Booze on the Loose: A Critique of Washington State's Liquor Privatization

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ABSTRACT

At the end of Prohibition in the United States, the nation debated how it should regulate liquor. American philanthropist John D. Rockefeller commissioned a study on liquor control so that the scourges of bootlegging and saloons would not reenter American life. That study returned two liquor control plans. Eighteen states adopted Rockefeller's preferred system—a state-controlled liquor monopoly—in which the government controls all retail liquor sales. The remaining states preferred a system in which private citizens and companies enter the liquor trade through a license system. Since states implemented Rockefeller's state-controlled liquor monopoly, Washington has become the only state to dismantle its monopoly system successfully and institute a license system.

Washington's liquor laws are unique. Washington is the only state that loosened the three-tier liquor distribution system, which separates manufacturing, distribution, and retail. Additionally, municipalities in Washington have little ability to regulate liquor in their communities. Furthermore, Washington requires new retail stores to have a floor plan of at least 10,000 square-feet. Finally, Washington collects license fees as a percentage of business revenue. Collectively, Washington's liquor privatization catered to big-box stores, like Costco.

Washington's experience with privatization became a template for other states. However, states should acknowledge the shortcomings of Washington's example in pursuing a private liquor industry. States should allow municipal governments to promulgate their own regulations on the locations and premises of liquor stores. Further, states should keep license fees low and tax retailers' revenue. Ultimately, this Comment argues that the main objective of a state pursuing privatization should be to encourage retail store competition and increase customer satisfaction.

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I. INTRODUCTION

"Vote—vote—we want beer," chanted the United States House of Representatives as they voted to permit the sale of beer and wine.[1] For 13 years, the United States banned the manufacture and sale of alcohol after ratifying the Eighteenth Amendment in 1920.[2] Prohibition, as this era came to be known in American history, was the fruit of a long and successful campaign by the American Temperance Movement.[3] However,

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1. *See* W. J. RORABAUGH, PROHIBITION 101 (Oxford Univ. Press 2018) (internal quotation marks omitted).

2. *See* U.S. CONST. amend. XVIII (repealed 1933).

3. *See* RICHARD F. HAMM, SHAPING THE EIGHTEENTH AMENDMENT 22 (Univ. N.C. Press 1995). Presbyterians, Methodists, Southern Baptists, and other evangelicals organized against the heavy drinking culture that developed in many urban and immigrant communities in what became known as the American Temperance Movement. *See id.* As early as 1812, societies such as the Massachusetts Society for the Suppression of Intemperance educated their congregations about the problems associated with the overuse of liquor. *See* RORABAUGH, *supra* note 1, at 11. The American Temperance Movement gathered momentum in the late 1800s as the National Woman's Christian Temperance Union ("WCTU"), led by Frances Willard, campaigned aggressively for Prohibition. *See* HAMM, *supra*, at 22-27. However, the WTCU needed to overcome the federal liquor tax, which amounted to a significant part of the national tax revenue, reaching over 41% in 1894 and 1898. *Id.* at 95-96. The American Temperance Movement advocated for replacing liquor revenue by passing the Sixteenth Amendment in 1916, permitting

the beginning of the Great Depression made many lawmakers reconsider their favorable stance toward Prohibition.[4] State governments hemorrhaged money and needed a new source of revenue.[5] As a result, lawmakers turned toward taxing distilleries.[6]

The Eighteenth Amendment aimed to end saloons and the sale of illicit liquor.[7] However, Prohibition allowed organized crime to flourish in American cities.[8] The Federal Bureau of Prohibition ("FBP") failed to police homebrewers, moonshiners, and bootleggers.[9] Additionally, the FBP could not stop the flow of illicit liquor coming from the Caribbean and Canada.[10] The FBP's inability to control bootlegging led to the rise of infamous gangsters like Al Capone.[11]

With a worsening economy and the expectation that ending Prohibition would lead to a $500 million increase in federal revenue and 500,000 new jobs, Wets—those in favor of legalizing liquor sales—dominated the 1932 election.[12] President Franklin Delano Roosevelt campaigned for the repeal of the Eighteenth Amendment and subsequently won the Democratic nomination.[13] Women, who originally led the charge for the ratification of the Eighteenth Amendment, backed Roosevelt's campaign and organized a new movement to repeal Prohibition.[14] The Women's Organization for National Prohibition Reform ("WONPR") opposed the Eighteenth Amendment, in part, because the government was incapable of controlling the surge in bootlegged liquor.[15] Ending

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Congress to enact a federal income tax that taxed wealthy Republicans from the northeast. *See* RORABAUGH, *supra* note 1, at 47; *see also* U.S. CONST. amend. XVI. The American Temperance Movement, whose members had become known as "Drys," pursued passing a Constitutional amendment to ban alcohol. *See* RORABAUGH, *supra* note 1, at 48.

4. *See* DANIEL OKRENT, LAST CALL: THE RISE AND FALL OF PROHIBITION 331 (Scribner 2010). In the first years of Prohibition, the federal government made more than $300 million in profit from fines and penalties. *See id.* However, at the start of the Great Depression, enforcement costs rose while revenue from fines and penalties quickly declined. *See id*. In the first three years of the Great Depression, liquor enforcement revenue dropped 60%. *See id.*

5. *See id*. at 348–49.

6. *See id*.

7. *See id.* at 344.

8. *See id*. at 344–45.

9. *See id.*

10. *See id*. at 344.

11. *See id.*

12. *See* RORABAUGH, *supra* note 1, at 23–26, 98, 100 (contrasting "Wets" with "Drys"—individuals against legal liquor).

13. *See* RORABAUGH, *supra* note 1, at 97.

14. *See id.* at 93–95 (crediting Pauline Sabin, a staunch supporter of pro-temperance political candidates, with subduing the WCTU's influence through her Women's Organization for National Prohibition Reform).

15. *See* Sarah Seidman, *The New York Women Who Dismantled Prohibition*, MUSEUM OF THE CITY OF N.Y. (Dec. 15, 2015), https://perma.cc/2KPT-GAUC. Pauline Sabin led WONPR after its founding in 1929. *See id.* WONPR was organized "to show

Prohibition was so popular that Congress passed the Twenty-First Amendment before Roosevelt was sworn in as President.[16]

The Great Depression was not the last national emergency to change the way Americans perceived the liquor industry.[17] In response to the COVID-19 pandemic, Pennsylvania Governor Tom Wolf "ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations . . . ,"[18] including the state-run liquor stores.[19] Shutting down the retail stores led Pennsylvanians in border counties to cross over state lines to purchase alcohol, causing adjacent states to crack down on those traveling to shop for liquor.[20] Representatives from Delaware lamented this interstate travel during a national public health emergency.[21]

Pennsylvania's momentary closure of its liquor stores renewed the debate about whether to privatize its state-run liquor monopoly.[22] On June 8, 2022, the Liquor Control Committee in the Pennsylvania House of Representatives passed H.B. 2272, an amendment to the Pennsylvania Constitution prohibiting the Commonwealth from selling or

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that not all women supported temperance." *Id.* In addition to opposing Prohibition because of the surge of bootleg liquor, WONPR believed that the Eighteenth Amendment was an unreasonable imposition by the government in regulating people's behavior. *See id.*

16. *See* RORABAUGH, *supra* note 1, at 97.

17. *See* Joseph V. Micallef, *How the COVID-19 Pandemic Is Upending the Alcohol Beverage Industry*, FORBES (Apr. 4, 2020, 8:00 AM), https://perma.cc/SST5-USVF.

18. *See* Press Release, Tom Wolf, Governor, Commonwealth of Pa., All Non-Life-Sustaining Businesses in Pennsylvania to Close Physical Locations as of 8 PM Today to Slow Spread of COVID-19 (Mar. 19, 2020) (on file with author).

19. *See* Aubrey Whelan, *As Pa. Liquor Stores Close, Advocates Worry About Risks of Sudden Alcohol Withdrawal*, PHILA. INQUIRER (Mar. 17, 2020, 5:52 PM), https://perma.cc/T5F5-S688.

20. *See* Rob Tornoe, *Delaware Police Are Pulling Over Pennsylvania Drivers, as Some Cross the Border to Buy Alcohol*, PHILA. INQUIRER (Apr. 3, 2020, 3:02 PM), https://perma.cc/Y56S-ZD36; *see also* Shelley Terry, *Ohio Takes Steps to Slow the Rush of Pennsylvanians Crossing the Border to Buy Liquor*, TRIB.-DEMOCRAT (Apr. 15, 2020), https://perma.cc/ESE8-U23B.

21. *See* Paul Burton, *Coronavirus Shines New Light on Pennsylvania's State Liquor Monopoly*, BOND BUYER (Apr. 27, 2020, 9:51 AM), https://perma.cc/UX84-77ZH ("You're forcing travel. You are forcing people to interact with other areas. I don't know if we want Pennsylvanians buying alcohol in New Jersey right now." (statement of Delaware State Representative Seth Grove)).

22. *See* Harrison Cann, *GOP Advances Efforts to Privatize Liquor System Via Constitutional Amendment*, CITY & STATE PA. (June 9, 2022), https://perma.cc/6M3U-NAV4. After Governor Tom Wolf vetoed two previous attempts to privatize Pennsylvania's liquor monopoly in 2015, Republicans in the Pennsylvania House of Representatives proposed a constitutional amendment to bypass the Governor's assumed veto. See *id*. Before Governor Wolf's tenure, three previous Pennsylvania governors, including Governors Ridge, Thornburgh, and Corbett, unsuccessfully attempted to implement a license system. *See* Emma Snyder, *Privatization in Pennsylvania: How Reforming the Pennsylvania Liquor Code Would Benefit the Commonwealth and its Citizens*, 119 PENN ST. L. REV. 279, 281–82 (2014).

manufacturing liquor, privatizing the industry.[23] The Liquor Control Committee voted on September 12, 2022, to send H.B. 2272 to the House for consideration.[24] However, passage of the amendment suddenly became unlikely because the Democratic Party, who generally did not support privatization, won a majority in the Pennsylvania Senate during the 2022 election.[25] If H.B. 2272 did become a ballot referendum, a poll revealed that 64% of Pennsylvania's electorate favored privatization.[26] Therefore, H.B. 2272 would likely succeed should it become a ballot referendum.[27]

Pennsylvania is not the only Commonwealth to pursue privatization.[28] In Virginia, H.B. 328 proposed a transition from a monopoly system to a license system.[29] Though the Virginia legislature did not sign this bill into law, H.B. 328 would permit private individuals to own and operate retail stores but would require those retailers to purchase their spirits from the Virginia Liquor Control Board.[30] H.B. 328 would also create a structure for post-privatization, including controlling the maximum number of retail stores per locality and requiring an affirmative vote to allow retail stores in each town.[31]

As evidenced above, there are different models for liquor control, ranging from complete state control to total privatization. Part II of this Comment begins with an exploration of the legal and governmental mechanisms states adopted to control liquor distribution,[32] including a state monopoly system and a license system.[33] Then, this Comment examines the successes and failures of Washington, the only state to privatize its liquor industry.[34]

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23. *See* H.R.J. Res. 2272, 2022 Gen. Assemb., Reg. Sess. (Pa. 2022); *see also* PA. CONST. art. XI, § 1 (explaining that an amendment to the Pennsylvania Constitution requires passage of the amendment in both chambers of the Pennsylvania Congress, two sessions in a row, followed by a ballot referendum, approved by a majority of the Pennsylvania electorate).

24. *See* Pa. H.R.J. Res. 2272; s*ee also* H.R. 167, 2022 Leg., Reg. Sess. (Pa. 2022) (explaining that H.R. 2272 may be added to the legislative calendar).

25. *See* Cann, *supra* note 22 (recognizing that Democrats are against privatization); *see also* Anna Orso et al., *Democrats Won a Majority of Seats in the Pa. House for the First Time in 12 Years*, PHILA INQUIRER (Nov. 17, 2022, 6:32 PM), https://perma.cc/T7FZ-WD6N.

26. *See* Jan Murphy, *Constitutional Amendment to Sell Off Liquor Stores Would Pass: Poll*, PENNLIVE (Apr. 21, 2022, 4:47 PM), https://perma.cc/K7PJ-Z9FL.

27. *See id.*

28. *See* H.R. 328, 2022 Leg., Reg. Sess. (Va. 2022).

29. *See id.*

30. *See id.*

31. *See id.*

32. *See infra* Section II.A.

33. *See infra* Sections II.A.1–2.

34. *See infra* Section II.B.

This Comment follows by exploring a state's choice to implement liquor control through a license system,[35] including the use of the three-tier system,[36] granting counties and municipalities the opportunity to exercise the local option,[37] and limiting the availability of liquor licenses to control the proliferation of retail stores.[38] This Comment also investigates how to tax liquor effectively to sustain the state's revenue without inflating liquor prices for the consumer.[39] Subsequently, this Comment examines how states could utilize the profits from license fees, excise taxes, and liquor sales taxes.[40]

Part III then analyzes the differences in states' laws and factors lawmakers should consider as they develop a new regulatory scheme.[41] Additionally, Part III recommends that states pursuing privatization should focus their new liquor code on increasing competition and customer satisfaction.[42] Finally, Part IV concludes with a summary of best practices in privatizing a state's liquor monopoly.[43]

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35. *See infra* Section II.C.
36. *See infra* Section II.C.1.
37. *See infra* Section II.C.2.
38. *See infra* Section II.C.3.
39. *See infra* Section II.C.5.
40. *See infra* Section II.C.6.
41. *See infra* Part III. Laws surrounding the liquor industry are far-reaching and complex. *Compare* WASH. REV. CODE § 66.28.160 (2024) (restrictions on promoting liquor at colleges and universities), *with* WASH. REV. CODE § 46.61.506 (2024) (evidence and tests regarding persons under the influence of intoxicating liquor). Dram shop, driving-under-the-influence, and underage drinking laws are an important part of a state's regulatory scheme governing alcohol. *See, e.g.*, *Guidelines*, PA. STATE POLICE, https://perma.cc/BP8L-B3PU (last visited Jan. 25, 2024). However, this Comment's focus narrows on the laws affecting commercial retail storefronts and privatization. Although public health and safety are concerns regarding alcohol consumption policy, *see* RORABAUGH, *supra* note 1, at 110–16, proponents of privatization primarily advocate for the potential economic benefits of privatization. *See* Melissa Allison, *Taking a Closer Look at Liquor Initiative I-1183*, SEATTLE TIMES (Oct. 23, 2011, 9:18 AM), https://perma.cc/6AG3-ZANC. For example, a 2020 study found that monthly liquor purchases in Washington increased by 82% after privatization, despite a 15.5% increase in price for 750 milliliter bottles. Beth L. Barnett et al., *Washington's Privatization of Liquor: Effects on Household Alcohol Purchases from Initiative I-1183*, 115 ADDICTION 681, 682 (2019). Privatization is antithetical to alcohol consumption. *See id.* This Comment therefore examines the economic and regulatory side of privatization. Additionally, this Comment does not address online retail sales of liquor because there is a body of scholarship already dedicated to this issue. *See* Alice Vagun, *A Seat at the Bar: Modernizing Alcohol Laws to Meet the Demands of Responsible Consumers*, 54 UIC L. REV. 1011, 1011–35 (2021); *see also* Sherry Truong, *A Tipsy Balance: Dormant Commerce Clause Limits on a State's Prerogatives Under the Twenty-First Amendment*, 44 HASTINGS CONST. L.Q. 203, 203–24 (2017).
42. *See infra* Part III.
43. *See infra* Part IV.

II. BACKGROUND

After Prohibition, John D. Rockefeller, Jr., a self-proclaimed teetotaler,[44] feared that the United States would revert back to the era of male-dominated saloons and commissioned a study concerning post-Prohibition alcohol laws.[45] Rockefeller hired Raymond Fosdick and Albert Scott to develop a system for alcohol regulation to find a middle ground between unregulated saloons and Prohibition.[46] Shortly after the ratification of the Twenty-First Amendment, Fosdick and Scott published their findings in *Toward Liquor Control*, which became the model for state governments to develop their own regulations.[47]

A. Toward Liquor Control

Toward Liquor Control proposed two liquor control systems for a post-Prohibition United States, the authority plan and the license system.[48] Ultimately, Fosdick and Scott recommended the "Authority Plan."[49]

1. The Authority Plan

The Authority Plan, better recognized as a state-controlled liquor monopoly, vested all power to sell and regulate alcohol to a centralized Liquor Control Board ("Board"), to be appointed by the state's governor.[50] The Board would be the only entity in the state permitted to sell liquor at retail or wholesale.[51] The Board would also distribute licenses to hotels, bars, and restaurants to sell liquor for on-premises consumption.[52] *Toward Liquor Control* argued that under the Authority Plan, states could better police consumption and bootlegging through direct control of the retail stores.[53] Additionally, states with varying populations and cultural beliefs

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44. *See* John D. Rockefeller, Jr., *Foreword* to RAYMOND B. FOSDICK & ALBERT L. SCOTT, TOWARD LIQUOR CONTROL, at xiii (Paul Pisano ed., Ctr. for Alcohol Pol'y 2011) (1933) ("I was born a teetotaler and I have been a teetotaler on principle all my life."); *see generally* RORABAUGH, *supra* note 1, at 13 (defining teetotaler as a person who abstains from alcohol).

45. *See* RORABAUGH, *supra* note 1, at 104–07.

46. *See* Rockefeller, *supra* note 44, at xiv (explaining that Raymond Fosdick was a practicing attorney, Albert Scott was an engineer, and Rockefeller purposefully sought these two individuals from different professions for a "well-balanced survey and appraisal of the lessons of experience"); *see also* RORABAUGH, *supra* note 1, at 104–07.

47. *See* RORABAUGH, *supra* note 1, at 104–07.

48. *See* FOSDICK & SCOTT, *supra* note 44, at 41–60.

49. *See id.*

50. *See id.* at 41–42.

51. *See id.* at 43.

52. *See id.*

53. *See id.* at 52–55, 70–71.

could more easily respond to local concerns about the placement of retail stores.[54]

After the publication of *Toward Liquor Control*, 18 states adopted the Authority Plan.[55] In Pennsylvania, then-Governor Gifford Pinchot—a "Dry"[56]—successfully convinced the Pennsylvania legislature to implement the Authority Plan in 1933.[57] Governor Pinchot's state monopoly plan created a Board that issued licenses to restaurants and bars and set their hours of operation.[58] The Board also owned and operated liquor retail stores throughout Pennsylvania.[59] Additionally, these state stores paid their employees a salary instead of a commission and required their employees "to pass a civil service exam."[60] This system is still in place today.

Like in Pennsylvania, Virginia's legislature influenced then-Governor John Garland Pollard to permit the sale of liquor in 1934 after the Twenty-First Amendment's ratification.[61] Though an advocate for Prohibition, Governor Pollard voted in favor of repealing the Eighteenth Amendment.[62] Governor Pollard claimed that public pressure and the ratification of the Twenty-First Amendment in 31 other states convinced him to vote for legalizing liquor.[63] However, Governor Pollard promised to enact strict laws to limit the distribution of liquor in Virginia.[64] Instead, the Virginia legislature bypassed Governor Pollard and sent a referendum to the Virginia electorate to repeal Virginia's Prohibition law without his input.[65] Virginia's Board, established to operate and supervise Virginia's retail stores, is still in operation today.[66]

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54. *See id.* at 55 ("If community sentiment should turn against local sale of liquor after a period of trial, the [Board]'s shop could be closed merely by the signing of an executive order. There would be no wholesale or retail dealers to protest and demand compensation.").

55. *See* RORABAUGH, *supra* note 1, at 108.

56. *See id.* at 26–33.

57. *See* Snyder, *supra* note 22, at 281.

58. *See* Carrie Hadley, *Pinchot and Prohibition*, 101 W. PA. HIST. 24, 26 (2018), https://perma.cc/HD33-KT8K.

59. *See id.*

60. *See id.*

61. *See Gov. Pollard for Repeal,* N.Y. TIMES, (Oct. 2, 1933), https://perma.cc/YT7W-RZX4.

62. *See id*.

63. *See id.*

64. *See id.*

65. *See* Ronald L. Heinemann, *John Garland Pollard (1871–1937)*, ENCYCLOPEDIA VA. (Dec. 22, 2021), https://perma.cc/U9RE-JEE8.

66. *See id.*

2. License System

Toward Liquor Control's alternative to the Authority Plan was a license system, which the majority of states adopted in some version.[67] Like the Authority Plan, a centralized Board would regulate the liquor market.[68] However, the Board would issue licenses to private licensees for the manufacture, distribution, and retail sale of liquor.[69] Additionally, the Board would regulate licenses "with respect to the number and character of places where liquor may be sold."[70] This regulation would limit the number of licenses issued based on the population of municipalities, local zoning ordinances, and proximity to churches and schools.[71] Furthermore, the issued licenses would be limited "not only to the person who sells, but to the *premises* where the liquor is sold."[72] The license system also would allow the "local option," in which counties or municipalities could vote to become a dry community.[73] However, Fosdick and Scott warned against the local option because they considered liquor policies too nuanced for community voting, and citizens could easily travel to other counties to purchase liquor.[74]

B. Washington State's Privatization

Almost 80 years after the end of Prohibition, Washington became the first and only state to privatize its liquor industry.[75] In 2011, Washington residents considered I-1183, a ballot initiative to privatize the manufacture and sale of alcohol in the state.[76] Costco Wholesale Corporation ("Costco") invested $20 million in the campaign to approve ballot initiative I-1183, which passed with 59% of the vote.[77] The Washington Association for Substance Abuse & Violence Prevention challenged I-1183's constitutionality, arguing that I-1183's language violated Article

67. *See* FOSDICK & SCOTT, *supra* note 44, at 27–34.
68. *See id*.
69. *See id.* at 28; *see also* RORABAUGH, *supra* note 1, at 106 (noting that the three-tier system would economically separate the manufacturers, wholesalers, and retail sellers of liquor, and each licensee could not have any economic interest in a business with a different type of license).
70. FOSDICK & SCOTT, *supra* note 44, at 30.
71. *See id.*
72. *Id.* at 32.
73. *Id.* at 35.
74. *See id.* at 36.
75. *See* Meenakshi S. Subbaraman et al., *Reversal of Voters' Position Since the Privatization of Spirits Sales in Washington State*, 19 PREVENTATIVE MED. REP. 1, 3 (2020).
76. *See id*.
77. *See id.*

II, section 19 of the Washington Constitution, the single subject rule.[78] Ultimately, the Supreme Court of Washington held that the initiative was constitutional and that its language was not false or misleading.[79] Senate Bill 5644, enacted to codify I-1183, officially privatized Washington's liquor industry in 2013.[80]

I-1183 was not the first attempt at privatization in Washington.[81] In 2010, voters rejected ballot initiatives I-1100 and I-1105, both of which sought to privatize the liquor industry in Washington.[82] Both initiatives involved a three-tier system, which separates the manufacture, wholesale, and retail sale of alcoholic products by restricting a business engaged in one tier from having an economic interest in another tier.[83] I-1100 intended to implement the traditional three-tier system for liquor but eliminate the three-tier system for beer and wine.[84] Alternatively, I-1105 required strict adherence to the three-tier system and prohibited quantity discounts.[85]

After these initiatives failed, Governor Chris Gregoire signed Senate Bill 5942 in 2011.[86] Senate Bill 5942 required Washington to lease its warehouses and wholesale distribution systems to private parties, but the state retained control of the retail stores.[87] Only a few months later, I-1183 repealed Senate Bill 5942.[88]

Among Washington's residents, the immediate results of I-1183 were unpopular.[89] Approximately 20% of Washington's residents wished to change their vote on I-1183 three years after privatization.[90] Moreover, residents who voted in favor of the initiative were eight times more likely to change their vote.[91] Residents changed their opinion because retail

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78. *See* Wash. Ass'n for Substance Abuse & Violence Prevention v. State, 174 Wash.2d 642, 654 (Wash. 2012); *see also* WASH. CONST. art. II, § 19 ("No bill shall embrace more than one subject, and that shall be expressed in the title.").

79. *See Wash. Ass'n for Substance Abuse & Violence Prevention*, 174 Wash.2d at 664.

80. *See* S.B. 5644, 63rd Leg., 2nd Spec. Sess. (Wash. 2013).

81. *See Double Approval: I-1100 and I-1105*, COLUMBIAN (Oct. 12, 2010, 12:00 AM), https://perma.cc/Y23F-UX5B.

82. *See id.*

83. *See, e.g.*, WASH. REV. CODE § 66.28.285 (2024).

84. *See Double Approval: I-1100 and I-1105*, *supra* note 81.

85. *See* WASH. H.R. OFF. PROGRAM RSCH., SUMMARY OF INITIATIVE 1105 (Comm. Print 2010).

86. *See* S.B. 5942, 62nd Leg., 1st Spec. Sess. (Wash. 2011).

87. *See id.*

88. *See* WASH. S. COMM. SERV., SUMMARY OF INITIATIVE 1183 TO THE PEOPLE (Comm. Print 2011).

89. *See* Press Release, Pub. Health Inst., Years After Liquor Privatization, Washington State Residents Regret Vote to End State Monopoly (June 28, 2016), https://perma.cc/2UGD-2MCA.

90. *See id*.

91. *See id.*

stores proliferated and prices increased.[92] The number of retail stores statewide increased from 330 to around 1,600 stores.[93] Additionally, liquor prices rose on average 15.5% for 750-milliliter bottles and 4.7% for 1.75-liter bottles.[94] Higher prices led to "border bleed," in which residents crossed into Oregon and Idaho to find cheaper liquor.[95] However, large wholesale stores like Costco and Total Wine and Spirits did not implement the same price increases.[96]

Washington residents not only experienced large price increases and retail store proliferation but also saw mass layoffs of state retail store employees.[97] In response to privatization, retail stores laid off over 700 clerks.[98] More than half of these clerks did not find employment for over a year after I-1183's passage.[99] In comparison, Pennsylvania currently employs 3,500 liquor store clerks at risk of termination upon privatization.[100]

C. Regulation by License

At the end of Prohibition, lawmakers who opted for the license system also adopted laws based on the recommendations in *Toward Liquor Control*.[101] Some states like Nevada, Louisiana, and Missouri loosened liquor laws and kept excise taxes low.[102] Alternatively, states like Kansas, Mississippi, and Tennessee enacted restrictive liquor laws.[103] New Jersey, concerned about respecting the wishes of small religious groups, granted key regulatory decisions to municipal governments.[104] Similarly, Colorado implemented strict rules on the location of retail stores.[105] To best understand the range of liquor laws in the United States, this

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92. *See id.*
93. *See id.*
94. *See* William C. Kerr et al., *Analysis of Price Changes in Washington Following the 2012 Liquor Privatization*, 50 ALCOHOL & ALCOHOLISM 654, 658 (2015), https://perma.cc/8HMY-EK6C.
95. *See* Allison Steele, *How Washington Fared When State Stores Died*, PHILA. INQUIRER (June 18, 2013, 3:01 AM), https://perma.cc/UUK5-PY8T.
96. *See* Press Release, Pub. Health Inst., *supra* note 89.
97. *See* Steele, *supra* note 95.
98. *See id*.
99. *See id.*
100. *See id.*
101. *See* FOSDICK & SCOTT, *supra* note 44, at 24–40.
102. *See The Laws & Regulating Bodies Controlling How Beer, Wine, and Liquor is Sold,* AM. ADDICTION CTRS. [hereinafter *Regulating Bodies*] (Aug. 24, 2022), https://perma.cc/34NR-X3WM.
103. *See id.*
104. *See id.*
105. *See* Will Cornelius, *Family Owned Liquor Stores Face Uncertain Future as Voters Could Decide Key Changes at the Ballot*, COLO. PUB. RADIO (Aug. 4, 2022, 4:00 AM), https://perma.cc/C6UG-ZBFP.

Comment compares the liquor laws of Missouri, Tennessee, New Jersey, and Colorado to Washington's liquor code.[106]

1. Three-Tier System

The three-tier system of liquor distribution outlined in *Toward Liquor Control* is implemented in nearly every state that has a private liquor industry.[107] A three-tier system separates the manufacturing, wholesale, and retail sale of liquor into three distinct license classes.[108] Manufacturers may only sell to wholesalers, and wholesalers may only sell to retail establishments.[109] Additionally, holding a license in one tier bars a business from having a financial interest in another tier.[110] Furthermore, a business may lose its license if it engages in any activities prohibited under that license.[111]

Each license tier requires licensees to adhere to specific rules.[112] However, not every state separates the tiers by license type.[113] For example, licensees in Missouri are granted either a manufacturer's or wholesaler's license, and the state regulates the licensee based on the company's business practices.[114] License fees depend on whether the licensee deals in malt liquor that is no more than 5% alcohol, liquor that is no more than 22% alcohol, or liquor of any alcohol level.[115] To separate Missouri's wholesale and retail tiers, retail licensees may only sell liquor

106. *See infra* Section II.C. These states are not meant to represent a perfect cross-section of U.S. liquor laws. *See Regulating Bodies*, *supra* note 102. Colorado, Missouri, Tennessee, and New Jersey were chosen because they take different approaches to common concerns in liquor license laws. *See id.*

107. *See* FOSDICK & SCOTT, *supra* note 44, at 24–40; *see also The Three-Tier System: A Modern View*, NAT'L ALCOHOL BEVERAGE CONTROL ASS'N [hereinafter *A Modern View*], https://perma.cc/H4ZJ-RBK5 (last visited Dec. 21, 2023).

108. *See id.*

109. *See* TENN. CODE ANN. § 57-3-203(f)(1) (2023).

110. *See, e.g.*, *id.* ("[N]o license shall be issued to any corporation unless such corporation meets the following requirements: . . . (B) No person owning stock in such corporation shall have any interest as partner or otherwise in a business licensed to engage in the retail sale of intoxicating liquors in Tennessee . . . .").

111. *See, e.g.*, N.J. REV. STAT. § 33:1-11.5 (2023) ("If, in the opinion of the director, privileges conferred by any Class B license, whether held by a resident person or a foreign person, are being used to circumvent or evade the provisions of this act, the director may revoke such Class B license . . . .").

112. *See* N.J. REV. STAT. § 33:1-10 (2023). Most states grant different licenses at the manufacture and retail tiers whether the licensee produces or sells beer, wine, malt liquor, fortified wine, or liquor. *See, e.g.*, N.J. REV. STAT. § 33:1-12 (2023); *see also* N.J. REV. STAT. § 33:1-10 (2023). This Comment focuses on liquor retail licenses. *See also A Modern View*, *supra* note 107.

113. *See, e.g.*, MO. REV. STAT. § 311.180(1) (2023).

114. *See id.*

115. *See id.*

in "a drug store, a cigar and tobacco store, a grocery store, a general merchandise store, [or] a confectionery or delicatessen store . . . ."[116]

Other states grant multiple types of licenses in each tier, each with its own restrictions.[117] Colorado and Tennessee, like Missouri, impose different restrictions on manufacturers based on the product and size of the operation.[118] However, Colorado and Tennessee have separate licenses for the wholesale of beer and other intoxicating beverages, and businesses may obtain both types of licenses.[119] Additionally, Colorado and Tennessee issue separate licenses for liquor retailers.[120] Colorado separates retail licenses further with a special license for liquor-licensed drugstores.[121]

New Jersey takes a different approach and divides the tiers into specific classes of licenses, each having multiple sub-classes.[122] Class A licenses are issued to manufacturers depending on the quantity and type of products produced, including a general license to distill spirits,[123] a license to distill fruit to make cordials,[124] a license to distill craft spirits,[125] and a

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116. MO. REV. STAT. § 311.200(1) (2023).

117. *See, e.g.*, COLO. REV. STAT. § 44-3-401 (2023).

118. *See* COLO. REV. STAT. § 44-3-402(7) (2023); *see* TENN. CODE ANN. § 57-3-202 (2023).

119. *See* COLO. REV. STAT. § 44-3-407(1) (2023); *see* TENN. CODE ANN. § 57-3-203(a)-(c) (2023).

120. *See* COLO. REV. STAT. § 44-3-409 (2023); *see* TENN. CODE ANN. § 57-3-204 (2023).

121. *See* COLO. REV. STAT. § 44-3-410 (2023). The two main distinctions between a retail liquor store and a liquor-licensed drug store are the requirements for non-liquor purchases and the presence of a manager. *Compare* COLO. REV. STAT. § 44-3-409 (2023) (retail liquor store), *with* COLO. REV. STAT. § 44-3-410 (2023) (liquor-licensed drug store). A retail liquor store must make less than 20% of its annual revenue from "the sale of nonalcohol products." § 44-3-409(1)(b). However, a liquor-licensed drug store must generate 20% or more of its annual revenue from nonalcohol related products. *See* § 44-3-410(2)(b)(IV)(A). Additionally, a liquor-licensed drug store must "have at least one manager permitted under section 44-3-427 who works on the licensed premises" and is permitted to purchase products from a wholesaler for the liquor-licensed drug store. § 44-3-410(6)(a).

122. *See* N.J. REV. STAT. § 33:1-9 (2023) (indicating that a Class A license is a manufacturer's license, a Class B license is a wholesaler's license, and a Class C is a retailer's license).

123. *See* § 33:1-10(3)(a). A plenary distillery license in New Jersey authorizes the license holder "to manufacture any distilled alcoholic beverages and rectify, blend, treat and mix, and to sell" the license holder's products. *See id.*

124. *See* § 33:1-10(3)(b). A limited distillery license authorizes the license holder "to manufacture and bottle any alcoholic beverages distilled from fruit juices and rectify, blend, treat, mix, compound with wine and add necessary sweetening and flavor to make cordial or liqueur." *Id.*

125. *See* § 33:1-10(3)(d). A craft distiller may not manufacture "more than 20,000 gallons of distilled alcoholic beverages." *Id.* A craft distiller may sell their products for on-premises consumption if the sale is connected to a tour of a distillery. *See id.* A craft distiller may also sell their products at retail for off-premises consumption but may not sell more than five liters of product per person. *See id.*

license to blend previously distilled spirits.[126] Similar to Class A, the state issues Class B licenses to wholesalers and separates the license by the type of product the wholesaler distributes.[127] Class C retail licenses are statutorily separated based on the type of business the licensee operates.[128] New Jersey issues retail licenses for on-premises consumption including restaurants;[129] boats, airplanes, limousines, and trains;[130] nightclubs;[131] and sporting facilities.[132] However, New Jersey grants a singular license for stores that sell liquor at retail for off-premises consumption.[133] Additionally, New Jersey grants a limited retail distribution license,[134] similar to Colorado's liquor-licensed drug stores.[135] New Jersey's limited retail distribution license only permits stores to sell "unchilled, brewed, malt alcoholic beverages in quantities of not less than 72 fluid ounces . . . ."[136]

Washington was the first state to alter the three-tier system.[137] After passing I-1183, Washington implemented a privatized three-tier system of

126. *See* § 33:1-10(4). A license to blend previously distilled spirits allows a licensee to "rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend, and treat fermented alcoholic beverages." *Id.*

127. *See* § 33:1-11(1). A Class B licensee may obtain a plenary wholesale license, which permits the wholesaler to maintain a warehouse and inventory in New Jersey and sell any alcoholic beverage to retailers in New Jersey. *See id.* Alternatively, a wholesaler may obtain a more restrictive, limited license. *See* § 33:1-11(2)(a). A limited wholesale license permits a licensee "to sell and distribute brewed malt alcoholic beverages and naturally fermented wines to retailers." *Id.* Additionally, a wholesaler may elect to only sell wine under a wine wholesale license, § 33:1-11(2)(b), or sell "brewed, malt alcoholic beverages" under a state beverage distributor's license. § 33:1-11(2)(c).

128. *See* § 33:1-12.

129. *See* § 33:1-12(1).

130. *See* § 33:1-12(4).

131. *See* § 33:1-12(5).

132. *See* § 33:1-12(6).

133. *See* § 33:1-12(3)(a) ("Plenary retail distribution license").

134. *See* § 33:1-12(3)(b) ("Limited retail distribution license").

135. *See* COLO. REV. STAT. § 44-3-410 (2023).

136. N.J. REV. STAT. § 33:1-12(3)(b) (2023).

137. *See* WASH. REV. CODE § 66.24.630 (2024).

liquor distribution, separating distillers,[138] distributors,[139] and retailers.[140] However, Washington relaxed the three-tier system to cater to Costco and other big-box stores.[141] The Board only granted new retail licenses to previously owned state retail store locations or new 10,000-square-foot retail stores.[142] This size requirement priced many small retailers out of the market.[143]

Costco and other big-box stores gained other benefits after privatization.[144] First, Washington permits off-premises retail licensees to sell to on-premises retail licensees,[145] a practice that is forbidden in other states.[146] Second, the Superior Court of Washington in *Costco Wholesale Corp. v. State Liquor Control Board* held that a Board rule limiting purchases to twenty-four liters was invalid, allowing big-box stores to sell in bulk to on-premises retailers.[147] Finally, Washington permits retailers to

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138. *See* WASH. REV. CODE § 66.24.140(2)(a) (2023). Distillers in Washington are granted more independence than distillers in other states because they may store their products at a warehouse separate from their licensed location and can bypass distributors by selling their products directly to retailers. *See* WASH. REV. CODE § 66.24.140 (2023).

139. *See* WASH. REV. CODE § 66.24.055 (2023). A "spirit's distributor's license" places very few limitations on what businesses a distributor may source products from or sell products to. *Id.* Distributors may purchase products "from manufacturers, distillers, or suppliers including, without limitation, licensed Washington distilleries, licensed spirits importers, other Washington spirits distributors, or suppliers of foreign spirits located outside of the United States." *Id.* Distributors may then sell their products to "other spirit distributors" and retail licensees for on-premises and off-premises consumption. *Id.* Finally, distributors may export their products out of Washington. *See id.* In sum, distributors may purchase products from nearly every licensee in the first and second tiers and may sell their products to nearly every licensee in the second and third tiers. *See id.*

140. *See* § 66.24.630; *see also id.* (creating a license for grocery stores to sell liquor).

141. *See* Sean P. Sullivan, *Focusing on Initiative 1183 Part II: Central Warehousing*, NW. WINE REP. (Oct. 21, 2011), https://perma.cc/TRT6-ZP7C (noting that central warehousing permits Costco to buy in bulk, lower their operational cost, and to purchase alcoholic beverages directly from Washington producers, cutting out the need for distributors).

142. *See* WASH. REV. CODE § 66.24.630 (2023). Grocery stores that were previously licensed by the Board to sell beer and wine received an advantage because they became eligible to apply for a license as a "now licensed" liquor retailer. *See* § 66.24.630(3)(c) ("The board may not deny a spirits retail license to an otherwise qualified contract liquor store at its contract location or to the holder of former state liquor store operating rights sold at auction . . . on the grounds of location, nature, or size of the premises to be licensed.") This eligibility gave grocery stores the ability to sell liquor even if they did not have a 10,000-square-foot premises. *See Id*.

143. *See* Sullivan, *supra* note 141.

144. *See id.*

145. *See* WASH. ADMIN. CODE § 314-02-106(3) (2023).

146. *See, e.g.*, N.J. REV. STAT. § 33:1-12(1) (2023).

147. *See* Costco Wholesale Corp. v. State Liquor Control Bd., No. 12-2-01312-5, 2013 Wash. Super. LEXIS 42, at *11 (Wash. Super. Ct. Apr. 29, 2013) (overruling WASH. ADMIN. CODE § 314-02-103(2), which prohibited grocery store licensees from exceeding 24 liters of liquor in a single sale, and WASH. ADMIN. CODE § 314-02-106(1)(c) (2023), which prohibited retail liquor licensees from selling more than twenty-four liters of liquor in a single sale).

operate a warehouse that is unattached to the licensed premises, permitting liquor retail chains to operate more efficiently.[148] Loosening the restrictions between tiers, permitting centralized warehousing of products, and removing single-sale restrictions opened the door for Costco and other big-box stores to act as both a wholesaler and a retailer.[149]

2. Local Option and Community Control

In creating license systems, lawmakers considered municipal governments' role in the liquor license system.[150] At the end of Prohibition, while most states guaranteed the right to manufacture alcohol, some states granted citizens the power to prohibit retail stores at the county level.[151] Fosdick and Scott recognized the difficulty of creating a liquor control system that would satisfy both rural and urban communities in the same state.[152] Today, the "local option" permits local governments to vote to ban the sale of alcohol in their city, county, or municipality.[153]

However, the local option's application may change depending on whether a state is dry or wet by default.[154] A wet state, like Washington, permits cities, municipalities, and unincorporated areas to prohibit the sale of alcohol by exercising the local option.[155] However, electing to prohibit the sale of alcohol results in the locality becoming ineligible for the distribution of funds collected through state excise and liquor sales taxes.[156] In contrast, the local option works in the opposite manner in dry-

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148. *See* WASH. REV. CODE § 66.24.630(3)(d) (2023) (permitting retailers to operate a warehouse that sells to both buyers outside of Washington and on-premises retailers); *see also* § 66.24.630(3)(e) (permitting retail licensees or groups of retail licensees to accept shipments to a warehouse at a location that is not part of the licensed premises); *see also* Jeff Siegel, *The Highs and Woes of Alcohol's Three-Tier System*, WINE ENTHUSIAST (Sept. 6, 2022), https://perma.cc/V88T-N2PS (explaining that chain liquor stores cannot operate as efficiently as chain grocery stores without a regional centralized warehouse or distribution center).

149. *See* Chad Sokol, *5 Years After Privatization, Washington Liquor Sales Are Up Despite Price Increase*, AP NEWS (Dec. 13, 2017), https://perma.cc/PH6R-E4TH.

150. *See* RORABAUGH, *supra* note 1, at 109.

151. *See id.*

152. *See* FOSDICK & SCOTT, *supra* note 44, at 8 ("[The local option] will be more satisfactory than would be an ambitious plan of greater geographical magnitude under which the wishes of thousands of neighborhoods are disregarded in the interest of some shadowy common good.").

153. *See, e.g.*, COLO. REV. STAT. § 44-3-410 (2023) (permitting cities, municipalities, or counties to ban or limit the sale of alcoholic beverages by "voting at any regular election or special election called for that purpose in accordance with the election laws of this state . . . within their respective limits").

154. *See Dry America in the 21st Century*, NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, [hereinafter *Dry America*], https://perma.cc/R2RT-K2ES (last visited Nov. 18, 2022).

155. *See* WASH. REV. CODE § 66.40.020 (2023).

156. *See* § 66.08.200 (regarding counties and unincorporated areas); *cf.* § 66.08.210 (regarding cities).

by-default states by requiring affirmative allowance of alcohol sales.[157] For example, Tennessee's local option acts as a county-level referendum to *permit*, rather than prohibit, the sale of alcohol.[158]

Moreover, some states' liquor laws make the local option ineffective.[159] Missouri does not permit any county or municipality to ban the sale of liquor at retail.[160] However, Missouri does permit incorporated cities the option to prohibit on-premises consumption in the form of a ballot question.[161] However, the Missouri Liquor Control Law requires all incorporated cities, towns, and villages to comply with state liquor law and the laws or ordinances "of any city, town or village to the contrary notwithstanding."[162] In *Modern Day Veterans Chapter No. 251 v. City of Miller*, the Southern District Court of Appeals of Missouri defined "notwithstanding" as "in spite of" and held that the Liquor Control Law preempts local ordinances.[163] Therefore, the court rendered the local option in Missouri ineffective, resulting in zero dry counties or municipalities in the state.[164]

New Jersey took a different approach and vested certain powers regarding retail liquor sales to municipal governing boards.[165] Through these boards, municipalities may limit the number of liquor licenses or refuse to issue retail licenses.[166] These board powers are not absolute, and licensees may appeal any municipal ordinance to the commissioner of a board.[167]

Alternatively, Colorado permits local government control through multiple avenues.[168] First, cities and municipalities in Colorado may prohibit the sale of alcohol by local option.[169] Second, licensees, regardless of the class of license obtained, must obtain a liquor license from both the

157. *See Dry America*, *supra* note 154 (recognizing Kansas, Tennessee, and Mississippi as the only states "where localities must take pro-active steps to allow the sale of alcohol").

158. *See* TENN. CODE ANN. § 57-2-103 (2023) (permitting the manufacture of alcohol by local option); *see also* § 57-3-102 (permitting the sale of alcohol by local option).

159. *See, e.g.*, MO. REV. STAT. § 311.110 (2023).

160. *See id.*

161. *See id*.

162. *See* § 311.040.

163. *See* Mod. Day Veterans Chapter No. 251 v. City of Miller, 128 S.W.3d 176, 178 (Mo. Ct. App. 2004).

164. *See* NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, WET & DRY COUNTIES 11 (2017), https://perma.cc/LQ7P-P74L.

165. *See* N.J. REV. STAT. § 33:1-40 (2023).

166. *See id.*

167. *See id.*

168. *See, e.g.*, COLO. REV. STAT. § 44-3-410 (2023).

169. *See id.*

state and local licensing boards.[170] Finally, the state licensing board must consider the "reasonable restrictions that are or may be placed upon [a] neighborhood by the local licensing authority[]" before granting a license.[171] Therefore, if a county or municipality does not opt for the local option, a local licensing board may still exert control over the licensing process and block licenses, limiting the number of retail stores in the community.[172]

3. Size and Location

In addition to local control, Fosdick and Scott recognized limitations to the local option and recommended that license states should be mindful of the nature of the licenses they are issuing.[173] *Toward Liquor Control* recommended that states restrict the number of licenses, the character of the licenses, and the licensed premises' proximity to schools and places of worship.[174] Modern liquor laws consider these three aspects when limiting retail licenses.[175]

The proximity of retail stores to churches, schools, and public institutions remains a chief concern, and states address this concern differently.[176] Colorado requires retail stores to have 500 feet of separation from churches, schools, and public institutions while Missouri only requires a separation of 100 feet.[177] Tennessee has no statewide law restricting the proximity of liquor stores to churches, schools, or public institutions but, rather, gives that authority to municipal governments.[178]

170. *See* § 44-3-304(3) ("The state licensing authority shall not issue a license pursuant to this section until the local licensing authority has approved the application . . . .").

171. *Id.*

172. *See* § 44-3-301(2).

173. *See* FOSDICK & SCOTT, *supra* note 44, at 35–36 ("Although voters should not be asked to vote on problems that are too complicated or involved, the choice between 'wet' or 'dry' is too narrow. The automobile has upset the possibility of certain types of local restriction, and this condition should be frankly recognized.").

174. *See id.* at 30.

175. *See, e.g.*, COLO. REV. STAT. § 44-3-313 (2023) (outlining the requirements a licensed premises must meet).

176. *See, e.g.*, COLO. REV. STAT. § 44-3-301(2) (2023).

177. *See* § 44-3-313(1)(d)(I). Colorado's 500-feet requirement extends to "any public or parochial school or the principal campus of any college, university, or seminary." *Id.* Local licensing authorities in Colorado may also reduce this distance or remove any of the church or school categories from this list. § 44-3-313(1)(d)(IV). *But see* MO. REV. STAT. § 311.080 (2023) (noting that a majority from the municipal authority may waive this requirement or require the separation of retail liquor stores from schools and churches be up to no more than 300 feet).

178. *See* METRO GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, TENN., CODE ORDINANCES 863 § 7.16.030 (2023). *But see* FRANKLIN, TENN., CODE ORDINANCES § 8-106. The variance between municipal regulations governing proximity can be seen in the codes of the Metro Government of Nashville and Davidson County, and Franklin, Tennessee, a

Alternatively, Washington requires potential licensees to provide notice to churches, schools, and public institutions within 500 feet of the proposed retail location.[179] However, Washington does not automatically bar retail stores in this area.[180] The only exception is that elementary and secondary schools are able to block a proposed license with proper notice from the school's administration.[181]

Retail store overconcentration is a growing concern among states.[182] Without adequate controls, retail stores may proliferate, as evidenced by the rapid increase in Washington retail stores after Washington's privatization.[183] However, there are several strategies that states use to control the overconcentration of retail stores.[184] For example, New Jersey limits municipalities to one retail store for every 3,000 citizens.[185] Additionally, New Jersey limits individuals or corporations to operate a maximum of two licensed premises per county.[186] Alternatively, Tennessee allows municipalities to limit licenses with the exception that a wet county cannot limit licenses to the point in which access to alcohol is restricted.[187] Finally, Colorado regulates the proximity of retail stores to

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suburb of Nashville. *Compare* METRO GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, TENN., CODE ORDINANCES 863 § 7.16.030 (2023), *with* FRANKLIN, TENN., CODE ORDINANCES § 8-106. Franklin requires retail liquor stores to be at least 200 feet from public libraries and certain private residences and 300 feet from churches and schools. *See* FRANKLIN, TENN., CODE ORDINANCES § 8-106(1)(a)-(b). Alternatively, Nashville requires retail liquor stores to be 150 feet from a public library on the same side of the street, 300 feet from a church, and 600 feet from a school or college. *See* METRO GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, TENN., CODE ORDINANCES 863 § 7.16.110.

179. *See* WASH. REV. CODE § 66.40.010(9) (2023).

180. *See id.*

181. *See id*.

182. *See* Nikita Biryukov, *Lawmakers Hear Competing Visions for Liquor License Reform*, N.J. MONITOR (May 10, 2022, 7:02 AM), https://perma.cc/3NKX-FUN8 (explaining that limiting retail licenses to a ratio of one license for every 3,000 citizens slows economic growth); *see also Overview of Alcohol Outlet Density Regulation,* PREVENTION FIRST, [hereinafter *Density Regulation*], https://perma.cc/E2WC-8YNM (last visited Jan. 5, 2023) (explaining that higher retail store density leads to an increase in violence, crime, and alcohol-related injuries).

183. *See* Press Release, Pub. Health Inst., *supra* note 89.

184. *See id.*

185. *See Density Regulation, supra* note 182. Limiting retail licenses based on population and limiting the number of licenses an individual or corporation may hold is facing a significant challenge since the COVID-19 pandemic. *See id.* Governor Phil Murphy of New Jersey made a priority out of undoing the current limitations that are now in place. *See* Ask Governor Murphy, *Ask Governor Murphy: The Culture War around Sex-Edin Elementary Schools*, WNYC, at 34:23 (Apr. 19, 2022), https://perma.cc/6RXM-RHFF. Governor Murphy is facing blow back from current licensees because a license may have cost a licensee hundreds of thousands or millions of dollars, making the retail license one of the most valuable assets of the company. *See Density Regulation*, *supra* note 182.

186. *See Density Regulation*, *supra* note 182.

187. *See* TENN. CODE ANN. § 57-3-208(c) (2023).

each other and permits municipalities to control the location of retail stores through zoning codes.[188]

Once a state establishes a suitable location for the retail license, it then regulates the licensed premises.[189] In Colorado, the Board must receive approval from the local licensing authority on the building or construction plans for a prospective retailer.[190] Alternatively, Tennessee requires that all retail stores must have two entry doors, and the store must operate on the ground floor of the premises.[191] Missouri relaxes the restrictions on suitable licensed premises and requires that the property is not condemned, is not "transitory, moveable or not permanently anchored to the ground," is not a private residence, and is not a licensed premises of a current licensee.[192] Finally, Washington requires new retail stores to be at least 10,000 square-feet.[193]

4. Taxes and State Revenue

Historically, governments used excise taxes on alcohol to accomplish three goals: (1) to reduce consumption; (2) to raise revenue; and (3) to punish the users and manufacturers of alcohol.[194] Fosdick and Scott asserted that Prohibition led to the end of punishment as a tax objective.[195] They also questioned whether the primary goal of liquor excise taxes should be geared toward raising revenue or establishing controls on consumption.[196] They firmly advocated for the latter.[197]

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188. *See* COLO. REV. STAT. § 44-3-301(12) (2023). A licensed retail liquor store or liquor-licensed drug store may not be within 1,500 feet of another licensed retail store. *See* § 44-3-409(1)(a)(II)(A), (C); § 44-3-410(1)(a)(II)(A), (C). If the licensed premises is in a municipality with less than 10,000 citizens, then the licensed premises must be 3,000 feet away from any other licensed retail liquor stores or liquor-licensed drug stores. *See* § 44-3-409(1)(a)(II)(B); § 44-3-410(1)(a)(II)(B). Additionally, Colorado's Board will reject any license if the proposed premises is within 500 feet of a premises that was denied within the previous two years because of "the reasonable requirements of the neighborhood and the desires of the adult inhabitants were satisfied existing [retail stores]." § 44-3-313(1)(a)(I). Finally, local governments can control the placement of liquor stores by strict zoning laws. § 44-3-313(c).

189. *See, e.g.*, WASH. REV. CODE § 66.24.035(4)(a) (2023).

190. *See* COLO. REV. STAT. § 44-3-304(2); *see also* § 44-3-309(3).

191. *See* TENN. CODE ANN. § 57-3-404(f) (2023).

192. *See* COLO. CODE REGS. § 70-2.020(13) (2023).

193. *See* WASH. REV. CODE § 66.24.035(4)(a) (2023) (combination spirits, beer, and wine license); *see also* § 66.24.630(3) (spirit retail license). The 10,000 square-feet required for the licensed premises must not be only the storeroom sales floor but may include "storerooms and other interior auxiliary areas." § 66.24.035(4)(a); *see also* § 66.24.630(3).

194. *See* FOSDICK & SCOTT, *supra* note 44, at 69.

195. *See id.*

196. *See id.*

197. *See id.*

Before and during Prohibition, liquor manufacturers corrupted national and local politics in their campaign against Prohibition.[198] Fosdick and Scott pursued a middle ground between lowering excise taxes enough to prevent illicit liquor manufacturing and raising taxes high enough to control consumption.[199] *Toward Liquor Control* encouraged a system in which the federal government taxed liquor manufacturing, while states collected retail tax and license fees, with no municipal government involvement.[200] *Toward Liquor Control* also argued that liquor taxes should not burden the consumer.[201] Fosdick and Scott concluded that states should tax retailers' profits, not the retail transaction or the quantity of liquor sold.[202]

Following Fosdick and Scott's recommendations, the federal government currently taxes the manufacture and importation of liquor at \$13.50 per proof gallon.[203] The Taxpayer Certainty and Disaster Tax Act of 2020 provided special reduced rates for craft distillers that produced a limited amount of liquor.[204] The Act lessens the burden on smaller operations by taxing the first 100,000 gallons of spirit at \$2.70 per proof gallon.[205] Next, over 100,000 and up to 22.23 million gallons of spirit are taxed at \$13.34 per proof gallon.[206] Finally, any spirit produced that exceeds the reduced rate limit of 22.23 million gallons is taxed at the standard rate of \$13.50.[207] The federal government created this progressive tax to encourage competition and stimulate small producers.[208]

Despite the federal government's taxation of liquor manufacturing, currently, no state follows Fosdick and Scott's additional recommendation to collect a small license fee and tax the profits of liquor retailers.[209] In fact, states created liquor tax laws that directly conflict with the recommendations in *Toward Liquor Control*.[210] For example, Colorado,

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198. *See id.* at 10.
199. *See id.* at 70.
200. *See id.* at 78–83.
201. *See id.* at 80.
202. *See id.*
203. *See* 26 U.S.C. § 5001.
204. *See* Taxpayer Certainty and Disaster Tax Act, Pub. L. No. 116-260, 134 Stat. 3038; *see also* 26 U.S.C. § 5001(c)(1).
205. *See* 26 U.S.C. § 5001(c)(1)(A) (defining "proof gallon" as a gallon of spirit at 50% alcohol).
206. *See* § 5001(c)(1)(B).
207. *See* § 5001(a)(1).
208. *See* Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021) (requiring the Secretary of the Treasury to assess "the current market structure and conditions of competition, including assessment of any threats to competition and barriers to new entrants" into the liquor market).
209. *See State Tax Rates on Distilled Spirits*, FED'N TAX ADM'R (Jan. 1, 2023), https://perma.cc/Q55R-VDTY.
210. *See* FOSDICK & SCOTT, *supra* note 44, at 82–83 (recommending that states do not levy excise taxes at the state level).

Missouri, New Jersey, Tennessee, and Washington all collect excise taxes at the state level.[211] Additionally, Washington has a special tax for retail liquor sales for off-premises consumption.[212] Finally, only one state, Georgia, permits a local excise tax on liquor up to $0.22 per liter.[213]

States also collect revenue from licensing fees.[214] *Toward Liquor Control* advocated that only state Boards should collect license fees.[215] Colorado and New Jersey disregard *Toward Liquor Control*'s advice and allow local governments to collect license fees for retail stores.[216]

Washington's license fee system for distributors and retailers is distinctive.[217] Manufacturers in Washington pay a flat yearly license fee of $2,000.[218] In contrast, distributors and retailers must pay a percentage of their revenue as a license fee.[219] Distributors pay 10% of their revenue for the first 27 months that they hold their license.[220] This fee is then

211. *See* COLO. REV. STAT. § 44-3-503(1)(a) (2023). Colorado levies an excise tax on manufacturers or wholesalers, whichever is the first owner of the liquor in Colorado, at 60.26 cents per liter, which is approximately $2.28 per gallon. *See id.* Missouri charges one of the lowest excise taxes in the country at $2.00 per gallon, MO. REV. STAT. § 311.550(1)(1) (2023), while Washington has the highest state-level excise tax in the country at $14.27 per gallon. *Spirits (Hard Liquor) Liter Tax*, DEP'T REVENUE WASH. STATE, https://perma.cc/7857-8R2V (last visited Dec. 21, 2023). New Jersey's excise tax rate is $5.50 per gallon, N.J. STAT. § 54:43-1(b) (2023), and Tennessee's rate is $4.40 per gallon, TENN. CODE ANN. § 57-3-302(b) (2023).

212. *See* WASH. REV. CODE § 82.08.150 (2023). Washington's high taxes on liquor are partially due to a 20.5% retail sales tax on spirits. *See id.* Kansas and the District of Columbia also impose a sales tax on retail liquor for off-premises consumption. *See* KAN. STAT. ANN. § 79-4101 (2023); D.C. CODE § 47-2002 (2023). Kansas's off-premises retail sales tax is 8%, *see* KAN. STAT. ANN. § 79-4101 (2023), and the District of Columbia's rate is 9%, *see* D.C. CODE § 47-2002 (2023).

213. *See* GA. CODE ANN. § 3-4-80 (2023) ("[E]ach municipality or county . . . may at its discretion levy an excise tax on the sale of distilled spirits by the package at either the wholesale or retail level, which tax shall not exceed 22¢ per liter of distilled spirits . . . ."); *see also* ATLANTA, GA., CODE § 10-166 (2023) (noting that wholesalers must pay a local excise tax of $0.22 per liter).

214. *See* COLO. REV. STAT. § 44-3-501 (2023). In Colorado, a manufacturer's license costs $300, a wholesale license costs $550, and a retail license costs $100. *See id.* Colorado's license fees are similar to Missouri's, which cost $650 for a manufacturer's license, $500 for a wholesale license, and $100 for a retail license. *See* MO. REV. STAT. § 311.180 (2023). Alternatively, New Jersey has high license fees at $12,000 for a manufacturer's license, *see* N.J. REV. STAT. § 33:1-10 (2023), $8,750 for a wholesale license, *see* N.J. REV. STAT. § 33:1-11 (2023), and anywhere between $125 and $2,500 for a retail license. *See* N.J. REV. STAT. § 33:1-12 (2023).

215. *See* FOSDICK & SCOTT, *supra* note 44, at 82–83.

216. *Compare* COLO. REV. STAT. § 44-3-505(1)(a) (2023) (requiring a license fee of $150 for licensed retail stores in the incorporated area and $250 for licensed retail stores outside of any incorporated area), *with* N.J. REV. STAT. § 33:1-12(3)(a) (2023) (granting municipal governments power to set retail license fees between $125 and $2,500).

217. *See* Alex P. Ferraro, *Serving the People: Evaluating Initiative 1183 & Liquor Privatization in Washington State*, 76 U. PITT. L. REV. 427, 435-37 (2015).

218. *See* WASH. REV. CODE § 66.24.140(1) (2023).

219. *See* § 66.24.055(3)(a); § 66.24.630(4)(a).

220. *See* § 66.24.055(3)(a).

reduced to 5% of the distributor's revenue after the twenty-eighth month.[221] Alternatively, retailers pay 17% of their revenue from spirits sales.[222] In addition to forfeiting a percentage of revenue, distributors and retailers must also pay a $1,300 or $166 annual flat fee,[223] respectively. Finally, Washington required distributors to pay $150 million in revenue fees within two years of privatization to supplement the revenue lost from privatization.[224]

5. Where Does the Money Go?

Fosdick and Scott, concerned about controlling consumption, scrutinized government agencies funded by license fees because these agencies may be incentivized to market liquor to raise revenue.[225] Rather, *Toward Liquor Control* recommended that "[a]ll revenue should go into the general fund and should not be designated or earmarked for charities, hospitals, old-age pensions, etc."[226] Fosdick and Scott acknowledged that profits from liquor taxes might be reverted to county and municipal governments.[227] However, they argued against designating specific funds for projects because it would provoke controversy and "confuse unrelated governmental problems."[228]

Tennessee follows Fosdick and Scott's advice by transferring the revenue from license fees and excise taxes to the state treasurer's general fund.[229] However, states more frequently use the money gathered from fees and taxes to operate state boards and liquor enforcement divisions.[230] Alternatively, Colorado transfers 85% of the revenue from license fees and taxes to the state's old-age pension fund.[231] Washington goes one step further than Colorado and distributes a specific percentage from each type of tax and license fee for law enforcement agencies and research institutions around the state.[232]

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221. *See id.*
222. *See* § 66.24.630(4)(a).
223. *See* § 66.24.630(4)-(5).
224. *See* § 66.24.055(3)(c).
225. *See* FOSDICK & SCOTT, *supra* note 44, at 81–82.
226. *Id.* at 82.
227. *See id.* at 82–83.
228. *See id.*
229. *See* TENN. CODE ANN. § 57-6-201(d) (2023).
230. *See* N.J. REV. STAT. § 33:1-4.1 (2023). New Jersey reserves revenue from license fees and taxes to fund the state Board and to operate "the Alcoholic Beverage Control Enforcement Bureau in the Division of State Police." *Id.* Missouri only retains 70% of the revenue for operating the state Board and transfers 30% of the revenue to the state general fund. MO. REV. STAT. § 311.730 (2023); *see also* § 311.735.
231. *See* COLO. REV. STAT. § 44-3-502(1)(a) (2023).
232. *See* WASH. REV. CODE § 66.24.065 (2023); *see also* § 66.08.170. Monies received for licenses and taxes in Washington are transferred to the liquor revolving fund, and distributions are made every three months. *See* § 66.24.065; *see also* § 66.08.170.

Modern liquor codes reflect states' priorities to advance the interests of business owners, consumers, or state governments.[233] States must identify the overall goal in developing a liquor code. Then, states must determine how to regulate retail locations, and which group should absorb excise and liquor sales tax.

III. ANALYSIS

Public opinion is turning in favor of a license system in several control states.[234] This change mirrors the growth in the popularity of spirits.[235] Washington's experience with privatization provides a template for other lawmakers looking to change their liquor codes. However, states should acknowledge the shortcomings of Washington's example in pursuing privatization: high liquor sales tax;[236] disproportionate benefits for big-box stores;[237] and a lack of municipal self-governance.[238]

The main objective of a state pursuing privatization should be to encourage retail store competition and increase customer satisfaction.[239] States can achieve this objective by (1) adopting a rigid three-tier system that allows retailers of all sizes more access to the market and (2) keeping license fees low and taxing retailers' revenue to ensure sufficient state income without increasing costs for consumers.[240] Additionally, states should consider ways to reduce retail store proliferation.[241] Finally, municipal governments are the proper authorities to promulgate their own

Border areas, defined as an area within seven miles of the United States-Canada border, § 66.08.195(1), receive funds based on three criteria: 65% of the funds are distributed proportionally to the needs of traffic control, 25% of the funds are distributed based on crime statistics, and the final 10% are distributed based on law enforcement spending per capita. § 66.08.196(1). Funds dispersed to cities, towns, and municipalities are distributed proportionally based on population. § 66.08.210. Washington also includes provisions that are specific to certain licenses. For example, on-premises retail license fees are held separate from the general fund until $300,000 is given to a state toxicology program. § 66.08.170(1)(a). Furthermore, 10.1% of the remaining funds are transferred to public universities for drug abuse research, with University of Washington receiving 6.06% and Washington State University receiving 4.04%. § 66.08.170(1)(b)(i). Finally, 89.9% of the on-premises retail license fees are distributed to the general fund for use in education about alcoholism and drug abuse. § 66.08.170(1)(b)(ii).

233. *See, e.g.*, Melissa Allison, *Costco Revamps Liquor-Sales Initiative*, SEATTLE TIMES (JULY 18, 2011, 11:02 AM), https://perma.cc/B874-GXZS.

234. *See* Pat Ralph, *Pa. Voters Support Privatizing Liquor and Wine Sales but are Divided on How to Do It*, PHILLY VOICE (Mar. 3, 2022), https://perma.cc/LB2K-WMFL.

235. *See id.*

236. *See supra* Section II.C.4.

237. *See supra* Section II.B.

238. *See supra* Section II.B.

239. *See infra* Section III.A.

240. *See infra* Section III.A.

241. *See infra* Section III.B.

regulations on the locations and premises of liquor stores.[242] A well rounded liquor code includes decision making and oversight from both state and local governments.

A. Washington's Liquor Code Disadvantages Consumers

Monopoly systems are inherently about control.[243] The state controls the location, size, selection, and price of liquor.[244] Consumers believe privatization will decrease liquor prices and increase selection, ultimately providing the consumer with more choice.[245] However, in examining Washington's experience with privatization, statistics show that while liquor selection for consumers rose, so did liquor prices.[246] Additionally, increased accessibility to liquor stores led to an increase in consumption where liquor stores proliferated.[247] Because experience shows that revenue will decrease after privatization,[248] states should prioritize encouraging competition and increasing consumer satisfaction.

A key consideration in encouraging competition in the liquor market is whether to keep a rigid three-tier system or to use Washington's flexible three-tier system.[249] Big-box stores like Costco dominate the retail market in Washington and priced out small stores.[250] A rigid three-tier system allows more individuals and businesses to enter the liquor market, aiding competition.[251] The increase in competition will ultimately lower cost for consumers while increasing liquor selection.[252]

Another factor leading to Washington's higher liquor prices was Washington's high retail liquor taxes.[253] After privatization, Washington's high taxes influenced residents to cross into Oregon and Idaho in pursuit of cheaper liquor.[254] In Pennsylvania and Virginia, residents already travel

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242. *See infra* Section III.B.

243. *See* FOSDICK & SCOTT, *supra* note 44, at 41.

244. *See id.* at 41–46.

245. *See* Sue Gleiter, *Are Wine and Liquor More Expensive in Pennsylvania Than in Neighboring States? Yes and No,* PENNLIVE (May 26, 2011, 5:00 AM), https://perma.cc/PH5T-S5LK.

246. *See* Press Release, Alcohol Rsch. Grp., Liquor Prices Continue to Grow in Washington State After Privatization but at a Slower Rate, (Dec. 18, 2019), https://perma.cc/82YR-J3SD.

247. *See id.*

248. *See id.*

249. *See* WASH. REV. CODE § 66.24.630 (2023).

250. *See* Press Release, Alcohol Rsch. Grp., *supra* note 246.

251. *See also A Modern View*, *supra* note 107.

252. *See id.*

253. *See Seattle Dollars: Washington has the Nation's Highest Tax on Distilled Spirits*, EVERGREY (June 27, 2017, 6:00 AM), https://perma.cc/VG56-PHP3.

254. *See id.*

to neighboring states to buy cheaper spirits.[255] Reducing retail taxes to keep liquor prices from inflating would aid in disincentivizing shoppers to travel to neighboring states to purchase liquor.[256]

Though Washington's license renewal fees are imposed at a modest rate,[257] Washington's annual license fees provide a large source of state revenue.[258] Washington requires all retail stores to pay an annual license fee of 17% of gross revenues.[259] Some commenters argue that states "may want to consider a 'progressive' system of license fees in which larger liquor retailers pay a higher license fee than smaller liquor retailers."[260] States should implement a progressive system for the revenue tax where smaller retailers will pay a lower rate than larger retailers. This progressive revenue tax would lessen the "threats to competition and barriers to new entrants" into the liquor retail market.[261]

Additionally, Washington imposes the highest liquor sales tax in the nation.[262] Consumers pay 20.5% in spirits sales tax and $3.7708 per liter in a spirits liter tax.[263] This leads a consumer to pay $73.45 for a bottle of liquor that retails for $50.[264] Washington's spirits taxes pass retailer's costs onto consumers, resulting in unreasonably high liquor prices.[265] To increase consumer satisfaction with private retail stores, states should reduce liquor sales taxes and rely on revenue-based license fees.

Finally, Washington's distribution of liquor license and tax revenue to a network of state agencies directly conflicts with the sound recommendations made in *Toward Liquor Control*.[266] Washington's agencies and publicly funded universities may enjoy more stability if all the taxes and fees were transferred to the general fund because the agencies would not rely on consumer shopping trends.[267] For example,

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255. *See* Alisha Ebrahimiji, *Pennsylvanians are Driving Out of State to Buy Liquor, so Neighboring States are Cracking Down,* CNN (Apr. 15, 2020, 4:28 PM), https://perma.cc/7SX9-QCJ4; *see also* P.J. Orvetti, *Last Call for Virginia Liquor Stores?*, NBC WASH. (July 27, 2010), https://perma.cc/3BQP-7PGP.

256. *See* Ebrahimiji, *supra* note 255.

257. *See* WASH. REV. CODE § 66.24.630(5) (2023).

258. *See Spirits Taxes*, DEP'T OF REVENUE WASH. STATE (last visited Mar. 27, 2024), https://perma.cc/Z4KR-PXYY.

259. *See* WASH. REV. CODE § 66.24.630(4)(a) (2023).

260. Ferraro, supra note 217, at 447.

261. See Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021).

262. *See* Adam Hoffer, *How Hard Do Distilled Spirits Taxes Bite in Your State?*, TAX FOUND. (June 13, 2023), https://perma.cc/R7HQ-ZWBQ (noting that Washington's spirits excise taxes are the highest in the nation at $36.55 per gallon).

263. *See Spirits Taxes*, *supra* note 258.

264. *See* Brett Davis, *At Almost $37 per Gallon, WA has the Stiffest Distilled Spirits Tax in the Nation*, CTR. SQUARE (June 14, 2023), https://perma.cc/7V94-RBYW.

265. *See id.*

266. *Compare supra* text accompanying note 232, *with* FOSDICK & SCOTT, *supra* note 44, at 80–2.

267. *See* FOSDICK & SCOTT, *supra* note 44, at 80–82.

89.9% of on-premises liquor sales tax funds education on alcohol and drug abuse.[268] However, COVID-19 created a shift from on-premises consumption to off-premises consumption for many consumers.[269] A dramatic shift in consumer habits could lead to an unexpected shift in a government agency's budget. Therefore, Washington's liquor code created an unstable patchwork of revenue distribution. Instead, states should follow Tennessee's example by depositing all liquor fees and tax revenue into the state's general fund, which will provide more stability to government alcohol enforcement agencies.[270]

States should be wary of following Washington's example of requiring high taxes on consumers. Instead, states should follow New Jersey, Tennessee, Missouri, and Colorado, all of which charge less than $6 per gallon for liquor.[271] Additionally, in keeping with the majority,[272] states should maintain a rigid three-tier system, requiring big-box stores to function as either a retailer or wholesaler. By keeping liquor taxes low and maintaining a rigid three-tier system, states can increase competition and consumer satisfaction.

B. Recommendations for a Consumer- and Community-Focused Liquor Code

Fosdick and Scott were concerned about the size of the community regulated by state and municipal liquor laws.[273] In *Toward Liquor Control*, they commented that "no system of liquor control can be successful which does not command the approval of the community."[274] States should consider their liquor code's effect on smaller communities and grant municipal governments control over specific aspects of retail store regulation. However, state governments should solely determine liquor taxes and fees and how the resulting revenue should be dispensed throughout the state.

States must consider whether state or local governments should regulate retail store locations knowing that accessibility to liquor increases consumption rates.[275] Part of Washington's retail store proliferation resulted from the statutory limit on the municipal government's control over retail locations.[276] "Liquor store density is associated with higher

268. *See* WASH. REV. CODE § 66.24.170(1)(b)(ii) (2023).

269. *See* Sandee LaMotte, *We Really Did Buy More Alcohol During the Early Pandemic, Study Finds*, CNN (Dec. 15, 2021), https://perma.cc/AEE7-33JP.

270. *See* TENN. CODE ANN. § 57-6-201(d) (2023).

271. *See* Hoffer, *supra* note 262.

272. *See supra* Section II.C.1.

273. *See* FOSDICK & SCOTT, *supra* note 44, at 6.

274. *See id.*

275. *See* Press Release, Alcohol Rsch. Grp., *supra* note 246.

276. *See* WASH. REV. CODE § 66.40.020 (2023).

levels of community disadvantage and higher rates of violence."[277] Additionally, both community disadvantage and violence are "associated with lower life expectancies."[278]

For example, Philadelphia, Pennsylvania, a highly diverse city with over 1.5 million residents, would be disproportionately affected by retail store proliferation.[279] Implementing Washington's license system, which does not permit local governments to limit retail store locations, would allow liquor stores to proliferate in a city like Philadelphia, just as retail stores did in Seattle.[280] Like Colorado's local licensing boards, municipal oversight of retail store locations would help protect against liquor store proliferation.[281] Therefore, municipalities should be able to impose some limitations, such as on the proximity of retail liquor stores to churches, schools, and other liquor stores.[282]

However, municipalities should not regulate retail locations unrestrained. States should set minimums and maximums for the number of licenses per capita, similar to what is done in New Jersey.[283] These ranges would ensure that retail stores are accessible without proliferating to the detriment of the population.[284] Additionally, states should require that each county issue at least one license of each retail type so counties cannot ban liquor sales altogether. These standards would still provide local governments some choice in regulating retail stores in their communities without municipal overreach.[285]

Furthermore, States should exclude the local option, which would permit local governments to vote to ban the sale of alcohol in their city, county, or municipality.[286] Even if a locality voted not to not sell liquor, these counties or municipalities would still need liquor enforcement via police and services from other state agencies.[287] However, these

277. C. Debra M. Furr-Holden et al., *Understanding the Relationship Between Alcohol Outlet Density and Life Expectancy in Baltimore City: The Role of Community Violence and Community Disadvantage*, 47 J. CMTY. PSYCH. 63, 63 (2018).

278. *Id.*

279. *See id.*; *Philadelphia County Profile*, PA. DEP'T LAB. & INDUS. (Dec. 2022), https://perma.cc/L3QH-GJK7 (noting that Philadelphia is 40.8% Black, 38.5% white, 15.4% Hispanic, and 20.7% other); *see also* Melanie Kiper, *Population Density by City,* UNIV. NEB. OMAHA (July 20, 2021), https://perma.cc/8CNL-P5SK (noting that Philadelphia is more densely populated than Baltimore, Maryland).

280. *See* Sokol, *supra* note 149.

281. *See* COLO. REV. STAT. § 44-3-304 (2023).

282. *See, e.g.*, COLO. REV. STAT. § 44-3-313(1)(d)(I) (2023).

283. *See* N.J. REV. STAT. § 33:1-40 (2023).

284. *See id.*

285. *See id.*

286. *See infra* Section III.A.

287. *See* Betsy Reed, *The Battle to Turn Arkansas's Dry Counties Wet—with Walmart's Help*, GUARDIAN (June 25, 2019), https://perma.cc/V5B6-WDZS (noting that many dry counties still permit alcohol in restaurants, and law enforcement must still police intoxicated driving in dry counties).

communities would not contribute any license fees or tax revenue from liquor sales to the general fund, which would support the police and those agencies.[288] Therefore, because it creates an imbalance in funding and receipt of services, states should not include the local option in their liquor code and permit licenses in every county.

Finally, states and municipalities should not require large retail store locations. Requiring a 10,000-square-foot premises, like in Washington, would make entry into the liquor retail market inaccessible to small businesses.[289] Additionally, states should not limit the number of licenses a business may acquire to two, as is the practice in New Jersey.[290] Acquiring multiple licenses would help a business grow and allow it to lower costs, which would increase competition in the market. Businesses could then raise more revenue and make larger investments in the state, which would increase contributions to the general fund.

IV. CONCLUSION

Control states will continue to experience efforts to undo their state liquor monopolies.[291] With Costco's expensive yet successful bid to privatize Washington's liquor industry, other control states can expect to see millions of dollars spent on campaigns and ballot initiatives to privatize state liquor monopolies.[292] However, unlike Pennsylvania's recent unsuccessful and unspecific Constitutional amendment to ban the state control system, states should carefully draft a license system to replace current liquor laws.[293]

The ultimate goal of a license system should be to encourage competition and increase consumer satisfaction.[294] Additionally, states should maintain a rigid three-tier system of licenses, which encourages competition and creates greater access for entrepreneurs entering the liquor trade.[295] Furthermore, states should also keep license fees low and implement a progressive revenue tax.[296] States should focus on keeping operational costs low for new businesses and avoid transferring costs to consumers via liquor sales tax.[297]

288. *See id.*
289. *See* WASH. REV. CODE § 66.24.630 (2023).
290. *See* Shelley Ross Saxer, *"Down with Demon Drink!": Strategies for Resolving Liquor Outlet Overconcentration in Urban Areas*, 35 SANTA CLARA L. REV. 123, 171 (1994).
291. *See supra* Part I.
292. *See supra* Part I.
293. *See supra* Section III.A.
294. *See supra* Section III.B.
295. *See supra* Section III.B.
296. *See supra* Section III.A.
297. *See supra* Section III.A.

Finally, states should permit local governments to control certain aspects of retail stores so municipalities may more easily react to the wishes of their local community.[298] Therefore, municipalities should govern the location and premises of retail stores to avoid liquor store proliferation.[299] Washington demonstrated that a state may successfully privatize its liquor industry.[300] However, states should avoid Washington's mistakes while pursuing privatization.

298. *See supra* Section III.B.
299. *See supra* Section III.B.
300. *See supra* Section II.B.