

# LEGAL SERVICES

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## MEMORANDUM

April 30, 2018

**SUBJECT:** Application of precedent  
(CSHB 299(FIN); Work Order No. 30-LS1281\U)

**TO:** Senator Anna MacKinnon  
Attn: Juli Lucky

**FROM:** Linda M. Bruce  
Legislative Counsel



You requested an opinion regarding AS 04.11.537, which provides that the Alcoholic Beverage Control Board (ABC Board) is not required to conform to or distinguish a decision of the board from any action taken in the past on similar facts. Below is a brief response to your questions.

**Equal protection and due process concerns.** You asked whether AS 04.11.537 is unique to the ABC Board and whether AS 04.11.537 raises any constitutional problems. It appears that no similar provision exists in the statutes for any other board, including the Marijuana Control Board under AS 17.38. It is my opinion that this language could present due process and equal protection problems by allowing the ABC Board to treat similarly situated licensees differently and potentially give different punishments for similar violations.

**Effect of repealing AS 04.11.537.** You also asked, if AS 04.11.537 were repealed, would the ABC Board have the flexibility to consider differences in location and changes in a community over time when issuing a decision on a license. In short, repealing AS 04.11.537 would not require the ABC Board to conform a current decision to a past action that presents different facts, such as factual differences that result from long periods of time or geographic location. However, if AS 04.11.537 were repealed, the ABC Board would need to distinguish a current decision from a past action that presents similar facts. You may wish to inquire with other boards in the state to determine what types of information these boards consider when conforming to or distinguishing a current decision from a past action.

**Application of AS 08.01.075(f).** You asked whether the provision in AS 04.11.537 is contrary to the directive in AS 08.01.075(f), which requires a board to "seek consistency" in imposing a disciplinary sanction. The ABC Board is not subject to the requirements of AS 08.01.075(f), which only applies to the boards listed under AS 08.01.010. However, requiring a board to seek consistency under AS 08.01.075(f) reflects due process and equal protection principles and is ultimately a different policy from AS 04.11.537, which does not require consistency.

If I may be of further assistance, please advise.