerce channels and investments based on current law allow for malt beverage RTD's, such as Fireball, produced by Sazerak. The alcohol industry is not completely free enterprise, as it is heavily regulated.

Responding to a question from Senator Thayer, Ms. Frommeyer said liquor stores only allow customers 21 years and older into the store where RTD products are sold. She feels the products would be too accessible to large groups of children in convenience stores and would be tempting for minors to shoplift in their backpacks. Senator Thayer said retailers have a choice what to sell in their stores and if it makes her nervous, she can choose not to sell the products.

Responding to a follow-up question from Senator Thayer regarding bourbon-based RTDs, Mr. Nolan said parity is needed as distillers distill other products besides bourbon. Kentucky distillers want to produce items like Jack and Coke in a can and have parity with malt-based RTD companies. Senator Thayer said consumers are not represented and is concerned about pricing. In Michigan, prices increased when policy changes were made. Mr. Deloney said there are no guarantees in retail pricing based on public policy changes. The tax rate was lowered in Michigan as the access base expanded, and RTD products were in high demand. Prices of different alcoholic beverages, not just spirits-based RTDs, increased. Senator Thayer said manufacturers can affect prices even if retailers choose to ignore it.

Mr. Nolan said alcohol laws were made 90 years ago and Kentucky is trying to operate with outdated laws in modern times. The KDA invites non-members to join each year. He thanked Senator Thayer for all his help with the industry over past years.

Representative Meredith said some people would rather go to liquor stores than grocery stores because folks do not want to see their neighbors when purchasing alcohol. Liquor store sales will not decrease in certain parts of the state with products expanding to other stores.

Retail to Restaurant - Limited Privilege

Scott Lindsey, Vice President, Rafferty's, said the restaurant business is a vibrant industry providing many tax dollars to the state, and employs over 200,000 Kentuckians. Restauranteurs would like the same opportunity as retail package stores to buy from retail outlets, instead of using distributors, in order to have product availability to meet consumer demand. This would be a limited privilege with less of a profit margin for the restaurant, but distributors can have slow delivery times due to labor shortages.

David Danielson, Owner/Chef, äta Restaurant, said 35 percent of his guests are from out-of-state and want to sample different bourbons. Independent restaurants are struggling to provide customers the bourbon experience as product is extremely limited. They need flexibility to service customers on a limited basis, which in turn promotes tourism for the Commonwealth of Kentucky.

Chairman Koch said restaurants should be allowed the ability to service customers with a variety of products on a limited basis, not only bourbon. In one instance, a restaurant in his district needed to pick up several cases of Yuengling at the request of a tour bus full of guests from Pennsylvania.

Representative Jackson welcomed Mr. Lindsey to Frankfort and said he provides many great restaurant experiences in the Bowling Green, Kentucky, area. His many businesses provide needed tax dollars to south central Kentucky and provide jobs and revenue.

Representative Meredith said Mr. Lindsey is a great corporate citizen and helps to raise between \$60,000- \$100,000 for children's charities in his region. The restauranteurs would still be purchasing the alcohol products in the three-tier system, so this is not an exemption, but just shifting to be able to purchase retail to retail in limited situations.

Wine & Spirits in Grocery Stores

Ms. Stiglitz discussed cooperatively assessing the impact of wine sale reform. In the US, alcohol-related policies vary significantly across states and are constantly evolving. While

39 states allow the sale of wine in grocery stores, a central ongoing policy debate in the remaining 11 is whether grocery stores should be permitted to sell wine and how this change would affect liquor stores and overall alcohol consumption. A case study of Tennessee evaluated the effects of a 2016 Tennessee policy allowing wine sales in retail food stores, including grocery and convenience stores. The wine sales tax per capita in Tennessee increased in FY 2017, a trend not observed in the control states. This suggests that the wine sales reform led to an increase in wine sales tax per capita in Tennessee.

Ms. Stiglitz said Kentucky ranks 44th in wine sales and has some of the highest wine taxes in the country. Nineteen states allow for the sale of wine and spirits in grocery stores. Statistical evidence indicates liquor store sales do not suffer, and competition favors the consumer with lower prices. Independent groceries are low margin businesses and vital parts of communities that could benefit from the addition of these products.

Brian Edwards, Co-owner, Thoroughbred Liquors, Murray, Kentucky, testified against expanding alcohol sales in grocery and convenience stores. There was an epidemic in theft in Washington among 12-17 year old minors in grocery stores once wine and spirits were sold there. It is easier to monitor adult customers in liquor stores, and grocery stores continue to struggle with loss from shoplifting. The three-tier system model in Kentucky is working by allowing the alcohol sales in a separate building where minors cannot enter.

Responding to question from Senator Howell regarding higher sales taxes in Tennessee, Ms. Stiglitz said 39 states, including all of Kentucky's surrounding states, have chosen to reform wine sales. Kentucky has a high tax rate on spirits and wine, but its tax structure is not identical to Tennessee. Many Kentucky consumers can cross the state borders and purchase these products in grocery and convenience stores, and Kentucky loses the revenue to Tennessee, Ohio, West Virginia, Virginia, Missouri, and Indiana. Senator Howell said the opposite is also true and some Tennessee residents travel to Kentucky to purchase alcohol because it is cheaper.

Responding to a follow-up question from Senator Howell, Ms. Stiglitz said the issue is about the consumer making pasta, for example, and the ease of picking up the wine in the recipe at the grocery store, as that customer would never drive to the liquor store to purchase. It is not about the ease or difficulty of accessing liquor stores, but time constraints on busy, working moms. Senator Howell noted small business owners contribute to communities in ways that corporations will not.

Responding to a question from Representative Smith, Mr. Edwards said the business license obtained for liquor stores has value and the license is an asset. He said it varies in cities and counties and depends on the amount of licenses in the quota system. Representative Smith said licenses are distributed depending on population, and some are declining in value.

Small business owners have made investments in Kentucky based on current business models and licenses and this agreement should be upheld. Mr. Edwards said the quota system and caps were placed several years ago, but cities may now expand on the quotas. Representative Smith noted that expansion of the quotas was beneficial in attracting Publix to Kentucky.

Senator Thomas said it is not clear why spirits and alcohol are on display in drug stores where children shop for medicine. He is an advocate of free markets and capitalism, and believes competition is beneficial for consumers. It is contradictory to sell in pharmacies where minors are present, but not grocery stores. Shoplifting can be effectively managed utilizing store policies. Ms. Stiglitz noted pharmacies have been exempt from alcohol restrictions since prohibition and alcohol being used as a medicine.

Responding to a question from Representative Kulkarni, Ms. Stiglitz said 39 states allow wine and beer sales and 19 states allow wine and spirit sales in grocery stores. There is objective data that show prescription medications and cosmetics are the most shoplifted items, and not alcohol. There are many university studies with objective data, as well as industry studies she can share with members.

Representative Meredith said pharmacies were the only legal outlet that could sell liquor, beer, and wine during prohibition in Kentucky. It was considered prescription alcohol for consumers.

Adjournment

With no further business before the committee, the meeting adjourned at 12:30 p.m.