

ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE
Anchorage LIO Auditorium
September 14, 2016
1:03 p.m.

MEMBERS PRESENT

SENATE JUDICIARY

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

HOUSE JUDICIARY

Representative Gabrielle LeDoux, Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

SENATE JUDICIARY

All members present.

HOUSE JUDICIARY

Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Matt Claman
Representative Kurt Olson

OTHER LEGISLATORS PRESENT

Representative Dan Saddler
Representative David Guttenberg

COMMITTEE CALENDAR

IMPLEMENTATION AND REGULATION STATUS OF ALASKA MARIJUANA
LEGALIZATION, BALLOT MEASURE 2, AND COMMERCIAL MARIJUANA
INDUSTRY

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board and Marijuana Control Board
Anchorage, Alaska

POSITION STATEMENT: Provided an update on the implementation of
the marijuana legalization initiative.

PETER MLYNARIK, Chair
Marijuana Control Board
Soldotna, Alaska

POSITION STATEMENT: Testified on the Marijuana Control Board.

KEN ALPER, Director
Tax Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Explained tax collection on marijuana sales.

BRANDON SPANOS, Deputy Director
Tax Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Described Alaska's marijuana sales tax.

PATRICE WALSH, Chief of Examinations
Division of Banking and Securities
Department of Commerce, Community and Economic Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding banking and the
marijuana industry.

JAHNA LINDEMUTH, Attorney General (AG)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Described how Alaska law does not allow for
marijuana social clubs.

JANA WELTZIN, Owner/Operator
JDW, LLC
Anchorage, Alaska

POSITION STATEMENT: Described legal issues encountered by the marijuana industry.

BRUCE SCHULTE, Former Chair
Marijuana Control Board
Anchorage, Alaska

POSITION STATEMENT: Provided updates and suggestions for the marijuana regulatory process.

RHONDA MARCY
Wasilla, Alaska

POSITION STATEMENT: Commented on the limits imposed by marijuana regulations and provided suggestions.

SAMANTHA LAUDERT-RODGERS
Chugiak, Alaska

POSITION STATEMENT: Testified that the marijuana regulatory process is taking too long.

MARTIN CHRISTENSEN
Anchorage, Alaska

POSITION STATEMENT: Testified in favor of marijuana clubs.

MARGE STONEKING, Executive Director
American Lung Association
Anchorage, Alaska

POSITION STATEMENT: Explained the health risks of second-hand marijuana smoke and vapor.

EUGENE CARL HABERMAN
Matanuska-Susitna Valley, Alaska

POSITION STATEMENT: Criticized time limits for public testimony and the absence of many committee members.

JOSHUA TOBIN
Anchorage, Alaska

POSITION STATEMENT: Expressed frustration with the marijuana regulatory process.

MAGGIE MULDONADO (Last name was unclear)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of Pot Luck Events marijuana club.

DON HART

Wasilla, Alaska

POSITION STATEMENT: Testified on the constitutionality of zoning by initiative with regard to marijuana laws.

TIMOTHY HALE

Butte, Alaska

POSITION STATEMENT: Encouraged the legislature to address marijuana clubs and spoke of testing drivers for marijuana.

JOHN RANDALL

Anchorage, Alaska

POSITION STATEMENT: Testified in support of marijuana clubs.

HEATHER THOMAS

Anchorage, Alaska

POSITION STATEMENT: Expressed support for clubs that are not alcohol-centered.

UNIDENTIFIED SPEAKER (Name given but indecipherable)

Chugiak, Alaska

POSITION STATEMENT: Testified in support of medical marijuana.

PETER (Indecipherable last name)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of marijuana clubs.

LEE HAYWOOD, Owner

Pot Luck Events

Anchorage, Alaska

POSITION STATEMENT: Described Pot Luck Events marijuana club.

ACTION NARRATIVE

[1:03:33 PM](#)

CHAIR GABRIELLE LEDOUX called the joint meeting of the House and Senate Judiciary Standing Committees to order at 1:03 p.m. Present at the call to order were Senator Costello and Chair McGuire and Representatives Lynn, Millett, and Chair LeDoux. Online were Senator Micciche and Representatives Kreiss-Tomkins and Drummond.

Implementation and Regulation Status of Alaska Marijuana Legalization, Ballot Measure 2, and Commercial Marijuana Industry

CHAIR LEDOUX announced that the only order of business would be an update on the status of the implementation of the marijuana ballot initiative. She announced the first two witnesses.

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CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC) and Marijuana Control Board (MCB), Anchorage, Alaska, was asked by Chair LeDoux for an update of the Marijuana Control Board.

MS. FRANKLIN said she will begin with regulation projects from 2015. The Marijuana Control Board had its first meeting on July 2, 2015, and it met a total of 17 times before the end of 2015. On November 20, the board adopted nine articles of regulation that matched those anticipated by the ballot measure. On February 24, 2016, the newly-named Alcohol and Marijuana Control Office (AMCO) began accepting electronic applications for all marijuana license types. At its February 2016 board meeting, the marijuana control board approved a roll out that called for the AMCO staff to process cultivation and testing licenses first. The board decided to look at product manufacturing and retail store applications beginning at its September meeting. This was to give licensed cultivation facilities the chance to grow legal, tested, and tracked marijuana before stores or product manufacturing facilities were licensed. It is a requirement that all marijuana in those facilities come out of the tracking system from licensed facilities, she explained. The board began approving cultivation and testing facility applications at its June 9-10 meeting. It approved 28 licenses and met again July 7-8 and looked at 30 more applications. Most were approved and "a couple" were tabled. The board met September 7-8 and approved 16 more cultivation licenses, four manufacturing facility licenses, and 12 retail store licenses, but members will meet this Monday to look at four more applications that were on their agenda. She said the board has approved two testing facility licenses, many cultivation licenses, four product manufacturing licenses, and 12 retail stores—with four more expected on Monday, for a total of 81 licenses approved by the board, so far. She noted that no applications have been denied, but the board tabled applications from Kodiak and the Mat-Su Borough when those local governments opted out or imposed a moratorium.

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MS. FRANKLIN added that those applications were tabled until after votes in those jurisdictions. She referred to a chart provided to the committee, and said the numbers change daily in

the electronic database, but there are 42 new applications where people have just started filling out forms but have not submitted them. There are 203 applications that are in an initiated status, which represent applicants who have not paid to have their paperwork reviewed, but who might already be advertising and providing local governments with notification. There are 18 applications under review, which means that AMCO has accepted payment and is making sure that the application is in order. There are 11 that are incomplete, where the team has requested corrections by the applicant. There are 41 that are deemed complete, which will be on the agenda for the meeting on October 27-28. There are 18 applications that are delegated by the board, which means the board has voted to approve them, but they are waiting other approvals from local governments, the Department of Environment Conservation (DEC), or the state fire marshal. Two applications were tabled. There are 25 active applications, whereby they are approved and AMCO has received all of the final approvals. They are now allowed to get into the tracking system and get ready for their preliminary inspection. She said she checked with the enforcement team, and she believes that 14 have been inspected and are operating. There were 63 voided applications, nine rescinded, and none that were transferred, denied, or expired. There are a total of 432 applications in the system. The board has approved multiple marijuana handler permit education courses, and the enforcement staff has issued 271 handler permits. The board will meet in October to approve more licenses, and "we already have 41 in that bin for them." The board will also meet in December and next February. She said she is trying to get the schedule similar to the Alcohol Beverage Control Board schedule, which meets five times a year.

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MS. FRANKLIN said there will be a testing facility operating three to six weeks from now. The board hired a contractor to look at the scientific part of the facility, because no one at AMCO is qualified to assess the testing process. It is a scientific accrediting facility called A2LA. She explained that someone from A2LA was flown in and will come back in October to assess other approved labs. The biggest challenge has been inadequate staff. The shortage is most apparent in answering questions from the public, applicants, and local governments. A series of email boxes have been created to make it easier to manage the questions, but it is still a challenge.

CHAIR LEDOUX asked if the staff are the same as the staff working on alcohol.

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MS. FRANKLIN said staff are the same, and they are the same as prior to the ballot measure, but two licensing examiners have been added. She said AMCO attempted to have all examiners working on both substances so that there would not be a big line for marijuana and a short line for alcohol. It hasn't turned out that way, she said, because there are many alcohol inquiries. The 10-day statutory deadline for processing alcohol is very strict, and alcohol permits seem to have gone up exponentially.

CHAIR LEDOUX said one of her concerns is the letters written to prospective licensees. She read the letter that goes to alcohol inquiries, and noted that it said, "Our staff is eager to assist you" and "feel free to call our office with questions or concerns," and "we are here to assist you in your business venture." The letter sounds really user friendly, but the new letter for the marijuana applicants sounds like you don't want them dropping in. It says if a person has multiple questions, he or she will be required to schedule an appointment. "It's a real different tone" for the marijuana applicants. "Is there a reason—a rationale—for that different tone?"

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MS. FRANKLIN said the alcohol instructions were written before the marijuana initiative passed. She was aware that AMCO would get a lot of questions, so she looked to other states for guidance on how to deal with an avalanche of inquiries. The marijuana instructions were written after the ballot measure, and the alcohol instructions represents "the way the office used to be—before we got both substances." She said the office has not had a chance to update the alcohol instructions, but those applicants have told her that the office has become much more stressed and a lot less friendly. It is simply a matter of [inadequate staffing]. Her predecessor estimated that the office would need twice the staff if the ballot measure passed, and that was not done, so there are a limited number of people. She noted that liquor license applicants have to make appointments now. Not all appointment slots are full, so AMCO is not turning people away for appointments. When marijuana applicants come in for appointments, they have generally expressed that they are pleasantly surprised that "we're pretty nice," but the job can't get done with the current number of staff. She said she brought a chart showing the increase in staff in other states, but AMCO did not get anywhere near as many. Basically, Alaska is in a fiscal crisis, and she recognizes that AMCO needs the licensing receipts to fund new staff. "That was the approach that we

agreed to take. What Alaska is feeling now is the ramifications of that approach," she explained. The enforcement team has enough people to inspect but not to do much else, so AMCO has been unable to run any proactive enforcement programs, like underage buying, because of the loss of the grant to fund that effort and because the staff is very busy checking in on all the licensees—which is a good thing, but other states are doing more enforcement for both alcohol and marijuana.

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MS. FRANKLIN said she was asked if criminal background checks are required, and they are for both applications except for handler permits, special event permits, or other permits that non-licensees apply for on the alcohol side. The ABC board is required by statute to review applicants with a felony conviction within the past 10 years, but there is no prohibition on issuing a license. Those applicants are evaluated on a case-by-case basis in executive session. Complications of marijuana applications and enforcing the rules like residency, operating plans, and metric, require a different process. Alcohol is still a paper-based application process, and the marijuana process is all electronic, which demonstrates that applicants have the means to enter the metric tracking system.

MS. FRANKLIN said the board began issuing licenses based on a certification filed by each applicant stating that he or she does not have a disqualifying criminal history. Fingerprint cards and fees are being collected and will be sent to DPS on the day that SB 165 becomes effective, which is October 4, 2016. She said she has been ordered by the board to summarily suspend any license in which the owner has a disqualifying criminal history, even though the owner certified that he or she did not. She expects there will be between 200 and 250 fingerprint cards to submit to DPS. Many of the licenses are owned by entities with multiple individuals, and the legislature voted that anyone with a disqualifying criminal history, no matter their ownership stake, would be disqualified. She said AMCO has been working with DPS, which forwarded SB 165 to the FBI, and it was approved this week. So there will be no delay on the back end once the act becomes effective; DPS will immediately begin accepting the fingerprint cards and running them through the same criminal background check that is used for liquor license applicants.

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CHAIR LEDOUX noted that Senator Wielechowski has been online since the beginning of the meeting, and Representative Saddler

is in the audience. She then asked if there was much delay in licensing because of the background check legislation.

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MS. FRANKLIN said the board did not delay in taking up the issue. The applications began being filed in the initiated status on February 24, 2016, which requires a three-week advertising period before coming forward with the other documentation. In terms of getting the applications ready, AMCO set aside the background check issue and powered on through getting those applications ready for the board, and 30 applications were brought to the board for its June meeting. There was no May meeting, and she believes there was one applicant for the April meeting. The delay was not due to the background checks but was due to the desire to get the board as many applications as possible in its first meeting and getting the handler course programs up and running so that everyone who was at that stage of approval could take handler courses.

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CHAIR LEDOUX asked if the board is where it is supposed to be in issuing licenses.

MS. FRANKLIN said, yes, and added that anytime an electronic system starts up, there will be glitches. Administrative services and the IT team in the Department of Commerce, Community, and Economic Development (DCCED) have prioritized AMCO's needs over other divisions' needs because of the deadlines in the ballot measure. The IT team has done a fantastic job providing an electronic system, but as AMCO staff worked with it, they "identified these statuses, so that long list of statuses that you have are places where we identified a place where an application might rest. We wanted to have a status, because we have attempted to have as completely a transparent process as we can." She said there is a lot of transparency, including a spreadsheet on the website showing the change in application status, which is updated weekly. There is another spreadsheet on the website keeping track of local governments that have opted out or passed marijuana ordinances. There is a licensing mailbox for anyone involved in the application process, and there is a mailbox for general comments and questions. She noted that the board is continuing to refine the regulations. There are also six regulation projects on the ABC side, "so we've been busy." She expressed her belief in keeping everything transparent and noted an extensive frequently-asked-questions database on AMCO's website, which is updated every month to six weeks. The website is continually

refined to keep current and to get all of the board agendas and packets online. All the documents that the board has reviewed are on the website, and the goal is to keep the process transparent and understandable. The regulations went out twice for public comment before they were finalized, and there were two full days of public hearings in October 2015. "We're committed to hearing what people have to say."

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CHAIR LEDOUX asked Mr. Mlynarik if he had anything to add.

PETER MLYNARIK, Chair, Marijuana Control Board (MCB), Soldotna, Alaska, reiterated that the staff has been busy. The board gets the application packets in one lump, usually three to four days before a meeting. Each license application can be 50 to 100 pages, so the board would like to get them sooner to have more time to go through them all. But the staff has been busy, and most of the applications received by the board do not have errors, so the staff is doing a good job. The regulation project was time consuming—making regulations from scratch—although there are templates from other states, but the board had to fit them to Alaska. Considering [the shortage of] staff and the newness of the regulations, the process, as a whole, has gone fairly smoothly. The only denials were for marijuana handler permit courses, and those were because of a lack of substantial information. Those are important as they teach people how to handle marijuana, but there have been quite a few handler permits provided, he said.

CHAIR LEDOUX asked about the course.

MR. MLYNARIK said that the courses can be online or taught in classes.

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MS. FRANKLIN said regulations specify what must be taught in a marijuana handler permit course, including information about marijuana, how to deal with persons impaired, and the rules about restricted access. Anyone can go in a liquor store in Alaska, but the sales can only occur for customers 21 and over. For marijuana, children cannot enter the store. Also, unlike a liquor store where someone might be able to slip a bottle under their sleeve and walk out with it, marijuana customers will have to fill an order and purchase the product before handling the marijuana. The controls are to assure the federal government that Alaska has met the stipulations in the Cole memo.

[1:32:24 PM](#)

SENATOR MICCICHE said AMCO is underfunded and overworked. He congratulated Mr. Mlynarik and the board, saying they have processed an incredible workload in a relatively short time. He said he supports having this status meeting today, "but we knew this was not going to happen overnight," and he hoped to take a moment to appreciate the hard work of the board.

CHAIR LEDOUX agreed and noted that Representative Guttenberg is now online.

[1:34:05 PM](#)

CHAIR MCGUIRE agreed and complimented the director and the board, noting that they had fewer resources than the alcohol program has had and perhaps with more complexities. "Imagine coming in after prohibition and being the first people on line to begin that process of legally regulating alcohol again—how overwhelming that would be." She asked if AMCO has created an overall implementation plan for where things should be, so everyone can understand where things are now and where the gaps are, particularly regarding the roles of the legislature, board, and DCCED. It will help guide all the parties to know "where we need law clarifications, where we need process improvement, where we need staff improvement—just an overall implementation plan." She expressed her concern of patch-working, like the issue of the social clubs, which is a radical departure from how Alaska treats alcohol. The goal was to treat marijuana like alcohol, but it seems like the state will end up with retail establishments setting aside a social lounge, and that is very different. She expressed that in each case AMCO is forced to be reactionary and needing to interpret the Cole memo and legislative intent, so it might be helpful to have an implementation plan everybody can look at.

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MS. FRANKLIN said there is an implementation plan, but it is not called that on the website, "so that is a great idea." The plan is guided by the ballot measure as amended by legislation. But the idea behind the timing of the ballot measure and all of the deadlines it contains was to get a marijuana industry up and operating within two years. At this time, AMCO has all four types of licenses approved by the board. She expects the first testing facility to begin operations in a matter of weeks, and there will be a very rapid roll out of the other license types once the testing facilities are operating. By February 2017, she believes there will be stores operating and manufacturers making products, which have been individually approved by the board,

which is a tremendous amount of work, and there will be testing facilities and a lot of cultivation facilities growing a lot of legal marijuana in Alaska. In terms of the social clubs, it is something that came up from other states and was not unexpected. She said other states also had issues with unregulated marijuana businesses, such as delivery companies and retail stores that do not have licenses.

MS. FRANKLIN said that it is difficult for the public to tell if an establishment is licensed and regulated. Many of the illegal establishments are posing as legal. The ballot measure passed in November 2014, so people feel that there should be stores open by now. She said her staff is responding to the public by stating that "we're very close; we're getting there; we're marching along toward that." The most helpful statute that is missing would address selling marijuana without a license. In SB 30, regarding misconduct involving marijuana, "we have our team working on a place in Anchorage right now that is selling liquor without a license, and that's a very specific offense that we feel is much more likely to be taken seriously when it comes to the prosecution decisions than simply defaulting to the Controlled Substances Act on relying on whatever amount of marijuana is found in such a place." She said it makes it very difficult for the enforcement team to address illegal, unregulated establishments, but this is something that has happened in Colorado and Washington. Washington outlawed clubs and Colorado has not, so there are models for both strategies. Colorado struggles with a lot of gray-area businesses, and a lot of it has to do with the overlay of its medical marijuana market on the recreational market.

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MS. FRANKLIN said she feels lucky that there is just one set of rules, and she believes this industry will stand up and demand that unlicensed, unregulated competitors be shut down.

MR. MLYNARIK added that the goal of the board is that if there is marijuana, it will be legal and will not come from people who do not have a license. "I think we're running into, possibly, the risk of unlicensed people selling marijuana." People are emboldened in some fashion, and that needs to be addressed through enforcement and prosecution. Although it is legal, it is not legal to sell without a license. "I think that we are starting to see some of that stuff pop up even with people with signs that aren't licensed." It will need to be addressed if the commercial marijuana industry is to be successful, he said.

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REPRESENTATIVE MILLETT asked about social clubs in Washington and Colorado and the pros and cons of each strategy. She noted the attorney general opinion (2016 Op. Alaska Att'y Gen. Aug. 31) stating that social clubs are not legal.

MS. FRANKLIN said the pros of marijuana social clubs are common sense. If marijuana is legal, it is an issue if there is nowhere to consume it. She said that was identified early on, and the board is attempting to address it by creating some form of consumption area in a licensed, regulated establishment. "In the meantime, life goes on, and so the social clubs open, and they claim that they're exempt from the prohibition on consumption in public, because they're not a public place." She said that is what the AG opinion touches on, and she will let her address that. From a licensing and regulatory perspective, marijuana social clubs provide a continued market for black market dealers. "If you go to any of the social club websites, they're not only inviting people to bring their own marijuana in, they're promising to provide it if you pay the fee to become a member." She noted they have "strains of the week," products to try, and none are produced by licensed, regulated cultivators or manufacturers. If a person was a grower and had a nice little cabal of customers, and those customers decided to buy legal and tested marijuana from a store, that person could go into one of the social clubs and find more customers. That is why bottle clubs are prohibited on the alcohol side, she explained. The alcohol industry recognizes the competition from unlicensed, unregulated places that invite people in to drink.

REPRESENTATIVE MILLETT noted that Alaska allows for personal use, which is not regulated or licensed, "so when you balance the fact that folks can grow their own marijuana at home and consume it, that's an opportunity for social activity, and we haven't outlawed homegrown beer, and those things are consumed and done." She wants to find a balance, because people are allowed to grow their own marijuana or make alcohol, so the social club aspect, for her, doesn't mean that the marijuana has to be regulated, "I mean you could bring your home strain or whatever and then share it there. So your thought process is just that it's untested, it's not licensed, and it's an opportunity to undercut a licensed facility?"

MS. FRANKLIN said home growers can have their marijuana tested. The testing regulations were written in a way to permit that in recognition that there are some people in Alaska that are very talented at a small home grow and might be interested in the THC

content and terpene profiles. In terms of getting together in public to share that, there really is no equivalent on the alcohol side. People are not permitted to bring homebrew—Alaska has introduction and removal rules that came about when prohibition ended with the idea that if there will be a controlled alcohol industry, all public outlets must be controlled. That is where the idea comes from, and introducing one's own strain to a public area where people can pay to come and consume it is not a regulatory model that has been adopted.

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REPRESENTATIVE MILLETT surmised that a social club would be considered a public place, and that is the basis for the AG opinion.

CHAIR LEDOUX noted that restaurants can allow people to bring alcohol.

MS. FRANKLIN answered that only wine is allowed, which is an exception to the introduction statutes. There are a lot of places in Title IV where pressure over the years has loosened it up, and it now allows bringing one's own bottle of wine. She takes guidance from AS 04.16.090, the bottle club prohibition, which refers to the exact business model that she has seen in the social clubs: charging memberships to come in and consume. The legislature has the ability to allow bottle clubs or social clubs. This is a fledgling industry, and there should be maximum protections to ensure its success; otherwise, the black markets will flourish and people who have made significant investments might flounder.

1:49:08 PM

CHAIR LEDOUX asked if that is coming from Ms. Franklin or from the industry. She said she assumes that one reason there are no bottle clubs is that CHARR [Cabaret, Hotel, Restaurant, and Retailers Association], bar owners, and other retail establishments do not want them. "It wasn't because government said, at the beginning, there is something inherently wrong with it." She asked if the push to not have social clubs is coming from the marijuana industry or if Ms. Franklin or Mr. Mlynarik just decided on their own.

MS. FRANKLIN said the industry does not yet speak with one voice. The marijuana industry would be licensed establishments, and the board has only looked at 81 of those so far. "I don't presume to speak on behalf of the marijuana industry," but she has had multiple applicants express displeasure with social

clubs and others support them, because marijuana is becoming more accepted, which is a desire for almost everyone in the new industry that we be able to talk about marijuana and work on it as a legal and regulated substance. "I think its evolving."

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CHAIR LEDOUX said she was concerned about the definition of "public location" because a social club would be a crime. Should the definition of public be defined by a regulation or by the legislature? "It seemed as if everything was because it's illegal and thus a crime because it's in the regulations, but normally crimes are determined by the legislative body, not by the regulators." She noted that Senator Coghill arrived about 45 minutes ago.

REPRESENTATIVE MILLETT asked if Ms. Franklin tried to work with the social clubs to put regulations in place so that they could operate. "Have you been willing to work with the social clubs and have dialogue with them ... so that there could be maybe some regulations that would allow operations of those, absent the attorney general's opinion, obviously?"

MS. FRANKLIN said that in June of 2015, she sent letters to six establishments that appeared to have gotten started early, and that is all. She has not taken any enforcement action. The board did not create any crimes through regulations—that is the legislature's role. It is the ballot measure itself that made public consumption illegal, and it is only a \$100 fine. In part, social clubs have thrived because there are no crimes that would shut them down. It would be a matter of writing tickets to their customers, which is an uncomfortable position for law enforcement officers, or it would be trying to charge the owner of the establishment with possession of whatever amount of marijuana was there when law enforcement goes in. If it was legalized, there would be language, but there is a gap. Other than the definition of "public" that came from an established statute, there is really nothing in the ballot measure or the legislation that speaks to the legality of these places. The owner of one social club has come to all of the meetings, "and we're cordial, but as an attorney, looking at the ballot measure, I can't see how the people voted for those, and so it really is a dead spot." She surmised that that is why the commissioner asked the attorney general for an opinion.

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CHAIR LEDOUX handed the gavel to Chair McGuire.

CHAIR MCGUIRE announced the upcoming witnesses. She noted the last discussion points to the complexity of the issue. There are philosophical values bumping against each other. Alaskans are somewhat libertarian, and, since the Ravin decision [*Ravin v. State*, 537 P.2d 494 (Alaska 1975)], the state has a right of privacy that allows individuals to grow and consume their own marijuana. The initiative provides liberty through regulation. With the legalization, you will not have "to skulk around in dark allies and have to buy a substance to consume illegally." She said some consumers have multiple sclerosis and other things, but at what point does the regulation quash the liberty? She said she understands that there should be penalties for the black market, but there is the irony of creating more criminal penalties to haunt individual Alaskans. It comes to that core level of our philosophical values bumping against each other. She appreciated that Ms. Franklin said perhaps Alaska will get to the place where we resolve this and we have a nice set of rules ahead of us in this industry. Regarding Title IV and alcohol, she was involved in the brew issue, "and I can tell you it was a war like I've never seen." The idea that everyone in this industry will ever come together is hopeful but not realistic. There will be work year after year, because there are always winners and losers. She noted that the homebrew people wanted to sell growlers and increase their limits, and the established dealers did not want the competition.

[1:59:36 PM](#)

KEN ALPER, Director, Tax Division, Department of Revenue (DOR), Juneau, Alaska, initially discussed taxation on marijuana. He said there are completed regulations that establish a two-tier system. The initiative referenced [a tax of] \$50 per ounce, with some flexibility for the different parts of the plant. The division created the second tier of \$15 per ounce for the non-flowering part of the plant, which has a lower concentration of the active ingredients and warrants a lower tax rate. His expectation is that those parts would be used by the concentrates industry to make liquids. The division is aware of the banking issues, and he said, "We can't fix it for them, but we could do our best to enable them to pay their taxes." He stated that the state is building a facility by a parking garage [in Anchorage] where all taxpayers, not just the marijuana industry, can make cash deposits. Individuals who are not in Anchorage will be able to mail their taxes in cash to a secure post office box at the Anchorage airport.

[2:02:26 PM](#)

CHAIR LEDOUX asked if there is much interest in paying taxes in cash other than from the marijuana industry.

MR. ALPER said it is expected to be used for the marijuana industry, but "we're taking pains to ensure that it's not exclusively for that purpose," so a bank will see it as tax money and not marijuana money.

CHAIR LEDOUX asked about problems with other states depositing tax money from the marijuana industry. "If I were a bank, I would be afraid to take it," she said.

MR. ALPER said it is awkward. He does not want to say the state is laundering marijuana money, but once the state takes it to the bank, it is just tax money.

BRANDON SPANOS, Deputy Director, Tax Division, Department of Revenue, Juneau, Alaska, added that other states have not had an issue with banks taking the money. Banks in Alaska have said they are willing to take the money once it is "revenue"; however, there is some concern if it is viewed as exclusively marijuana tax. Oregon will no longer take credit cards on its website, and Oregon's tax revenue was closed down for credit card processing, because the website specifically said a credit card could be used to pay marijuana taxes. There is also a transportation carrier who wanted no part of transporting the cash, he explained. The banks have not said they will not take revenue, but "to ensure that we're on the up-and-up, we're going to take cash from all tax types." It is seldom, but some of the alcohol and tobacco taxpayers have paid small amounts in cash, he said.

[2:06:25 PM](#)

CHAIR MCGUIRE summarized that there will be a mechanism for accepting cash, and local banks will take it because it is not specific revenue from the marijuana industry.

SENATOR COGHILL asked if the tax division will do spot checks or annual true-ups for accountability. There is an electronic reporting mechanism on the marijuana sold or transferred through a marijuana retail outfit, so does the reporting come from the retail outlet?

[2:08:09 PM](#)

MR. SPANOS said the reporting is through the tax revenue management system. Revenue Online is an outward-facing website that taxpayers can log into and report taxes. Marijuana

taxpayers are the cultivators, so when they make a sale to a processor or retailer, they must report the total ounces of flowers and other parts of the plant sold. It is a simple form, and the total tax due is calculated. For spot-checking, the division will do the same thing it does for other taxpayers, which is examine and audit those returns. The examination will rely on that seed-to-sale software that AMCO will be using. All of the sales are tracked in the software, and both AMCO and the tax division will have investigators to verify the plants and the shipments. An investigator can show up, look at a shipment, weigh it, and verify it, he explained.

SENATOR COGHILL said if it is going from a non-legal industry to a legal industry, there will be a temptation to not pay taxes, so it is important to make sure that those who are doing it right are not troubled any more than need be, so they are rewarded for doing things correctly. He suggested protection for the sellers and accountability. "I don't know that I'm totally satisfied with the answer yet, but I'll listen along the way."

[2:10:22 PM](#)

MR. ALPER referenced the division's support for squeezing out the illegal industry and its goal of doing everything to make sure the Alaska marijuana industry is focused on the legal and licensed taxpayer. A bill last session, HB 337, would have given DOR the power to have tax penalties in addition to criminal penalties for retailers that did not have a legal grow, which could be an extra deterrent. It will be a continuing problem, and one that should be fixed as quickly as possible.

[2:12:00 PM](#)

PATRICE WALSH, Chief of Examinations, Division of Banking and Securities, Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, said the director is traveling and could not call in. She explained that banking institutions are regulated by federal and state laws, and marijuana is still illegal under federal law; therefore, banks that deal with the marijuana industry violate federal law. The U.S. Department of Justice gave guidance in August 2013 for marijuana enforcement, and it issued the Cole memorandum in February 2014, which states that it will enforce federal marijuana laws regardless of state laws. Federal regulators of banks include the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). The FDIC had a meeting in April 2014, and stated it would support banks that elected to offer services to marijuana-related businesses. The transactions would involve funds derived from

activity that violates federal law. Therefore, a bank would be required to file a suspicious activity report (SAR) with the Financial Crimes Enforcement Network (FinCEN). FinCEN issued guidance in 2014 describing three levels of SARs that are related to the marijuana industry.

MS. WALSH said she was asked about challenges that Alaska banking institutions encounter regarding marijuana. The Division of Banking and Securities is not aware of any bank or credit union in Alaska that is willing to bank marijuana businesses at this time, as it can put the financial institutions, including staff and directors, at risk of federal prosecution. Banks and credit unions are comprised of boards that instruct management on who to do business with, and they get to choose who they do business with, so the threat of action against them has dissuaded them from providing services to marijuana-related businesses in Alaska. Credit unions have the same challenges as banks, and their federal regulator is the National Credit Union Association. She said she was asked what steps are needed to set up a community bank for the marijuana industry similar to one in Washington. All banks are subject to federal law, whether they are national or state-chartered. Additionally, all are required to get federal insurance, and that requires adherence to federal law. If the State of Alaska were to open a bank, it would have to apply for a charter through a federal regulator, and she said she imagines that it would require legislation and funding—there has to be different amounts of capital to open a bank. The division is not familiar with the banks in Washington and how they offer services to marijuana-based businesses.

[2:17:56 PM](#)

MS. WALSH said it is each board's choice to provide services to marijuana businesses, and there would be "very huge" additional costs. It is expensive to handle cash, she said, and it would require the additional SARs reporting. She said the division has reached out to some banks and credit unions to try and bridge this gap. In November 2015, the division hosted a webinar with FinCEN, and it included a lot of financial officers from Alaska trying to understand the risks. The division also had a seminar with Director Franklin's group for financial officers to explain the state's due diligence in issuing licenses to marijuana-related businesses and the enforcement and regulations for the industry.

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CHAIR MCGUIRE asked what role the division should have. She noted the Cole memo, the follow-up memo from the Department of

Treasury, and the FDIC board hearing on April 9, and said there is no outright prohibition for a bank to lend to marijuana businesses that have been legally licensed. The Cole memo and others are attempting to get down to the nuances of finding a way for banks to become more comfortable about this. She said it seems that the issues for banks are uncertainty, administrative burdens, and collateral issues with lending where there is real property—or even chattel that could be subject to seizure. But it all hinges on the idea that was in the Cole memo saying that states that have legalized marijuana have an obligation to set up regulations to provide security, authority, and a clear path for banks and lending institutions to secure legal lending. It is interesting, she stated, that that is the missing element. If Alaska under the leadership of Ms. Walsh and the director were to propose regulations that would comport with the Cole memo and were approved by the DOJ at the federal level, banks could then rely on that and enter into these transactions. She said her point is if the idea is to eliminate the black market—the illegal weapons trade, the cash, the human trafficking, et cetera—then legalizing it is exactly the right way to do that. If it is legal, why would the state want people running around paying their taxes with cash in paper bags or from bags hiding under their mattresses? It seems to be a contradiction. It seems that the answer is regulations from Ms. Walsh's office.

[2:23:42 PM](#)

MS. WALSH said she has not been speaking her opinion; Congress has not changed the law. There is guidance, but guidance is guidance. There is still a federal law with violations, so that is where the issue is. Banks have been given this guidance, but when it comes down to being prosecuted, there is no protection from the guidance, so the banks make decisions to be sound for all of their accountholders. Institutions are not willing to do something that could throw a prosecution at them with huge fines that could undermine them. The work needs to be done at the congressional level, since there are so many states passing laws [to legalize marijuana]. "I think that's the next step."

CHAIR MCGUIRE said an analogy is waiting for the federal government to build an icebreaker, and Alaska can only wait so long. "I am asking a very different direct question, which is: Do you believe that your department in banking and securities in the State of Alaska has a role, never mind the opinion that has been expressed by some banks that they would prefer to have federal clarity—I think everyone would prefer that—but we also know that getting federal clarity and action is very difficult, so we understand that, but my question is: Do you believe that

if you were to promulgate regulations comporting with the Cole memo—and the Cole memo cries out for it—that would set up a regulated, legalized pathway for banks to allow marijuana customers to come into their system, do you think that they would be more likely to lend?"

[2:27:03 PM](#)

MS. WALSH said, "It could offer an assurance to the financial institutions; however, we're not the only regulator. They have a federal regulator, and unless they have a state charter, we don't have any jurisdiction over them." She added that there is one credit union in Alaska that is a state charter, and it would not apply to the rest of the credit unions. There are four state banks that are chartered, and the others are not and would not be affected. It might help, but there is still the component of the federal regulator, and if they could get assurance from that piece of it, they might be able to feel more comfortable.

CHAIR MCGUIRE said, "Godspeed in your work. I encourage you to keep being proactive on it." She added that there is room in the Cole memo to think about the state "as we have in the initiative and in implementation of the licensing itself." Ten years ago someone could have said that the initiative could not have been written and the legislature could not have acted. "Someone said that, I know, but here we are." She said it is an opportunity for Alaska to be at the forefront of the conversation to see if it could get some agreement, even if it is just through a memoranda of understanding.

[2:28:45 PM](#)

CHAIR LEDOUX said she does not want to throw cold water over some forward thinking, but if she were a bank or a credit union she would not touch this with a ten-foot pole. The penalties for being wrong are onerous, and she did not realize, at first, the requirements that banks have. A grocer who knows that every dollar coming into the store is from drug money has no obligation to report it to the federal government, but a bank is not just set up to protect people's money, its role is as an unpaid helper for law enforcement. "I don't know how that happened, but it did, and so we're stuck with it." She said Washington found a way around that, so, somehow, the benefit of being the banker for the marijuana industry has outweighed the risk. She asked Ms. Walsh to find out what they did so Alaska does not need to reinvent the wheel. Senator McGuire is right. This law tries to legalize things—to bring things in from the shadow—and then there is a federal rule requiring everything to be in cash, so the state will probably not get all of its taxes,

because that's the way it works in cash economies. California must have something for its active medical marijuana industry, she surmised. The problem applies to the medical marijuana industry as well, so there has got to be some way. California has been doing it for 10 years, so someone must have figured it out. She asked Ms. Walsh to look into it.

MS. WALSH agreed to look into it and report back.

[2:32:53 PM](#)

CHAIR MCGUIRE asked if there were more questions.

SENATOR COSTELLO spoke of a bill she introduced and was signed into law that dealt with equity crowd investing. She said if there would be problems associated with that legislation. It allows businesses to raise \$1,000,000 with contributions of up to \$10,000 from Alaskans, and the division is promulgating regulations right now.

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MS. WALSH said the division does not see problems at this time with that "and these other issues," but she will contact her if problems come up.

SENATOR COSTELLO said she appreciates the opportunity to plug equity crowd investing. No one in the media has picked this up so she is writing an op-ed. "This is a way for Alaskans to invest in Alaska businesses, and I'm sitting here thinking that's why we created the law." She expressed appreciation for the division for promulgating the regulations, and it is her understanding that the division will help businesses create a business plan to access equity crowd investing, which is like crowd funding with equity in the company.

[2:35:19 PM](#)

SENATOR COGHILL asked about barriers for capital improvement of a building or buying a building. "Do we look at Alaska Housing and Finance; do we look at Fannie Mae?"

MS. WALSH said, "At this point, we're hoping that it doesn't go that far down, but it's up to each bank or credit union." They are starting to look at where the cutoff should be as far as third-party associations. Those are things that banks are trying to decide with their boards. All institutions are taking a very close look at this.

SENATOR COGHILL said where there is a will, there is a way, and there will be people who will be putting their thumbs on the scales, "and you're going to have to deal with that." It could be through relationships that are at arm's reach, but still entangled, he stated. Any way the legislature can look at ways to supply a different avenue is something to consider. Borrowing for a business plan is one thing, borrowing for a building is another, and cash flow is another issue. "It sounds like we don't have a good answer."

[2:37:46 PM](#)

MS. WALSH said each institution makes its own policy, and she knows they are addressing it. As a regulator, the division has supported the industry and changes with state law, but the institutions look at their federal regulator. "And we've had a lot of contact with the federal regulator," which is FDIC for banks that the state regulates. The division has had numerous conversations with the FDIC, and if a bank chooses to have accounts that are marijuana-related, the division supports that and is working with the federal regulator to try to let that be okay, "but it's not our decision." The division's job is to make sure the institution is making sound business decisions to protect the accountholders but not who to bank with.

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CHAIR MCGUIRE said it is like liberty through regulation. Landlord/tenant laws had a hands-off approach until people decided to address discrimination. "To a degree we say that we let these businesses operate the way they do, but there are points in time in history where we take a step back and try to identify whether there are gaps; people who aren't being lent to for reasons that we would like to prevent." It's incumbent on the government to continue to be proactive and visioning on how funding is accessed, like startups and new innovations and ideas. Oregon's governor, Kate Brown, initiated a movement that led to institutions there that are equity driven-board driven, and the board mandatorily includes women and men, people of color, people of different sexual orientations, and they are motivated by philosophy that they'll adopt. There is room to consider that there might be gaps.

[2:41:12 PM](#)

CHAIR LEDOUX said she understands where Senator McGuire is coming from, but she would not want to require banks to deal with these businesses. She said she really wants the marijuana industry to succeed, but she does not want to tell a private business that it has to take money from someone that might put

them in violation of federal law and cause them to lose their charter. That is a dangerous road to go down.

[2:42:20 PM](#)

CHAIR MCGUIRE said she is not saying that, but there are always those intersections in history between what is legal now and what is legal in the future. There was a time when alcohol was legal and then it wasn't, but she was not suggesting that banks be forced to take [marijuana] money, but there could be better communications with the federal government. She said there could also be outside-the-box thinking so lending can occur.

SENATOR COGHILL said banks end up at the end of the line. Racketeering laws were based on drug money and laundering, so it ends up at the bank's door. They had to look one transaction beyond and be able to report it. That is one of the problems. "How do we, as a state, short circuit that, so it's not a racketeering problem anymore, but it's actually a cash transaction that's accountable?" It needs to be addressed at the federal level, but at the state level, the problem is how to keep a less-legitimate business from laundering cash.

[2:44:20 PM](#)

CHAIR MCGUIRE welcomed Jahna Lindemuth and asked if she is the first female attorney general in Alaska. (She replied that she is the second.)

JAHNA LINDEMUTH, Attorney General, Department of Law (DOL), Juneau, Alaska, said she was asked to address how the attorney general opinion (2016 Op. Alaska Att'y Gen. Aug. 31) came about. She noted that she has been on the job for only four weeks, but she will provide her understanding of the opinion. The Marijuana Control Board identified some confusion in the law regarding marijuana social clubs, which is not a defined term in the law, but it is a business that offers marijuana for a fee, whether it is a membership fee or otherwise.

CHAIR LEDOUX asked if a club is a business that offers marijuana for a fee or one that offers a place to consume it for a fee.

MS. LINDEMUTH said it could be either, but there is remuneration for consuming marijuana in the location. There are many entities operating differently, so the term captures a bunch of different possible operations.

[2:47:05 PM](#)

CHAIR LEDOUX said if they were providing marijuana for a fee without being licensed, that is illegal and is a big difference between that and the gray area of providing a venue to consume the marijuana.

MS. LINDEMUTH said there is a distinction, and that is addressed in the opinion, but if a business is advertising that there will be marijuana samples, and it is charging a fee, that can be seen as distributing marijuana. There would be a financial benefit to the owner of the building who is advertising that marijuana samples would be provided. The MCB was not confused, because the statutes and regulations are very clear, but educating the public could help with enforcement. Education comes first and then there is enforcement if folks do not get the message.

[2:48:49 PM](#)

CHAIR LEDOUX noted that Ms. Lindemuth said the statute is very clear. The statute is the initiative, and she does not find it to be very clear.

MS. LINDEMUTH said it is clear that public consumption is banned. The initiative legalized consumption and allowed every person to have one ounce or six plants, which was later changed to twelve plants. It also says that marijuana will be regulated. Then it allows four different types of entities to have more than an ounce: retail marijuana stores, cultivation facilities, product manufacturing facilities, and testing facilities. Other entities cannot have more than one ounce or 12 plants.

[2:50:59 PM](#)

CHAIR LEDOUX asked about clubs that are not offering free samples. For example, tourists from cruise ships have no place to go, because [marijuana] is not allowed on the ship and cannot be consumed on the street. The tourist would want a place to consume what has been legally purchased and pay a fee to go into a club. She asked if the opinion applies to a club that only offers a place where someone can consume it.

[2:52:29 PM](#)

MS. LINDEMUTH said such a place would be a public place, but the legislature could change that. As written, the club would be a public place, and "I don't think we can get around that."

REPRESENTATIVE LEDOUX said she is trying to figure out the idea of a public place. If a club is an athletic club, or a petroleum club, or any club, and the fees are pretty expensive, then not

everybody could go in. If those places had a room to consume pot, would they be public?

[2:53:51 PM](#)

MS. LINDEMUTH said the opinion describes three ways that a place is public, and "I think it would fall under any of those three situations." A business is a public place, and that gets into whether there is a financial benefit to the club owner—and there is. Places of amusement are public. The third way addressed in the opinion are places where a substantial number of people have access. It would not be a house where people only come in if they are known and invited, she explained.

REPRESENTATIVE LEDOUX asked if those definitions are from regulations and not legislative definitions. There are different definitions for different purposes. She said she believes that when most people voted on the initiative, they figured that a public place just meant that a person could not smoke a joint walking down the street. Public has different definitions for other laws, such as anti-discrimination, disability, and others, but then there is "just that old definition" of public being what most people think of, "and that is, you're outside, you're someplace that everybody can be, that you can just walk around in," and she does not think marijuana clubs meet that kind of public definition, other than through the regulations. She is troubled that the regulations are making the law rather than the legislature. Maybe the courts need to decide, she stated.

[2:56:39 PM](#)

MS. LINDEMUTH agreed that the definition of public is broad, but she believes that it is consistent with the statute and with common law. Even if the regulation did not exist, she believes it would end up in the same place. The statute has the four buckets, and unless an entity is one of those buckets, it is not part of the regulated industry.

REPRESENTATIVE LEDOUX said there is a law that prohibits urinating in public but does not prohibit using a public restroom. There are really huge differences in the meaning of public depending upon the context.

MS. LINDEMUTH said it is hard to imagine that someone would be in violation of the law if they went into a restroom and consumed an edible.

REPRESENTATIVE LEDOUX said her point is that the definition of public does not prohibit urinating in a public restroom.

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MS. LINDEMUTH said, "Right, but what we are starting from here is what you are deeming a club where people can come and be with other people that they don't know and that there would be marijuana consumed." Just because there is a membership fee, it does not change it from a public to a private event. Like Costco, which requires a membership, is still a public place. The board room at Alaska Airlines is public even though a private membership is required, and they serve alcohol and are regulated by the Alcohol Control Board.

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CHAIR MCGUIRE spoke of SB 30 that meant to clarify this by defining "public" as Chair LeDoux does. It made people think about it in several ways: "We thought about in terms of alcohol, we thought about it in terms of smoking, and we thought about this practical point of what reasonable people think." Also, the Alaska Constitution's rights of privacy have provided the right to consume marijuana. There are uncovered issues, like a weed fairy that comes in and provides the weed for most people. "We've just sort of ignored it, but the reality is that there are many Alaskans that have consumed marijuana for medicinal or recreational purposes under the assumption of the Noy [*Noy v. State*, 83 P.3d 538, 544-45 (Alaska Ct. App. 2003)] and Ravin decisions. This area needs to be clarified in statute, and there needs to be a robust record of it. We want to welcome tourists, she said, and we want them to be safe, and then we say they can buy marijuana and then we say: "I have no idea where you're going to consume it." Alaskans with children may not want to consume marijuana at home. She said she knows many families who choose to consume alcohol only away, so a group of parents may want to consume marijuana legally in a social situation not in the presence of their children. "Gosh, now we're saying you're subject to, perhaps, criminal penalties." She does not think that was the goal of the initiative, but the legislature has not given Ms. Lindemuth much latitude. The regulations are based on unclear parts of the initiative.

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MS. LINDEMUTH said the legislature is welcome to address this by adding a fifth element, which would be like a bar for marijuana, but the regulations have tried to address this by allowing a place for consumption at a retail store. By regulation, stores can allow public consumption.

REPRESENTATIVE MILLETT asked for a definition of a private club.

MS. LINDEMUTH said that is outside the scope, because that is not how the statute and regulation is written. There is private consumption that allows the possession of one ounce of marijuana and 12 plants at home. The legislature could add that concept to the statute.

REPRESENTATIVE MILLETT said, "So let's just talk about a private club that's not marijuana-based." If someone wanted a private club in a commercial building where people were charged to enter in order to basket-weave, how would he or she make it private? "So for you, there's no private club definition in statute?"

[3:03:46 PM](#)

MS. LINDEMUTH said the concept of charging a fee makes it a business and brings it into the public realm. If you are charging a fee, you are acting as a business, and for this discussion, it would be a public place.

REPRESENTATIVE LEDOUX asked about the Moose or Elks who charge dues, and they are private, but they are still subject to public accommodation laws when it comes to discrimination, and yet they certainly are private clubs. If the Elks decided to set up a room in its private club to allow the consumption of marijuana, could you bust them?

[3:05:22 PM](#)

MS. LINDEMUTH said that if the Elks want to serve alcohol, they have to be licensed. It is the same concept. There is nothing set up to have marijuana consumption outside of the constructs provided. It is a regulated industry, and the legislature can change it, but that has not been done so far.

REPRESENTATIVE LEDOUX asked about the Elks not selling marijuana but providing a room where marijuana can be consumed. Could you bust those people? Arrest them? Cite them?

[3:06:38 PM](#)

MS. LINDEMUTH said, "We were seeing venues that were advertising marijuana to bring folks into the venue in order to consume marijuana." That was the primary purpose, so it may be outside of the [AG] opinion if there is a group of people unbeknownst to the Elks that are sitting there enjoying themselves. That is more of a gray area. If the legislature is interested in allowing that kind of activity, it is best for everyone to address it by statute so that it is clear.

CHAIR MCGUIRE said it is interesting. Some places have a cordoned off area for tobacco. If a person is consuming edibles in the public, "where does that John Stewart Mill thing happen where your liberty is bumping up against someone else's, because there isn't an exchange of smoke?" By the way, she said, this hearing is not about smoking. Marijuana is also a substance that alters a person's mind, like alcohol. Then there is the privacy right, and it is the only substance that doesn't come under the Commerce Clause—it comes under a compelling First Amendment right. That makes it even odder. The only way to move forward with clarity is for the legislature to address it. There are so many mixed messages, but the point of the hearing brings out that for liberty, "you regulate to get it, but be careful what you ask for, because sometimes you end up regulating yourself into a place that is very un-Alaskan" and antithetical to the Alaska way of life. She knows no one that wants to bust veterans, for example, who might be consuming marijuana peacefully with fellow people who served in the war.

SENATOR COGHILL noted the conundrum of public safety and dealing with impairment, and because of federal highway funds, Alaska has huge regulations on CDLs [commercial driver licenses]. He said he is not sure that Alaska has any clue how to deal with impairment. He asked if the AG's office has looked at that. Transportation is going to be a big problem—"put it in the air, it's a problem." Is it a problem on state highways? The legislature needs to figure that out, but the public safety element is impairment, and he asked if that is being looked at.

[3:11:14 PM](#)

MS. LINDEMUTH said she has only been in her position for a month and she is not aware if the office has been looking at that. In her private practice experience she knows that air cargo and transportation companies have to comply with the federal law and still have drug testing. There may be certain Alaskans that cannot partake in marijuana consumption due to their jobs.

SENATOR COGHILL said with regard to public consumption, there is a nexus with public safety that is "a big deal to us." The same with alcohol, which can be tested rapidly and successfully, but he does not know about testing for other impairments. No-doze and Benadryl can be tested, but there is no way of knowing about marijuana. Legislators must start thinking about it, and it goes right to the question of these public consumption clubs.

CHAIR MCGUIRE said the Department of Law has always been a very useful resource for complex issues like this. She suggested that

the department work more with the national attorney general group, and she expects that there is a coalition among all the states that are dealing with this. She said it would be helpful to have Ms. Lindemuth's leadership and advice.

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SENATOR COGHILL noted the disparity in one ounce of concentrate and one ounce of leaves. He said he keeps bringing this question up with regard to penalties. [The law] just says "an ounce." An ounce of hashish or concentrate is very different from an ounce of leafy substances. He wants to have a way to meter the toxicity. It is a huge problem. There is the toxicity and the value problem. "And the banks are going to run into this, and that is if you start selling an ounce on cash, and one ounce divided by a hundred is worth a thousand dollars, and one ounce divided by two is worth a hundred dollars, how do you figure that out? That is a key problem that he keeps bringing up, he said, and he is bringing it up for Ms. Lindemuth's perusal.

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MS. LINDEMUTH said there will be work to bring consistency to criminal law, and that will probably be a part of that.

REPRESENTATIVE MILLETT said this is a concern with heroin and fentanyl and other drugs that are hitting the street.

CHAIR MCGUIRE asked for questions from members and then passed the gavel to Chair LeDoux.

3:17:43 PM

JANA WELTZIN, Owner/Operator, JDW, LLC, Anchorage, Alaska, said her law firm represents a good amount of companies in Alaska, as well as marijuana companies in Arizona, Washington, and Oregon.

CHAIR LEDOUX asked about her experience in navigating this process in Alaska—the bad and the good.

MS. WELTZIN said there was a rocky start. Industry has been engaged in the rule-making process, and throughout it she has often reminded people that "we really, actually have some pretty good rules in front of us so far." There are a couple of things that did not make too much sense, and more are still getting fleshed out, she said. The biggest issue is the government departments not talking to each other and giving conflicting advice. The delay is understandable. When people asked why Oregon is ready and not Alaska, she tells them it is because Oregon already had a medical system, but it has been two years,

and some of her clients have been paying rent for a really long time. For the application process, people were not allowed to use intent letters to secure a premises. They actually had to have a lease, and for a landlord to make that kind of investment and agree to that, a lot of companies have been paying rent for 12 months or more. She said that the staff at AMCO are so amazing, and she would like more investment to relieve their burden. "I don't want to see where we get in this industry where there's not enough people there to catch things that fall through the cracks, and we get violations of regulations, which would give people a little bit of ammo to kind of shut down the whole industry." Consistency in treating applications is important, and that is hard to achieve when staff are overworked, she opined.

CHAIR LEDOUX asked why a person needs a lease to get a license. Is that because of a statute, and is it the same for alcohol?

MS. WELTZIN answered that she thinks it is an interpretation of regulation, which requires that licenses be tied to a premises, and a document called POP, or proof of possession, shows that.

[3:22:35 PM](#)

MS. WELTZIN said that Arizona allows using letters of intent by "engaging in a nonbinding document with the landowner and the licensee and saying, hey, if we pass through all this application process and we get to the point where we actually are awarded a license, you, landlord, are saying to me as a licensee, I can use your building." She said that is what she is used to in Arizona, but that form is not allowed here, so "we had to use an actual lease." She said she can see both sides, because a letter of intent does not ensure that the property will be available, but that is more of a burden on the licensee, "because we're already paying our fee regardless." She added that "we" had to engage in all these leases, so there has been a lot of people paying a lot of money, but if that gets changed, they will be asking why they spent \$150,000 for rent if that is no longer required.

CHAIR LEDOUX said she understands those people will be mad, but that might not be a good reason for a change. "Just because we've done something in the past which might not have been a great idea, we should probably shouldn't be continuing it." She will ask the executive director to come back and comment on that. She asked if that is the most significant problem encountered.

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MS. WELTZIN said this process is new to everybody. One of her clients called yesterday and said the state fire marshal has no clue what needs to be done to make a manufacturing facility fire proof. "They have no idea what they're going to require," she said, "and we're two years into this." She said she does not understand how that can be. There are building plans in and the only hold up is the fire marshal not knowing the requirements. It is a bit unacceptable. She expressed appreciation for Chair LeDoux pushing the FBI background check, or else "we really wouldn't have an industry." She said that was a big heart-attack moment for everyone. Another issue is getting kicked back and forth between DEC and DHSS [Department of Health and Social Services]. When she started doing the retail application, DEC was stamping her food permit things, and all of a sudden it switched to DHSS—so it was one hand not talking to the other hand. She added that the interpretation of regulations leaves a little bit to be desired, but it will come in time. A lot will come from just fleshing this out and seeing it actually happen. The biggest contention is onsite consumption. The board recognized it, and there is no other industry where there will be a product sold to consumers, yet there will not be a legal place to consume it "except for the place where your children are at." That is just bad policy and bad business.

CHAIR LEDOUX asked if part of the regulations allow a license for onsite consumption kind of like a bar.

MS. WELTZIN said the last Marijuana Control Board meeting in September was supposed to address that issue and create some regulations, but it got kicked down the road until October. It is very hard to plan for that as there is an incredible ventilation system for allowing smoking. Anchorage has a smoking ban, so for non-private clubs it is not as much as an issue, but for everywhere else, the ventilation needs to be researched. "We've got to really start researching where and how these types are going to be established and what the fire marshal code's going to be." Regulations are not really how-to documents.

CHAIR LEDOUX asked how the legislature could make the process easier.

MS. WELTZIN said, "We are willing to bend over, but please don't break out backs." It is incredible how much, in Anchorage alone, that Title 21 is such an investment. Just to build out 8,000 square feet of cultivation is about \$250,000 to get Title 21 compliant, not including lights. There are warehouses that

cannot be used because of the parking requirements. She said she left Alaska and came back and was shocked at the building code and zoning ordinances.

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MS. WELTZIN noted that in November, Denver will vote on public consumption, and a yes vote will support public consumption in certain clubs, lounges, and bars. The definition of public used in the AG opinion is from the Colorado statute, "but there is an exemption in the Colorado law, and right now it says that onsite consumption has to comply with the indoor Clean Air Act, which makes it kind of impossible to comply with." That is why private social clubs pop up and require day memberships. She said she does not think that is a great model, and if Alaska wants something that is unregulated and cannot be controlled, it should "continue this path and continue doing private, because I guarantee you there's ways to make them, a club like Pot Luck, private—have somebody sponsor membership—don't make your Facebook public." There are ways they can figure that out, so "why don't we just create a license type that we can actually regulate and implement and tax?" Maybe it will just be public consumption venues with no marijuana sales or free marijuana samples. "Wouldn't that cure everybody's issues?" She noted that it is not the business model of Brown Jug to consume on the premises. She said she is in favor of the retail onsite consumption idea, "but if we don't want to kick the door open, maybe something like a venue consumption-only place is an idea to consider." That might not be popular for everybody, but it should be discussed.

REPRESENTATIVE MILLETT said the legislature has addressed that through brew houses with tastings. A person can go to the Alaska Brewing Company and try its new tap and four other samples. "So we do allow it in a small regulated way." When it comes to having families and elderly people in their homes, "I don't think most people want to go home." She said she has two grandkids and she sure does not want marijuana in her house. The public wants this, and she believes that was the intent of the voter initiative. "Unless I go and talk to all 720,000 residents of Alaska, I won't know, but I think we can go—the pendulum can swing so far that we discourage this new environment or we can go so far that we don't have a regulated environment." She said there has to be a balance in the middle, and the fear of the people who voted against the initiative was that there would be a country gone wild with pot smokers on every corner. That fear has diminished greatly, and we are seeing that the process is very complicated, but the more difficult Alaska makes it, the

more it is set up for failure. There are brilliant people in the state, and if they were brought to the table to talk about what a social club and its regulations would look like, there will be much better legislation. She said she has seen it in the legislature, where she is not an expert but she knows who the experts are in the community, "and we could have a really balanced economy where it is safe and people don't feel threatened that are non-potsmokers." Everyone just wants to know what the rules are, "and I think we've been very vague and maybe a little bit backwards in our two years of trying to develop these." She said Alaska does not need to reinvent the wheel.

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CHAIR LEDOUX said Seattle or Washington outlawed social clubs. "Let me tell you folks, you go to downtown Seattle and, I mean, that place stinks right now." People are smoking on the streets, which is exactly what the public does not want, and there is only a minimal fine and no enforcement. She said she would rather have people in clubs where the smoke is not wafting into the streets. Smelling the smoke is what is offensive to people.

MS. WELTZIN agreed, and asked how to maximize the ability to cut down on people who drive when impaired. There are retail establishments—42 in Anchorage alone—and if they had onsite consumption, along with the bars, it is a lot for enforcement. "Wouldn't it be nice if we just had three or four venues where people consume and then if the cops want to catch people for DUIs they know where they're at, instead of having 42, plus all the bars?" It's a lot for the enforcement division and the police who are tackling a lot of issues. Tourism is the second largest industry in Alaska, and do we really want to alienate these people by telling them to smoke in their rental cars or risk hotel violations?

CHAIR LEDOUX said that a place like Anchorage, which is anti-smoking, would likely trump any onsite consumption.

MS. WELTZIN said that is true for a public venue, but there are cigar clubs in Anchorage. A very private club—a truly private club—that model has to be defined and narrowed. She does not want it to be abused, and there is the issue of a slippery slope. For a true private club there could be smoking, but a publicly licensed venue that anyone over 21 can come in, there would be no smoking allowed, but people could consume edibles.

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MS. WELTZIN said she sent contact information for banking institutions in the Lower 48 that work with cannabis companies to [the committee aide]. She noted that Ms. Lindemuth said a person cannot have over an ounce, but the statute allows any product grown on a person's premises can stay there. "I want to make sure that we're not putting the message out there or the misunderstanding that medical—or any person—that grows in their home cannot keep that in their home, whatever they do grow. You can have over an ounce."

CHAIR LEDOUX referred to the concept of having an ounce, which was in the initiative. She asked if it made any sense that a person can also have all that their 12 plants can grow.

MS. WELTZIN said it does. Anything grown at home can be kept at home, and she raised a question about security concerns, but then said that there is probably enough weed around that people are not breaking down doors to steal it. But does a person running around town really need to have more than an ounce? The more important issue the legislature could weigh in on is that an ounce of a flower is so different from an ounce of concentrate. "If we're going to talk limits, we need to be consistent, and that is probably something that should be fleshed out."

CHAIR LEDOUX asked Cynthia Franklin to discuss the lease requirements.

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MS. FRANKLIN said, "When the regulations were written—these are premises-based licenses—we have to know that the applicant has the right to possess the premises, because they are expected to be in complete control of everything that happens on the premises of the marijuana that comes on, the security measures." Both marijuana and alcohol require leases. Applications are sent to the board within 90 days of when the application is determined to be complete. There are often a lot of issues with the application, and her office tries very hard to work with applicants to bring quality applications to the board. The board is trying to set up an entire industry in a very short amount of time, and it could not get through the applications in the two days at the last meeting. To give the board applications that members need to evaluate, there has to be application standards or the board would have to wade through all associated documents. There is not time with a volunteer board; that is what the staff are paid to do. "So, we're looking for a lease on both sides." It may be different in Arizona, but there are a lot

things that are different in the other states. "This is our book. It's 127 pages, 9 articles of regulation." The Colorado regulations are almost 800 pages.

MS. FRANKLIN noted that they did their best to get a minimum regulatory scheme in place, but there are Range 13 employees examining these applications, and they have to have something to look for. If all applicants have something different documenting that they will have a place in the future, then it is not clear what to tell the board about the person's control of that property. "We are looking for leases, but, of course, the legislature has the power to tell us anything that we're doing wrong in the process." All of the information about the application process went out for public comment twice, and there were some concerns about the cost of having a lease, but, frankly, a lot of this is just working in a regulated industry. "They asked for a regulated industry, and they're getting a regulated industry, and some of the applicants aren't used to working in a regulated industry—they want everything to be private; they want not to provide the things that we're looking for to bring the board a decent application." She said they are doing their best.

CHAIR LEDOUX said she is not suggested that she is not doing her best. She mentioned taking an option where an applicant who did not get a license would not have to pay for the lease. If something fell through, and a license is contingent on having a particular place, then the license is not valid. "What's the purpose of making them pay rent for all this time? I just don't understand that."

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MS. FRANKLIN said, "We are simply requiring a lease before the application is complete. We don't have any specific rules about how long they have to pay rent before the application is complete." She said she has seen some contingent leases, so people are dealing with this the same way they are dealing with other regulated industries. They are finding ways to work with those private parties and their landlords. She does not believe that all of the applicants have the same issues that Ms. Weltzin presented. She has only heard about it from a few people. It is a very broad brush, and Ms. Weltzin has brought it up as an issue because it is different in Arizona, but it is the way that it is done here. Before the application is complete, applicants have to show possession of the proposed premises, but they are not required to have a lease for a certain number of months.

CHAIR LEDOUX asked how long after the application is complete.

MS. FRANKLIN said, "Until the next board meeting."

CHAIR LEDOUX noted that there are board meetings once a quarter.

MS. FRANKLIN said there will ultimately be five meetings a year, but this year there will be seven to get more licenses in front of the board.

CHAIR LEDOUX noted that people can sell their alcohol licenses.

MS. FRANKLIN said alcohol licenses can be transferred by location or ownership. Regarding marijuana, licenses can be transferred to another owner but not to another location. For alcohol, licenses are population-limited, and only a certain number are available, but an unlimited number of marijuana licenses can be issued to anyone who applies and qualifies, so if marijuana licensees lose their locations, they can apply with another location. Alcohol licenses are limited, and, by statute, licensees who lose their locations have to surrender the license within ten days unless they have taken some other action. They are both premises-based licenses that are very tied to place, and losing a location means the license would be lost with either substance. The license is laid on the location, not on the person, "so you can't pick a license up and carry it around town and set it down somewhere else, because the local government has complete control over the zoning and controlling where these places go." The state cannot issue a license to use anywhere. The local government has to know where the operation will be before the license is issued. That is why regulations require proof of control over the premises, she reiterated.

CHAIR LEDOUX said she cannot see why an applicant cannot just show the lease when the license is issued and why an applicant should have to pay for even one month of rent prior to that.

MS. FRANKLIN said they are just looking for a document to meet the regulations.

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REPRESENTATIVE MILLETT asked Ms. Franklin why she is regulating the municipality's code and not requiring the applicant to determine compliance. "If you're licensing as many as you want, I don't understand why there is even a requirement to show where you are going to be at one certain time." Alcohol is a population-based license, and marijuana is unlimited, "so why

are you even requiring to have any documentation of where you're going to be?" She asked why AMCO would even care if they had a lease or a building, because that would be up to the municipality. From her understanding, the law is based on municipality structure not on something that AMCO regulates, monitors, or even enforces.

MS. FRANKLIN explained that the ballot measure says local government has control over the time, place, manner, and number of marijuana licenses issued. The local government can determine that even though the state would issue unlimited licenses within its city boundaries. "But our regulations require that we tell them where this place is going to be so they can determine whether it's in the correct zoning environment, and they have a right of protest to the issuance of the state license." The local control is wrapped up in knowing certain things about the license before the local government weighs in. If the question is why can't the local government do all of that, she noted that the ballot measure provided that if state regulations were not written in the time provided, the local government would have the responsibility to create all of the rules around this. She said there was quite a bit of resistance from local governments at the prospect of the state missing the deadlines and then being responsible for creating the rules. The way alcohol regulations and statutes work is that it is a shared regulatory burden between the city and the state. "When we read the ballot measure we saw something that looked exactly the same to us ... in terms of local control and local option, and we heard from the cities they didn't want to make all the rules."

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MS. FRANKLIN said the cities wanted marijuana regulation to be like alcohol, where the state would get information, like where it will be, who is getting it, what the financial interests are, and all of that. After receiving the information, the cities can make a decision on whether they want to protest the issuance of the license. She said that appears to be what the ballot measure contemplated, and that is what the board wrote.

REPRESENTATIVE MILLETT said that she sees a disparity because of the limited number of alcohol licenses. "It's hard for me to equate that the balance is there." The marijuana initiative had an unlimited amount of licenses. She said she understands the notification, but maybe that should be the responsibility in that once the license is issued is to note where the location is. "The ease of that would be simpler than to go through this

process of burden. I mean we're creating barriers now, because we've required them to lease the space for now up to two years."

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MS. FRANKLIN said she does not believe that anybody has leased a space for two years before getting their license. It hasn't been two years since the act became effective, and if anyone has leased a place for two years, it is their choice and not anything that the state made them do. It is a piece of the application. The limitations did not come out of the statute, it came from the regulations, because the only place in the statute that mentions the number of licenses issued is in the section giving local government control over the time, place, manner, and number. She added that the population-limited license creates a lot of issues, and when she speaks with her counterparts in other states, they say that they would have preferred to let the free market determine the number of licenses. "So we see it as an improvement, but not a replacement for the premises-based licensed system." That is what the board passed, and staff are just trying to make it happen.

REPRESENTATIVE MILLETT said she is just trying to think about the success of a new operation, and we might not like it but it seems just a little bit cumbersome to have that responsibility to lease a place, especially when someone has a warehouse.

CHAIR LEDOUX asked if Ms. Franklin would think of a way to make it less cumbersome for people who are renting, so they do not need to spend a bunch of money before they get their licenses.

MS. FRANKLIN turned to the consumption endorsement. That language was created and put out for public comment. There were more comments opposed to the project than for it. The board changed it and put it back out between July and September, and of the 42 comments from the public, 40 were opposed to the public consumption endorsement, and there were many questions of why the board was not responding to the people who were opposed to the project. At the September meeting, one board member expressed a desire to spend more time looking at the endorsement in light of the AG opinion, which had just come out. The board voted to move it to October. She said that the project is still alive, but most of the commenters were opposed to creating an area for public consumption.

CHAIR LEDOUX said that is interesting. That multiplies the problem of not having a place to consume.

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BRUCE SCHULTE, Former Chair, Marijuana Control Board, Anchorage, introduced himself.

CHAIR LEDOUX noted that Mr. Schulte was the chair of the MCB for a year, and she asked if he recommends any steps the board or the legislature should undertake.

MR. SCHULTE praised the AMCO staff, particularly Sarah Oates and her licensing team and James Hoelscher and his enforcement group. The process is pretty much on schedule, and the key target dates of adopting regulations and accepting applications were on schedule. A lot got done in a short time, but a voter initiative is an imperfect way of developing law, he said.

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MR. SCHULTE added that any delays have been reasonable, except the debacle on FBI background checks. It was resolved in SB 165, but "had we waited for that bill to become effective—to get FBI background checks—nobody would be growing anything at all until December or January." That would have been catastrophic, so it is crucial that the board intervened to override the director, and it got things back on track. At that time, some people had been sitting on real estate for many months, and the prospect that their application would be shelved for five more months pending the background check was financially devastating to several of them. One business was on the hook for \$22,000 a month, so, fortunately, that was a bullet dodged.

CHAIR LEDOUX asked if this was in contravention of the director.

MR. SCHULTE said the board had not weighed in on it. He said he and the public were informed from a radio interview with the director that all the applications were going to be held until there was an FBI background check. There was considerable debate about whether that was required. "Ultimately, I asked the question at our board meeting in April: Is there actually a statutory or regulatory requirement for these national criminal background checks?" The answer was no, so the board voted to process the applications. "I don't want to get too much down in the weeds, but that was hugely important, because no applications were to be deemed complete until that point." Only complete applications get forwarded to the local government, and until then, the 60-day protest does not begin, and then the local government's process begins. He gave the example of an Anchorage application deemed complete on October 5, it would go

the municipality, which would have 60 days to protest and go through its secondary licensing process.

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MR. SCHULTE said the process is evolving, and the folks in the trenches have done a great job. Once the board approves an application and it goes to the local government and gets processed, there is a final step before the license is issued. The AMCO staff visit the premises and say, "Okay, what you put in place is what you committed to do, here's your license." That should be the day positive control of the property would be in question. "If you shell up and they're not at the address that they had in their application, they simply don't get a license. To me that is such a simple way of handling it. I don't even know why it's a point of discussion."

MR. SCHULTE said there are five members on the board defined by the legislature, and, "we didn't always have the same perspective, in fact, sometimes we were very much at odds." Very few votes were five to zero, he said. That was healthy, and the board makeup represented how the public voted on the initiated. It only passed by 53 percent, and so where the public was slightly in favor of it, the board members were slightly in favor of regulating marijuana in favor of the industry. The deliberations were broad and constructive, and he said he is pretty happy with the regulations, but they can be made better. The board has wrestled with statute, regulations, and policies.

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MR. SCHULTE said much of today's discussion has been about policies that are not under the direct control of the board. He recommended that those policies be codified, and then let the board adopt some and have an opportunity to discuss them with public comments. Some of these issues could better be resolved in the open with public testimony. Regarding marijuana clubs, he said he is not an advocate or an opponent. He said he called a club that opened in Anchorage and encouraged them shut down, because he did not want to see that distraction, and it continues to be so. At the board's first meeting in July last year after the director wrote cease-and-desist letters, it voted to make recommendations to the legislature, and one was to clarify clubs. "Tell us, do we have authority over these or not?" There were discussions, and based on legal advice, the board took the position that it did not have authority over clubs, either to regulate or ban them. That was where the onsite consumption idea came from. The public was asking for that, including elected officials from Juneau and Fairbanks. They were

asking to make provisions for a place to consume marijuana, he said. Legal counsel told the board that the definition of a retail store could be expanded to include onsite consumption.

MR. SCHULTE said staff proposed draft regulations in April, and they have been getting moved down the road over the last several meetings. The committee was told earlier that after those cease-and-desist letters were issued, there was no further action taken against these clubs, but that is not entirely true. He said an alcohol licensee that is in the same building as a club in Anchorage was told they could not have an alcohol event permit unless the club was evicted. That's significant and concerning. It appeared to be contrary to the board's stated position that it had no authority over clubs. Also, there was no due process—the club was not even consulted on the matter. He said that is not the way to regulate, and a regulatory board should not be in the business of interpreting or enforcing statute, unless it is written down. He said he was concerned and asked for a meeting with the director. "I pointed out to her that (a) this is contrary to the board's stated position, (b) it looks like coercion." The media was starting to ask him questions, he said, and he declined to comment, because the board chair should not be getting into that kind of dispute with the executive director, but it is an important discussion. The director told him he had no right to talk to her about it and stormed out of the room. Since then, a group conducting training for the marijuana handler's course wanted to hold the course at that marijuana club, and they were told the board might revoke their authority to conduct such classes if they held it there.

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MR. SCHULTE said at least one other event was told that they could not have a permit if Pot Luck Events was associated with it. Since the judiciary committee was told that no further actions were taken, "I thought it was incumbent on me to clarify that." He noted that he is not necessarily advocating for marijuana clubs, but a regulatory body should not make the determination. It is the purview of the courts and the legislature with public input, and one of his requests is that the legislature weigh in on it. "I think the manner in which it was handled was inappropriate," he said. Senator McGuire had the same reaction as he did on the balance between personal liberties and government control. "I had that same struggle myself. It's a difficult one." One justification for going after these clubs is because they are nests of illegal activity. Maybe they are. He said he has been to them, and maybe they are. The black market is alive and well whether or not it is at these

clubs. "I really can't say; but, again, I think that we are a state and a country of laws, and the folks that are involved with this, they deserve due process." Prior to the AG opinion, it was just an individual's interpretation of law. The opinion is helpful, but as a matter of public policy, it is the role of the legislature or the courts to decide if clubs are legal, if they should be regulated, and what the operating parameters should be.

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MR. SCHULTE said he has a "wish list," and it begins with the AMCO staff, and a "later wish" is that the legislature authorize more resources, because "a few people probably want to stab me half way through this discussion." He said it would be helpful if the AMCO office documented its process, which is very complicated, and "none of us have ever done this before." The staff has been doing a fantastic job of wading through it and creating something that did not exist. The process should be documented and made available for review. He said he would like AMCO staff to work with local governments. Anchorage has a complex licensing process, so it would be great to develop a supplemental process. That way, applicants could see what they need to do in parallel—and what needs to be done first. People could look at the website and see: "What am I getting myself into?" The board, itself, should move some of the staff policies over to regulations so they can go through public deliberations, including things like the lease requirement. He noted that an applicant asked if a building could have restrooms down the hall shared with another business. There was a big question about it, because there was discontinuous space. Somebody who has applications for cultivation, processing, and retail in the same building, might be asked to have different restrooms for each one, as well as separate data rooms and offices. No other business would be required to have duplicated resources like that. He said he introduced that regulations project "shortly before I was booted from the board." He said he hopes that it will see the light of day. He added that the regulations were developed quickly, and he is pretty happy where they ended up, given the time frame, but he would like the board to refine them and remove unnecessary impediments. It is not a matter of public safety, it should be in favor of commerce, because the board is housed under the commerce department.

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MR. SCHULTE said he would like the legislature to recalibrate the criminal statutes, which began with the second version of SB 30. "It was awesome; it was going in a great direction," he

opined. Existing criminal statutes are at odds with the initiative. He also suggested de-scheduling marijuana. He does not have a dog in the fight, but he would like the legislature to settle the issue of clubs. At the last meeting of the MCB, a member said the board now had pause over the whole question of onsite consumption because of the AG opinion. "So, we're very much at an impasse here." There is no place for onsite consumption, and the tourists are going to show up in six or seven months, and it would be great to have a solution by then, but that might be optimistic. He would like the legislature to adjust the law to exclude certain, licensed businesses from the definition of public consumption. "That would kind of get this out of the ditch we're in if the law simply said: Unless operated under a state license, the following is illegal. Then we make provisions for creating a state license, and we're all off the hook."

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MR. SCHULTE suggested changing the tax from \$50 per ounce to a percentage per ounce. The wholesale price of cannabis is fluctuating tremendously. With prices high, the state may be losing out on revenue at \$50 an ounce, and later, if the price drops, then [cultivators] might be struggling to compete or to survive or to compete with the black market, and the \$50 tax might be an unsustainable portion of the price. He said he is not suggesting it right now, because "I will get publically skewered from doing that." He said the legislature should consider expanding [AS] 17.38 to allow the MCB to create new license types. There are only six licenses available under the four general categories, and for alcohol there are 22 or more, including event and catering permits. He said Alaska is not quite ready for that, but it will be helpful for the legislature to see how "this thing" plays out next year. Once there is a comfort level that the industry can operate responsibly, it will be an appropriate direction to go and would simplify a lot of these discussions.

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MR. SCHULTE suggested that the legislature authorize funds to AMCO. "They really are overtaxed. I get it." He said there are staff working long hours and probably not being properly compensated. He added that he greatly appreciated HB 123 as it was a fantastic way to go in the financial context. "When we can demonstrate the revenue from this industry, I would like to see a separate MCB created apart from alcohol with a separate director and a separate staff." The two are very different. Alcohol is primarily people renewing and moving licenses—there

are a few new ones, but not as many. Marijuana is all new, and it is a huge task to balance those two.

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REPRESENTATIVE MILLETT thanked Mr. Schulte for his work on all of the legislation and being willing to serve on the board. He did an excellent job and is sorely missed. Mr. Schulte has shepherded the legislature through a really interesting time through the initiative process and pointing out some of the road blocks. He has been very valuable to the judiciary committee.

4:23:43 PM

CHAIR MCGUIRE said, "Thank you, Bruce, as my constituent." It will be years from now until people really understand what he did to be a voice of the people of Alaska. It is a great risk to step out, particularly considering his political affiliation, knowing there was a great desire to smoke, yet there were not any identifiable pathways, especially for those who were already using medical marijuana. She said she will continue to talk with Mr. Schulte a lot, and she thinks his suggestions today were fantastic. The one she loves the most, besides [increasing] resources, is that the board should put its policies into regulation. It is important for all boards to remember, because members could go into autopilot looking for expediency and lose sight of the "line of power that is supposed to come down." She said the legislators sit before the voters who can throw them out or reelect them. The public has to have some way to comment and understand what is happening at the board level.

4:25:35 PM

CHAIR LEDOUX seconded that. It is a great idea. No one should ever be able to say, "Well, that's the policy." It always needs to be a transparent and vetted process. Mr. Schulte has been an invaluable resource over the last couple of years. If there has ever been any question about anything relating to the cannabis industry, Mr. Schulte has been available almost 24/7. She could text him at midnight or so, she stated, and ask him what was going on. She expressed regret that he will not be on the board.

MR. SCHULTE said he looks forward to working with all of the members in the future, because he is not going anywhere.

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CHAIR MCGUIRE said she has to leave, but she reminded public witnesses to be respectful in their testimony. She said that stating an affiliation is for the public record, not for "a

power control." The hearing is confined to marijuana regulations and not about Alaska's fiscal crisis or smoking or vaping.

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CHAIR LEDOUX opened the hearing to public testimony, limiting each to one minute.

4:29:00 PM

RHONDA MARCY, Wasilla, said she has an initiated application and has served on the Mat-Su Marijuana Advisory Committee. There are things about the whole process that she has not been able to address. Her business model is "wellness from a plant-based whole health approach." Under existing law, there is no way to juice or use raw cannabis. It has to be cut, dried, and made into a smokable form. She said she supports clubs and having a place to go. She has been to Pot Luck and has not seen illegal activity, although the club provides the "bud-of-the-week," but "you don't buy it; it's provided if you'd like it as part of being in the membership." It is important to have places that are safe. She suggested looking at tradeshow, because "we don't have any way to take your product and go to cannabis classics that they've had or the Hemp and Cannabis Fair." She suggested rules so that people can lawfully bring something to a tradeshow, like the seniors are having a wine tasting, and "we're shut down from having that." At this point, there is not even social areas for people who live here. She said she can invite people to her house, but the problem is that her wellness center is on her property, and she does not want to come into conflict with the state. She noted that she has not had the opportunity to address that with the director. One little issue she has with the ballot measure, she said, is zoning without going through the zoning process. The initiative process has bypassed that. There is action in the Valley right now to try and get the courts to address that "so that we can move our Valley businesses forward, because we've been shut out of a process that's letting everybody get ahead of us while we sit and address this." She said she thought Mr. Schulte was doing a great job, and she is upset that the current chairman is working on an initiative to stop [marijuana use] on the Kenai Peninsula. "They claim that that's no conflict with law enforcement; I disagree with that." They get federal forfeiture money if they are behind keeping cannabis illegal, she stated.

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SAMANTHA LAUDERT-RODGERS, Chugiak, said she worked hard on the "yes" campaign, and many did so expecting that cannabis would be available for the medical marijuana community. "Many of us

struggle on a daily basis with invisible illnesses, and it's the one thing that actually can help us and can help so many people in Alaska—and save lives." She said things are taking too long, which is divisive. Businesses that wanted to give back to Anchorage or elsewhere are falling apart. She has seen divisiveness, and with 81 approved licenses, Alaska will not have stores open within two years of the initiative. She wants things to move faster because other issues need focus.

[4:34:33 PM](#)

MARTIN CHRISTENSEN, Anchorage, said he has been a business person in Alaska for the last 14 years and is an involved and supportive member of Pot Luck, but he is representing himself. People do not have a good history of assimilating new ideas, including the belief that the world was flat. In 1693 we were still burning each other in the Salem witch trials. In 1940 it was understood that by traveling faster than 50 miles per hour, blood would boil. Less than 100 years ago it was assumed that cannabis would cause "reefer madness." Everyone now knows that all of these things are not quite true. After the passage of Proposition 2, his friend, Theresa Collins, opened Pot Luck Events. She saw a need for a place where like-minded adults could get together, and the idea behind it was to just be an event facility, like the Dena'ina Center. Since then it has drastically changed, and "we've become more of a place where people can come who can't smoke at home and still socialize. We see new friendships blossom across generations and culture gaps. We've witnessed marriage proposals and hosted wedding receptions." His daughter's birth was celebrated at the club. The club answers the need that the community presented. He and others are just asking for the same thing that is given to the alcohol community. He said he can go to the Dena'ina Center and have a beer and watch a show, but he cannot do that anywhere else. The alcohol community can throw the Beer and Barleywine Festival without cops kicking in the door. "That's really what we want," he said. He noted that he is a professional tax person, and from that standpoint on the federal level, a private club either operates as a nonprofit or it operates like a business and is taxed like a business. The phrase, significant public access, was created more recently to protect private clubs but prohibit discrimination. That is where the law came from, and he is saddened to see it used to prohibit people from getting together.

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MARGE STONEKING, Executive Director, American Lung Association, Anchorage, said there is general consensus on having the

legislature decide on onsite consumption or licensure. As the legislature does that, she would like to weigh in from the health perspective. The American Lung Association takes no position on the legalization of marijuana, and all comments submitted publicly have been in regard to second-hand exposure. When any plant product is aerosolized or combusted for inhalation, there will be secondary health effects. There will be pollution. When it is indoors, others are at risk. There are not nearly as many studies on second-hand marijuana exposure, but the smoke from it contains fine particulate matter that can be breathed deep into the lungs and can cause asthma attacks, increase respiratory infections, and exacerbate problems like COPD [Chronic Obstructive Pulmonary Disease] and bronchitis. She wants people to be aware of the second-hand smoke effects, which cannot be filtrated or ventilated away. The American Society for Heating, Refrigeration, and Air Conditioning Engineers has included marijuana smoke in its position on ventilation—that there is no ventilation system that can clean the air. Onsite consumption poses a potential risk to workers in that venue and adjacent businesses, and many Alaska businesses are in strip malls.

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EUGENE CARL HABERMAN, Matanuska-Susitna Valley, noted that he has sat in on many meetings. The more complicated an issue is, the more notice and opportunities for public comments should be made available. He said the one-minute limit does not provide a reasonable opportunity for the public to be heard and is in violation of state law. An extensive amount of time was allowed for invited witnesses, but when it comes to the public, they get one minute, and written comment is the only other option. He asked, "Where is the quorum?" There are only two members of the Joint Judiciary Committee present, and everyone else is gone. There might be one or two members online, but he cannot verify that, so this is not a legitimate meeting, and it is not respectful to the public. He has attended every meeting of the borough marijuana committee, and he has been to the assembly marijuana committee meetings. "I had substantial information that I would have like to have been verbally on the record, but seeing this tragedy of a meeting, the way you conducted it, the chair is now present, that has not allowed for me to really focus on really what I want to say." He had to focus on how wrongly the meeting has been conducted regarding connecting with the people. When done appropriately, the public may not be happy with the decision, but people will be more comfortable with it, and most importantly, they will be more supportive.

[4:45:11 PM](#)

CHAIR LEDOUX explained that the quorum requirement is for taking action, and this meeting is simply to update the legislature on the marijuana control board.

MR. HABERMAN said that at the beginning of the meeting Chair LeDoux stated that there was a quorum.

[4:45:57 PM](#)

JOSHUA TOBIN, Anchorage, said he is also not that happy that many members have left. The state took two years, and that is a long time. He was told that people would have licenses in February, so he rented his building in December. "I'll have spent \$50,000 just for what reason, I don't know." Regarding banking, he said that everybody in this state has read that they cannot do business with banks, and his address is posted online at the AMCO website as well as the address to "my grow. So now they know that I can't use banks and they know where I am. That doesn't help a whole lot," he stated. In Anchorage, once a person finishes the state's application process, the same process has to be done again. "You have a community meeting for the state's process; you have to have another one for Anchorage. You have to wait 60 days; you have to wait another 60 days for Anchorage." He is not sure how that helps anybody. Also, he would bet large amounts of money that he has not run into a city official who has read any of the regulations. When he meets with them, they discuss things in the first paragraphs. In a meeting last week smell was discussed. "People were discussing the smell of weed two years ago--this is ridiculous." It would be handy if they could get up to date. He stated that the AMCO is really understaffed. "It's brutal." He said he heard that Cynthia Franklin has not done anything about the people acting without a license, but she sent APD out to Wasilla to arrest Rocky Burns, and he faces "a hundred-something years right now." "Over on Gambel, right now, I saw it this morning, they're selling weed over there. They busted them. They're still open." Regarding pot bars, he personally laughs about this. "You can go ahead and make laws against it. That's fine. People are going to congregate and do whatever they want like they've done for 100 years. You can either get on board and pass laws making this possible, or we'll continue to have this situation where people break the law." He said the cannabis community has proven that they will do that.

[4:49:23 PM](#)

MAGGIE MULDONADO, Anchorage, said she moved to Alaska about five months ago, and Pot Luck has provided her with a safe place to

go and meet people. She did not know anybody, and the [people at] Pot Luck have taken care of her, made her feel like family, and have been wonderful. "I would just like to leave today with a more positive note," she said.

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DON HART, Wasilla, said Proposition 2 created a personal property right and was codified in AS 17.38. The problem with AS 17.38.210(a)(2), regarding local option, is that when the personal property right was created in the constitution, the local municipalities stand in the shoes of the legislature, because they authorize that mandatory statute, "so they, in turn, are exercising government powers in a takings action through the ordinance or through initiative process is a takings action that violates these people's personal property rights created by Prop. 2." The language, "or through the initiative process," is unconstitutional, because the Alaska Supreme Court has decided in three cases that the initiative cannot be used for a zoning process. It is illegal and unconstitutional, he said, and it violates several mandatory Alaska statutes. Alaska was divided up into large zones and large boroughs to reduce the smallest amount of government and to avoid double taxation. In dividing up the boroughs, six different statutes were created to say exactly what had to be done. The borough has to create a planning and zoning commission to use an area-wide plan to determine how the land is to be used. Those statutes mandate the borough to do all of the zoning, and initiative does not do that. It is not submitted to the planning commission, and it does not determine the proper land use. That is why the Alaska Supreme Court has said it is unconstitutional. The Joint Judiciary Committee would probably be interested in knowing that the legislature itself could delete "or through the initiative process", and it would not affect the rest of AS 17.38. It would remove the unconstitutional aspect of allowing and enticing people to enter the initiative process, like is being done in the Kenai Peninsula Borough.

[4:54:11 PM](#)

TIMOTHY HALE, Butte, Alaska, said the onsite endorsement is up to the legislature to either make legal or illegal, which is the consensus of people he has talked to. Intoxicated driving can be an issue with cannabis. He said the body metabolizes the cannabinoids twice. The first is the one that is psychoactive, and the second is from what is stored in fat cells and that metabolite is not psychoactive. It is pretty easy to determine the difference with a blood test, and that needs to be taken into consideration regarding impaired driving.

4:56:15 PM

JOHN RANDALL, Anchorage, said he is retired and has been regularly going to the Pot Luck Events Club for about 18 months. There has never been any commerce there. It used to be that folks that were growing crops or promoting their strain would bring some to the club and give it to people, but it was never in exchange for money and never had anything to do with going into the club and paying the cover charge. It is a private club as far as he can tell, because a membership is required. People no longer bring samples, because it is not allowed now under their licenses, "So it's a bring-your-own-bud kind of a club. I bring something I grew or that I have, and I share it, and that's the extent of what goes on there." He never asks if anyone wants to buy his marijuana, and no one asks him to buy it, it is just a safe place to consume without fear.

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HEATHER THOMAS, Anchorage, said she is 22, and it is important that her generation has a safe place to be social that is not alcohol-centered. She does not like to drink, and our society seems focused on alcohol. She likes having Pot Luck and thinks it is a healthy and safe place for people coming into adulthood.

4:59:10 PM

UNIDENTIFIED SPEAKER, Chugiak, said he was not planning on testifying but when he heard the AG opinion, it occurred to him that if all clubs are public, then every exotic club is probably violating public nudity laws. (Chair LeDoux said that was an interesting point.) As a long-time cancer patient and survivor, it is important that we do try to add something for medical needs. He said he has worked with many medical people, and being left out is a travesty.

5:00:10 PM

PETER BARNES, Anchorage, said he has been a member of Pot Luck since it was open, and he has never seen one fight there. "I'm a recovering alcoholic; I used to drink in almost every bar in this town 20-odd years ago. I saw a fight in every one of them." He said he got pulled over and went through treatment numerous times, and after finding cannabis, he has been a successful member of society ever since. He said he owns a business and a home and he is happily married. Regarding impaired driving, he said to look at the numbers of DUI stops leaving Pot Luck since it opened. "I don't think there's any." He added that, "We are just sharing our products in there; nobody's selling anything." The owners are not selling anything—they're just not. "We pride

ourselves in following that rule; we really, really do, and we condemn those that try to violate it." He voted for cannabis to be legal when he was 19, and now he is in his 60s. This is way past due. He said he has medical needs that cannabis helps, including PTSD. He is a former Marine, and private clubs like Pot Luck need to be allowed, he concluded.

[5:02:27 PM](#)

LEE HAYWOOD, Owner, Pot Luck Events, Anchorage, said he has upwards of 6,000 applications and membership forms, which shows the need for Pot Luck Events. "We" are fighting a lot of battles in a lot of different directions, and [the owners of] Pot Luck Events just wanted to provide a place where people could come, share their cannabis, "talk about what this is," start breaking down some of the social stigmas, educate people on the history of cannabis, and introduce people to different types of strands. "We provide more than just walking in off the street and come smoking with us." He said that in over 18 months of operations, there has not been one call to "the muni." There have not been any disruptions, and the club regulates itself. "We regulate those people that need cannabis from a medical standpoint and provide them a place to be able to link up with other folks that are willing to share that cannabis." He said there have been numerous businesses that have come into Pot Luck with the idea of getting into this industry. He said Pot Luck tries to provide a place for the black market to translate over into the green market and give them some business acumen behind those ideas that they may have.

MR. HAYWOOD said Pot Luck provides a place to be political. Ages range from 21 to 87 for members, and there is social and economic diversity. A person can sit down in any circle and have a conversation. There is the typical stoner next to someone with an advanced law degree, and they are having a dialogue. "We build a sense of community, and that's what we've been about from the beginning." He said he used to work for the state as a justice officer, and he is retired military. "We are professionals and we're trying to promulgate this responsibly." He added that the Pot Luck wants to be regulated or maybe not, depending on what the legislature decides, but it does not make any money by selling marijuana. It does not happen there and it is frowned upon, he explained. There are people who come in looking to buy it, but that's not what Pot Luck is about. Regarding comments about being a public place, he said there are no windows and everyone has to sign a membership form. He said the company is willing to restructure based on the AG opinion in order to stay legal. The founder, Theresa Collins, is now

battling stage 4 cancer. The stresses of this are enormous: trying to build relationships and a sense of community and talking to politicians and then trying to conduct your day-to-day life, like mowing the lawn, for example. In this industry, it has been said that one cannabis year is worth about seven years of anyone else's life. The boxes he brought today of membership forms represent to him stories of people. There have been many times he wanted to throw the towel in, thinking that the risk is not worth the reward. He said Pot Luck owners always wanted to serve as the practicum for the city and state on "how this can be introduced socially." They have invited the director, legislators, mayor, and assembly members to come and see what they do. Some have taken them up and are members of the club. "We need this in order to move forward. We've needed this because we've had no infrastructure prior to (unclear)." The groups have to come together and talk at the 420 headquarters.

[5:07:15 PM](#)

REPRESENTATIVE MILLETT thanked Mr. Haywood for giving her a tour of Pot Luck and explaining what it was all about. She said she has encouraged all other legislators to visit before passing judgement on any of the social clubs, because Mr. Haywood really opened her eyes with the conversations and the things that she saw. "I think everybody before they pass laws or pass judgement on something, they should go down and see what it's all about." That is part of the due diligence that she has as a policy maker, which is to fully understand what she is legislating. She said she is not the normal person, but Mr. Haywood welcomed her with open arms and explained how things worked. She said she appreciates his openness and willingness to work with all walks of life and make the case and help legislators understand what the concept is and what the idea was. She said she really did not know what a social club was until talking to Mr. Haywood.

MR. HAYWOOD said the concept is to build a community and the industry.

[5:08:28 PM](#)

There being no further business to come before the committee, Chair LeDoux adjourned the Joint Judiciary Committee meeting at 5:08 p.m.