

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 11, 2015

3:18 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Andy Josephson
Representative Cathy Tilton
Representative Sam Kito

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 67

"An Act relating to product warranties and required updates to products; and relating to dealers, distributors, and manufacturers."

- MOVED CSHB 67(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 123

"An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 67

SHORT TITLE: PRODUCT WARRANTIES & REQUIRED UPDATES

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	L&C
03/11/15	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 123

SHORT TITLE: ESTABLISH MARIJUANA CONTROL BOARD

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/23/15	(H)	READ THE FIRST TIME - REFERRALS
02/23/15	(H)	L&C, JUD, FIN
03/04/15	(H)	L&C AT 3:15 PM BARNES 124
03/04/15	(H)	Heard & Held
03/04/15	(H)	MINUTE(L&C)
03/11/15	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions as prime sponsor of HB 67.

JULI LUCKY, Staff

Representative Mike Hawker

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on behalf of the prime sponsor of HB 67.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General

Commercial/Fair Business Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Provided comments and answered questions during the discussion of HB 67.

CHAD GERONADALE

Construction Machinery Industrial

Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 67.

MICALEA FOWLER, Legislative Liaison

Office of the Commissioner

Department of Commerce, Community & Economic Development (DCCED)

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 123.

CYNTHIA FRANKLIN, Executive Director

Alcoholic Beverage Control Board (ABC Board)

Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 123.

JAMES BARRETT
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 123.

ELLEN GANLEY, Member
Alcoholic Beverage Control Board (ABC Board)
Department of Commerce, Community & Economic Development (DCCED)
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 123.

KIM KOLE, Coalition for Responsible Cannabis Legislation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 123.

FRANK BERARDI, Chair
Coalition for Responsible Cannabis Legislation (CRCL)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 123.

GIONO BARRETT
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 123.

GIRARD GAUL, Senior Spokesman
Coalition for Responsible Cannabis Legislation (CRCL)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 123.

BRUCE SCHULTE, Public Relations Manager
Coalition for Responsible Cannabis Legislation (CRCL)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 123.

BRANDON EMMETT
Executive Director
Coalition for Responsible Cannabis Legislation (CRCL)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 123.

ACTION NARRATIVE

[3:18:09 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Josephson, LeDoux, Tilton, Kito, Hughes, and Olson were present at the call to order. Representative Colver arrived as the meeting was in progress.

HB 67-PRODUCT WARRANTIES & REQUIRED UPDATES

[3:18:29 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 67, "An Act relating to product warranties and required updates to products; and relating to dealers, distributors, and manufacturers."

[3:18:59 PM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, speaking as prime sponsor, stated that HB 67 came about as a result of concerns expressed by retail construction equipment companies with respect to the responsibility for performing warranty work. He offered his belief that financial obligations that should belong to manufacturers are being pushed down on local vendors.

[3:20:49 PM](#)

REPRESENTATIVE HAWKER stated that HB 67 was modeled on the current statutes regarding boat and recreational vehicle warranties. The bill would define the relationship and responsibilities between vendors and manufacturers of equipment, tools, and off-road vehicles used in construction, resource extraction, development, snow removal, forestry and similar functions. Within the bill are carefully crafted delineations, he said, that will help to ensure that Alaska's dealers are sufficiently and appropriately reimbursed for work and expenses incurred on behalf of a manufacturer of certain equipment. He asked to place very clearly on the record that this bill does not apply to motor vehicles registered for highway use since those vehicles fall under a separate class.

[3:22:26 PM](#)

REPRESENTATIVE HAWKER stated that HB 67 was limited to warranty work on defective products and upgrades on those products. The bill substantively sets a minimum reimbursement rate for parts and labor, requires the manufacturer to send the necessary parts that a dealer or distributor does not possess, sets deadlines

for approval and payment of claims, and clearly delineates and identifies the responsible party - whether it is the manufacturer or the vendor. He reported that 36 states have enacted similar laws, which he characterized as commercial protection laws regarding warranty work performed by dealers and distributor for manufacturers. In addition, this bill would extend the state's "lemon law" provisions for boats, ATVs and new motor vehicles to the products covered in this bill. However, this bill does not change the law with respect to motor vehicles, but simply would extend the umbrella of protections for inherently defective products, he said.

[3:23:43 PM](#)

REPRESENTATIVE HAWKER anticipated that the committee will hear testimony that the major manufacturers object to this legislation. He stressed that this bill would prevent manufacturers from dictatorially exercising undue influence and economic hardship on independent vendors in Alaska. Many Alaskans depend upon the heavy equipment industry to support the state's resource base. He characterized this an instance of evolution and growth of state warranty protection laws, which expands the laws that have been in effect for motor vehicles to boats and recreational vehicles. He offered his belief that it is now time to extend protections to heavy equipment manufacturers.

[3:25:33 PM](#)

REPRESENTATIVE JOSEPHSON understood the focus of the bill was on industrial equipment. He asked whether these changes could also apply to stereos.

[3:26:07 PM](#)

JULI LUCKY, Staff, Representative Mike Hawker, Alaska State Legislature, on behalf of the prime sponsor of HB 67, Representative Mike Hawker, suggested that the committee first adopt the proposed committee substitute (CS) for HB 67 since one of the changes in the CS was to narrow the items covered by the bill.

[3:26:30 PM](#)

REPRESENTATIVE HUGHES moved to adopt the proposed committee substitute (CS) for HB 67, labeled 29-LS0129\E, Bannister, 3/6/15, as the working document [Version E].

CHAIR OLSON objected for the purpose of discussion.

3:27:00 PM

REPRESENTATIVE COLVER referred to a letter of support in members' packets that points out the manufacturer's flat fee for dealers to make repairs in the field causes a hardship in Alaska. He asked to be directed to the language in the bill that would cure this and allow dealers to charge reasonable fees to perform the warranty work.

REPRESENTATIVE HAWKER deferred to Ms. Lucky.

MS. LUCKY stated that there is no minimum time or reasonable time for field repair work; however, the bill would set a minimum labor rate and clarify that there must be a certain amount of time allowed for dealers to perform administrative work. She directed attention to the labor rate in Version E, beginning on page 2, line 28 to Sec. 45.45.777. She read, "... the manufacturer shall pay the dealer or distributor providing the service at a rate that is not less than the highest of the following for the labor of the technicians:" Thus the manufacturers must select a rate that was at least as high as one of the three rates listed in paragraphs 1-3, whichever is the highest. In addition, the bill would require payment for cleanup, preparation, diagnosis, disassembly, repair, testing, and final cleaning as needed to provide a quality result. Although it doesn't necessarily specify a minimum amount of time, it does require that the time must be adequate to perform all of these services, she said. In addition, she referred to subsection (d), on page 3, lines 13-15, which requires manufacturers to pay a dealer or distributor an hour for administrative services.

3:29:47 PM

REPRESENTATIVE LEDOUX understood the sponsor's intent, but asked for the rationale used to interfere with contractual rights. It's easy to say, "This is the little guy and there's this big bad corporation out there that's going to do really mean awful things to the little guy so like let's change the law." She said she once lived on an island and prices were higher but government didn't set rate or price controls because people trusted the free market system. She asked why the free market system wasn't working.

3:31:02 PM

REPRESENTATIVE HAWKER suggested Representative LeDoux was likely aware of the five legal elements of a valid contract, with one being the absence of any form of duress on one of the contracting parties. In fact, duress was a broad subject that has been examined extensively in the legal system. He noted there are certainly levels of what might be constituted as duress in relation to a contracting entity, such as when one party was in such a position that the other party is unable to fairly negotiate the terms of an agreement. In those types of circumstances one party can dictate the terms of the agreement. Essentially this is what has been occurring with the vendor relationships when one mega company is the manufacturer of a product. He asked to refrain from using a specific manufacturer, however, it could apply to any one of major national or international manufacturers who dictate the terms of their franchise agreements in the state. These franchisees really don't have any choice except to say yes since these contracts are not negotiable items due to the weight and influence of one party to the contract. Thus these contracts are not contracts negotiated at an "arms-length" among parties of equal standing. He offered that HB 67 would provide guidelines for the contracts that can keep them within sidebars. This bill was crafted to provide guidelines and a reasonable basis for the relationships between manufacturers and vendors without getting overly prescriptive, and without trying to dictate a fixed rate or other terms; instead, to provide a framework and a rubric of guidelines to create a fair economic relationship between the manufacturers and vendors.

3:33:50 PM

REPRESENTATIVE LEDOUX asked how she obtains equal standing with a bank [under contracts], since the bank is a corporation and she is an individual. She pointed out that government doesn't tell the banks what to charge consumers.

REPRESENTATIVE HAWKER replied that the banking industry, in particular, the commercial loan industry, the residential loan industry, or the consumer loan industry represent some of the most heavily regulated industries in terms of tax codes, usury statutes, and non-discrimination statutes under FIRREA, [the Financial Institutions Reform, Recovery, and Enforcement Act of 1989]. Under FIRREA any holder of property always has recourse against the previous property holder for environmental damage, he said. He respectfully requested that the financial

institutions between small individuals and the mega-banks is exactly the kind of relationship being discussed here and exactly why so many financial protection laws are in place at the state and federal level.

[3:35:37 PM](#)

REPRESENTATIVE JOSEPHSON asked how disagreements are ultimately resolved between the manufacturer and the ultimate purchaser.

MS. LUCKY replied that Ed Sniffen with the Department of Law could more fully answer that question; however, the language in this bill was based on current laws regarding ATVs, snowmachines, and boats.

[3:36:24 PM](#)

REPRESENTATIVE JOSEPHSON asked about the issue of electronic notice to the manufacturer from the vendor when there was a defect or need for repair. He asked whether that was something that could reasonably be added.

MS. LUCKY offered her belief that Representative Josephson was referring to the certified mail requirement for the lemon law provisions. She explained that the certified mail requirement exists in all lemon law provisions in current statute and it provides a proof of mailing and proof of receipt. However, there currently isn't any standard for a proof of mailing for e-mail and proof of receipt. For example, the aggrieved party in this case could send an e-mail that shows the date stamp, but the manufacturer could say it never received the e-mail. Therefore, there currently is not any real standard of proof except for certified mail, she said.

[3:38:49 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), introduced himself said his responsibilities included enforcement of consumer protection laws, including ATV and motor vehicle lemon law statutes. He said he has been doing consumer protection for about 15 years and has encountered some situations that might address some questions previously asked.

[3:39:22 PM](#)

REPRESENTATIVE LEDOUX acknowledged that what Representative Hawker was addressing were instances when significant disparity exists, which she referred to as an adhesion contract.

MR. SNIFFEN agreed.

REPRESENTATIVE LEDOUX asked whether the courts or the state normally substitute their own provisions or if the courts simply declare that the contract is null and void, which would be a method of getting out of the contract.

[3:40:23 PM](#)

MR. SNIFFEN answered that it can be a little tricky. He explained that the courts look to the intent of the parties when they decide what a contract should look like if a contract of adhesion issue arises. He said the Alaska Supreme Court has handled contracts in different ways. If the consumer couldn't reasonably understand the contract and there was not any "meeting of the minds," contracts could sometimes be voided, he said.

[3:41:11 PM](#)

REPRESENTATIVE LEDOUX asked what would happen if the consumer understands the process, but doesn't have any other alternative.

MR. SNIFFEN answered that she just identified the reason for lawyers, but in the event a factual or legal dispute arises and it is a legitimate dispute, a jury or judge will ultimately decide.

[3:41:45 PM](#)

REPRESENTATIVE LEDOUX related a scenario in which a small community with one grocery store charges really high prices. She asked whether the state or the court would intervene on behalf of the customers.

MR. SNIFFEN answered that he also enforces anti-trust statutes. He stated that with the recent closure of one grocery store in Bethel there will only be one store left, which creates a natural monopoly. He suggested that the state doesn't rate pricing on products for a monopoly so the store will likely charge whatever rates it feels the customers will bear; however, the state would only get involved if predatory pricing contract exists. For example, if the store was engaging in some type of

unilateral conduct to force out another competitor, or if the price was set through some collusion to artificially raise prices without the benefit of true market competition, the state would intervene. In terms of an equipment supplier entering into a warranty contract with a retailer, he suggested that what the bill attempts to do is similar to laws pertaining to ATV or auto manufacturers, who have so much power that they can essentially dictate terms of the contracts. This bill would provide some mechanism for vendors to be paid fairly, which of course, are all policy decisions. The Department of Law has reviewed HB 67 and believes it would provide good consumer protection and did not find anything inconsistent with this bill that isn't already done with other manufacturers.

[3:44:48 PM](#)

REPRESENTATIVE LEDOUX asked whether HB 67 would be philosophically inconsistent, assuming there weren't any predatory practices occurring, pointing to the earlier scenario in which one store in one community can charge what it wanted to charge.

MR. SNIFFEN understood the concern, but answered that it would be a policy decision whether to regulate pricing in those types of situations.

[3:45:28 PM](#)

REPRESENTATIVE HAWKER commended Mr. Sniffen for his accurate portrayal of the bill. He clarified that this bill was not about regulating pricing or transactions that relates to bulk commodities, but it specifically relates to the relationship between manufacturers and sellers that involve products with a product warranty from the manufacturer. For example, Quaker Oats doesn't put a warranty on oatmeal, he said. This bill does not regulate any industry, pricing, or specific terms between the manufacturers and vendors; however, the bill does put on some sidebars to provide reasonable protections for vendors in instances in which a dictatorial opportunity for the manufacturer exists. Again, it would only apply to product warranty issues and is limited to warranty issues, he said.

[3:47:21 PM](#)

MS. LUCKY said the bill would cover warranty work and required updates in instances when the manufacturer wants something done and the dealer provides that work on behalf of the manufacturer,

such as a product defect fixed, a safety modification, or necessary improvement must be done. The first half of HB 67 covers this work, she said, and the second half of the bill would address lemon law provisions, she said.

[3:48:11 PM](#)

MS. LUCKY referred to Version E and stated that the bill will require the manufacturer to provide warranty to the dealer and the dealer to provide the warranty and necessary manuals to the ultimate purchaser of the item, with the dealer or distributor to subsequently provide warranty service on behalf of the manufacturer.

[3:48:40 PM](#)

MS. LUCKY described the "meat of the bill" as the provisions related to minimum payments. She said the manufacturer would not be allowed to restrict the parts, the number or type of parts necessary to perform this work. The payment for required services must meet a minimum payment in terms of labor rates and time. For example, the bill would provide a minimum of one hour for administration of the claim, plus reimbursement for transportation and lodging costs when providing this service in the field. In instances in which a product cannot be shipped back to the dealer or distributor for warranty work, the vendor has currently been bearing the cost of sending a technician to the field, often via a flight to a remote site. The dealer loses the employee's work for the day plus has not been reimbursed adequately for any travel and lodging costs incurred.

MS. LUCKY related that the bill would establish a timeline for the payment of claims, specifically the manufacturer will have 30 days to approve or deny the claim, and if not denied within 30 days would be deemed approved, with an additional 30 days to remit payment.

[3:50:05 PM](#)

MS. LUCKY referred to page 4, line 15, which addresses the lemon law provisions. She commented that the lemon law provisions are similar to ones for other items, such as boats, ATVs, snowmachines, and motor vehicles. She explained that the purchaser can send a letter to the manufacturer that states that despite a reasonable number of attempts the product still is not functional. The manufacturer shall either provide the new

product or reimburse the purchase price minus an amount for the use of the product.

[3:51:02 PM](#)

MS. LUCKY directed attention to page 6, lines 9-19, of Version E, which outlines the exemptions and establishes a rebuttable presumption for "reasonable number of attempts" to remedy a defect in order to claim a replacement or refund.

[3:51:21 PM](#)

MS. LUCKY directed attention to page 7, lines 2-19, to proposed Sec. 45.45.787, that defines what products are covered by this legislation, which read, "(1) equipment, tools, or motor vehicles if the equipment, tools, or motor vehicles are designed to be used primarily for construction, road building, snow removal, mining, oil projects, gas projects, forestry, resource development, or a similar type of project. in this paragraph, "motor vehicle" means a motor vehicle that is not 8 subject to registration under AS 28.10.011; or".

[3:52:06 PM](#)

REPRESENTATIVE LEDOUX asked whether motor vehicles are covered under a similar act.

MS. LUCKY answered yes; she was unsure how similar the law covering the auto industry was; however, she related her understanding that the auto industry has been working on details of their warranty provisions under AS 45.45.

[3:52:45 PM](#)

REPRESENTATIVE LEDOUX asked whether the dealers are working with the manufacturers.

MS. LUCKY answered that she was not privy to any specifics between the auto dealer franchises and their manufacturers, since the auto dealers are clearly exempted from this bill. However, she related her understanding that the auto industry, wanted an exemption from this bill since the industry has a separate provision in statute.

[3:53:41 PM](#)

REPRESENTATIVE HAWKER reiterated that he was not aware of any work being addressed related to automotive warranties. This bill was developed specifically to exempt automobile warranties, and HB 67 relates to qualified equipment under AS 45.45.787 as previously discussed, he said.

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REPRESENTATIVE HUGHES referred to page 7 of Version E, and said she noticed that construction and road building was covered, but she did not notice road maintenance; however, she did notice language "or a similar type of project." She asked whether the sponsor was confident that will cover projects such as equipment that places gravel on roads as well as other big equipment used in road maintenance.

REPRESENTATIVE HAWKER answered that was absolutely the intent. The bill doesn't delineate specific tools, but mentions equipment, tools or motor vehicles designed for construction, road building, snow removal, or similar type of project, which would imply other work. He offered his belief that this language would very definitely include it, with the exception of any equipment subject to title and registration for on-road use.

[3:56:07 PM](#)

REPRESENTATIVE JOSEPHSON assumed that the period of warranty service are typically mention, and not any surcharges being foisted on vendors.

REPRESENTATIVE HAWKER said that was a reasonable characterization; however, he suggested that the manufacturers or vendors could better answer the specifics.

REPRESENTATIVE JOSEPHSON asked what would stop Kubota [Tractor Corporation] from tacking on a surcharge for backhoe uses.

[3:57:33 PM](#)

REPRESENTATIVE HAWKER answered that was where competition in the marketplace takes places, for example, if Kubota raises the price of its skid loader by 15 percent, but John Deere [Products and Services] or other manufacturer do not, market forces come into play.

[3:58:19 PM](#)

REPRESENTATIVE LEDOUX asked why motor vehicles should not be covered by the bill since all of the same problems will be applicable.

MS. LUCKY answered that this bill was crafted not to include auto dealers because it was not a problem constituents requested. She requested that legislators often bring up bills at the request of constituents. The auto dealers did not raise issues in terms of reimbursement on warranty work. She related her understanding that similar efforts occurred in 2009 with boats, ATVs, and snowmachines. Since the auto dealers have statutes that address their products, this bill will be limited to off road motor vehicles. Further, it would be a policy call for the legislature and the committee to discuss, but from the sponsor's perspective, HB 67 was limited to address the specific problem raised. Finally, the auto dealers indicated their preference to address their products separately.

[4:00:31 PM](#)

REPRESENTATIVE HAWKER emphasized that HB 67 addresses a different and unique market segment, rather than the highway motor vehicle industry that already has a functioning set of statutes. Further, HB 67 was limited to a gap in the statutory protections for the commercial community.

[4:00:58 PM](#)

CHAIR OLSON suggested that the 2009 bill set up a firewall between the auto industry and the off road vehicles, equipment, and boats. He surmised one reason that the auto industry has not testified since industry issues have been addressed.

[4:01:24 PM](#)

MS. LUCKY pointed out there was a zero fiscal note.

CHAIR OLSON removed his objection to adopting Version E. There being no further objection, Version E was before the committee.

[4:01:56 PM](#)

CHAIR OLSON opened public testimony on HB 67.

[4:02:14 PM](#)

CHAD GERONADALE, Construction Machinery Industrial (CMI), stated he works for CMI, and has worked in the construction equipment industry for 28 years, including as a dealer as well as for the manufacturers. He offered to provide some examples that can help identify some of the situations equipment dealers face. There are times in which the equipment industry has had to comply with emission regulations that required making changes with engines. In addition, the Tier IV upgrades; The Tier 4 standards provide manufacturers with a flexibility provision and include an interim step - Tier 4-I [interim] upgrades. He related that a manufacturer might have a piece of equipment in Barrow experiencing problems with its emission control system. The dealer would provide a synopsis of the symptoms of the problem, and in turn, the manufacturer would respond with ideas and which parts to replace or sometimes the dealer would not hear back, but would send the dispatcher/technician. Upon arrival, the technician may discover a certain component that was not functioning, and if possible would change it, if not, would bring the part to the branch, and once the replacement part was available, would fly back to Barrow with the part, and replace it. However, the manufacturer might only offer three hours to replace the part, but would not pay travel time. This could mean the equipment dealer or the customer must pay for both flights to Barrow, plus and room and board, if necessary, since the mechanic may not be able to accomplish the work and take a return flight. In addition, a repair that might take three hours in California, could take six hours in the 20 below zero weather conditions in Barrow without a shop. He emphasized that the additional labor hours are not reimbursed, and the dealers seek relief.

[4:06:16 PM](#)

MR. GERONADALE said that typically the manufacturer warranties take a "cookie cutter" approach, which may include four hours of labor, and no reimbursement or limited reimbursement of an hour for travel time. These programs may work in many other states, but in Alaska due to the remoteness and geographical nature of the state, don't work well. In addition, the change from the emissions control issues, the engines are now controlled electronically, which may require software updates, which again means flying or driving to the machines and performing the upgrades. When the machines lie off the road system or a lengthy drive, for example, at Coldfoot, means a four-hour drive to perform an upgrade that might take 20-30 minutes; however, the mechanic would be gone for the whole day, yet the

manufacturer may only allow reimbursement of one-half hour to one hour.

[4:08:46 PM](#)

CHAIR OLSON, after first determining no one further wished to testify, closed public testimony on HB 67.

[4:09:13 PM](#)

REPRESENTATIVE HUGHES moved to report the proposed committee substitute for HB 67, Version E, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 67(L&C) was reported from the House Labor and Commerce Standing Committee.

[4:10:06 PM](#)

The committee took an at-ease from 4:10 p.m. to 4:12 p.m.

HB 123-ESTABLISH MARIJUANA CONTROL BOARD

[4:12:32 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 123, "An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

[4:12:38 PM](#)

CHAIR OLSON said questions on the fiscal note arose. He then reported that the fiscal note has been revised.

[4:13:16 PM](#)

MICALEA FOWLER, Legislative Liaison, Department of Commerce, Community & Economic Development (DCCED), stated that in a previous hearing, the committee discussed moving the funds from the Governor's FY 16 budget into the FY 16 appropriation request. She explained that the DCCED's fiscal note was revised to reflect the FY 16-FY 21 projected costs.

[4:14:09 PM](#)

CYNTHIA FRANKLIN, Executive Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community & Economic Development (DCCED), explained that HB 123 would create a Marijuana Control Board (MCB), with the executive director serving both the Alcoholic Beverage Control Board (ABC Board) and the Marijuana Control Board (MCB). She explained details in the fiscal note, such that the personal services adds four fulltime employees in FY 16. She directed attention to the narrative section of the fiscal note that contemplated six added positions to implement proposed regulations related to marijuana. Two positions were added in FY 15 to respond to the substantial work necessary to regulate marijuana. In FY 16, three investigator positions and one business licensing examiner. The travel section includes travel for enforcement and compliance, noting that enforcement officers travel throughout the state to ensure that licensees are in compliance and to ensure that licensees are not providing alcohol to minors. She anticipated a similar need for enforcement travel to oversee marijuana licensees.

MS. FRANKLIN explained that the new board would be comprised of five members, set up in a similar fashion to the current ABC board. She reviewed costs, in the first year, including an anticipated \$50,000 FY 16 for board related travel. She reviewed services, which included legal services, information technology services, employee support costs, enforcement vehicles, printing and public notices. The department anticipates needing additional legal services due to the need for massive regulations. Colleagues in Washington and Colorado have indicated a great deal of interest arose on data around the regulation of recreational marijuana, that the Alcoholic Beverage Control Board (ABC Board) was currently a paper-based agency, but the agency will need necessity a database to better track and provide information.

[4:17:25 PM](#)

MS. FRANKLIN related that the database includes software that has the ability to track marijuana from "seed to sale." She explained that the services costs include the initial cost of the database and development in out years. The commodities expenditures would include the cost of moving staff since the current office location cannot accommodate the additional staff required to implement the initiative.

[4:18:22 PM](#)

MS. FOWLER added that the fiscal note includes the supplemental costs, including expedited regulation timeframe and the cost of the initial staff.

[4:18:49 PM](#)

REPRESENTATIVE LEDOUX said the cost of moving offices appears to cost more than the actual staff salaries and costs. She asked whether commodities includes the office relocation.

MS. FRANKLIN answered that commodities includes equipment, office space, furniture, moving expenses, and equipment purchases; however, the one-time costs are not included after the first year. She directed attention to FY 16 at \$134.5, and in the out years commodities was budgeted at \$106.1, with the difference between the two representing the cost of the move.

[4:20:11 PM](#)

REPRESENTATIVE LEDOUX asked for the rationale for the board composition and whether the rules were different for the marijuana industry than for the alcohol industry. She wondered why the two boards would be treated differently.

MS. FRANKLIN answered that the Marijuana Control Board (MCB) was modeled after the revised Alcoholic Beverage Control Board (ABC Board), which means that it took into account the substantial work the stakeholders group underwent during the Title 4 revisions, including to ensure that the ABC Board was representative of the industry, public safety, and public health sectors affected by the substance. She said that a bill has not yet been introduced to reflect the proposed changes to Title 4, but the language in the Marijuana Control Board (MCB) was modeled after the revisions.

[4:21:28 PM](#)

REPRESENTATIVE LEDOUX, assuming the revisions would be introduced and that the bill passed both bodies, asked whether the two board would be similar boards.

MS. FRANKLIN answered yes.

[4:21:42 PM](#)

REPRESENTATIVE JOSEPHSON related his understanding that the budget that moved out of House Finance Committee today does include any funds for marijuana regulation.

MS. FRANKLIN answered that was also her understanding.

[4:22:00 PM](#)

REPRESENTATIVE JOSEPHSON offered his belief that the \$1.57 million would be an addition to state spending if HB 123 passed.

MS. FOWLER answered that the House Finance subcommittee asked the department to include all costs for regulating marijuana associated with the initiative that passed be included in the fiscal note for HB 123 rather than requesting these costs in the DCCED's budget request.

[4:22:39 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the out years also reflect \$1.4 million.

MS. FOWLER answered that if the bill passed with the fiscal note, the department would not need to come back with an additional request for the out years.

[4:23:01 PM](#)

REPRESENTATIVE HUGHES asked how the annual amount for the out years compared to the ABC Board's budget. She asked whether the investigator positions were solely based on Alcoholic Beverage Control Board (ABC Board) or if the department anticipated there will be more marijuana businesses.

MS. FRANKLIN answered that currently the Alcoholic Beverage Control Board (ABC Board) oversees 1,875 licensees. The original cost estimate to implement ballot measure 2 was a "mirror image" of the ABC Board's staff. She commented that the ABC Board currently has five investigators statewide, three licensing employees, and two administrative staff. She trimmed the estimate for FY 16, since it is not likely that the Marijuana Control Board (MCB) will have as many licensees initially; however, no decisions have been made as to limit licenses, similar to the way the state limits liquor licenses in the state. She said the potential exists for the need for additional staff in the out years; however, it is difficult to

estimate until the state knows how restrictive or open the industry might be and what the level of interest might be.

[4:25:21 PM](#)

REPRESENTATIVE HUGHES asked for the number of inquiries she has had plus any feedback on inquiries that Colorado has experienced as compared to the number of businesses that have opened.

MS. FRANKLIN explained that the closest analogy population-wise to Alaska would be the City of Denver, which issues its own marijuana licenses. The City of Denver anticipated an additional 16 employees, but they added 21 more for next year bringing the total to 37.5 fulltime employees for a population of 650,000, serving approximately 900 marijuana licenses. She compared the types of employees, and said that depending on how the licensing process is structured there could be a fairly urgent need for additional staffing in future years. However, all of the positions in the City of Denver were fully funded by the tax revenues received from regulating the substance. She reported that Denver collected over \$6 million in 2014 with the 37.5 fulltime employees, with the cost to the city at about \$4.5 million. She suggested that in moving forward to establish the industry, given that it may be easier to ask for additional staffing once the tax revenue becomes apparent.

[4:27:46 PM](#)

REPRESENTATIVE LEDOUX asked whether the City of Denver has a similar board that oversees alcohol.

MS. FRANKLIN explained that the state has 10 employees statewide, including 5 enforcement officers. The City of Denver regulates marijuana through its Division of Revenue, regulating alcohol, marijuana, and gaming without a board. She said the marijuana enforcement division employees 55 fulltime employees, of which about half are investigators.

[4:28:46 PM](#)

REPRESENTATIVE LEDOUX how many staff the City of Denver employs to oversee the alcohol industry, noting the city may regulate it differently than in Alaska. She recalled that Alaska has 5 or 6 staff to assist the ABC Board. She asked to hone in on how many staff regulate alcohol in Denver to help her determine whether the city was doing things more or less efficiently.

MS. FRANKLIN answered that she did not have the comparison, but she has reviewed the State of Washington's structure, which is similar to Alaska's system, with a liquor control board that regulates marijuana and alcohol. She reported that 297 employees cover regulations of alcohol, with approximately 120 assigned to marijuana licensing and control. For comparison, she stated that Washington has 15,000 liquor licenses, with significantly more people working on alcohol than on the marijuana industry with fewer licensees. She used Washington's figures to help her determine staffing for marijuana control in Alaska, noting that Alaska has 10 staff assigned to the alcohol regulation, and potentially will be adding six employees, which she said seemed fairly even.

CHAIR OLSON requested the information be sent to the committee so it can be posted and distributed to committee members.

[4:31:00 PM](#)

REPRESENTATIVE COLVER asked about timing of the regulation process.

MS. FRANKLIN answered that the marijuana initiative gave the Department of Commerce, Community & Economic Development (DCCED) nine months from February 24, 2015 to get regulations approved by the board, whether it happens within the ABC Board or the Marijuana Control Board (MCB). She anticipated the process would begin as soon as session ends, once the statutory framework is known. Further, she reported that Colorado and Washington, who have marijuana programs, have been helping and will continue to help Alaska. In addition, she has information from the Title 4 revisions to review, all of which represents a good starting place. The ABC Board released a preliminary document so it has a good start, she said.

[4:32:38 PM](#)

REPRESENTATIVE COLVER asked about concepts for a definition of public place.

MS. FRANKLIN answered that the ABC Board met in an emergency meeting on February 24, 2015 and defined public place using the definition from Title 11, AS 11.81.900 (53). The board defined the term "in public" as given in AS 17.38.040 and has used the definition in Title 11 for "public place" for the prohibition of consumption of marijuana "in public." She stated that the ABC Board will meet again on April 9, 2015 in the Anchorage

Legislative Information Office (LIO) to take public testimony on whether to make that regulation permanent. She said she received some initial feedback that the definition could potentially shut down the possibility of businesses ever having Cannabis cafés, in which businesses could invite members in to smoke marijuana together. The overlay of smoking prohibitions in many communities in Alaska makes it a second year consideration since the MCB board would like to put some baseline rules in first, prior to making decisions on the types of businesses that will be allowed. She said that both Washington and Colorado have struggled with this issue, but started with the position of not including those types of businesses in their initial regulations.

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REPRESENTATIVE KITO related his understanding that the initial concept was to regulate marijuana like alcohol, but he suggested some significant differences exist in the way these businesses operate. For example, marijuana would have production, manufacturing, testing, and sales functions, he said, stating that Alaska has sales types of businesses in alcohol, but the department does not anticipate allowing "consume in place" businesses. Currently, the state doesn't have statutes that govern the four types of [marijuana] businesses. He stated that the board structure was meant to regulate the licensing of marijuana; however, at this point, the state doesn't know much about the proposed marijuana businesses.

REPRESENTATIVE KITO anticipated that the board would initially spend most of its time developing regulations. He expressed concern over a lack of expertise identified on the board for the start-up period. During this initial period, the board will be generating significant new regulations that will govern operations of businesses, yet the state doesn't know exactly what it will need to regulate. He asked whether the state can identify who should be on board and if the state would need a transition phase to provide expertise to board members in developing regulations that will allow for the effective operation of the marijuana businesses.

MS. FRANKLIN answered that under the ballot measure, AS 17.38.110 would give the ABC Board regulatory authority unless a separate board was created and it does outline the four types of licenses, including manufacturing or cultivating, processing, retail, and testing facilities. She acknowledged AS 17.38 provided a sketchy outline of the four types of licenses. In

terms of composition of the proposed Marijuana Control Board (MCB) and representation of the types of businesses, she reported that in Title 4 manufacturing was kept out of representation on the ABC board, primarily with the way alcohol regulation developed over the years as a tiered system. She was unsure on whether a similar tiered system would be developed for marijuana; however, the differences between the two substances makes it unlikely. In fact, prohibition has not been written in as an industry tier. Theoretically, the proposed board member industry representatives in HB 123 could be representative of any of the four types of licensees. Initially, it might present some challenges to identify industry representation for the board; however, the agency has not had a shortage of people coming forward who want to be part of the board. Thus the governor could evaluate applicants, she said. Of course, the difficulty will arise in finding an experienced grower since the industry is currently illegal. However, she has some confidence that the voters' will in passing the ballot measure will be honored and that people will be able to openly speak about their experiences in the industry. For example, some people have already attested to having acquired experience of 40 years as growers and these people have appeared at local government meetings in the Mat-Su valley, she said.

[4:39:53 PM](#)

MS. FRANKLIN suggested that the board will be able to identify people in the short run who claim to be part of the industry. However, the state will need to get an industry going before it can ascertain this, although the transition sections and staggered terms may enable the governor to appoint someone into shorter term board positions. If it turned out that a person represented him/herself as part of the industry, but did not end up having the necessary expertise, the governor could turn the seat over to another person. It may be that people who supported the ballot measure or who participated in the Coalition for Responsible Cannabis Legislation (CRCL) might not necessarily qualify as industry representatives, but the governor's selection process can identify the necessary business background. She said she has been contacted by numerous businesses who have expressed an interest in the industry and some existing businesses may provide appropriate experience to fill one of the shorter-term appointments.

[4:41:31 PM](#)

REPRESENTATIVE KITO said her response helped, but people simply having the desire to serve doesn't give him confidence that the potential board members will end up having good business experience. He acknowledged the need for a public health member, a public safety member, a general public member, and a rural member. However, by statute the two industry representatives do not need business experience since the state doesn't have a marijuana industry in Alaska. He maintained his concern that the board might end up without the board having the expertise to develop regulations that will regulate all the types of businesses dispensing marijuana.

[4:42:29 PM](#)

CHAIR OLSON assured members it was important to spend sufficient time on the bill to address concerns and ensure the regulatory board and system was appropriate.

[4:42:57 PM](#)

CHAIR OLSON opened public testimony on HB 123.

[4:43:14 PM](#)

JAMES BARRETT began his testimony by stating he was interested in entry into the marijuana industry. He offered his belief that Alaska has an awesome opportunity to establish this industry, recalling that historically the state has assisted new industries, for example, the state helped establish the fishing industry. A black market once existed with the fishing industry, just as it currently exists with the marijuana industry. He suggested that the Marijuana Control Board (MCB) members will help bring expertise, but he emphasized the necessity of doing it right the first time. He suggested that it was important to have marijuana controlled separately from alcohol since the substances are not the same, although they can be similarly regulated. He offered his support for this bill and concluded by commending Ms. Franklin's knowledge and ability.

CHAIR OLSON agreed Ms. Franklin has been doing an incredible job.

[4:45:17 PM](#)

ELLEN GANLEY, Member, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community & Economic Development

(DCCED), stated that substantial discussion has occurred on whether it would be best to have one board or two boards. She initially thought that marijuana should fall under one regulatory board, but since then she has reevaluated this viewpoint, in particular, given the amount of work that board must accomplish. In addition, she has been involved in the current work of the ABC Board, which oversees 1,800 licenses, as well as during the two years it has taken to draft a rewrite of Title 4, which will require significant time to implement. She concluded that she believes it makes sense to have two boards.

[4:46:20 PM](#)

KIM KOLE, Coalition for Responsible Cannabis Legislation (CRCL), who initially started the Anchorage chapter of CRCL, offered support for HB 123, which would set up a separate Marijuana Control Board (MCB) under the direction of Ms. Franklin. She suggested that this structure seemed to make sense for a number of reasons, including reducing financial costs by having one administrator serve the Marijuana Control Board (MCB) and the Alcoholic Beverage Control Board (ABC Board), and to help identify regulations for this industry. She said that the language allows up to two board members who represent the cannabis industry to serve. She encouraged members support two board members from the industry, including representatives of cultivators, processors of non-consumables such as concentrates and lotions, processors of consumable and edible products. She hoped that ultimately retail stores, beer gardens or cafes will sell or serve marijuana products. Since the industry is so broad, no one person can know all aspects of the cannabis industry, she said, which emphasized the need to have two industry representatives on the board. She appreciated the importance of the business perspective and background on the board; however, she argued that it wasn't imperative to have someone with only a business background since it was possible to have an array of backgrounds represented by people who are really passionate about this new industry.

[4:47:56 PM](#)

FRANK BERARDI, Chair, Coalition for Responsible Cannabis Legislation (CRCL), offered the CRCL's support for HB 123. He said the board supported having a separate autonomous Marijuana Control Board (MCB) housed under the same framework as the Alcoholic Beverage Control Board (ABC Board), directed by Ms. Franklin. In terms of the vetting process for industry representatives, the coalition believes that the CRCL membership

has extensive business experience, noting that several people have an educational background in business and some have already completed business plans for this venture. The coalition would like to see the process be an open process that will allow people be vetted for the positions. He said he personally supported initial one-year terms for board members just to see how "this thing shakes out." In closing, he offered support for HB 123.

[4:49:28 PM](#)

GIONO BARRETT asked to testify in support of HB 123. He said it was a good idea to put the regulations in the hands of the Alcoholic Beverage Control Board (ABC Board), especially since Ms. Franklin and her staff have done a great job thus far. He stated that he was registered for medical marijuana and has been a long-time marijuana user. He offered his belief that the key to the regulation of the industry was education since it can take years to learn the industry. He suggested that Ms. Franklin has covered a lot of information really well, that he has an interest in the industry and has found her to be "spot on." In closing, he said he would trust Ms. Franklin to regulate marijuana properly.

[4:50:34 PM](#)

GIRARD GAUL, Senior Spokesman, Coalition for Responsible Cannabis Legislation (CRCL), asked to support HB 123. He further supported having the Marijuana Control Board (MCB) as a separate committee working alongside the Alcoholic Beverage Control Board (ABC Board) under Ms. Franklin. He thanked members for the work on this bill and offered his belief that HB 123 looked great.

[4:51:15 PM](#)

BRUCE SCHULTE, Public Relations Manager, Coalition for Responsible Cannabis Legislation (CRCL), testified in support of HB 123. He said that historically this group has been advocating for a separate Marijuana Control Board (MCB); however, given the combined constraints of schedule and budget, he believed the hybrid board would be a terrific solution. He said he has tremendous faith in Ms. Franklin's ability to guide both boards. He echoed Ms. Kole's comments on board representation, noting this bill would allow at least two members with experience to serve on the board. He pointed out that the schedule has actually begun on the regulatory process

and the board has until November 24 to complete it. He suggested that this [bill] has become the critical process.

[4:52:53 PM](#)

BRANDON EMMETT, Executive Director, Coalition for Responsible Cannabis Legislation (CRCL) asked to testify in support of HB 123. He suggested that HB 123 was a step in the right direction. As Mr. Schulte stated, the CRCL's initial position was to support a completely autonomous Marijuana Control Board (MCB), but the CRCL now prefers a hybrid board nested under the Alcoholic Beverage Control Board (ABC Board) to help the MCB adopt regulations and rules in a timely fashion. He emphasized the importance of having several board members with expertise in the marijuana industry. He offered his belief that marijuana industry board members will be unfettered by any conflict of interest that could affect a board member directly involved in the alcohol industry.

[4:54:24 PM](#)

CHAIR OLSON said he would hold public testimony open on HB 123.

[HB 123 was held over.]

[4:54:43 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:54 p.m.