

Ending Tee-Total Control: Privatizing Liquor Sales in North Carolina*

North Carolina has a long history of puritanical restrictions on alcohol sales. These restrictions—imposed in the name of “public safety”—often do little to protect the public and a lot to inconvenience consumers and businesses. This is the case with the government-run monopoly on liquor in North Carolina. While beer and wine can be bought and sold in gas stations and grocery stores, North Carolinians must purchase liquor at government-run liquor stores. In addition to retail sales, the government completely controls liquor prices, the wholesale acquisition of liquor, and its distribution in the state. This Comment explores how this system of control harms both entrepreneurs and consumers, runs counter to the ideals espoused in the North Carolina Constitution, defies common sense, and does nothing to protect public safety. This Comment also explores potential alternatives to the current system of control while keeping in mind the government’s primary motivation for maintaining control over the liquor system—revenue.

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INTRODUCTION

The state government has a monopoly on liquor in North Carolina. While beer and wine sales in North Carolina are privatized and available in several retail outlets,¹ the general public, as well as bars and restaurants, must purchase liquor through government-run outlets known as “ABC stores.”² The ostensible purpose of government control of liquor sales is safety, but as this Comment demonstrates, the real reason is profit. The profit margin of North Carolina’s government-run system (“ABC system”) is 11.2%, while the average profit margin of private alcohol sales in America is only 2.4%.³ Past efforts to privatize

1. Jon Sanders, *North Carolina’s Alcoholic Beverage Control System: Part 2*, JOHN LOCKE FOUND. (May 8, 2019), <https://www.johnlocke.org/research/north-carolinas-alcoholic-beverage-control-system-part-2/> [https://perma.cc/HDB4-3XMC] [hereinafter Sanders, *NC’s ABC System: Part 2*].

2. There is a narrow exception for North Carolina distilleries, which are allowed to sell an unlimited quantity of bottles of product on-site to visitors of the distillery. See M. Keith Kapp, Jennifer Morgan & Rick Zechini, *North Carolina Distillery and ABC Modernization Bill Signed into Law*, JD SUPRA (Aug. 8, 2019), <https://www.jdsupra.com/legalnews/north-carolina-distillery-and-abc-27088/> [https://perma.cc/84ZK-DDYB]. The “ABC store” is named after the North Carolina Alcoholic Beverage Control Commission that operates it. See *About the ABC Commission: History*, N.C. ABC COMM’N, <https://abc.nc.gov/About> [https://perma.cc/TWT2-D42Y].

3. See Sanders, *NC’s ABC System: Part 2*, *supra* note 1.

liquor sales in North Carolina, such as H.B. 971 in 2019,⁴ have been unsuccessful.⁵

This Comment explores the current system of state control and the impact of various models of privatization and ultimately concludes that North Carolina should privatize liquor sales.

Part I explores the history of North Carolina's liquor laws, and Part II provides an overview of how the current ABC system works. Parts III and IV, respectively, discuss arguments for reform and arguments for maintaining the current control system, highlighting the flaws in the arguments for the latter. Part V analyzes options for reforming the ABC system and the potential impact of each of these options. Part VI examines the experience of Washington State in transitioning from government control to privatized liquor sales, and Part VII ultimately concludes that privatizing liquor sales is in the best interests of North Carolinians.

I. HISTORY OF LIQUOR SALES IN NORTH CAROLINA

A. *The Buildup to Prohibition*

At the turn of the twentieth century, North Carolina led the nation in liquor production with 745 distilleries legally registered with the state in 1904 (540 of which were operating).⁶ Around this time, however, anti-alcohol forces promoting temperance and religious ideologies began to gain political traction in the state.⁷ A statewide ballot referendum to ban alcohol sales in North Carolina was defeated 166,325 to 48,370 in 1881.⁸ The Prohibition movement began to pick up steam when Black people, who largely opposed Prohibition,⁹

4. H.B. 971, 2019 Gen. Assemb., 2019–2020 Sess. (N.C. 2019).

5. See, e.g., Colin Campbell, 'Complicated' Switch to Private Liquor Stores in NC Will Likely Have To Wait, NEWS & OBSERVER (Jan. 27, 2020), <https://www.newsobserver.com/news/politics-government/article239678143.html> [<https://perma.cc/K6A5-WZZH>].

6. Jon Sanders, *North Carolina's Alcoholic Beverage Control System: Part 1*, JOHN LOCKE FOUND. (Feb. 15, 2019), <https://www.johnlocke.org/research/alcoholic-beverage-control/> [<https://perma.cc/9S X8-ADB2>] [hereinafter Sanders, *NC's ABC System: Part 1*] (citing N.C. ALCOHOLIC BEVERAGE CONTROL COMM'N, 2011 ANNUAL REPORT (2011), <https://portal.abc.nc.gov/Web%20Documents/Sections/Media%20Resources/Annual%20Reports/2011%20Annual%20Report.pdf> [<https://perma.cc/LMF8-XSRN>]).

7. See Ben Steelman, *North Carolina Has Complex History with Liquor*, STAR NEWS (Mar. 6, 2010, 12:01 AM), <https://www.starnewsonline.com/news/20100306/north-carolina-has-complex-history-with-liquor> [<https://perma.cc/695D-HAEB>].

8. *Id.*

9. See, e.g., *id.*; *Prohibition in North Carolina: The Acceptance of the Bill Dependent Upon Systematic Work*, N.Y. TIMES, Mar. 12, 1881, at 1 ("[I]t is apprehended that a large majority of the colored voters will vote against prohibition."); *Prohibition in North Carolina*, WASH. POST, Aug. 4, 1881, at 2 ("It is not very strange that the Republicans of that State, the majority of whom are negroes, are opposed to prohibition . . . they believe in cheap whiskey and no impediments in the way of its manufacture and sale.").

were disenfranchised following the enactment of Jim Crow laws in North Carolina.¹⁰ In 1902, the North Carolina Anti-Saloon League¹¹ was formed, and in 1903, North Carolina passed the Watts Act, which banned the manufacture and sale of liquor outside of incorporated towns.¹² Three years after the passage of the Watts Act,¹³ North Carolina passed the Ward Act,¹⁴ which effectively implemented Prohibition in sixty-eight counties by banning the manufacture and sale of liquor in towns with populations fewer than 1,000.¹⁵

North Carolina then enacted Prohibition statewide with the passage of a ballot referendum in 1909.¹⁶ This was over a decade before Prohibition was enacted federally with the passage of the Eighteenth Amendment.¹⁷ North Carolina was the first state in the South to enact Prohibition and the first state in the nation to do so by ballot referendum.¹⁸

B. *Prohibition*

North Carolinians may have voted to make alcohol illegal, but they certainly did not stop drinking it.¹⁹ There was plenty of illegal liquor being manufactured, sold, and consumed during Prohibition.²⁰ If the goal of Prohibition was to stop people from drinking, it failed mightily.²¹ Before the nationwide Prohibition, “bootleggers” often brought in liquor to North Carolina from Virginia and South Carolina.²² Around \$15 million (about \$375

10. See Steelman, *supra* note 7 (“North Carolina’s enactment of Jim Crow laws—which deprived tens of thousands of African Americans of their right to vote—removed a barrier to prohibition, noted historian Harry McCown.”).

11. U.S. Senator J.W. Bailey led the Anti-Saloon League and advocated for Prohibition. Prior to passage of the Watts Act, much of the Anti-Saloon League’s campaign involved using local option elections to eliminate liquor sales in towns. Ginny Orvedahl, *Anti-Saloon League*, in *ENCYCLOPEDIA OF NORTH CAROLINA* 53, 53 (William S. Powell ed., 2006).

12. Steelman, *supra* note 7.

13. Act To Regulate the Manufacture and Sale of Liquors in North Carolina, ch. 233, 1903 N.C. Sess. Laws 288 (repealed 1937).

14. Act To Amend Chapter 233 of the Public Laws of 1903, Regulating the Manufacture and Sale of Liquors in North Carolina, ch. 339, 1905 N.C. Sess. Laws 360 (repealed 1937).

15. Steelman, *supra* note 7.

16. *Id.*

17. Joel Burgess, *Why Does North Carolina Sell Liquor Like It Does?*, *CITIZEN TIMES* (Apr. 8, 2019, 10:42 AM), <https://www.citizen-times.com/story/news/local/2019/04/04/north-carolina-liquor-alcohol-facts-abc-board/3355642002/> [<https://perma.cc/LV9T-SQUW>].

18. Steelman, *supra* note 7.

19. *See id.*

20. *Id.*

21. *Id.*

22. Kristen Merryman, *Prohibition, Bootlegging, and the Law in North Carolina*, *DIGITAL N.C. BLOG* (Jan. 17, 2014), <https://www.digitalnc.org/blog/prohibition-bootlegging-and-the-law-in-north-carolina/> [<https://perma.cc/69UR-6PB7>].

million in today's dollars) worth of alcohol was reportedly trafficked into the state from Richmond, Virginia, alone.²³

After the passage of the Eighteenth Amendment, “moonshining”—the practice of making unregulated corn liquor which dates back to the colonial days—became a very profitable industry in North Carolina.²⁴ Wilkes County, North Carolina, even proclaimed itself the “Moonshine Capital of the World.”²⁵ According to one historian, running moonshine was so profitable that “[m]oonshiners could lose every third car and shipment and still turn a profit.”²⁶

Legends from the Old North State's moonshining days abound; many highlight just how hypocritical regulators could be and how ineffective the government was at promoting temperance. For example, “gentlemanly” North Carolina moonshiner Amos Owens supposedly once shared his popular “Cherry Bounce” moonshine with the law enforcement officers who came to arrest him for making it.²⁷ Legend has it, after drinking Amos's Cherry Bounce, one agent stumbled into the nearby woods while another passed out in Amos's house.²⁸ Rather than attempt to evade capture, Amos reportedly waited for the agents to sober up and arrest him.²⁹ The day after returning to his home from a six-month jail sentence, Amos was right back to making his beloved Cherry Bounce.³⁰

C. *Post-Prohibition*

Though the “Noble Experiment”³¹ failed to moderate people's alcohol consumption, North Carolina was reluctant to reinstate legal alcohol sales.³² In 1933, North Carolinians overwhelmingly rejected a statewide referendum to

23. David J. Hanson, *Prohibition in North Carolina: Relics of Prohibition Continue*, ALCOHOL PROBS. & SOLS., <https://www.alcoholproblemsandsolutions.org/prohibition-in-north-carolina-2/> [<https://perma.cc/8FEF-KR86>].

24. See Bland Simpson, *Moonshine*, in *ENCYCLOPEDIA OF NORTH CAROLINA*, *supra* note 11, at 760, 760.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. This term for Prohibition is attributed to Herbert Hoover. See *Herbert Hoover 1874–1964: American Republican Statesman, 31st President 1929–33*, in *OXFORD ESSENTIAL QUOTATIONS* (Susan Radcliffe ed., 4th ed. 2016), <https://www.oxfordreference.com/view/10.1093/acref/9780191826719.001.0001/q-oro-ed4-00005547?rskey=KcFj4k&result=1> [<https://perma.cc/4BCY-6ASH>].

32. Steelman, *supra* note 7 (“Despite the widespread lawlessness, however, and the evidence suggesting that Prohibition actually encouraged excess drinking, many North Carolinians were unwilling for the ‘Noble Experiment’ to end.”).

call a convention to repeal the Eighteenth Amendment.³³ The Turlington Act³⁴ had been passed by the North Carolina General Assembly in 1923 and made it illegal to make, sell, buy, transport, and possess liquor.³⁵ When the Twenty-First Amendment to the Constitution repealed Prohibition federally, the Turlington Act maintained Prohibition at the state level in North Carolina.³⁶

In 1935, two years after Prohibition was repealed nationwide, the North Carolina General Assembly recognized that North Carolinians were once again traveling to South Carolina and Virginia to buy their booze, which deprived the state of a substantial amount of tax revenue.³⁷ Still unwilling to fully repeal Prohibition and reinstate legalized private alcohol sales, the General Assembly passed a number of bills that gave certain counties the option to set up government-run liquor stores.³⁸ When the first government-run liquor store in North Carolina opened in Wilson in 1935, 825 bottles of liquor were sold on the first day alone, and over 100 customers were denied service when the store closed at 6:00 p.m.³⁹

In 1937, the specially authorized Governor's Commission, tasked with studying the implementation of legal alcohol sales, reported back to the General Assembly.⁴⁰ The Governor's Commission recommended that North Carolina adopt a "control" system of state-run liquor sales in which the government would maintain a monopoly on liquor sales.⁴¹ Sheriffs in counties that had implemented government-run liquor stores in 1935 "thought conditions had improved and many of the bootleggers had been run out of business."⁴²

A government-run monopoly over liquor sales did not originate in North Carolina. When the repeal of nationwide Prohibition seemed imminent, John D. Rockefeller Jr. commissioned a report entitled *Toward Liquor Control*, which recommended states adopt a control model of alcohol sales post-Prohibition.⁴³

33. *See id.* ("In 1933, in another statewide referendum, North Carolinians rejected—293,494 votes to 120,190—calling a convention to repeal the 18th Amendment.")

34. Act To Make the State Law Conform to the National Law in Relation to Intoxicating Liquors, ch. 1, 1923 N.C. Pub. Laws 55 (codified as amended in scattered sections of N.C. GEN. STAT. § 18B).

35. Steelman, *supra* note 7. The Turlington Act has never been officially repealed, and former North Carolina Supreme Court Justice Susie Sharp wrote in a 1966 opinion that the Turlington Act remains good law in towns that have not elected to allow liquor sales pursuant to the subsequent acts that set up the ABC system. *See id.*; Jerry C. Cashion, *Turlington Act*, in *ENCYCLOPEDIA OF NORTH CAROLINA*, *supra* note 11, at 1139, 1139; *D&W Inc. v. City of Charlotte*, 268 N.C. 577, 578–83, 151 S.E.2d 241, 242–45 (1966).

36. *Id.*

37. Steelman, *supra* note 7.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198, 2209 (2010) (citing Mark R. Daniels,

Rockefeller referred to this system of government control over the liquor business as the “Authority Plan.” The Authority Plan was justified under the theory that it would (1) eliminate economic incentives to maximize sales and to sell to underage customers and (2) implement policy incentives to promote a safer industry.⁴⁴ North Carolina was one of many states to buy this argument and implement a state-run monopoly on liquor sales.⁴⁵

In 1937, the North Carolina General Assembly set up the State Board of Alcoholic Control,⁴⁶ composed of three members appointed by the Governor—one chairman and two associate members.⁴⁷ That board is now known as the North Carolina Alcoholic Beverage Control Commission (“ABC Commission”).⁴⁸ Hence, liquor stores in North Carolina are referred to as “ABC stores.” In the same act that created the State Board of Alcoholic Control, the General Assembly mandated that legal sales of liquor in a county or city could not begin until local voters approved of it.⁴⁹ It took counties many years to approve legal alcohol sales; however, at this time, Graham County is the only county in the state to remain a “dry county.”⁵⁰

Alcohol legalization has been a gradual process in North Carolina since the end of Prohibition, and North Carolina has a rich history of alcohol regulations that make little sense and are ineffective at promoting public safety.⁵¹ For example, up until 1978, restaurants and private clubs—though allowed to serve

Toward Liquor Control: A Retrospective, in SOCIAL AND ECONOMIC CONTROL OF ALCOHOL: THE 21ST AMENDMENT IN THE 21ST CENTURY 217, 218 (Carole J. Jurkiewicz & Murphy J. Painter eds., 2008)).

44. Laura Napoli, *A Regulatory Roadmap: The Importance of Toward Liquor Control to Modern Alcohol Policy*, in 2011 NATIONAL ESSAY CONTEST WINNERS (2012), <https://www.centerforalcoholpolicy.org/wp-content/uploads/2012/06/Center-for-Alcohol-Policy-2011-Winning-Essays.pdf> [<https://perma.cc/8NEY-62AB>].

45. *See, e.g., id.* (“Utah is not the only state that has embraced the idea of state management of alcohol sales. While all states impose some form of control over alcohol distribution and consumption, nearly half of the states control the sale of alcoholic beverages, either at the wholesale or the retail level.”).

46. *A Survey of Statutory Changes in North Carolina in 1937*, 15 N.C. L. REV. 321, 321 (1937).

47. *About the ABC Commission: History*, N.C. ABC COMM’N, <https://abc.nc.gov/About> [<https://perma.cc/TWT2-D42Y>].

48. *Id.*

49. *Id.*; *see* Act To Provide for the Manufacture, Sale, and Control of Alcoholic Beverages in North Carolina, ch. 49, 1937 N.C. Sess. Laws 84 (codified as amended in scattered sections of N.C. GEN. STAT. § 18B).

50. Lilly Knoepp, *Last Dry County in North Carolina Will Soon Sell Alcohol*, WUNC 91.5 N.C. PUB. RADIO (Nov. 4, 2021, 3:29 PM), <https://www.wunc.org/law/2021-11-04/last-dry-county-in-north-carolina-will-soon-sell-alcohol> [<https://perma.cc/VJ5W-MEVG>]. Graham County recently passed measures allowing for the sale of beer and wine in select locations in the county. *Id.*

51. *See, e.g.,* K. Todd Johnson, *Prohibition*, in ENCYCLOPEDIA OF NORTH CAROLINA, *supra* note 11, at 916, 916 (“Prohibition was slowly phased out in North Carolina after national Prohibition was repealed in 1933.”); Steelman, *supra* note 7 (“The legislature did, however, choose to retain some aspects of Prohibition.”).

beer and wine—were forbidden from serving mixed drinks.⁵² This regulation was largely ineffective as diners circumvented it by bringing their own bottle of liquor into restaurants, a practice known as “brown-bagging.”⁵³ Perhaps acknowledging the common trend of brown-bagging, the General Assembly removed the mixed-drink ban and granted counties and municipalities the power “to allow ‘liquor by the drink’ on a local-option basis” in 1978.⁵⁴

Until 1976, customers at ABC stores could not pick their own liquor bottles off the shelf.⁵⁵ Before the General Assembly passed the Brunch Bill in 2017,⁵⁶ it was illegal for restaurants to serve alcohol before noon on Sundays.⁵⁷ ABC stores still remain closed on Sundays.⁵⁸ Why it is safe to buy alcohol Monday through Saturday but not on Sunday is a question that has gone unanswered. Bars and restaurants in North Carolina are not allowed to offer “happy hour”⁵⁹ specials on alcoholic beverages,⁶⁰ and if they wish to offer a specialty mixed drink made from an in-house recipe, they must submit an application with the recipe and have it approved by the ABC Commission before they are allowed to serve it.⁶¹ These are only a handful of the restrictions currently imposed on alcohol sales in North Carolina.⁶²

These arbitrary restrictions illustrate a microcosm of the problems that come with a government monopoly on the liquor business. When bars can sell mixed drinks full of alcohol such as a Long Island Iced Tea⁶³ but must obtain

52. Steelman, *supra* note 7.

53. *Id.*

54. *Id.*

55. *Id.*

56. Brunch Bill, ch. 87, 2017 N.C. Sess. Law 730 (codified at N.C. GEN. STAT. § 18B-1105).

57. See Governor Roy Cooper Signs ‘Brunch Bill,’ ABC11 (June 30, 2017), <https://abc11.com/brunch-bill-north-carolina-sunday-drinking/2154452/> [<https://perma.cc/XBG7-NECQ>].

58. *Frequently Asked Questions: Are ABC Stores Open on Sundays or Holidays?*, N.C. ABC COMM’N, <https://abc.nc.gov/About/Question/20> [<https://perma.cc/Q2HM-HQ6U>] (“No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, on any Sunday, New Year’s Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day.”).

59. “Happy hour” refers to the practice of discounting the price of certain drinks for a certain period of time during the day. See *Happy Hour*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/happy%20hour> [<https://perma.cc/G7TT-L3WB>].

60. N.C. ALCOHOLIC BEVERAGE CONTROL COMM’N, HAPPY HOURS FAQs 1, <https://portal.abc.nc.gov/Web%20Documents/Sections/Education/Publications/1.%20Questions%20and%20Answers/Happy%20Hour%20Frequently%20Asked%20Questions.pdf> [<https://perma.cc/5V6Q-BBLR>].

61. N.C. ALCOHOLIC BEVERAGE CONTROL COMM’N, GENERAL FREQUENTLY ASKED QUESTIONS 3 [hereinafter ABC COMM’N, FAQ], <https://portal.abc.nc.gov/Web%20Documents/Sections/Education/Publications/1.%20Questions%20and%20Answers/General%20Frequently%20Asked%20Questions.pdf> [<https://perma.cc/TVA8-YUTV>].

62. For a more exhaustive list, see *Laws, Rules, and Resources*, N.C. ALCOHOLIC BEVERAGE CONTROL COMM’N, <https://abc.nc.gov/Documents/Index/10> [<https://perma.cc/UTU6-4J4Q>].

63. See, e.g., HOWARD’S PUB, LIBATIONS: BEER, WINE, & COCKTAIL MENU, https://www.ocracokenavigator.com/wp-content/uploads/2015/04/Howards-Pub_Libations-Menu_2015-

approval from the government for a new recipe that contains less alcohol,⁶⁴ government regulation is burdening businesses without making the public any safer. While Rockefeller's report and the 1937 North Carolina General Assembly may have intended government control to promote safety, in practice it promotes only inconvenience and inefficiency. It is time for North Carolina to reassess the government's role in alcohol regulation.

II. CURRENT MODEL OF REGULATION: "CONTROL"

A. *Structure of the ABC System*

While North Carolina is one of seventeen states in which the wholesale distribution of liquor is controlled by the government, and one of thirteen states in which retail distribution is controlled by the government, it is the *only* state in which local governments control retail liquor stores.⁶⁵ The ABC Commission's operations are funded entirely by liquor sales through a surcharge added to bottles of liquor sold, and no funding is provided from the state's general fund.⁶⁶ To best understand how liquor makes it from a distillery into the bloodstream of a North Carolina consumer, it is helpful to break down the process step-by-step.

1. Step One: Determining What Liquor Is Sold and for How Much

The North Carolina ABC Commission determines what liquors will be sold and sets a uniform price for their sale throughout the state.⁶⁷ The price is determined by a markup formula outlined in Section 18B-804 of the North Carolina General Statutes.⁶⁸ For bars and restaurants offering liquor for resale, there is an additional \$20 tax per four liters purchased.⁶⁹ Figure 1 below is from the ABC Commission and demonstrates how a case of liquor is taxed:

2.pdf [<https://perma.cc/9Q76-5TNK>] (describing the Long Island Iced Tea menu option as "[l]ots of white liquor, a couple of browns, and one heck of a hangover").

64. See ABC COMM'N, FAQ, *supra* note 61, at 3.

65. Sanders, *NC's ABC System: Part 1*, *supra* note 6.

66. PROGRAM EVALUATION DIV., REP. NO. 2008-12-01, N.C. GEN. ASSEMB., NORTH CAROLINA'S ALCOHOL BEVERAGE CONTROL SYSTEM IS OUTDATED AND NEEDS MODERNIZATION 8 (2008) [hereinafter PROGRAM EVALUATION DIV., OUTDATED SYSTEM], https://www.ncleg.net/ped/reports/documents/abc/abc_report.pdf [<https://perma.cc/789C-TMUN>].

67. *Spirituos Liquor Pricing Breakdown*, N.C. ALCOHOLIC BEVERAGE CONTROL COMM'N, <https://abc.nc.gov/Pricing/Breakdown> [<https://perma.cc/F9MD-DBDF>].

68. N.C. GEN. STAT. § 18B-804 (LEXIS through Sess. Laws 2021-162 of the 2021 Reg. Sess.).

69. See *Spirituos Liquor Pricing Breakdown*, *supra* note 67.

Figure 1. Spirituous Liquor Pricing Breakdown⁷⁰

\$150.27	Distiller's Price (12 bottle case/80 proof, includes Federal Excise Tax)
+ \$2.75	Bailment Charges (<i>State Warehouse Budget</i>)
\$153.02	Sub Total Case Cost
+ \$60.60	Local ABC Board Markup (39.6%)
\$213.62	
\$64.08	State Excise Tax (30%)
+ \$7.48	Additional Markup (3.5%) (<i>Profit Distribution</i>)
\$285.177253	Case Cost to Six Decimals
+ \$1.15	Bailment Surcharge (<i>State Commission Budget</i>)
\$286.3273	
÷ 12	Divide above number by the number of bottles in the case
\$23.8606	
\$.05	Add Bottle Charge (<i>Rehabilitation</i>)
+ \$.05	Add Additional Bottle Charge (<i>Profit Distribution</i>)
\$23.9606	Round the Result to an Integer Evenly Divisible by Five Cents (.05)
\$23.95	Retail price per bottle before sales tax at point of sale 7.00%
+ \$1.68	(7% NC Sales Tax)
\$25.63	Selling price per bottle of an individual.
+ \$3.75	Mixed Beverage Tax (\$3.75 for .75L)
\$27.70	Selling Price to Mixed Beverage Permittees (No sales tax added for MXB Permittees)

As shown, the distiller lists the price at \$150.27, but then the price of the case is further increased by a \$2.75 “Bailment Charge” that goes towards the state warehouse, a 39.6% tax that goes towards the local ABC board, a 30% state excise tax, an additional 3.5% markup, and an additional \$1.15 “Bailment Surcharge.”⁷¹ That raises the total price of the case to about \$286.33, not including sales tax.⁷² Since there are twelve bottles in a case, each bottle will cost about \$23.86.⁷³ Then, there are then two additional fees: a \$0.05 “Bottle Charge,” and a 7% sales tax for individual consumers, which brings the total cost of a bottle of liquor for an individual to \$25.63.⁷⁴ If there had been no taxes, then the bottle would have only cost an individual \$12.52.⁷⁵ Frustratingly for restaurant and bar owners, while an individual consumer could buy a bottle of this liquor for \$25.63, the “Mixed Beverage Permittees” tax of \$3.75 means that

70. *Id.*71. *See id.*72. *Id.*73. *Id.*74. *Id.*75. *See id.*

restaurants and bars, who presumably buy more liquor on average than an individual consumer, would pay \$27.70.⁷⁶

2. Step Two: Central Liquor Warehouse Storage and Delivery

All liquor in North Carolina, regardless of where it was made and where it will be sold,⁷⁷ must first pass through the ABC Commission's central liquor warehouse in Raleigh before being shipped to an ABC store where it can be purchased.⁷⁸ This can result in a distribution pattern that makes little logistical sense. For example, gin made at a distillery that is next door to a bar in Asheville must travel some 500 miles to Raleigh and back, then be placed at Asheville's local ABC store where an employee of the bar can purchase it, all before it is finally sold in the bar that is next door to the distillery.⁷⁹ It is entirely unclear how making a bottle of liquor travel for 500 miles before being consumed makes consumers any safer, but this hurdle does make it much harder for bar owners and distillers to work together and get their product to the market.

Once liquor is shipped from the manufacturer to the ABC Warehouse, it is stored until it is distributed to an ABC store.⁸⁰ While the ABC Commission owns the warehouse, they contract out the responsibilities of storage, receipt, and distribution to a private contractor.⁸¹ The private contractor does not take legal possession of the liquor while storing it and distributing it to ABC stores, but rather operates under a bailment system: the distiller or manufacturer of the liquor maintains legal ownership of the liquor until it is delivered to an ABC store, and the private contractor is paid via a "bailment surcharge" included in the markup formula for a bottle of liquor.⁸²

3. Step Three: Purchase at a Local ABC Store, Where the Government Makes Money

Once the private contractor delivers the liquor to an ABC board, it is available for purchase by consumers and restaurant or bar owners at the local

76. *See id.* Note that restaurants and bars would not pay the 7% sales tax as that would be passed on to customers.

77. There is a minor exception for liquor sold on the premises of a distillery. *See* M. Keith Kapp, Jennifer Morgan & Rick Zechini, *North Carolina Distillery and ABC Modernization Bill Signed into Law*, JD SUPRA (Aug. 8, 2019), <https://www.jdsupra.com/legalnews/north-carolina-distillery-and-abc-27088/> [<https://perma.cc/TRZ2-LFE4>].

78. PROGRAM EVALUATION DIV., OUTDATED SYSTEM, *supra* note 66, at 4.

79. Joel Burgess, *NC Liquor Privatization: More Convenience? Higher Prices? Public Health Problems?*, CITIZEN-TIMES (Apr. 4, 2019), <https://www.citizen-times.com/story/news/local/2019/04/04/nc-liquor-privatization-convenience-higher-costs-health-issues/3237747002/> [<https://perma.cc/G2NK-N46C> (dark archive)].

80. *See* PROGRAM EVALUATION DIV., OUTDATED SYSTEM, *supra* note 66, at 5.

81. *Id.* at 4.

82. *Id.*; *see also* *Spirituos Liquor Pricing Breakdown*, *supra* note 67.

ABC store.⁸³ ABC stores are managed and operated by ABC boards, which are independent political subdivisions of the state.⁸⁴ Local ABC boards are the official entities that sell liquor to consumers, restaurants, and bars through ABC stores.⁸⁵ Once the private contractor delivers the liquor to the ABC store, the ABC board has thirty days to pay the liquor manufacturer for the shipment.⁸⁶

According to the Program Evaluation Division (“PED”) of the North Carolina General Assembly, in 2018 there were 170 local ABC boards that brought in a total of \$1,129,132,692 in revenue, which resulted in a distribution of \$406,129,069 to state and local government entities.⁸⁷ In other words, government entities in North Carolina directly pocketed over \$406 million in 2018 from the current government-controlled system.

III. ARGUMENTS FOR REFORM

A. *Control ≠ Safety*

Though privatization opponents continue to proffer the same arguments as Rockefeller did in the 1930s and insist that a government monopoly on liquor sales keeps citizens safer, empirical data paint a different picture.⁸⁸ A 2012 policy brief from the Mackinac Center for Public Policy (“Mackinac”) compiled several studies that analyzed the differences in alcohol-related public safety outcomes between “control” states and “privatized” states.⁸⁹ These studies show that on virtually every alcohol-related public safety outcome, control states are no better off than states with privatized liquor sales.⁹⁰

The data compiled by Mackinac reinforces the experience of Washington State—the only state since Prohibition to have moved from a control model to a completely privatized system of liquor sales.⁹¹ As will be discussed further in

83. See PROGRAM EVALUATION DIV., OUTDATED SYSTEM, *supra* note 66, at 5.

84. *Frequently Asked Questions*, N.C. ASS’N ABC BDS., <https://www.ncabcboards.org/faq> [<https://perma.cc/8ATH-JWNN>].

85. See *id.*

86. PROGRAM EVALUATION DIV., OUTDATED SYSTEM, *supra* note 66, at 5.

87. PROGRAM EVALUATION DIV., REP. NO. 2019-03, CHANGING HOW NORTH CAROLINA CONTROLS LIQUOR SALES HAS OPERATIONAL, REGULATORY, AND FINANCIAL RAMIFICATIONS 9 (2019) [hereinafter PROGRAM EVALUATION DIV., CHANGING HOW NORTH CAROLINA CONTROLS LIQUOR], https://www.ncleg.gov/PED/Reports/documents/ABC_Modernizing/Modernizing_ABC_Report.pdf [<https://perma.cc/C8KG-JHCH>].

88. See discussion *infra* Section IV.A.

89. See MICHAEL LAFAIVE & ANTONY DAVIES, POLICY BRIEF: ALCOHOL CONTROL REFORM AND PUBLIC HEALTH AND SAFETY 2–8 (2012), <https://www.mackinac.org/16923> [<https://perma.cc/PFU2-7V8B>].

90. See *id.* at 2–6. Alcohol-related harms analyzed include alcohol-related deaths and alcohol-related driving fatalities. See *id.*

91. See Melissa Maynard, *Should States Get Out of the Booze Business?*, PEW CHARITABLE TRS. (Apr. 4, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/04/04/should-states-get-out-of-the-booze-business> [<https://perma.cc/VM2R-WBUJ>].

Part VI, fears of negative public safety outcomes following privatization did not materialize in Washington.⁹² In fact, privatization in Washington actually coincided with a *decrease* in alcohol consumption for both younger drinkers and the heaviest purchasers of alcohol.⁹³

B. *A Government Monopoly on Alcohol Sales Hurts Entrepreneurs in the Alcohol Industry*

An article published by the John Locke Foundation pointed out that the North Carolina Constitution enshrines the right of North Carolinians to “the enjoyment of the fruits of their own labor,” and the Constitution declares that “monopolies are contrary to the genius of a free state and shall not be allowed.”⁹⁴ The article also pointed out that, for entrepreneurs in most industries, there are a variety of ways to transport goods to the market, such as for the hypothetical sweet potato farmer, Bob:

Maybe Bob knows some local grocers and restauranteurs who’ll sell his produce. He could contract with food handlers to deliver his sweet potatoes to other grocers. He might set up a stand at a local farmer’s market. He could set up his own roadside stand. Wherever he is, Bob can offer samples to prospective buyers. Bob could even become a member of the N.C. Department of Agriculture & Consumer Service’s “Got to Be NC” program, where his sweet potatoes could be listed and accessible to any consumer, grocer, or restaurant looking to showcase North Carolina products.⁹⁵

For entrepreneurs in the liquor business, such as the hypothetical rum distiller, Amber, things look quite different:

First, [Amber] has to get product recognized by the North Carolina Alcoholic Beverage Control (ABC) Commission. Then she has to persuade commissioners to think her rum will meet their profit threshold, so that they will put it on their official list of approved products. If it’s not listed, ABC stores can’t sell it. Once it’s listed, she has to contact each of the 433 ABC stores to urge the managers to carry her product. Amber can’t sell her rum at farmers’ markets or fairs. She can’t sell bottles or even drinks away from her distillery. She can’t even hold tastings of her rum at ABC stores. She can’t distribute any of her products herself.⁹⁶

92. See discussion *infra* Part VI.

93. See *infra* Section VI.A.

94. Sanders, *NC’s ABC System: Part 2*, *supra* note 1 (quoting N.C. CONST. art. I, §§ 1, 34).

95. *Id.*

96. *Id.*

While Amber may be hypothetical, the problems she faces are ones that many North Carolina entrepreneurs know all too well. The president and CEO of Durham Distilleries laments that to realistically sell her product in North Carolina, the state in which it is made, she has to “personally appeal to every single ABC jurisdiction to carry our products.”⁹⁷ Other North Carolina distillers have also complained of setbacks such as ABC boards delisting their product without warning and refusing to carry a product for arbitrary reasons wholly unrelated to quality or market demand.⁹⁸ A distillery representative even anonymously reported to the *Carolina Journal* that they heard ABC board members admit that ABC boards refuse to carry the products of distillers who have spoken out in favor of privatization.⁹⁹ This distillery representative was not alone. In fact, the *Carolina Journal* found that “fear of retribution was a common thread among distillers and their representatives.”¹⁰⁰

North Carolina distiller Jonathan Blitz of Mystic Farm and Distillery was even penalized by the ABC Commission for something that was not a violation.¹⁰¹ An Alcohol Law Enforcement (“ALE”) agent appeared at the distillery for the second time in a month.¹⁰² Blitz had an open bottle of Southern Star whiskey sitting in the kitchen, the product of another distillery that he was using as a reference sample, and the ALE officer attempted to penalize Blitz for it.¹⁰³ Though Blitz pointed out that this is not against the law in North Carolina, the ABC Commission sued him and then immediately promulgated a new set of rules prohibiting the practice.¹⁰⁴ The ABC Commission, however, does not have the power to write its own rules—such rules are promulgated by *local* ABC boards. So, when Blitz filed a lawsuit against the ABC Commission, the courts issued an indefinite stay prohibiting the ABC Commission from enforcing the policy.¹⁰⁵ Blitz stated that:

As a craft distiller, I find it shocking that the commission found nothing better to do during an economic collapse than to issue and try to enforce

97. See Matthew Lardie, *Why Is It So Expensive To Drink Cocktails in North Carolina?*, EATER CAROLINAS (Oct. 14, 2020, 11:00 AM), <https://carolinas.eater.com/2020/10/14/21506547/north-carolina-liquor-laws> [https://perma.cc/F3YU-B9RP].

98. See Sanders, *NC’s ABC System: Part 2*, *supra* note 1.

99. See John Trump, *North Carolina’s Monopolistic System of Controlling Liquor Is Broken, but Will Lawmakers Fix It?*, CAROLINA J. (Sept. 10, 2018, 1:38 AM), <https://www.carolinajournal.com/news-article/north-carolinas-monopolistic-system-of-controlling-liquor-is-broken-but-will-lawmakers-fix-it/> [https://perma.cc/GXP8-B6FN].

100. *Id.*

101. See Leigh Tauss, *A Distiller Fights Back Against the ABC Commission’s Attempt To Write New Laws*, INDY WEEK (Oct. 28, 2020, 6:30 AM), <https://indyweek.com/food-and-drink/news/abc-commission-and-distilleries/> [https://perma.cc/YL2C-E4MD].

102. *Id.*

103. *See id.*

104. *See id.*

105. *Id.*

illegal rules against our struggling industry. . . . It's one thing to be completely out-of-touch with people desperately trying to save their businesses and keep their staff employed, but for the commission to break the law in the process shows that there really is a crisis of leadership in an agency that regulates more than \$2 billion in commerce in our state.¹⁰⁶

Distillers are not the only entrepreneurs disadvantaged by the ABC system—restaurant and bar owners often face problems as well.¹⁰⁷ Not only are they disallowed from having “happy hour” and required to submit an application to the ABC Commission whenever they come up with an idea for a new cocktail recipe,¹⁰⁸ but state control of product availability means that owners sometimes are unable to obtain the products they need.¹⁰⁹ As Chall Gray, the owner of Asheville cocktail bar Little Jumbo's, has noted: “It's hard to obtain a number of things that are pretty easy to get in other states.”¹¹⁰ On top of that, state law prevents local ABC boards from being able to charge delivery fees,¹¹¹ which means that bar owners typically have to factor in the time and cost of driving to the ABC store themselves to purchase the liquor they sell in their establishment.¹¹²

Government-run ABC stores have an easier time making profits than distillers. The profit margin for the ABC system is 11.2%, which is quite high compared to the national average of 2.4% profit margin for private alcohol sales.¹¹³ The John Locke Foundation has noted that “[i]n a competitive market, a profit margin of 11.2 percent is a clear welcome sign for more sellers,” so the ABC system “stands in the way of competition and job creation.”¹¹⁴ No matter the merits of the control system, it is clear that a government monopoly on liquor is counter to the free-market ideals enshrined in the North Carolina Constitution.¹¹⁵

106. *Id.*

107. *See supra* notes 59–61 and accompanying text.

108. *See supra* notes 59–61 and accompanying text.

109. *See* Lardie, *supra* note 97.

110. *Id.*

111. N.C. GEN. STAT. § 18B-100 (LEXIS through Sess. Laws 2021-162 of the 2021 Reg. Sess.) (“[L]ocal ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited.”); *see* PROGRAM EVALUATION DIV., CHANGING HOW NORTH CAROLINA CONTROLS LIQUOR, *supra* note 87, at 42.

112. *See* Lardie, *supra* note 97.

113. Sanders, *NC's ABC System: Part 2*, *supra* note 1.

114. *Id.*

115. *See id.*

C. *The ABC Commission Has a History of Mismanagement*

In 2018, the North Carolina Office of the State Auditor performed an audit of the ABC Commission's contract for the state warehouse.¹¹⁶ Key findings included: "Poor contract administration cost the State at least \$11.3 million over 13 years," "Unused warehouse space potentially cost the State \$2.1 million over 7 years," and "No monitoring left the State underpaid by at least \$297,537 over two years."¹¹⁷ The warehouse contract was between the state and LB&B Associates, Inc. ("LB&B"), a Maryland-based company contracted to provide warehouse and distribution operations.¹¹⁸ The audit found that the contract cost the state \$8.3 million from 2017–2018 and \$77.7 million from 2004–2017.¹¹⁹ Further, the audit concluded that the ABC Commission failed to "procure, administer, and monitor the LB&B Associates, Inc. . . . contract for the warehousing and distribution of spirituous liquor in accordance with state policies and best practices."¹²⁰

Though the contract specifically stated that price increases "shall not exceed the changes in the Average Wages of N.C. Employees in Wholesale Trades [ECI] and/or the Consumer Price Index for Motor Fuels [CPI],"¹²¹ the ABC Commission approved price increases that exceeded these amounts for thirteen years in a row.¹²² Not only did the ABC Commission approve these increases, the Commission failed to notice that the reasons given by LB&B for these requested price increases were often inaccurate.¹²³ For example, in both 2008 and 2016 there was a request for more money due to increased fuel costs, but the audit showed that LB&B's fuel costs actually decreased by \$23,197 in 2008 and \$221,228 in 2016.¹²⁴

The ABC Commission also failed to obtain approval for the contract terms from the Department of Administration Division of Purchase and Contract despite having an obligation to do so as a state agency executing a contract with a term longer than three years.¹²⁵ The Commission further violated state-purchasing policy by failing to obtain approval for each of the three extensions executed between 2006 and 2016.¹²⁶ The ABC Commission also authorized the

116. BETH A. WOOD, N.C. OFF. OF THE STATE AUDITOR, ALCOHOL BEVERAGE CONTROL COMMISSION WAREHOUSE CONTRACT: PERFORMANCE AUDIT 3 (2018), <https://www.auditor.nc.gov/EPSSWeb/reports/performance/PER-2017-4900.pdf> [<https://perma.cc/WU76-B5MN>].

117. *Id.* at 5, 9, 12.

118. *See id.* at 1–2.

119. *Id.* at 2.

120. *Id.* at 4.

121. *Id.* at 5 (quoting language from a 2004 contract).

122. *Id.*

123. *See id.* at 7.

124. *Id.*

125. *Id.*

126. *Id.* at 7–8.

lease of a second warehouse in Clayton, North Carolina, that went largely unused and increased the cost of the contract with LB&B by an average of \$2.54 million a year.¹²⁷ The audit found that less than a quarter of the warehouse was used, resulting in approximately \$2.1 million of unnecessary costs over seven years.¹²⁸

This audit is not the only reported instance of government mismanagement and abuse. In 2009, Diageo, a liquor company, hosted a \$12,700 dinner for members of Mecklenburg County's ABC Board.¹²⁹ This violated state law prohibiting gifts from suppliers.¹³⁰ There were also reports of other lavish, illegal meals provided for Mecklenburg County ABC Board members, including a lunch at the Ritz-Carlton.¹³¹

In 2011, Billy Williams, the former head of New Hanover County ABC Board, was convicted of a felony for using \$43,000 of public money that was intended for concrete work at an ABC store to build a two-story garage at his home.¹³² Williams was paid an annual salary of \$232,000.¹³³ Greensboro ABC Board General Manager, Katie Alley, was investigated for corruption in 2010 after she "solicited and took liquor, concert tickets, travel and other 'things of value' from liquor distributors that sold through the Greensboro ABC Board's 16 stores."¹³⁴ When Alley got wind of this investigation, she reportedly bought a \$519.99 shredder with ABC funds and destroyed several documents.¹³⁵

It stands to reason that in a private market, where people who run a company have a financial incentive to maximize profit and minimize waste, there would be less mismanagement of funds than in a government bureaucracy where executive compensation has nothing to do with profitability. In the words of New Hanover County Commissioner Woody White, "[s]omething like liquor sales as a monopoly—it's going to be run more efficiently and it's going to have less opportunity for corruption and problems if it's in the private sector."¹³⁶

127. *Id.* at 9.

128. *Id.* at 9–10.

129. *Grand Jury Subpoenas Mecklenburg County ABC Employees*, WINSTON-SALEM J., https://journalnow.com/news/local/grand-jury-subpoenas-mecklenburg-county-abc-employees/article_76e00f7a-f2ad-51a4-a54b-d69bc2a2aa17.html [<https://perma.cc/CDC4-JEUT> (dark archive)] (Apr. 16, 2021).

130. N.C. GEN. STAT. § 18B-201(f) (LEXIS through Sess. Laws 2021-162 of the 2021 Reg. Sess.).

131. *Id.*

132. Ann McAdams, *Broken Blue Laws: Push To Privatize NC Liquor Sales*, WECT NEWS, <https://www.wect.com/2018/10/12/broken-blue-laws-push-privatize-nc-liquor-sales/> [<https://perma.cc/76QA-L2VJ>] (Oct. 12, 2018, 1:34 PM).

133. *Id.*

134. Mark Binker, *ABC Board, Council Didn't Spot Problems*, NEWS & REC., https://greensboro.com/news/abc-board-council-didn-t-spot-problems/article_f69a35c6-aed2-5873-b279-60a657b2362b.html [<https://perma.cc/5DGQ-QRV7> (dark archive)] (Jan. 25, 2015).

135. *Id.*

136. McAdams, *supra* note 132.

IV. ARGUMENTS FOR MAINTAINING A GOVERNMENT MONOPOLY

A. “Safety”

Public safety was the reason for implementing a control system in the first place.¹³⁷ Though much has changed since the first half of the twentieth century, opponents of privatization still point to public safety as a primary reason to maintain a government monopoly on liquor sales.¹³⁸ On the North Carolina ABC Commission’s website, the Commission describes itself as “sit[ting] squarely at the intersection of public health, public safety, and fair commercial regulation.”¹³⁹ The Commission has also found support among some grassroots organizations.

For example, “NC Keep it Local,” a group organized in response a 2019 bill that sought to privatize liquor sales,¹⁴⁰ argues on its website that privatization is an inherent danger to public safety.¹⁴¹ The group claims that (1) violence will increase as a result of an increase in “outlet density” of stores that sell liquor and (2) young people will be endangered because they will have increased access to alcohol.¹⁴² Furthermore, they allude to the dangers of alcoholism by quoting a 2000 survey claiming that “[t]he top 10% of the heaviest drinkers consume 63% of all liquor,” and then link that statistic to privatization by stating (in all caps and bright golden font), “PRIVATIZATION WOULD BENEFIT HEAVIEST DRINKERS THE MOST.”¹⁴³

The rhetoric of privatization opponents stands in stark contrast to empirical data.¹⁴⁴ While privatization opponents cite studies of their own,¹⁴⁵ the limitations of these studies are worth mentioning. For example, a 2011 article that appeared in the journal *Alcohol Research & Health*, which was cited by “NC Keep it Local,” does not provide data comparisons between privatized and control states.¹⁴⁶ In fact, the study explicitly states that “[c]omprehensive policy studies of continuing privatization steps in the United States and their effects on alcohol sales and problems are critically needed.”¹⁴⁷ While the article cites

137. See *D&W Inc. v. City of Charlotte*, 268 N.C. 581, 583–89, 151 S.E.2d 241, 254–49 (1966) (describing the Turlington Act and state liquor control laws).

138. See *infra* notes 140–41 and accompanying text.

139. *About the ABC Commission*, N.C. ABC COMM’N, <https://abc.nc.gov/About> [<https://perma.cc/A6GP-Q8LL>].

140. H.B. 971, 2019 Gen. Assemb., 2019–2020 Sess. (N.C. 2019).

141. See *The Case*, NC KEEP IT LOC., https://www.nckeeperlocal.com/the_case [<https://perma.cc/M2WC-SBLM>].

142. *Id.*

143. *Id.*

144. See *supra* notes 89–90 and accompanying text.

145. See *The Case*, *supra* note 141.

146. Paul J. Gruenewald, *Regulating Availability: How Access to Alcohol Affects Drinking and Problems in Youth and Adults*, 34 ALCOHOL RSCH. HEALTH 248, 248 (2011).

147. *Id.* at 250.

several studies suggesting that increased outlet density for alcohol correlates to negative public safety outcomes, it fails to differentiate between places where liquor is sold and places where beer and wine are sold.¹⁴⁸ Also, it does not explicitly study the difference in public safety outcomes between privatized and control states. Further, the article was published before any studies on public safety outcomes of Washington’s transition from control to privatization could be conducted.¹⁴⁹

While it is true that the Centers for Disease Control (“CDC”) has publicly opposed privatization efforts,¹⁵⁰ this position—and the data underlying it—has been roundly criticized by the scientific community, including the former chair of the American Medical Association, Dr. Raymond Scalettar.¹⁵¹ Trevor Butterworth, director of Sense About Science USA,¹⁵² notes that while the CDC argues that privatization leads to an increase in consumption, only two out of the seventeen studies it cites even addressed whether or not increased consumption of liquor leads to harmful outcomes.¹⁵³ Butterworth also notes that the data on harm showed “mixed results” and had “methodological limitations.”¹⁵⁴ In addition to a number of other criticisms of the data underlying the CDC’s conclusion, Butterworth points out that the increase in per capita alcohol sales following privatization is largely due to an increase in wine consumption in Idaho and Maine, which privatized wine sales in 1971.¹⁵⁵ Moreover, while per capita wine consumption did increase in states after 1971, per capita wine consumption also increased by similar margins across America, including in states that already had privatized wine sales and in states that kept government control of wine sales.¹⁵⁶

B. *Government Revenue*

Data from 2016–2017 show that North Carolina state and local governments made over \$406 million in revenue from the current ABC

148. *See id.* at 250–51.

149. *See id.* at 249 (indicating the article was published in 2011). Washington privatized its system in June 2013. *See* Maynard, *supra* note 91.

150. *See Preventing Excessive Alcohol Use*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/alcohol/fact-sheets/prevention.htm> [<https://perma.cc/K7AJ-R6NG>].

151. *See* Trevor Butterworth, *The CDC Goes To War Against Wine*, FORBES (May 13, 2013, 9:27 AM), <https://www.forbes.com/sites/trevorbutterworth/2013/05/13/the-cdc-goes-to-war-against-wine/?sh=6a45516b2bc0> [<https://perma.cc/ZJU8-U2Z3>]; Leonard Gilroy, *Why is the CDC Being Anti-Science on State Liquor Privatization?*, REASON FOUND. (May 14, 2013), <https://reason.org/commentary/cdc-liquor-privatization/> [<https://perma.cc/QU99-JQVB>].

152. Butterworth, *supra* note 151.

153. *Id.*

154. *See id.*

155. *See id.*

156. *See id.*

system.¹⁵⁷ Opponents of privatization cite the importance of this revenue stream and its effects on “keep[ing] property taxes low” as a reason to maintain government control.¹⁵⁸ Maintaining government revenue is still possible with privatization, as shown in Part VI of this Comment, but it would likely result in a slight increase in the price of liquor for consumers.¹⁵⁹ While tax revenue is undoubtedly important for state and local governments, should an institution continue to exist, despite numerous downsides, simply because it raises revenue for the government?

C. “Moral Hazard” of Alcohol

Opponents of privatization argue that increased alcohol consumption is inherently bad.¹⁶⁰ Using this argument to oppose liquor privatization in North Carolina makes sense, in the words of Jon Sanders of the John Locke Foundation, “[o]nly if you consider liquor the only alcoholic beverage.”¹⁶¹ Sanders points out that in states where liquor sales are privatized, including North Carolina, there does tend to be lower rates of liquor consumption.¹⁶² However, if you look at beer and wine consumption rates, privatized states rank much higher in terms of beer and wine consumption, suggesting that North Carolinians may be drinking more beer and wine at present than they would be if liquor sales were privatized.¹⁶³

Moreover, perhaps it makes more sense to base public policy on measurable, objective standards (such as public safety outcomes), than on moral proclamations such as “drinking alcohol is inherently bad,” which are based solely on subjective principles. After all, if eradicating alcohol consumption is a worthy public policy goal in and of itself, why not bring back Prohibition?

157. PROGRAM EVALUATION DIV., CHANGING HOW NORTH CAROLINA CONTROLS LIQUOR, *supra* note 87, at 9.

158. See McAdams, *supra* note 132 (“Jon Carr, a lobbyist for the NC Association of ABC Boards, sent a letter to state lawmakers asking them to ‘oppose any effort to privatize the current ABC system.’ Carr claimed the current system keeps property taxes low.”); see also Brian Caskey, Opinion, *Privatizing Liquor Sales Is a Bad Idea for NC*, CITIZEN TIMES (Apr. 22, 2019, 5:28 PM), <https://www.citizen-times.com/story/opinion/2019/04/22/privatizing-liquor-sales-bad-idea-nc-opinion/3513697002/> [https://perma.cc/LA4X-87DM] (“I suppose we could make up that shortfall with higher property taxes. But aren’t property taxes high enough already? I think so.”).

159. See *infra* Sections VI.B–C.

160. See Butterworth, *supra* note 151 (discussing the “Single Distribution Theory” adopted by the CDC); *The Case*, *supra* note 141 (“Jon Carr, a lobbyist for the NC Association of ABC Boards, sent a letter to state lawmakers asking them to ‘oppose any effort to privatize the current ABC system.’ Carr claimed the current system keeps property taxes low. He also said NC has one of the lowest rates of alcohol consumption per capita in the country, and that changing the system would increase consumption and jeopardize the public health.”).

161. Sanders, *NC’s ABC System: Part 2*, *supra* note 1.

162. See *id.*

163. See Sanders, *NC’s ABC System: Part 1*, *supra* note 6.

V. OPTIONS FOR REFORM

In 2019, PED published a report outlining potential ways to reform the current ABC system while remaining “revenue neutral”¹⁶⁴ and the likely impact of each type of reform.¹⁶⁵ The first decision for major reform is whether to end government control of *only* retail sales or whether to eliminate government control of *both* retail and wholesale operations.¹⁶⁶ Eliminating a government monopoly on retail sales involves a further choice of whether to contract with agency retailers and still have the state determine brand and pricing or whether to simply license private retailers to sell liquor and have the market determine the rest.¹⁶⁷

PED divided these reform options into three categories, the first two of which only involve privatizing retail outlets, while the third also involves privatizing wholesale distribution. First, the Agency Model would dissolve local ABC boards and allow retail sales to be conducted by private retailers, though the ABC Commission would determine the retail price of liquor and what brands could be sold.¹⁶⁸ The ABC Commission would still control wholesale and distribution under the Agency Model.¹⁶⁹ Second, the Private Retail Model would dissolve local ABC boards and allow retail sales to be completely controlled by private retailers licensed by the state.¹⁷⁰ While the ABC Commission would maintain control over wholesale operations, including determining the wholesale price, licensed private retailers would determine what liquor to sell and for what price.¹⁷¹ Third, under the Licensure Model, the government would retain no direct control over the liquor business, and both wholesale operations and retail sales would be controlled by private businesses licensed by the state.¹⁷²

For the purpose of its report, PED assumed that each model would increase access to liquor because there would be more locations authorized to sell liquor.¹⁷³ PED estimated that this would result in a 20% increase in retail liquor consumption.¹⁷⁴ PED calculated the taxation adjustments needed to maintain the current levels of revenue for state and local government and

164. See *Revenue Neutral Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/r/revenue-neutral/> [<https://perma.cc/WV4H-FUJR>].

165. PROGRAM EVALUATION DIV., CHANGING HOW NORTH CAROLINA CONTROLS LIQUOR, *supra* note 87, at 1–2.

166. *Id.* at 16.

167. See *id.* at 3–4 (describing various models for ABC reform).

168. *Id.* at 30–31.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 32.

174. *Id.*

factored in this 20% increase in consumption for those purposes.¹⁷⁵ Thus, if liquor consumption increased less than 20%, revenue maintenance would require higher taxation than outlined below.¹⁷⁶ If liquor consumption increased more than 20%, lower taxation could maintain revenue maintenance.¹⁷⁷

A. *Ending Government Control of Retail Only*

1. General Implications

Regardless of the replacement model, ending government control of retail sales would require figuring out how to dissolve the current ABC retail system.¹⁷⁸ PED reports that there are around 2,870 ABC employees.¹⁷⁹ Ending retail sales would mean terminating these positions.¹⁸⁰ While that may be logistically simple, most local ABC boards participate in the Local Governmental Employees' Retirement System ("LGERS") and withdrawing from it would be costly.¹⁸¹ North Carolina law "requires an employer withdrawing from LGERS to pay the actuarial valuation of the unfunded pension liability for their employees at the time of withdrawal."¹⁸² PED estimates that cost of doing so could exceed \$100 million.¹⁸³

ABC boards have an estimated \$254 million worth of capital assets such as real property, equipment, and vehicles.¹⁸⁴ They also have an estimated \$24.6 million in cash set aside for operations.¹⁸⁵ Some local ABC boards have also taken on debt to purchase capital assets and liquor stock.¹⁸⁶ While PED does not provide an estimate for how much outstanding debt ABC boards have, it notes that local governments cannot be held responsible for ABC board debts and that ABC boards would have to resolve their debts before dissolving their retail operations.¹⁸⁷

Once outstanding debts are resolved, ABC boards' capital assets and cash would accrue upon dissolution to the local government authority that appointed the ABC board, per North Carolina law.¹⁸⁸ PED notes that this process would require no action on the part of the North Carolina General Assembly, but the

175. *Id.* at 33.

176. *Id.*

177. *See id.* (describing the relationship between liquor consumption and government revenue).

178. *Id.* at 18.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* (citing N.C. GEN. STAT. § 128-30(i) (2019)).

183. *Id.*

184. *Id.*

185. *Id.* at 19.

186. *Id.*

187. *Id.*

188. *Id.* at 18–19 (citing N.C. GEN. STAT. §§ 18B-801(d), 18B-805 (2019)).

General Assembly would have to determine how dissolved ABC boards are to dispose of their liquor stock.¹⁸⁹ A transition plan would have to be implemented to determine how consumers will purchase liquor between the closing of ABC retail stores and the beginning of private retail sales.¹⁹⁰ As discussed, ending government control of retail sales would have an immense impact on state employees and the financial health of ABC stores. Still, the two models below posit the benefits of ending such government control.

2. Agency Model

Under PED's Agency Model, both ABC Commission funding and ABC Warehouse operations would continue to be financed through bailment surcharges on each bottle of liquor sold.¹⁹¹ There would be no change in the pricing formula for state government revenue, but local government revenue would be maintained by increasing the 3.5% local government markup to 12% and eliminating the 39.6% local ABC board markup.¹⁹² This model assumes that agency stores would receive a 10% commission on liquor sold.¹⁹³

The Agency Model would result in an estimated 14.8% reduction in retail liquor price and an estimated 12.8% reduction in mixed beverage liquor price.¹⁹⁴

3. Private Retail Model

Like the Agency Model, under the Private Retail Model, both ABC Commission funding and ABC Warehouse operations would continue to be financed through bailment surcharges on each bottle of liquor sold.¹⁹⁵ State government revenue would be maintained by adding a 1% markup to the state pricing formula.¹⁹⁶ This model assumes that licensed stores would add a 25% retail markup.¹⁹⁷

The Private Retail Model would result in an estimated 1.3% reduction in retail liquor prices and an estimated 1.1% reduction in mixed beverage liquor prices.¹⁹⁸ The two models propose frameworks that vary in terms of government control and purported profit. However, the third model is the most extreme. The discussion below explores the Licensure Model and its possible effect on North Carolina liquor prices.

189. *Id.* at 19.

190. *Id.* at 24.

191. *Id.* at 32.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

B. *Ending Government Control of Wholesale Operations: The Licensure Model*

1. General Implications

First, if the ABC Commission were to cease wholesale operations, the state would have to decide what to do with the central warehouse in Raleigh and the contractual obligations tied to it.¹⁹⁹ In doing so, the state could lease the warehouse to a private business, allow another state agency to use it, or sell the property altogether.²⁰⁰ Second, new permits would become necessary for private wholesalers if government control of wholesale liquor ends.²⁰¹ As a result, the ABC Commission would need to keep up with the increased workload of evaluating and issuing new permits.²⁰² These administrative tasks, along with the new transition plan to cease operations of the ABC Warehouse, are important factors in analyzing the administrability of the Licensure Model.²⁰³

2. Government Revenue and Pricing

Under the Licensure Model, no bailment surcharge would be charged to fund the ABC Commission.²⁰⁴ State government revenue would be maintained by increasing the excise tax from 30% to 33.6%, and local government revenue would be maintained by establishing a 12% excise tax.²⁰⁵ This model assumes that wholesalers would add a 20% markup and retailers would add a 25% markup.²⁰⁶

The Licensure Model would actually result in an estimated 15.7% increase in the price of retail liquor and an estimated 13.5% increase in the price of mixed beverages.²⁰⁷

3. The Three-Tier System

Under a “three-tier system,” the manufacturer, distributor, and retailer are required to be separate entities and are separately licensed.²⁰⁸ PED’s report notes that “[e]stablishing a three-tier system for liquor sales would be necessary if the legislature ended government control of wholesale liquor sales”²⁰⁹ That conclusion, however, is far from obvious, and PED provides little to no

199. *Id.* at 24.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 32.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.* at 23.

209. *Id.*

justification as to why this is the case.²¹⁰ When Washington went from full government control of retail and wholesale liquor operations to private licensing at both the retail and wholesale levels, it completely eliminated three-tier restrictions.²¹¹

Proponents of the three-tier system argue that it gives smaller manufacturers greater market access and thus provides more variety for the consumer.²¹² Proponents also argue that the “checks and balances” on each level of the supply chain make it less likely that untaxed and potentially tainted alcohol will be able to enter the market.²¹³

Oponents of the three-tier system counter that the only group that benefits from a three-tier system is the wholesalers.²¹⁴ In most three-tier systems, a manufacturer can only use one wholesaler per geographic area, and once they sign a contract, it is typically very difficult for them to get out of it save for “good cause,” which includes fraud or bankruptcy on the part of the wholesaler, but does not include the wholesaler’s failure to sell the product.²¹⁵ North Carolina’s three-tier system for beer is similarly harsh on manufacturers, which ends up hurting small breweries the most.²¹⁶ Smaller brewers in North Carolina fear “‘parking’—an industry term describing the situation in which a neglected brewery’s product collects dust in the distributor’s warehouse, while the distributor focuses on selling other brewers’ products, for reasons other than customer preference.”²¹⁷

A three-tier system not only puts a substantial amount of risk on smaller manufacturers, but it also virtually eliminates e-commerce in the alcohol industry.²¹⁸ Unlike purchasing almost any other product legally for sale, under

210. See *id.* (arguing that a three-tier system for liquor sales is necessary in the absence of government control of liquor sales).

211. William C. Kerr, Edwina Williams & Thomas K. Greenfield, *Analysis of Price Changes in Washington Following the 2012 Liquor Privatization*, 50 ALCOHOL & ALCOHOLISM 654, 654 (2015).

212. See NABCA RSCH., THE THREE-TIER SYSTEM: A MODERN VIEW 2 (2015), https://www.nabca.org/sites/default/files/assets/files/ThreeTierSystem_Mar2015.pdf [<https://perma.cc/R9JQ-8WKZ>].

213. *Id.*

214. ANGELA LOGOMASINI, COMPETITIVE ENTER. INST., A CARE-LESS RUSH TO REGULATE ALCOHOL 3–6 (2011), <https://cei.org/sites/default/files/Angela%20Logomasini%20-%20A%20CARE-less%20Rush%20to%20Regulate.pdf> [<https://perma.cc/NX9Q-QGW9>].

215. *Id.* at 4–5.

216. See Luke Basha, Comment, *It’s Still 1970 Somewhere: How North Carolina’s Small Craft Breweries Hope To “Craft Freedom” from Antiquated Statutes Friendly to Distributors and National Macrobreweries*, 18 WAKE FOREST J. BUS. & INTELL. PROP. L. 340, 365–69 (2018) (analyzing the impact of the three-tier system on manufacturers).

217. *Id.* at 366.

218. See Beth Newhart, *Alcohol’s Three-Tier System Slows Ecommerce and Dates the Industry*, BEVERAGE DAILY (Feb. 17, 2020), <https://www.beveragedaily.com/Article/2020/02/17/Alcohol-s-three-tier-system-slows-ecommerce-and-dates-the-industry> [<https://perma.cc/9UMG-QYWT>].

a three-tier system, consumers would be unable to order a bottle of their favorite craft spirit directly from the distillery.²¹⁹

Should North Carolina end government control of wholesale operations in the liquor business, it should ensure that it does not set up a three-tier system that allocates virtually all of the risk to distilleries in the state. At the very least, it should ensure that small distilleries have an option to sell directly to consumers if they wish, that distilleries can get out of contractual agreements with distributors who engage in “parking,” and that some form of e-commerce is available to consumers.

VI. LESSONS FROM WASHINGTON

In November of 2011, Washington voters approved a ballot initiative that made Washington the first state since Prohibition to move from a government-control model of liquor sales to a completely privatized model.²²⁰ Private liquor sales in Washington commenced in 2012.²²¹ This part provides an overview of the implications of privatization in Washington.

A. *No Less Safe*

While access to liquor certainly increased in Washington following privatization, alcohol-related automobile accidents and alcohol-related fatalities and injuries did not increase as many privatization opponents feared.²²² According to data from substance abuse centers, there was a decrease in alcohol abuse.²²³ From 2007 to 2017, Washington substance abuse facilities experienced a 3% decrease in clients being treated for alcohol abuse and an 8% decrease in clients being treated for both drug and alcohol abuse.²²⁴

A study published in the Society for the Study of Addiction’s journal, *Addiction*, found that while low and moderate alcohol consumers increased their monthly purchases of alcohol, individuals who consumed the most alcohol

219. *See id.*

220. Maynard, *supra* note 91.

221. *Privatizing Liquor Sales in Washington Has Not Produced Added Safety Problems*, IDAHO FREEDOM FOUND. (Nov. 1, 2013), <https://idahofreedom.org/privatizing-liquor-sales-washington-produced-added-safety-problems/> [<https://perma.cc/US8R-64CD>].

222. DONALD KIMBALL, WASH. POL’Y CTR., *PRIVATIZATION THAT WORKED—GETTING WASHINGTON STATE GOVERNMENT OUT OF THE LIQUOR BUSINESS* (2019), <https://www.washingtonpolicy.org/library/doclib/Kimball-Privatization-that-worked-getting-Washington-state-government-out-of-the-liquor-business.pdf> [<https://perma.cc/Q7WU-DWNH>].

223. *Id.*

224. *Id.*

decreased their monthly purchases.²²⁵ Drinking among young people continued to decline after privatization, in line with historic trends.²²⁶

B. *Government Revenue Increase*

Washington's 2011 ballot initiative was designed to guarantee state and local governments an increase in revenue.²²⁷ According to the "fiscal impact statement" accompanying the initiative, state revenues would increase by \$37 million from \$216 to \$253 million, and local revenues would increase by \$41 million from \$186 to \$227 million over six years.²²⁸ Overall, both state and local government revenues were predicted to increase by 19.4% following privatization.²²⁹

While revenues have not increased quite that much, they have increased by 15% as of 2015.²³⁰ The revenue changes discussed here are in terms of net revenue, and the increase comes as a result of the state spending less to operate a liquor system rather than simply taking in more cash. In other words, the state does not actually collect more tax money. It simply retains more, even while collecting less, because it does not have to spend money running retail and wholesale liquor sales.²³¹

C. *Pricing*

Overall, liquor prices in Washington increased following privatization.²³² This price increase is primarily due to the tax increases imposed postprivatization.²³³ A report from the Washington Policy Center notes that:

Washington has the highest tax rate on liquor in the U.S. by far, the excise rate being \$32.52 per gallon—the second highest rate is from Oregon, which only charges \$21.98. Lowering the tax rate on liquor would help alleviate the economic burden on consumers drastically, most

225. Sarah Beth L. Barnett, Norma B. Coe, Jeffrey R. Harris & Anirban Basu, *Washington's Privatization of Liquor: Effects on Household Alcohol Purchases from Initiative 1183*, 115 ADDICTION 681, 687 (2019).

226. LOOKING GLASS ANALYTICS, INC., WASHINGTON STATE HEALTHY YOUTH SURVEY 68–73 (2017), <https://www.askhys.net/Docs/HYS%202016%20Analytic%20Report%20Final%2010-24-17.pdf> [<https://perma.cc/5ZQ9-P6WT>].

227. Alex P. Ferraro, Note, *Serving the People: Evaluating Initiative 1183 & Liquor Privatization in Washington State*, 76 U. PITT. L. REV. 427, 437 (2015).

228. *Id.*

229. *Id.*

230. Jim Davis, *After Privatization, Here's Who Won and Lost the Liquor Battle*, HERALD BUS. J. (Feb. 8, 2016, 5:09 PM), <https://www.heraldnet.com/business/after-privatization-heres-who-won-and-lost-the-liquor-battle/> [<https://perma.cc/S4C4-GLUC>].

231. *Id.*

232. Kerr et al., *supra* note 211, at 1.

233. *Id.* at 5 (“[P]rices were found to increase as hypothesized given the large (for the USA) taxes that were imposed to make up for revenues lost from ending the control system.”).

likely decreasing the purchase cost of spirits to lower levels than under public management of liquor stores. Additionally, this would help keep Washington liquor businesses competitive with other states, since the high prices for Washington liquor stem from the massive tax burden, not the low retail price. Minimizing the tax rate would be a good move to help liquor privatization realize its full potential.²³⁴

While on average the price for a 750-milliliter bottle of liquor increased 15.5% following privatization, and the price of a 1.75-liter bottle of liquor increased by 4.7%, prices have been found to vary widely by store type.²³⁵

Using a “6 brand index”²³⁶ to track the price of liquor changes, the average price of a 750-milliliter bottle of liquor increased by an average of 15.5% in Washington following privatization.²³⁷ The mean price for a 750-milliliter bottle at a “liquor superstore” (such as Total Wine & More)²³⁸ only increased by 3.9%, while the mean price at smaller liquor stores increased by 27.2%, and the mean price at grocery stores increased by 13.6%.²³⁹ For 1.75-liter bottles, the mean price decreased by a whopping 11.4% at liquor superstores and decreased by 8.2% at “wholesale stores”²⁴⁰ such as Costco.²⁴¹ At smaller liquor stores, the mean price of a 1.75-liter bottle increased by 12.3%, while at grocery stores the mean price for a 1.75-liter bottle increased by 5.21%.²⁴²

These varying outcomes reflect the hypothesis that larger stores could either buy in bulk and obtain lower prices from wholesalers or bypass wholesalers altogether, leading to a substantial decrease in retail markup margins.²⁴³ The success of larger stores following privatization should be no surprise given that Costco spent over \$22 million to try to persuade voters to vote for the privatization initiative, shattering the state record for “most money spent by a single donor on a voter initiative.”²⁴⁴

234. KIMBALL, *supra* note 222.

235. Kerr et al., *supra* note 211, at 1.

236. *Id.* at 4 (using Bombay Sapphire Gin, Bacardi Superior Rum, Absolut Vodka, Crown Royal, Jack Daniel’s Whiskey, and Jameson Irish Whiskey as the six brands).

237. *Id.*

238. *Id.* at 3.

239. *Id.* at 4.

240. *Id.* at 5.

241. *Id.* at 3.

242. *Id.* at 4–5.

243. *Id.* at 5 (“This suggests that these stores were able to obtain lower prices from wholesalers or producers, or to bypass wholesalers in some cases, and were able mark-up these products with lower margins, perhaps partly reflecting lower business costs, than other types of stores.”).

244. Melissa Allison, *Costco’s \$22M for Liquor Initiative Sets Record*, SEATTLE TIMES, <https://www.seattletimes.com/seattle-news/costcos-22m-for-liquor-initiative-sets-record/> [https://perma.cc/E8HC-BHPX] (Oct. 20, 2011, 6:17 AM).

D. *Brand Variety*

Researchers from the Alcohol Research Group developed an index of sixty-eight brands that were popular in Washington preprivatization.²⁴⁵ The researchers found that postprivatization, liquor superstores carried an average of fifty-nine of those sixty-eight brands; smaller liquor stores carried an average of fifty; grocery stores carried an average of forty-five; and drug stores carried an average of forty-one.²⁴⁶ It is not entirely clear from this data, however, whether stores just started carrying different brands but just as much of a variety postprivatization, or whether privatization truly resulted in less variety.²⁴⁷

A local news station in Washington, KREM, analyzed brand selection by looking at the number of varieties of bourbon, and like with pricing, found a wide variance by type of store.²⁴⁸ KREM found that in Idaho, which has a state-run liquor system, there were seventy-six kinds of bourbon available at one state-run liquor store.²⁴⁹ In Walmart and Target in Spokane, Washington, there were only twelve varieties of bourbon available.²⁵⁰ The Trader Joe's in Spokane had fifteen varieties of bourbon available, and a RiteAid had nineteen available.²⁵¹ Total Wine, however, had 168 varieties of bourbon available.²⁵² Based on this data, Washington consumers looking for low prices and variety postprivatization should shop at liquor superstores rather than traditional supermarkets.

VII. THE BEST WAY FORWARD FOR NORTH CAROLINA

The current state monopoly on liquor in North Carolina is devastating to entrepreneurs and extremely inconvenient for consumers. If public safety truly is the reason for maintaining a government monopoly on liquor, then privatization is warranted because all available evidence shows that privatization does not make the public any less safe.²⁵³

If tax revenue is the reason for maintaining a government monopoly on liquor, then it is worth reiterating that liquor sales can be privatized while maintaining the current level of revenue. Whether or not maintaining the

245. Kerr et al., *supra* note 211, at 2.

246. *Id.* at 4.

247. *See id.*

248. Ian Smay & Casey Decker, *Private Liquor in Washington State: Are We Better Off?*, KREM (Nov. 19, 2019), <https://www.krem.com/article/news/investigations/private-liquor-in-washington-state-are-we-better-off/293-9e52bbef-3087-4e46-a5a7-d5dc7324d9af> [<https://perma.cc/3NZZ-2EDY>].

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *See supra* Section IV.A.

current level of government revenue from liquor sales is a worthwhile goal is a question beyond the scope of this Comment. Maintaining the current level of tax revenue would likely result in a slight price increase. Proponents of maintaining the current revenue levels might argue, however, that the projected price increase of 15.7% in the cost of retail liquor²⁵⁴ is fairly inconsequential. For one, whether a bottle of liquor costs \$10 or \$11.57 would be insignificant for many consumers. Furthermore, while liquor may become more expensive in smaller stores such as gas stations if the current level of revenue is maintained, it would still likely become cheaper in larger stores such as Total Wine and Costco. Cost-conscious consumers could plan to buy liquor in larger stores with discount prices.

While both the retail and wholesale sale of liquor in North Carolina should be privatized, a three-tier system should not be adopted. The three-tier system introduces unnecessary obstacles to entrepreneurs, and Washington's privatization experience has shown that a three-tier system is unnecessary for ensuring public safety.

Brand variety and availability is an issue PED did not explore in its report, but Washington's experience shows that, while most private retailers lack the variety found in an ABC store, consumers looking for variety can travel to a big-box store to purchase their liquor. While rural consumers may lack access to big-box stores, the lack of a three-tier system would mean rural consumers could order liquor online, and presumably have access to even more brands than an ABC store allows for now.

CONCLUSION

North Carolina's current government-control model of liquor sales causes far more problems than it solves and should be replaced with a privatized model that does not include a three-tier distribution system. Doing so would likely result in a negligible increase in the price of liquor or a slight decrease in tax revenue. However, that model would have the benefits of eliminating a system that limits entrepreneurial opportunity, is antithetical to the values of the North Carolina Constitution, results in rampant government misconduct and waste, and limits the freedom of North Carolina consumers.

Furthermore, data comparing privatized and control states, along with Washington's experience with privatization, show that public safety—the very reason North Carolina became a control state in the first place—is not served by maintaining a government monopoly on liquor. Given this evidence and the numerous downsides of the current ABC system, North Carolina should move to privatize both retail and wholesale liquor sales. It is past time to end an

254. See *supra* note 207 and accompanying text.

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antiquated system that stifles small business growth and limits the choices of North Carolina consumers.

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