

## **House Committee on Ways and Means**

Minutes of Meeting  
2020 Interim Session  
December 2, 2020

### **I. CALL TO ORDER**

Representative Stuart J. Bishop, chairman of the House Committee on Ways and Means, called the meeting to order at 9:11 a.m. in Room 5, in the state capitol in Baton Rouge, Louisiana.

### **II. ROLL CALL**

#### **MEMBERS PRESENT:**

Representative Stuart J. Bishop, chairman  
Representative Ryan Joseph Bourriaque  
Representative Marcus Anthony Bryant  
Representative Rhonda Gaye Butler  
Representative Les Farnum  
Representative Jason Hughes  
Representative Barry Ivey  
Representative Jeremy S. LaCombe  
Representative Wayne McMahan  
Representative Buddy Mincey, Jr.  
Representative Joseph A. Orgeron  
Representative Tammy T. Phelps  
Representative John M. Stefanski, vice chairman  
Representative Malinda B. White  
Representative Matthew Willard  
Representative Mark Wright

#### **MEMBERS ABSENT:**

Representative Gerald "Beau" Beaulieu, IV  
Representative Neil Riser

#### **STAFF MEMBERS PRESENT:**

Brittany Lea, committee administrative assistant  
Linda Hopkins, executive assistant  
Mark Mahaffey, division director  
Catherine Zeringue, attorney

Amanda Trapp, legislative analyst

**ADDITIONAL ATTENDEES PRESENT:**

Representative Jean-Paul Coussan  
Mr. Danny Leming, House sergeant at arms  
Representative Troy Romero  
House Speaker Clay Schexnayder  
Ms. Faye Talbot, House sergeant at arms

**III. BUSINESS**

*Representative Stefanski in the chair.*

Chairman Bishop stated that the business before the committee was to review administrative rules, an infrequently used exercise for the legislature, and provided an overview of the committee oversight process. He further explained the actions the committee may take to find a rule acceptable or unacceptable.

*Representative Bishop in the chair.*

**To review the administrative rules proposed by the Office of Alcohol and Tobacco Control regarding CBD Product Safety Regulations**

Mr. Ernest Legier, commissioner, Office of Alcohol and Tobacco Control (ATC), 7979 Independence Boulevard, Baton Rouge, LA, (225) 954-0178, spoke for information only on Agenda Item 1.

Speaker Schexnayder explained to the committee that he and Commissioner Legier had an earlier discussion on CBD regulatory enforcement, and Representative Stefanski would offer a motion to allow the CBD product to be regulated as originally discussed.

Representative Stefanski offered a motion to find Sections 6129, 6131, and 6141 of the proposed ATC CBD Product Public Safety Regulations unacceptable and find the remaining sections of the proposed rules acceptable. Without objection, the motion passed by a vote of 15 yeas and 0 nays. Representative Bishop, Stefanski, Bourriaque, Bryant, Butler, Farnum, Hughes, Ivey, LaCombe, McMahan, Mincey, Orgeron, White, Willard, and Wright voted yea.

**To review the administrative rules proposed by the Office of Alcohol and Tobacco Control regarding Direct Delivery of Alcohol Public Safety Regulations**

Mr. Ernest Legier, commissioner, Office of Alcohol and Tobacco Control (ATC), 7979 Independence Boulevard, Baton Rouge, LA, (225) 954-0178, was available to provide information only on Agenda Item 2.

Ms. Ann Junia, outside counsel, Shipt, 325 Florida Street, Baton Rouge, LA 70809, (312) 519-8603, spoke in opposition of the proposed Direct Delivery of Alcohol Public Safety Regulations, specifically Paragraphs (1) and (2) of Subsection 807(J).

Representative Ivey and Commissioner Legier discussed administrative authority, price fixing among alcohol retailers, and the lack of ATC's authority to do so. Mr. Legier stated that he worked with the industry and distributed a draft rule to parties within the industry. Ms. Junia stated that there is a cost to delivering alcohol. There are exorbitant prices associated with online sales and delivery. Shipt is not in control of these prices or the sharing of profits. Retailers should be free to make their business decisions as they see fit. Commissioner Legier disagreed with Ms. Junia about shared fees within the state of Louisiana and stipulated that the intent for major retailers in the state was to place a 10-15% additional mark up to be shared with third-parties on alcohol made available through an electronic platform or for delivery.

Representative Ivey continued his line of questioning with Commissioner Legier.

Representative Stefanski and Commissioner Legier discussed third-party delivery prices and the differences between food and alcohol deliveries.

Representative White and Commissioner Legier discussed the differences between the retailers' regulated price and third-party delivery service fees and referenced Statute 26:308(E). Ms. Junia voiced her concern regarding Paragraphs (1) and (2) of Subsection 807(J). Ms. Junia explained that if a third-party company's online price, which is provided to them by the retailer via data feed, does not directly match the retailer's in-store price, the third-party company may be subject to potential revocation of the third-party company's ATC permit. Ms. Junia added that holding a third-party company responsible for something they cannot legally control was bad policy.

Mr. Harlan Powell, Target Corporation, 325 Florida Street, Baton Rouge, LA 70809, (312) 257-4662, spoke in opposition to the proposed rule, with regard to Paragraphs (1) and (2) of Subsection 807(J) of the proposed rule.

Representative Phelps and Mr. Powell discussed price differentials and technical difficulties regarding online pricing versus in-store pricing.

Representative Phelps continued her line of questioning with Commissioner Legier regarding hypothetical situations related to the alcohol-delivery process.

Representative Ivey questioned Commissioner Legier and Ms. Junia with regard to public safety and referenced a business model of online purchases in the service delivery, as well as membership-based applications and calculations regarding the cost of delivery. Representative Ivey's emphasis was that this issue has to do with technology rather than a third-party company. He discussed development costs and innovative technology as an alternative to delivery charges.

Representative Bryant and Ms. Junia discussed pricing, percentage fees shared with retailers, and a respectful and profitable model for all parties.

Representative Wright and Commissioner Legier discussed retailer controlled pricing.

Representative Phelps asked Commissioner Legier and Ms. Junia a line of questioning pertaining to profit sharing and negotiated pricing. Ms. Junia stated that the concern was the regulatory issue it created for Shipt, specifically that a third-party company cannot control the pricing of a product on the platform unless directed by the retailer, which could result in a third-party company being subject to revocation of their permit.

Representative Orgeron discussed with Ms. Junia and Commissioner Legier alcohol and non-alcohol delivery classifications, proper certification, protocol, and training.

Representative Ivey questioned how a third-party company would know in real time the price a retailer is charging. Commissioner Legier stated a retailer would communicate with the third-party company to ensure a significant regulatory effort for in-store and online prices to remain the same.

Mr. Donn Lacoste, Gnarly Barley Brewing, 1709 Corbin Road, Hammond, LA 70403, (504) 220-4974, spoke for information only on Agenda Items 2 and 3.

Mr. Cary Koch, Louisiana Craft Brewers Guild, 504 Lakeland Drive, Baton Rouge, LA 70802, (225) 907-5880, spoke for information only on Agenda Item 2.

Mr. John Williams, Beer Industry League, 575 North 8<sup>th</sup> Street, Baton Rouge, LA 70802, (225) 235-7710, spoke for information only on Agenda Item 2.

Representative Ivey and Mr. Williams discussed merchant processing, delivery service providers, vendors, online platforms, and credit card transactions.

Representative Farnum and Mr. Williams discussed vendor payments and the percentage paid to the delivery company based on the receipt of sale.

Representative Ivey offered a motion to find LAC 55:VII.807(J)(1) and (2) unacceptable and find the remaining sections of the proposed rules acceptable, to which Representative Bryant objected.

Representative Bryant offered a substitute motion to find all sections of the proposed rules acceptable. The administrative assistant called the roll, and the substitute motion to find all sections of the proposed rules acceptable failed by a vote of 2 yeas and 13 nays. Representatives Bryant and Phelps voted yea. Representatives Bishop, Bourriaque, Butler, Farnum, Hughes, Ivey, LaCombe, McMahan, Orgeron, Stefanski, White, Willard, and Wright voted nay.

The original motion to find LAC 55:VII.807(J)(1) and (2) unacceptable and find the remaining sections of the proposed rules acceptable was considered. The administrative assistant called the roll, and the motion passed by a vote of 12 yeas and 3 nays. Representative Bishop, Bourriaque, Butler, Farnum, Hughes, Ivey, LaCombe, McMahan, Orgeron, Stefanski, Willard, and Wright voted yea. Representative Bryant, Phelps, and White voted nay.

Witness cards submitted by individuals who did not speak are as follows: 1 in support, 1 for information only, and 4 in opposition. Witness cards are included in the committee records.

Statements submitted in accordance with House Rule 14.33 in lieu of appearing before the committee are as follows: 9 in support. Copies of these statements are included in the committee records.

Chairman Bishop recessed at 12:08 p.m. and reconvened at 12:30 p.m.

**To discuss the governor's updated proclamation concerning COVID-19 that provides for a modified phase 2 and its effect on businesses regulated by the Office of Alcohol and Tobacco Control**

Commissioner Legier shared a document with the committee containing ATC's official guidance regarding the governor's updated modified phase 2 executive order, Exhibit A, which is included in the committee records. He stated the agency was placed in a precarious situation, balancing the interest of the public's safety related to the spread of COVID-19, with the sentiment of supporting the small businesses that the ATC regulates. The agency's approach during COVID-19 began earlier this year focusing less on punitive enforcement and more on providing advice, education, assistance, and customer service.

Mr. Johnny Blancher, Rock 'N' Bowl, 905 Jefferson Street, Lafayette, LA 70501, (504) 913-2388, spoke for information only on Agenda Item 3. Mr. Blancher provided committee members with a handout, Exhibit B, which is included in the committee records.

Ms. Leah Jensen, Parleaux Beer Lab, 634 Lesseps Street, New Orleans, LA 70117, (504) 702-8433, (504) 231-1320, spoke for information only on Agenda Item 3.

Mr. Richard Greenaae, Oak Street Brewery, 8201 Oak Street, Suite 2, New Orleans, LA 70118, (504) 533-9139, spoke for information only on Agenda Item 3.

Mr. Cary Koch, Louisiana Craft Brewers Guild, spoke for information only on Agenda Item 3.

Mr. George Favalaro, Nitetown, 54 Jefferson Street, Lafayette, LA 70501, (337) 654-3673, spoke for information only on Agenda Item 3.

Mr. Matt Chiasson, The Grouse Room, 417 Jefferson Street, Lafayette, LA 70501, (337) 849-4870, spoke for information only on Agenda Item 3.

Chairman Bishop inquired of Commissioner Legier what the economic impact of the state would be without the sales tax from bars and breweries. Commissioner Legier stated he could not answer the question. Chairman Bishop followed by asking if Commissioner Legier had examined those numbers through the Department of Revenue. Commissioner Legier answered he had not. Chairman Bishop further inquired whether those numbers would interest ATC in determining what the phase 2 requirements are costing the state of Louisiana. Commission Legier stated the governor's office determined what rules were related to COVID-19.

Representative Ivey asked Commissioner Legier about the promulgated rules and regulatory actions that have been taken by ATC, to which Commissioner Legier responded that ATC has not yet promulgated any rules. Representative Ivey pointed out that the executive branch has not promulgated rules with respect to how agencies were regulating businesses during the public health emergency, providing the State Fire Marshal's office as an example. Representative Ivey and Commissioner Legier further discussed the differences and purposes of using agency guidelines versus the formal rule making process. Representative Ivey referred to a handout containing ATC guidelines related to the governor's guidelines, Exhibit B, which is included in the committee records.

*Representative Stefanski in the chair.*

Representative Jean-Paul Coussan, District No. 45, 2508 Johnston Street, Lafayette, LA 70503, (337) 262-2400, referenced an ATC citation given to one of his constituents and questioned Commissioner Legier regarding the "OpenSafely" guidelines related to the governor's modified phase 2 executive order. Representative Coussan questioned the Commissioner about the types of activity ATC could regulate during the public health emergency. Commissioner Legier explained that under the governor's current executive order "dancing" is considered to be a prohibited activity and stated that a business can be cited if it failed to adhere to the governor's order.

*Representative Bishop in the chair.*

Representative Troy Romero, District No. 37, P.O. Box 287, Jennings, LA 70546, (337) 824-0376, and Commissioner Legier discussed ATC agents and other employees throughout the state. Representative Romero and Commissioner Legier discussed the in-place procedures and the policy of serving notices of suspension to businesses.

Ms. Shirley Bowler, 705 Maximillian Street, Baton Rouge, LA 70802, (504) 487-8526, spoke for information only on Agenda Item 3.

Representative Ivey and Commissioner Legier discussed Title 26 and the Louisiana constitution with regard to ATC's authority to suspend the license or permit of a regulated entity in an effort to enforce the governor's executive order. Representative Ivey asked Commissioner Legier whether the ATC has promulgated rules or regulations (pre-COVID-19) pertaining to what constitutes "sanitary". Representative Ivey requested a list of all specific violations that occurred and were actually enforced by ATC.

Witness cards submitted by individuals who did not speak are as follows: 1 for information only. Witness cards are included in the committee records.

Statements submitted in accordance with House Rule 14.33 in lieu of appearing before the committee are as follows: 4 in opposition. Copies of these statements are included in the committee records.

#### **IV. OTHER BUSINESS**

COMMITTEE ROOM 6 TO BE USED FOR OVERFLOW

#### **V. ANNOUNCEMENTS**

Persons who do not feel comfortable giving testimony in person at this time may submit a prepared statement in accordance with House Rule 14.33 in lieu of appearing before the committee:

A. Any interested person or any committee member may file with the committee a prepared statement concerning a specific instrument or matter under consideration by the committee or concerning any matter within the committee's scope of authority, and the committee records shall reflect receipt of such statement and the date and time thereof.

B. Any person who files a prepared statement which contains data or statistical information shall include in such prepared statement sufficient information to identify the source of the data or statistical information. For the purposes of this Paragraph, the term "source" shall mean a publication, website, person, or other source from which the data or statistical information contained in the prepared statement was obtained by the person or persons who prepared the statement.

NOTE: Statements emailed to [leab@legis.la.gov](mailto:leab@legis.la.gov) and received prior to noon on Tuesday, December 1, 2020, will be distributed to the committee members prior to the meeting.

All persons desiring to participate in the meeting shall utilize appropriate protective health measures and observe the recommended and appropriate social distancing.

## **VI. ADJOURNMENT**

The meeting was adjourned at 3:03 p.m.

Respectfully submitted,

Chairman Stuart J. Bishop  
House Committee on Ways and Means