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## Antiquated Relics or Misunderstood Mess, Why South Carolina Liquor Laws are Ripe for Restructuring

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ANTIQUATED RELICS OR MISUNDERSTOOD MESS:  
WHY SOUTH CAROLINA LIQUOR LAWS ARE RIPE FOR RESTRUCTURING

Annie Day Bame\*

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I. INTRODUCTION

During the daytime, the Five Points retail district, located within walking distance of the University of South Carolina in Columbia, is the perfect place

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for a college student to bring a visiting parent. This quaint area includes an array of cafes, coffee shops, and locally owned boutiques to peruse. At night, however, the area is almost unrecognizable as the streets become engorged with stumbling, yelling, and intoxicated underaged students heading to bars targeted precisely towards this population.<sup>1</sup> *The State* newspaper describes the change in atmosphere from quiet retail district to rowdy nightlife as a “transformation from funky urban village to raucous college party; from sidewalk dining to sidewalk fisticuffs, urination and barfing.”<sup>2</sup>

This environment, seen by college students as a “vivid nightlife,”<sup>3</sup> is seen by neighbors and other community members as an “attractive nuisance”<sup>4</sup> for underage drinkers leading to “obnoxious, alcohol-fueled shenanigans” that harm the neighboring area.<sup>5</sup> Neighbors report a wide range of problems, from minor crimes like vandalism, littering, and public urination,<sup>6</sup> to more concerning incidents—such as having the front door broken off its hinges,<sup>7</sup> awakening in the middle of the night to a student drunkenly banging on the wrong door,<sup>8</sup> and finding a naked young woman on a front porch first thing in the morning.<sup>9</sup> These social harms appear to stem from a variety of factors, from the density of bars to the high rate of underage overconsumption in the area.<sup>10</sup>

The alcohol-related problems in the Five Points area exemplify the precise issues South Carolina alcohol laws ineffectively seek to prevent.<sup>11</sup> South Carolina’s power to regulate alcohol—for the purpose of protecting the

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1. See generally Sarah Ellis et al., *Lust, Long Lines and Liquor Towers: How Five Points Lights Up After Dark*, STATE (Columbia, S.C.) (Mar. 9, 2018, 10:50 PM), <https://www.thestate.com/news/local/article204038224.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. Five Points Roost, LLC v. S.C. Dep’t of Rev., No. 18-ALJ-17-0005-CC, 2018 WL 1724696, at \*4 (S.C. Admin. Ct. Apr. 3, 2018).

6. *Id.*

7. T. Michael Boddie, *Quality of Life: Town Hall Addresses Late-Bar Hours*, DAILY GAMECOCK (Feb. 7, 2018, 9:40 PM), <https://www.dailygamecock.com/article/2018/02/blame-it-on-the-alcohol>.

8. Cynthia Roldán, *Naked USC Students Latest Tipping Point for Neighborhood Residents*, STATE (Columbia, S.C.), <https://www.thestate.com/news/local/article100521877.html> (last updated Sept. 8, 2016, 3:05 PM).

9. *Id.*

10. See LESLIE G. WISER, JR. ET AL., TIME FOR CHANGE: AN EVIDENCE-BASED APPROACH TO CRIME PREVENTION AND ENVIRONMENTAL CHANGE 14–15, 20 (2015).

11. See Mr. Joe G. Shinn, 1972 S.C. Op. Att’y. Gen. 79, 1972 WL 20421, at \*1 (Mar. 9, 1972) [hereinafter 1972 S.C. Op. Att’y. Gen. 79] (explaining the purpose of the law limiting liquor sales to restaurants is to prevent the return of the lifestyle associated with the “public saloon or barroom” (quoting Hammond v. McDonald, 89 P.2d 407, 411 (Cal. Ct. App. 1939)).

health, welfare, and morals of its citizens—comes from the state’s police powers;<sup>12</sup> however, the current system is ineffective in achieving this purpose.

South Carolina alcohol laws and regulations for beer, wine, and liquor have a history of criticism that continues today.<sup>13</sup> Those pushing for more relaxed restrictions on alcohol retail, including those involved in manufacturing, selling, and serving alcohol, argue that the current system of laws is outdated and inconsistent with the modern service industry.<sup>14</sup> However, those promoting stricter enforcement of alcohol regulations argue that the significant issues the current laws unsuccessfully seek to address would only worsen with relaxed restrictions.<sup>15</sup> Notwithstanding the opposing sides of this debate, it is apparent that South Carolina’s outdated and confusing system of alcohol regulation creates challenges for compliance—as well as enforcement—and it does not achieve the interests it purports to serve.<sup>16</sup> South Carolina’s laws and regulations concerning alcoholic beverages are not being enforced under the current scheme and need to be rewritten in a precise and applicable manner to be effective.<sup>17</sup> This Note argues that alcohol regulation in South Carolina would be more effective if the law was uniformly enforced by each responsible agency, the current scheme was revised to promote a more cohesive system of laws, and the legislature’s intent behind alcohol laws was more widely understood by law enforcement, retailers, and citizens.

Part II of this Note will provide the history of South Carolina’s alcohol laws, the social context in which these laws have been created and modified,

12. *Pendarvis v. Berry*, 214 S.C. 363, 368, 52 S.E.2d 705, 706 (1949) (explaining that the Alcoholic Beverage Control Act is “a typical exercise of the police power of the State and is designed for the protection of the morals and welfare of the public”).

13. See discussion *infra* section II.A.

14. See, e.g., Wilson Daniel, Note, *Contemporary Tastes: How South Carolina’s Regulation of the Craft Beer Industry Could Better Reflect Modern Societal Attitudes and Current Industry Needs*, 69 S.C. L. REV. 827, 828 (2018).

15. See PALMETTO FAMILY COUNCIL, CAN SOUTH CAROLINA HOLD ITS LIQUOR?: ALCOHOL ACCESSIBILITY AND CONSUMPTION IN THE PALMETTO STATE: 1970–2016, at 8 (2018) (“The high rates of binge drinking, college-age drinking, and drunk driving remain an alarming problem, and the data suggests that these problems will not be improved by increasing availability to alcohol.”).

16. See JOHN D. GEATHERS & JUSTIN R. WERNER, THE REGULATION OF ALCOHOL BEVERAGES IN SOUTH CAROLINA 4 (South Carolina Bar 2007) (referring to South Carolina’s alcohol scheme as “enigmatic” and stating the provisions are rife with “confounding euphemisms”).

17. See PALMETTO FAMILY COUNCIL, *supra* note 15, at 5 (“For years, SC DOR has been short-staffed and is constantly being forced to adjust to ever-changing policy emanating from the South Carolina General Assembly. In many cases, the meaning of legislation is unclear and the Department is being left to use its judgment.”).

and an overview of South Carolina's current regulatory system.<sup>18</sup> Part III will then discuss recent problems related to alcohol regulations in South Carolina by identifying specific issues that have created conflict in South Carolina and discussing recent South Carolina case law.<sup>19</sup> Part IV will provide a comparison of alcohol regulations in the neighboring states of Virginia, North Carolina, and Georgia.<sup>20</sup> Finally, Part V will analyze the efficacy of the current system and offer recommendations for potential changes to the law, considering the interests on both sides of the debate, as well as recommendations for those attempting to comply with South Carolina alcohol law and for those trying to enforce it.<sup>21</sup>

This Note focuses specifically on the laws and controversies surrounding regulation of intoxicating liquor (alcoholic liquor), with minimal discussion of beer and wine. Beer and wine have historically been treated differently than liquor, culturally and legally.<sup>22</sup> Regulations regarding beer and wine have traditionally been less strict and have thus incited less debate. The recent growth in the craft beer industry has brought forth arguments for review of the applicability of the three-tier system as it relates to beer;<sup>23</sup> however, this Note will only briefly address the current regulatory scheme for beer and wine.<sup>24</sup>

## II. BACKGROUND

### *A. From Dispensaries to Mini-Bottles: A History of South Carolina Liquor Laws*

South Carolina has had laws regulating the manufacture, sale, and consumption of alcohol since the colonial government's creation of its first set of laws in 1682, which included "An Act for the suppression of Idle,

18. *Infra* Part II.

19. *Infra* Part III.

20. *Infra* Part IV.

21. *Infra* Part V.

22. See, e.g., S.C. CODE ANN. § 61-4-10 (2009) (declaring beer and wine to be "nonintoxicating and nonalcoholic beverages").

23. See generally T.A.C. Hargrove II, *Stone Didn't Come, But We Got The Bill: An Analysis of South Carolina Laws Affecting Craft Brewers*, 9 CHARLESTON L. REV. 335, 336-37 (2015) (describing "the Stone Bill," which amended § 61-4-1515 of the South Carolina Code of Laws, as "the biggest change to South Carolina's beer laws since the end of Prohibition in 1933" and discussing the application of the three-tier system established over eighty years ago to the "exploding" craft brewery business and whether it continues to serve its intended purpose.).

24. *Infra* section III.A.

Drunken and Swearing Persons, inhabiting within this Province.”<sup>25</sup> Since the 1800s, the sale and consumption of liquor has been the source of emotionally charged disputes in the Bible Belt<sup>26</sup> states.<sup>27</sup> From the early years of this debate, South Carolinians have asserted concerns about overconsumption, alcohol-related deaths, and the deterioration of societal morals.<sup>28</sup> During the 1800s, liquor consumption was part of the culture for the high class and the low class alike.<sup>29</sup> For the high-class population, however, alcohol was an especially “important function of southern elite culture.”<sup>30</sup> Elite young men, particularly those at the college level, reportedly “drank ‘superhuman’ amounts” and were said to be “prominent among the many men who wrecked or prematurely ended their lives with liquor.”<sup>31</sup> Christian temperance advocates condemned alcohol use as a “catalyst for all other vices; i[t] ruined one’s health, shattered families, and instigated domestic violence, crime, gambling, and illicit sex.”<sup>32</sup> South Carolina’s history of changing alcohol regulation schemes illustrates many failed attempts to address these concerns.

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25. GEATHERS & WERNER, *supra* note 16, at 7 (citing 2 THE STATUTES AT LARGE OF SOUTH CAROLINA V (Thomas Cooper ed., Columbia, S.C., A.S. Johnston 1837) (Acts No. 2 and 18)).

26. Bible Belt is a term used for the “southern states of the United States of America, where the mainstream of Christianity is characteristically fundamentalist, stressing the literalism and inerrancy of the Bible.” *Bible Belt*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/religion/dictionaries-thesauruses-pictures-and-press-releases/bible-belt> (last visited May 8, 2019).

27. JAMES L. UNDERWOOD, THE CONSTITUTION OF SOUTH CAROLINA, VOL. 1: THE RELATIONSHIP OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES 44–45 (1986) (“[Generally, l]iquor consumption issues are almost by definition highly charged emotional disputes in the Bible Belt states.”).

28. See, e.g., Kevin M. Krause, A Different State of Mind: Ben Tillman and the Transformation of State Government in South Carolina, 1885–1895, at 208–19 (Dec. 2014) (unpublished Ph.D. dissertation, University of Georgia) (submitted to faculty, electronic version approved), [https://getd.libs.uga.edu/pdfs/krause\\_kevin\\_m\\_201412\\_phd.pdf](https://getd.libs.uga.edu/pdfs/krause_kevin_m_201412_phd.pdf).

29. *Id.* at 207 (recounting the remarks of a northeastern visitor to Alabama that “[t]he highest & lowest Classes are much addicted [sic] to excessive drinking,” as reported in BERTRAM WYATT-BROWN, SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH 280 (1982)).

30. *Id.* at 208.

31. *Id.*

32. *Id.* (noting further that “evangelical leaders insisted that a democratic society that allowed the debauchery that liquor caused was asking for punishment from an angry God”). For additional discussion of the temperance movements of the 1880s related to the Women’s Christian Temperance Union in South Carolina, see JAMES L. UNDERWOOD, THE CONSTITUTION OF SOUTH CAROLINA, VOL. III: CHURCH AND STATE, MORALITY AND FREE EXPRESSION 310 (1992).

In 1892, prior to the adoption of prohibition, South Carolina adopted a state-wide Dispensary System pushed by Governor Ben Tillman.<sup>33</sup> Under this system, each county was given the choice of prohibiting liquor sales or establishing a State Dispensary, giving the state a monopoly over liquor sales.<sup>34</sup> Tillman sold his idea to legislators as a compromise for the dispute between “temperance proponents, who sought to ban all liquor sales within the state, and the open saloon forces.”<sup>35</sup> Contrary to Tillman’s assertions that this compromise would settle the dispute over liquor sales, the Dispensary System further divided “wets” against “drys” in South Carolina, resulting in rioting and creation of militias on both sides of the debate.<sup>36</sup> Amidst assertions that the system constituted an unconstitutional overreach by the state, rumors surrounding the corruption of and violence committed by officials chosen to enforce the system, and general discontent on both sides with this middle ground approach, the Dispensary System was dismantled in 1907.<sup>37</sup> This act prompted the South Carolina legislature to find a regulatory scheme that would address the numerous concerns of citizens related to alcohol retail and consumption.<sup>38</sup>

In 1907, South Carolina counties were given the opportunity to elect whether or not to maintain local dispensaries.<sup>39</sup> Twenty-one of forty-one counties voted to keep local government liquor stores; however, by the end of 1913, there were seventy-two dispensaries in only twelve counties, resulting in an inequitable flow of liquor funds throughout the state.<sup>40</sup> During this time, prohibitionists, viewing the state as overrun by liquor, pushed towards shutting down the remaining dispensaries.<sup>41</sup> These prohibitionists were successful at the state level in 1915.<sup>42</sup>

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33. Richard F. Hamm, *Dispensary*, SCENCYCLOPEDIA.COM, <http://www.scencyclopedia.org/sce/entries/dispensary> (last visited May 8, 2019). “Pitchfork” Benjamin Tillman became governor of South Carolina in 1890 before becoming a United States Senator in 1895. Stephen Kantrowitz, *Benjamin Ryan Tillman*, SCENCYCLOPEDIA.COM, <http://www.scencyclopedia.org/sce/entries/tillman-benjamin-ryan> (last visited May 8, 2019). Tillman was known in the Senate for his attacks on “racial equality, corporate power, and imperial expansion.” *Id.*

34. Hamm, *supra* note 33.

35. *See* UNDERWOOD, *supra* note 27, at 44 (citation omitted).

36. *Id.* at 45.

37. Krause, *supra* note 28, at 232–35.

38. Hamm, *supra* note 33.

39. THE SOUTH CAROLINA HISTORICAL ASSOCIATION, USC-AIKEN, THE PROCEEDINGS OF THE SOUTH CAROLINA HISTORICAL ASSOCIATION 120–21 (William S. Brockington, Jr. & W. Calvin Smith eds., 1980).

40. *Id.* at 121.

41. *Id.*

42. *Id.*

In 1915, amidst concerns related to alcoholism, family violence, and saloon-based political corruption,<sup>43</sup> South Carolina voted to adopt statewide prohibition.<sup>44</sup> In 1918, South Carolina was the fifth state to ratify the Eighteenth Amendment instituting national prohibition.<sup>45</sup> In addition to religious beliefs concerning the evils of alcohol,<sup>46</sup> there was a common fear that alcohol was deleterious to the family system and family values.<sup>47</sup> One rationale behind this fear was that saloons were drinking places for men only during the nineteenth century, resulting in the view that alcohol was a serious threat to family unity.<sup>48</sup>

In 1933, the Twenty-first Amendment was enacted—despite South Carolina’s objection—repealing prohibition nationwide.<sup>49</sup> South Carolina was once again faced with finding a solution to the heated alcohol regulation debate. In 1935, the state enacted a comprehensive liquor licensing scheme to be administered by the South Carolina Tax Commission.<sup>50</sup> Although South Carolina reluctantly allowed the retail sale of liquor, political challenges continued to plague alcohol regulation.<sup>51</sup> In 1945, the legislature passed laws that strictly limited advertising by liquor stores to include only the words “Retail Liquor Dealer” in non-neon letters no more than three inches high.<sup>52</sup> To work around these restrictions, liquor stores began using big red dots painted onto the side of the building during this time.<sup>53</sup> The Legislature, seeing the ineffectiveness of this regime, continued to consider the most effective way to structure alcohol regulation.<sup>54</sup>

In 1967, administration of the licensing system was transferred to the newly created Alcoholic Beverage Commission, an agency with the sole purpose of administering regulation of alcoholic beverages.<sup>55</sup> The Commission’s existence was short-lived due to assertions of corruption,

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43. Marcia Yablon, *The Prohibition Hangover: Why We Are Still Feeling the Effects of Prohibition*, 13 VA. J. SOC. POL’Y & L. 552, 559–62 (2006); see also 1972 S.C. Op. Att’y. Gen. 79, *supra* note 11.

44. Hamm, *supra* note 33.

45. GEATHERS & WERNER, *supra* note 16, at 10.

46. Krause, *supra* note 28, at 208.

47. Yablon, *supra* note 43, at 559.

48. *Id.*

49. GEATHERS & WERNER, *supra* note 16, at 10.

50. *Id.*

51. Robert F. Moss, *Why Do South Carolina Liquor Stores Have Red Dots?: No Sunsets or Illiterate Tiplers, Just Convoluted Liquor Laws*, RFM (Sept. 20, 2017), <https://www.robertfmoss.com/features/Why-Do-South-Carolina-Liquor-Stores-Have-Red-Dots>.

52. *Id.*

53. *Id.*

54. See *id.*

55. GEATHERS & WERNER, *supra* note 16, at 26.



mismanagement, and unethical behavior by Commission officials.<sup>56</sup> During the government restructuring in 1993, the Commission was abolished, and regulatory power was subsequently transferred to the taxing authority, now called the South Carolina Department of Revenue (SCDOR), and the South Carolina Law Enforcement Division (SLED), with power of review given to the South Carolina Administrative Law Court (ALC).<sup>57</sup>

The bulk of South Carolina's modern day liquor laws, and the basis for the current scheme, were written in the 1960s and 1970s as the Alcohol Beverage Control Act (ABC Act).<sup>58</sup> For example, the "brown bagging" system, enacted in 1967 and permitting persons going to restaurants to bring their own liquor in a brown paper bag,<sup>59</sup> was an early attempt by the legislature to balance the interests of those on both sides of the debate on selling liquor by the drink.<sup>60</sup> Following the "brown bagging" laws, South Carolina began regulating liquor sales through the use of mini-bottles in 1973<sup>61</sup> in order to limit alcohol content in mixed beverages. Proponents of this position asserted that mini-bottle regulation was a compromise allowing South Carolina to benefit economically from liquor taxes.<sup>62</sup>

56. *Id.* at 27. Lisa Greene, *5 Defendants in ABC Case Get Probation*, STATE (Columbia, S.C.), Dec. 18, 1992, at 1B (discussing "unlawful giving and acceptance" of favors, gifts, and campaign contributions by ABC Commission officials within the "good ol' boy system").

57. GEATHERS & WERNER, *supra* note 16, at 10. The ALC was previously called the South Carolina Administrative Law Judge Division; it was renamed in 2004. *Id.* at 27 (citation omitted).

58. *Id.* at 10.

59. *Id.* at 26. *See also Mini-Bottle Bill Should Not Offend Most Drys*, STATE (Columbia, S.C.), Mar. 23, 1970, at 12-A [hereinafter *Mini-Bottle Bill*] (noting the difficulty of imagining "a more repellent practice" than customers having to bring their own liquor into restaurants).

60. *See* Edward D. Harrill, *Liquor in a Mini-Bottle?, That's the Question Facing S.C. Legislatures this Term*, STATE (Columbia, S.C.), Mar. 15, 1970, at 48 (discussing the 1966 attempts to liberalize liquor laws defeat and the enactment of "brown bagging laws").

61. *See* Tobias v. Sports Club, Inc., 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998). The court agreed that the purpose of the mini-bottle was "to promote public safety, and to prevent an already intoxicated person from becoming even more intoxicated, and thus an even greater risk to the public at large, when he leaves the establishment." *Id.* (citing Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct. App. 1985), *overruled by* Tobias, at 92, 504 S.E.2d at 320; Daley v. Ward, 303 S.C. 81, 399 S.E.2d 13 (1990)).

62. *See Mini-Bottle Bill*, *supra* note 59 ("[the mini-bottle bill is a] compromise that falls somewhat short of regular open bars while still modernizing the state's ancient restrictions on the sale of liquor by the drink."); *Mini-Bottle Would Bring More Revenue-Proponent*, STATE (Columbia, S.C.), Mar. 18, 1970, at 15 (relaying assertions from a Charleston Senator supporting the bill that the mini-bottle bill would bring revenue into the state through taxes); Robert G. Liming, *New Battle on Liquor Hits House*, STATE (Columbia, S.C.), Jan. 19, 1972, at 22 (quoting a Charleston House Representative's statement that, "Whether we like it or don't like it, liquor by the drink is being sold in many, many counties right now and the state needs the money it could obtain through proper regulation").

Since the 1970s, updates to alcohol law and regulation have been added sporadically to create the muddled system currently in use.<sup>63</sup> For example, for the first time in 1993, voters in each county were legally allowed to vote on whether alcohol would be sold on Sunday.<sup>64</sup> In that same year, alcohol retailers were officially allowed to post two signs showing store hours, where previously no posting of store hours was allowed.<sup>65</sup> Brewpubs were first permitted in 1994,<sup>66</sup> and the use of full-size liquor bottles in restaurants did not become legal until 2006.<sup>67</sup>

These few examples demonstrate the piecemeal nature of South Carolina's liquor laws. Attempting to apply such laws, sporadically modified over the course of more than forty years, presents substantial challenges for those currently tasked with regulating, enforcing, and complying with the South Carolina system.

### *B. A Look at South Carolina's Current Scheme*

Many South Carolinians may be surprised to learn about the confusing system of laws the businesses they frequent must sort through for their alcohol retail practices to be legal. For example, section 61-4-140 of the South Carolina Code provides that a person can be jailed for up to thirty days for drinking or possessing beer or wine "between the hours of twelve o'clock Saturday night and sunrise Monday morning at a place licensed to sell beer or wine" unless they have a specific permit.<sup>68</sup> Additionally, "bars" are not legal in South Carolina, and businesses that are permitted to sell liquor by the drink are "restaurants" required to engage "primarily and substantially" in the

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63. See PALMETTO FAMILY COUNCIL, *supra* note 15, at 3 ("[T]he arbitrary and constant tinkering of South Carolina's alcohol policy has led to poorly constructed and confusing policy.").

64. S.C. DEP'T OF REVENUE, 1993 SUMMARY OF LAW CHANGES: CHANGES IN TAXATION, MOTOR VEHICLES AND ALCOHOLIC BEVERAGES 14 (adding § 61-1-105, effective June 21, 1993); see also Letter from John McCormack et al., Manager, South Carolina Department of Revenue, to Vicki Ringer, Public Information Director, South Carolina Department of Revenue 6 (Aug. 19, 1993) (<https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL93-18.pdf>).

65. *Id.* at 15 (amending § 61-3-1000, effective Mar. 23, 1993).

66. S.C. DEP'T OF REVENUE, 1994 SUMMARY OF LAW CHANGES 9 (amending § 61-3-425, effective July 1, 1994); see also Memorandum from South Carolina Tax Commission, Legislative Changes Update 3 (Aug. 19, 1994) (<https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL94-20.pdf>).

67. *SC Liquor by the Drink Law*, S.C. REST. & LODGING ASS'N, <https://www.sclra.org/general/custom.asp?page=222> (last visited May 8, 2019).

68. S.C. CODE ANN. § 61-4-140 (2009).

preparation and serving of meals.<sup>69</sup> Seven counties in South Carolina still prohibit any alcohol sales on Sunday, and nine allow Sunday sales only in certain towns.<sup>70</sup> Liquor can be sold on Sundays at restaurants in certain counties for on-site consumption, but cannot be sold for off-premise consumption on Sundays by any type of establishment statewide.<sup>71</sup> Because many rules related to alcohol are manipulated or ignored completely, alcohol retailers, consumers, and enforcement entities appear to have different understandings of how the alcohol laws in South Carolina should operate.<sup>72</sup>

South Carolina regulates alcohol retail through a license alcohol control scheme overseen by the SCDOR in which the state licenses private businesses or individuals to conduct retail sales of spirits.<sup>73</sup> Alcohol regulations are provided under Title 61 of the South Carolina Code of Laws through a three-tier distribution system which separates alcohol licensing into three categories: manufacturing and importing licensing, wholesale licensing, and retail licensing.<sup>74</sup> Theoretically, the purposes of the three-tier system—adopted across the United States—include promoting effective regulation of consumption through state-level regulations responsive to local concerns and promoting economic efficiency by ensuring producers receive accurate information about consumer demand.<sup>75</sup> Manufacturing and importing licenses authorize the production or importation of alcoholic beverages into the state.<sup>76</sup> Wholesale licenses are granted to those acting as middle-tier participants and authorize the purchase of alcoholic beverages from producers for resale to

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69. S.C. CODE ANN. § 61-6-1610(A) (2009); *infra* Part III; *see also* Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm’n, 273 S.C. 782, 784, 260 S.E.2d 452, 453 (1979) (holding that food sales making up only ten percent of business is not “primary” or “substantial” as required by the statute and accordingly is not entitled to a mini-bottle license).

70. *South Carolina County Laws*, STATELIQUORLAWS.COM, <http://www.stateliqorlaws.com/counties/SC> (last visited May 8, 2019).

71. *See* S.C. CODE ANN. § 61-4-120 (Supp. 2018).

72. *See* discussion *infra* section III.A.

73. *See generally* S.C. CODE ANN. § 61-6-10 *et seq.* (2009 & Supp. 2018) “The Alcoholic Beverage Control Act”; S.C. CODE ANN. REGS. 7-200 *et seq.* (2011 & Supp. 2018) (regulation of alcohol, beer, and wine); *see also* S.C. CODE ANN. § 61-4-735 (2009) (applying the three-tier system to beer and wine); *Retail Distribution Systems for Spirits*, ALCOHOL POLICY INFORMATION SYSTEM, <https://alcoholpolicy.niaaa.nih.gov/apis-policy-topics/retail-distribution-systems-for-spirits/7/about-this-policy#page-content> (last visited May 8, 2019); S.C. CODE ANN. § 61-6-20 (Supp. 2018) (applying the three-tier system to liquor).

74. *Alcohol Beverage Licensing*, S.C. DEP’T REVENUE, <https://dor.sc.gov/tax/abl> (last visited May 8, 2019).

75. *See* GEATHERS & WERNER, *supra* note 16, at 240–42.

76. *Alcohol Beverage Licensing*, *supra* note 74 (select “License” tab; then select “Beer/Wine Producer or Importer” from drop-down list).

retailers.<sup>77</sup> Retail licenses authorize the sale of alcoholic beverages to the public, typically by restaurants, hotels, and liquor stores.<sup>78</sup> Restaurants, hotels, and motels can apply for licenses to sell liquor by the drink,<sup>79</sup> and retail liquor stores can apply for licenses to sell “to-go” liquor.<sup>80</sup> SCDOR has broad power in its discretion to grant or deny these licenses; however, unless there is a clear violation of law or a protest, licenses are often granted.<sup>81</sup>

Regulation of alcohol in South Carolina falls primarily within the authority of the SCDOR based on its sole authority to grant and deny alcohol licenses.<sup>82</sup> This regulation is asserted to be within the state’s police power because “liquor—by its very nature—is dangerous to the morals, good order, health, and safety of the people” of South Carolina.<sup>83</sup> SCDOR, however, is simultaneously responsible for the administration of thirty-two different state taxes in South Carolina.<sup>84</sup> SLED supports SCDOR by investigating alleged violations by businesses and private citizens and by subsequent enforcement.<sup>85</sup> SLED, however, also splits its responsibilities between

77. *Id.* (select “License” tab; then select “Wholesale Beer/Wine Distributor” from drop-down list).

78. *Id.* (select “Summary” tab).

79. *Id.* (select “License” tab; then select “Business (Restaurant & Hotel/Motel) Liquor by the Drink” from drop-down list).

80. *Id.* (select “License” tab; then select “Retail Liquor Store” from drop-down list).

81. *See* *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (1985) (discussing the denial of a license based on proximity to school); *Schudel v. S.C. Alcoholic Beverage Control Comm’n*, 276 S.C. 138, 142, 276 S.E.2d 308, 310 (1981) (holding that, although suitability of location not provided in the law, ABC Commission can use various factors in determining whether to grant licensure based on the word “may” in the statute); *Roche v. S.C. Alcoholic Beverage Control Comm’n*, 263 S.C. 451, 211 S.E.2d 243 (1975) (discussing the denial of a license based on constant issues of public intoxication in the area, a predominantly residential neighborhood, and proximity to a church); *Moore v. S.C. Alcoholic Beverage Control Comm’n*, 304 S.C. 356, 361, 404 S.E.2d 714, 717 (Ct. App. 1991), *vacated*, 308 S.C. 160, 417 S.E.2d 555 (1992) (holding that ABC Commission may also take into account availability of law enforcement in the area).

82. The South Carolina Code of Laws further explains this constitutional authority providing that:

The State, through the [D]epartment [of Revenue], is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, is authorized to establish conditions or restrictions which the [D]epartment considers necessary before issuing or renewing a license or permit, and occupies the entire field of beer, wine, and liquor regulation except as it relates to hour of operation more restrictive than those set for in this title.

S.C. CODE ANN. § 61-2-80 (2009).

83. *State ex rel. George v. City Council of Aiken*, 42 S.C. 222, 231–32, 20 S.E. 221, 224 (1894).

84. *See Tax Index*, S.C. DEP’T REVENUE, <https://dor.sc.gov/tax> (last visited May 8, 2019).

85. GEATHERS & WERNER, *supra* note 16, at 34–36.

various agencies throughout the state.<sup>86</sup> Additionally, the ALC has the power to review the conduct of the SCDOR and SLED through its general power to adjudicate contested cases involving state agencies.<sup>87</sup> Retail of alcoholic beverages is further regulated by local government through regulatory ordinances and enforcement of the regulatory system.<sup>88</sup> Municipalities use zoning ordinances<sup>89</sup>—and ordinances related to hours of operation<sup>90</sup>—to further control businesses selling alcoholic beverages.<sup>91</sup>

Over the past two decades, numerous changes have been made to alcohol law by affixing new regulations to preexisting laws.<sup>92</sup> To comply with the alcohol laws and regulations at assorted levels of government, business owners are often required to cross-check numerous laws and regulations.<sup>93</sup>

86. See *General Information*, S.C. LAW ENFORCEMENT DIV., <http://www.sled.sc.gov/GeneralInformation.aspx?MenuID=GeneralInformation> (last visited May 8, 2019) (“The primary mission of the State Law Enforcement Division is to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General.”).

87. See *South Carolina Dep’t of Rev. v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012) (“In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the *de novo* contested case proceeding.”). See also *Kan Enters., Inc. v. S.C. Dep’t of Rev.*, 420 S.C. 596, 604, 803 S.E.2d 882, 886 (Ct. App. 2017) (first quoting *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 120 (1981); and then quoting *Palmer v. Alcoholic Beverage Control Comm’n*, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984)) (“Although the statute does not define what constitutes a ‘proper’ location for the retail sale of beer and wine, this court ‘recognizes the rather broad discretion vested in the [fact-finder] in determining the fitness or suitability of a particular location. In deciding whether a location is a proper one, the fact-finder may consider any evidence showing adverse circumstances. Thus, ‘[t]his determination of suitability is not solely a function of geography but involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the community.’ The court should weigh evidence of the location’s burden on law enforcement in deciding its suitability.”) (alteration in original).

88. See *GEATHERS & WERNER*, *supra* note 16, at 44.

89. See, e.g., COLUMBIA, S.C., CODE OF ORDINANCES ch. 17, art. 3, § 269 (2018).

90. Laws related to the sale of alcohol on Sundays vary by municipality. *South Carolina County Laws*, *supra* note 70.

91. See *Arnold v. City of Spartanburg*, 201 S.C. 523, 523, 23 S.E.2d 735, 739 (1943) (holding that one purpose of statute empowering city and town councils to enact ordinances for security, welfare, and convenience of cities and towns, or for preserving health, peace, order, and good government, is to enable municipal officers “to protect the public against [places where beer and wine are sold], particularly with reference to the Sabbath day”); *Town of Williston v. Hancock*, 103 S.C. 199, 199, 87 S.E. 997, 998 (1916) (holding that a town has “ample power and authority” to pass and amend an ordinance forbidding transporting of whiskey within its limits).

92. See *PALMETTO FAMILY COUNCIL*, *supra* note 15, at 3 (“Evidence suggests that the arbitrary and constant tinkering of South Carolina’s alcohol policy has led to poorly constructed and confusing policy.”).

93. See, e.g., *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 214, 574 S.E.2d 196, 199 (2002) (providing the general rule that “[i]n order for there to be a conflict between state statute

Additionally, the sporadic enforcement of these laws<sup>94</sup> contributes to confusion in interpreting the law of the land and implies that this confusion exists on both sides of this issue.

### III. ANALYSIS

#### *A. Current Events: Recent Issues and Interpretations*

Although regulation of particular substances by constitution may appear antiquated, South Carolina has consistently regulated alcohol for over three centuries based on concerns similar to those asserted today.<sup>95</sup> Historically, proponents of strict alcohol regulations expressed fears about harm to family togetherness and values, harm to societal morals, and religious concerns, while those pushing for more lenient laws emphasized the economic benefits of liquor retail.<sup>96</sup> Similarly, modern concerns about the harms of alcoholic beverages focus on societal harms such as underage drinking,<sup>97</sup> driving while intoxicated,<sup>98</sup> crimes,<sup>99</sup> and nuisances.<sup>100</sup> On the other hand, proponents of more lenient alcohol laws argue that South Carolina's laws are antiquated in

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and municipal ordinance[.] 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting[.]'" and holding that the DOR's authority to regulate operation of retailers of alcoholic beverages did not preclude city from passing ordinance affecting hours of operation of these retailers) (quoting *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990)).

94. PALMETTO FAMILY COUNCIL, *supra* note 15, at 5.

95. See discussion *supra* section II.A.

96. See discussion *supra* Part II; see also 1972 S.C. Op. Att'y. Gen. 79, *supra* note 11 ("The purpose and intent of legislatures in limiting the public's access to alcoholic liquor to places where meals are served has been said to be 'to prevent the return of the public saloon and barroom.'") (quoting *Hammond v. McDonald*, 89 P.2d 407, 411 (Cal. Ct. App. 1939)).

97. *Norton v. Opening Break*, 313 S.C. 508, 512, 443 S.E.2d 406, 408–09 (Ct. App. 1994) (explaining that statutes prohibiting sale of alcohol to persons under 21 are "designed to protect both the minor who consumes the alcohol and those members of the public likely to be harmed by the minor's consumption"); PALMETTO FAMILY COUNCIL, *supra* note 15, at 7 ("University of South Carolina students exceed the national average in almost every category of drinking—pregaming, doing shots, choosing a drink containing more alcohol, chugging alcohol, blacking out, passing out, having a hangover and performing poorly on an assignment due to drinking.") (citation omitted).

98. See PALMETTO FAMILY COUNCIL, *supra* note 15, at 5 ("Over the past decade, South Carolina has consistently ranked as one of the worst states in the number of drunk driving deaths.").

99. See generally WISER ET AL., *supra* note 10, at 3 (discussing structural and environmental factors that influence crime, such as alcohol outlet density).

100. *Five Points Roost, LLC v. S.C. Dep't of Rev.*, No. 18-ALJ-17-0005-CC, 2018 WL 1724696, at \*4 (S.C. Admin. Ct. Apr. 3, 2018).

a twenty-first century service industry<sup>101</sup> and that the state is placing unnecessary licensing restrictions on alcohol retail that are outside the scope of its police power.<sup>102</sup> Meanwhile, alcohol regulations are not uniformly enforced throughout the state, resulting in confusion among alcohol retailers and law enforcement alike.<sup>103</sup> Recent South Carolina cases illustrate examples of problems experienced by those attempting to comply with and enforce a vague and confusing system of law.

One recent case exemplifying this confusion dealt with the denial of a liquor license requested by an establishment under a provision of South Carolina's Constitution.<sup>104</sup> The business, Five Points Roost, intended to operate as a restaurant in the popular Five Points district near the University of South Carolina in Columbia.<sup>105</sup> The ALC heard testimony regarding operations of similar businesses in the area from principals of the business applying for the license, the Chief of Police, an administrator from the University of South Carolina, a criminologist, and three residents of nearby neighborhoods.<sup>106</sup> While the principals of Five Points Roost asserted that the establishment's food options met the requirements for liquor license approval as a restaurant, the testimony showed that the food options were limited to hotdogs made in a microwave upon request.<sup>107</sup> The testimony additionally illustrated the harm resulting from the high density of establishments purporting to be restaurants, but operated as bars, in the Five Points neighborhood.<sup>108</sup>

The ALC found that Five Points Roost was essentially a bar, not a restaurant, and was thus prohibited from holding a liquor license because it was not "primarily and substantially engaged in the preparation and serving of meals," as allowed by South Carolina's Constitution.<sup>109</sup> The South Carolina Constitution's limited description of the types of businesses that may be granted licenses for on-premise liquor consumption includes this definition of

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101. See Hargrove, *supra* note 23, at 336.

102. See, e.g., Retail Servs. & Sys., Inc. v. S.C. Dep't of Revenue, 419 S.C. 469, 473, 799 S.E.2d 665, 667 (2017).

103. PALMETTO FAMILY COUNCIL, *supra* note 15, at 4–5.

104. See *Five Points Roost*, 2018 WL 1724696, at \*2.

105. *Id.*

106. *Id.* at \*2–4.

107. *Id.* at \*5.

108. *Id.*

109. *Id.* at \*12. The court noted that the statute at issue "mirrors the language of the mandate of our state's constitution" in S.C. CONST., ART. VIII-A § 1. *Id.* at \*10.

restaurants.<sup>110</sup> South Carolina's Alcoholic Beverage Control Act (ABC Act) attempts to clarify the meaning of "primarily and substantially," stating that these businesses have, *inter alia*, "seating [for] not fewer than forty persons simultaneously," a kitchen utilized for making meals at "normal meal times," menus readily available, and hot meals upon demand "at least once each day the business establishment chooses to be open."<sup>111</sup> Despite the legislature's attempt to define this constitutional language, its vagueness has contributed to a lack of compliance and enforcement for decades.<sup>112</sup>

Significantly in this case, although the ALC denied the business's alcohol license based on lack of food and undisclosed principals, the opinion discussed underage drinking, law enforcement resources, and nuisances to surrounding areas in analyzing the extent of the issue.<sup>113</sup> The ALC's holding could have a statewide impact on alcohol retailers because it affirms that bars are technically not legal in South Carolina under the current law.<sup>114</sup> This holding surprised many in the South Carolina food and beverage industry, where many drinking establishments are licensed as restaurants, but run as bars similarly to the establishment in this case.<sup>115</sup>

Conversely, in a 2017 case, the South Carolina Supreme Court struck down a forty-year old statutory provision of the ABC Act limiting an owner to three retail liquor licenses.<sup>116</sup> Total Wine & More (Retail Services), a retail company which already owned and operated three separate alcohol retail establishments in three South Carolina cities, brought suit against SCDOR after SCDOR denied its application for a fourth alcohol retail license.<sup>117</sup> SCDOR's decision was based on section 61-6-140 of the South Carolina Code

110. S.C. CONST. art. VIII-A § 1 ("[L]icenses may be granted to sell and consume alcoholic liquors and beverages on the premises of businesses which engage primarily and substantially in the preparation and serving of meals . . .").

111. S.C. CODE ANN. § 61-6-20(2)(a)-(c) (Supp. 2018).

112. See e.g., Mark George, *Exploitation of the Law Cited*, STATE (Columbia, S.C.), Sept. 4, 1977, at 28 (discussing exploitation of the law by businesses charging \$1 in order to fall under the "private clubs" provision and by businesses serving pretzels and saltines in order to fall under the "restaurant" provision).

113. *Five Points Roost*, 2018 WL 1724696, at \*7-10; WISER ET AL., *supra* note 10, at 11-15 (discussing the robust amount of underage drinking in bars close to the University of South Carolina and how this can contribute to increased crime rates).

114. For discussion of the implications of the *Five Points Roost* case, see Jeff Wilkinson, *Is a Microwave a Stove? A Hot Dog a Meal? The Answers Could Affect Hundreds of SC Bars*, STATE (Columbia, S.C.), <https://www.thestate.com/news/local/article209970389.html> (last updated Apr. 30, 2018, 6:45 AM) (stating that if the ruling holds "the whole drinking landscape of the Palmetto State could change").

115. See *id.*

116. *Retail Servs. & Sys., Inc. v. S.C. Dep't of Rev.*, 419 S.C. 469, 475-77, 799 S.E.2d 665, 668 (2017); see also S.C. CODE ANN. § 61-6-141 (Supp. 2018).

117. *Retail Servs.*, 419 S.C. at 471, 799 S.E.2d at 666.



of Laws, which provides that, “[t]o promote adequate law enforcement, regulatory measures, health care costs, and associated impacts on the health, safety, and welfare of the state’s residents . . . [,] [t]he department shall not issue more than three retail dealer licenses to one licensee.”<sup>118</sup>

The court deemed section 61-6-140 unconstitutional because the restrictions provided therein “do not promote the health, safety, or morals of the State, but merely provided economic protection for existing retail liquor store owners.”<sup>119</sup> The court noted that, while the South Carolina Constitution provides a “broad mandate” to the General Assembly for regulating sale and retail of alcohol, its ability to regulate does have limitations.<sup>120</sup> The court noted, “if the act is not a police measure, it is unconstitutional.”<sup>121</sup> Therefore, the court held the three license rule was thus unconstitutional because economic protection falls outside the scope of South Carolina’s police powers.<sup>122</sup>

The contrasting results of these cases demonstrate the problems experienced by alcohol retailers and law enforcement in applying vague laws that are simultaneously too broad and too strict. Indeed, some laws are seen as arbitrary or unconstitutional,<sup>123</sup> while others are completely misunderstood based on a tradition of lack of compliance and enforcement.<sup>124</sup> In determining the constitutionality and effectiveness of South Carolina’s current regulatory scheme, it is important to consider the actual impact of the laws on the health and well-being of South Carolina’s citizens.

118. S.C. CODE ANN. § 61-6-140 (Supp. 2018).

119. *Retail Servs.*, 419 S.C. at 472, 799 S.E.2d at 666. Interestingly, similar arguments related to the scope of state power in relation to alcohol regulation have been made since the days of the Dispensary system. See Krause, *supra* note 28, at 234; discussion *supra* section II.A.

120. *Retail Servs.*, 419 S.C. at 472, 799 S.E.2d at 666; but see *id.* at 477, 799 S.E.2d at 669 (Kittredge, J., dissenting) (asserting that the state has “virtually complete control” within the sphere of alcohol regulation granted by the Twenty-First Amendment).

121. *Id.* at 472–73, 799 S.E.2d at 667 (quoting State *ex rel.* George v. City Council of Aiken, 42 S.C. 222, 247, 20 S.E. 221, 230 (1894)).

122. *Id.* at 475–76, 799 S.E.2d at 668.

123. See Initial Br. of Appellant at 16–17, *Retail Servs. & Sys., Inc. v. S.C. Dep’t of Revenue*, Appellate Case No. 2014-002728 (Apr. 6, 2015) (asserting that S.C. CODE ANN. §§ 61-6-140 and 150 are unconstitutional because the plain language of the statutes does not provide any perceived evil intended to lesson and thus place arbitrary restrictions on alcohol sales) (on file with author).

124. See, e.g., Initial Br. of Appellants at 8, *Five Points Roost, LLC v. S.C. Dep’t of Rev.*, No. 2018-001064 (S.C. Ct. App. Aug. 8, 2018) (asserting that neither the DOR nor the ALC had the authority to deny licenses, but that this power lies within the authority of the municipalities).

*B. Does the Law Accomplish Its Purpose?*

Although SCDOR is given broad power to regulate alcohol through the current law, this power is not being utilized effectively. The purported purpose for the current laws regulating alcohol is protecting public safety and morals from alcohol related harms,<sup>125</sup> but the current system does not protect from these harms. The overarching themes for justification of strict regulation of alcohol include interests in protecting the drinker from harm (underage drinking, alcohol abuse) and interests in protecting other citizens from harm (drunk driving, nuisances, crime).<sup>126</sup>

Despite current law, underage drinking and alcohol abuse continue to run rampant in South Carolina. Excessive drinking results in approximately 1,534 deaths and 47,267 potential years of life lost in South Carolina each year.<sup>127</sup> Binge drinking<sup>128</sup> is especially common for college students, and students at the University of South Carolina rank higher than the national average for high risk alcohol use behaviors including pregaming, doing shots, choosing a drink with a higher alcohol content, and chugging alcohol.<sup>129</sup> Unsurprisingly, University of South Carolina students also had higher rates of alcohol-related harms including blacking out, passing out, having a hangover, and performing badly in classes due to alcohol use.<sup>130</sup> While universities in South Carolina such as the University of South Carolina, College of Charleston, and Clemson University have begun instituting their own methods of reducing the harms of underage drinking on their campuses, uniform, proactive regulation of alcohol retailers by state agencies would be more effective in this pursuit and would reduce the use of university resources devoted to these issues under the current liquor regulation system in South Carolina.<sup>131</sup>

125. See *Pendarvis v. Berry*, 214 S.C. 363, 368, 52 S.E.2d 705, 706 (1949).

126. See discussion *supra* sections II.A, III.A.

127. WISER ET AL., *supra* note 10, at 39.

128. Binge drinking is defined as drinking five or more drinks on an occasion for men or 4 or more drinks on an occasion for women. *Data and Maps*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/alcohol/data-stats.htm> (last visited May 8, 2019).

129. UNIV. OF S.C.—COLUMBIA, ALCOHOLEDU FOR COLLEGE, IMPACT REPORT 2017–2018, at 19, [https://sc.edu/about/offices\\_and\\_divisions/substance\\_abuse\\_prevention\\_and\\_education/documents/alcoholedu\\_impact\\_report\\_2017-2018.pdf](https://sc.edu/about/offices_and_divisions/substance_abuse_prevention_and_education/documents/alcoholedu_impact_report_2017-2018.pdf).

130. *Id.* at 20.

131. The University of South Carolina requires students to take an alcohol education course online before they are able to register for classes. *AlcoholEdu and Sexual Assault Prevention for Undergraduates*, U.S.C.: SUBSTANCE ABUSE PREVENTION & EDUC., [https://www.sc.edu/about/offices\\_and\\_divisions/substance\\_abuse\\_prevention\\_and\\_education/alcoholedu-sexual-assault-prevention/index.php](https://www.sc.edu/about/offices_and_divisions/substance_abuse_prevention_and_education/alcoholedu-sexual-assault-prevention/index.php) (last visited May 8, 2019). Clemson University worked with off-campus landlords to develop stricter language in rental agreements to reduce issues with underage drinking. PAC. INST. FOR RES. & EVALUATION (PIRE), OJJDP

Binge drinking is also common among adults in South Carolina, and rates are high for harm related to alcohol use and driving.<sup>132</sup> For example, South Carolina is ranked seventh for alcohol-related driving deaths in the United States.<sup>133</sup> In 2007, for example, approximately thirty-nine percent of traffic fatalities involved alcohol.<sup>134</sup> Additionally, areas with high densities of businesses selling alcohol for on-site consumption have higher rates of alcohol-related crimes and harms.<sup>135</sup>

Problems with compliance and enforcement are a major contributor to the failure of the South Carolina liquor regulation scheme intended to protect against alcohol-related harms. Businesses have been successfully circumventing alcohol regulations for decades<sup>136</sup> and continue to find ways to read and interpret the law leniently in their favor—or avoid it altogether.<sup>137</sup> Local law enforcement faces substantial issues in enforcing alcohol

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DEVELOPMENT GRANTS TO COLLEGES YIELD IMPROVEMENT IN UNDERAGE DRINKING ENFORCEMENT (Apr. 2012). The College of Charleston instituted an Alcohol Enforcement Team and saw benefits from institution of “alcohol-free zones.” *Id.*

132. Approximately 18.1% of South Carolina residents polled admit to binge drinking, and the average binge drinker in South Carolina exceeds the national binge drinking threshold, consuming seven to eight drinks per session. *Data and Maps, supra* note 128.

133. Cheyenne Buckingham, *These Are America's Drunkiest States*, USA TODAY (Mar. 8, 2018, 10:27 AM), <https://www.usatoday.com/story/news/2018/03/08/these-americas-drunkest-states/406342002> (reviewing data from the Centers for Disease Control).

134. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS: STATE ALCOHOL-IMPAIRED-DRIVING ESTIMATES 5 (2018), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812483>.

135. WISER ET AL., *supra* note 10, at 38.

136. *See, e.g.,* George, *supra* note 112 (discussing exploitation of the law by businesses charging \$1 in order to fall under the “private clubs” provision and by businesses serving pretzels and saltines in order to fall under the “restaurant” provision).

137. WISER ET AL., *supra* note 10, at 24 (“[K]itchens [in Five Points’ businesses] often consist[] of only a microwave oven used in the preparation of ‘hot pockets’ and other pre-prepared foods.”).

regulations ranging from relaxed societal views<sup>138</sup> to lack of resources<sup>139</sup> to limitations provided by the statutes themselves.<sup>140</sup> The social harms and general confusion about alcohol enforcement laws illustrate the ineffectiveness of South Carolina's current alcohol regulation system and the need for structural reform in this area.

#### IV. NOSEY NEIGHBORS: A COMPARISON OF ALCOHOL REGULATIONS IN NEIGHBORING STATES

##### *A. Alcohol Regulation in Virginia*

In Virginia, liquor is regulated by a mixed/overlapping alcohol control scheme.<sup>141</sup> The Virginia Alcoholic Beverage Control Authority was established in 1934 as an executive branch agency, but it transitioned to an executive branch authority on January 15, 2018, meaning it now regulates retail of alcohol and enforces those regulations.<sup>142</sup> Localities are permitted by state law to vote on whether to allow retail sale of alcohol.<sup>143</sup> Liquor and wine above a certain alcohol by volume (ABV) percentage are sold through state-operated Alcoholic Beverage Control stores, and beer and low-ABV wine are sold through private distributors.<sup>144</sup> Restaurants licensed to sell mixed

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138. In their study, *Time for Change*, WISER ET AL. note that, particularly in Columbia's Five Points neighborhood, alcohol enforcement is less strict based on societal views. Specifically reporting:

Parents of students often consider underage drinking in Five Points as a rite of passage for college students; students, themselves, assert that their violations are victimless; law enforcement officials disagree about its effectiveness; and alcohol establishments resent the implication that alcohol sales are related to victimization.

*Id.* at 22–23. The authors further explain that students worry more about sanctions from the university than they do about being arrested; however, this concern has decreased as the police are no longer able to notify University of South Carolina about students who are arrested or hospitalized because of drinking. *Id.* at 23.

139. *Id.*; see also George, *supra* note 112 (quoting ABC Commissioner who explained money from alcohol fines is channeled into other agencies and asserted, "We're trying as hard as we can. . . . We simply don't have enough men.").

140. WISER ET AL., *supra* note 10, at 25 (pointing out that alcohol regulation and enforcement are almost exclusively left to the SC DOR and the State Law Enforcement Division (SLED), but that alcohol regulation is not a top priority for either of these resource-limited departments).

141. NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, *Information Sheets, Virginia*, CONTROL STATE DIRECTORY AND INFO (Dec. 2018), [https://www.nabca.org/sites/default/files/assets/files/Virginia\\_3.pdf](https://www.nabca.org/sites/default/files/assets/files/Virginia_3.pdf).

142. *Id.*

143. *Id.*

144. *Id.*

beverages in Virginia must generate a minimum of forty-five percent of sales revenue from food sales, meaning there are no standalone “bars” in the traditional sense.<sup>145</sup>

One of the major areas of concern for states considering changes to their alcohol regulations is whether those changes will in fact promote public safety and welfare.<sup>146</sup> The Virginia Institute for Public Policy, in an attempt to measure the efficacy of promoting these goals, conducted a study which concluded that “government-spirits monopolies do not generate the health benefits their proponents trumpet.”<sup>147</sup> The authors of the study suggest that the government’s regulation of liquor does not impact negative health benefits resulting from alcohol use because drinkers simply substitute beer and wine where liquor is more difficult to obtain.<sup>148</sup>

Virginia uses several programs to combat health and safety concerns related to alcohol, including the Youth Alcohol and Drug Abuse Prevention Project, the Higher Education Alcohol and Drug Strategic Unified Prevention program, and Responsible Seller and Servers: Virginia’s Program (RSVP), and Manager’s Alcohol Responsibility Training.<sup>149</sup> Additionally, Virginia has a leadership program focusing on strategic prevention programs for high school students<sup>150</sup> as well as an initiative providing tools and resources for students, professionals, and parents to prevent alcohol and substance abuse on college campuses.<sup>151</sup>

### *B. Alcohol Regulation in North Carolina*

Although North Carolina’s relationship with alcohol regulation is historically similar to South Carolina’s, North Carolina’s system differs from

145. VA. CODE ANN. § 4.1-210(A)(1)(ii) (West, Westlaw through end of 2018 Reg. Sess. And 2018 Sp. Sess. I), *amended by* Act of Feb. 27, 2019, ch. 174, 2019 Virginia Laws 174.

146. Sujit CanagaRetna, *Debate on Proposals to Privatize State-Administered Alcohol Sales*, S. LEGIS. CONFERENCE (June 2015), <http://www.sclatlanta.org/research/index.php?pub=347>.

147. DONALD J. BOUDREAUX & JULIA WILLIAMS, VA. INST. FOR PUB. POL’Y, *IMPAIRED JUDGMENT: THE FAILURE OF CONTROL STATES TO REDUCE ALCOHOL-RELATED PROBLEMS* 4 (July 2010), <https://virginia institute.org/pdf/ABC-revised-version-final.pdf>.

148. *Id.*

149. NAT’L ALCOHOL BEVERAGE CONTROL ASS’N, *supra* note 141.

150. *About*, YOUTH ALCOHOL & DRUG ABUSE PREVENTION PROJECT, [www.yadapp.com/about](http://www.yadapp.com/about) (last visited May 8, 2019).

151. *Id.*; *see also* Higher Education Alcohol and Drug Strategic Unified Prevention (HEADS UP), VA. ALCOHOLIC BEVERAGE CONTROL AUTH., <https://www.abc.virginia.gov/education/programs/heads-up> (last visited May 8, 2019).

South Carolina's in important ways.<sup>152</sup> In North Carolina, spirits are controlled by the state.<sup>153</sup> In 1937, the North Carolina General Assembly enacted an Alcohol Beverage Control bill allowing each county to vote on whether they preferred retail sale of alcohol or whether they preferred to be a "dry county."<sup>154</sup> In contrast to South Carolina's privatized license system for liquor, beer, and wine, North Carolina has a state-run alcohol control scheme for liquor, meaning that the state has the exclusive authority—as the sole wholesale distributor—to set the price of and gain revenue directly from retail sales of all liquor.<sup>155</sup> North Carolina has a license system for beer<sup>156</sup> and a mixed/overlapping system for wine.<sup>157</sup> Liquor can only be sold through state-run ABC stores, but beer and wine can be sold at other appropriately licensed outlets.<sup>158</sup>

Although the systems for liquor, beer, and wine differ in North Carolina, the confusion resulting from alcohol laws is similar to South Carolina. The North Carolina legislature, however, has already begun to make changes to clarify and modernize its alcohol regulation system by clarifying vague legal definitions,<sup>159</sup> adjusting its three-tier system to make room for a growing beer

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152. For an overview of North Carolina's liquor regulation history, including prohibition, brown bagging, and mini-bottles, see generally Michael Crowell, *A History of Liquor-by-the-Drink Legislation in North Carolina*, 1 CAMPBELL L. REV. 61 (1979).

153. See *id.* at 62 (noting that the spirits could only be sold in county run stores). See also NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, *Information Sheets, North Carolina*, CONTROL STATE DIRECTORY AND INFO (Aug. 2018), <https://www.nabca.org/sites/default/files/assets/files/NCOnePager.pdf> ("Local ABC boards operate retail stores while the state Commission manages wholesale distribution of spirituous liquor and oversight of local ABC boards.").

154. Crowell, *supra* note 152, at 62; See also NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, *Information Sheets, North Carolina*, CONTROL STATE DIRECTORY AND INFO (Aug. 2018), <https://www.nabca.org/sites/default/files/assets/files/NCOnePager.pdf>.

155. The North Carolina government's power to directly profit from alcohol sales thus contrasts with South Carolina's limitation to revenue derived solely from taxation. See discussion *supra* section II.B.

156. NAT'L ALCOHOL BEVERAGE CONTROL ASS'N, *supra* note 154.

157. *Id.*

158. *Id.*

159. See, e.g., *AGL, Inc. v. N.C. Alcoholic Beverage Control Comm'n*, 315 S.E.2d 718, 719 (N.C. Ct. App. 1984), for a discussion of the change following the 1981 Session Laws, effective January 1, 1982, in which Chapter 18A of the General Statutes was repealed and replaced by Chapter 18B (discussing North Carolina's move from the similar "primarily and substantially" requirement to qualify as a restaurant to "an establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverage"). The current language of N.C. GEN. STAT. 18B-1000(6) (West, Westlaw through S.L. 2018-145 of the 2018 Reg. Sess. and Extra Sess., including through 2019-04 of the General Ass.) provides that "an establishment's gross receipts from food and nonalcoholic beverages

industry,<sup>160</sup> and providing alcohol abuse education to promote its legislative intent.<sup>161</sup>

North Carolina has made changes to clarify alcohol laws by changing the vague definition of “primarily and substantially” to providing a statutory requirement that a restaurant’s gross sales from food and nonalcoholic beverages be at least thirty percent of overall sales.<sup>162</sup> Recently, the growing craft beer industry in North Carolina has prompted an analysis of the appropriateness of the current beer regulation system.<sup>163</sup> In fact, North Carolina has been successful enough in adapting its approach to beer regulation that Asheville, North Carolina, was named Beer City USA in 2009 and boasts more breweries per capita than any other city in the United States.<sup>164</sup> To address concerns about the impacts of alcohol use on health and safety, North Carolina has also made changes to provide alcohol education by instituting the Talk it Out campaign, which aims to “raise awareness about the dangers of underage drinking” and to encourage parents to talk to their kids about this issue by providing effective tips and tools.<sup>165</sup> Significantly, North Carolina also offers educational resources in the form of free, year-round

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shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages.”

160. See Andrew Tamayo, Comment, *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, 2200 (2010) (discussing the North Carolina General Assembly’s recognition of the craft beer industry as a growing industry in North Carolina which boosts the economy through creation of jobs and attraction of tourists).

161. NAT’L ALCOHOL BEVERAGE CONTROL ASS’N, *supra* note 154.

162. N.C. GEN. STAT. 18B-1000(6) (West, Westlaw through S.L. 2018-145 of the 2018 Reg. Sess. and Extra Sess., including through 2019-04 of the General Ass.); *see also supra* text accompanying note 159.

163. See Tamayo, *supra* note 160, at 2214.

164. Jen Nathan Orris, *Beercation Getaway*, EXPLORE ASHEVILLE (Aug. 31, 2015), <https://www.exploreasheville.com/stories/post/beercation-getaway> (last visited May 8, 2019).

165. NAT’L ALCOHOL BEVERAGE CONTROL ASS’N, *supra* note 154. *See also Talk It Out*, TALKITOUTNC.ORG, <https://www.talkitoutnc.org> (last visited May 8, 2019) (providing tips and tools for parents to raise awareness about underage drinking—an initiative from the North Carolina ABC Commission); *infra* section V.D. Similarly, Virginia uses several programs easily accessible from its alcohol control authority’s website to promote enforcement and education related to alcohol laws. *See generally* VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY, <https://www.abc.virginia.gov> (last visited May 8, 2019). To combat health and safety concerns the Virginia Alcoholic Beverage Control Authority (VABCA) offers the Youth Alcohol and Drug Abuse Prevention Project, the Higher Education Alcohol and Drug Strategic Unified Prevention program, and Responsible Seller and Servers: Virginia’s Program, and Manager’s Alcohol Responsibility Training. From VABCA’s enforcement page, individuals can report a violation, object to a license, easily access specific alcohol laws, and view alcohol-related court dockets. *See Enforcement*, VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY, <https://www.abc.virginia.gov/enforcement> (last visited May 8, 2019).

classes through its Responsible Alcohol Seller/Server Program to help ensure businesses fully understand and comply with alcohol regulations.<sup>166</sup> Resources for quickly finding alcohol laws and regulations, alcohol-related educational trainings and materials, and enforcement measures are easily accessible from the website of the North Carolina Alcoholic Beverage Control Commission and can help businesses determine whether they are in compliance with alcohol regulations.<sup>167</sup>

Although North Carolina has worked to modernize its alcohol laws to promote the retail industry, many continue to criticize the regulation system of so-called “control” states<sup>168</sup> as antiquated.<sup>169</sup> Critics advocate for privatization of liquor based on corruption within Alcoholic Beverage Commission authorities<sup>170</sup> and the purported benefits of a free-market economy.<sup>171</sup> Opponents of privatization continue to call attention to compromised public safety, loss of profit for the state, and job losses.<sup>172</sup> While Virginia and North Carolina illustrate some of the benefits of a centralized

166. NAT’L ALCOHOL BEVERAGE CONTROL ASS’N, *supra* note 154.

167. *See generally About the ABC Commission: General Information*, NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMM’N, <https://abc.nc.gov/About> (last visited May 8, 2018). The Virginia Institute for Public Policy, however, in attempting to determine the benefit of strict alcohol control, conducted a study concluding that “government-spirits monopolies do not generate the health benefits their proponents trumpet.” BOUDREAUX & WILLIAMS, *supra* note 147. The authors of the study suggest that the reason government regulation of liquor does not impact negative health benefits resulting from alcohol use is that beer and wine are simply substituted where liquor is more difficult to obtain. *Id.*

168. North Carolina is one of only seventeen states with the control model. *Control State Directory and Info*, NAT’L ALCOHOL BEVERAGE CONTROL ASS’N, <https://www.nabca.org/control-state-directory-and-info> (last visited May 8, 2019).

169. *See* John Trump, *Time to Privatize? N.C. ABC System Too Broken to Fix*, CAROLINA J. (Sept. 7, 2018, 4:00 AM), <https://www.carolinajournal.com/opinion-article/time-to-privatize-n-c-abc-system-too-broken-to-fix> (referring to North Carolina’s system as “archaic” and “monopolistic”).

170. *See* Will Doran, *NC Liquor Store Officials Wasted Millions of Taxpayer Dollars, Audit Finds*, NEWS & OBSERVER (Aug. 9, 2018, 4:46 PM), <https://www.newsobserver.com/news/politics-government/article216365045.html>; *Our Opinion: Privatize State’s Wasteful Liquor Sales Monopoly*, WILSON TIMES (Aug. 14, 2018, 9:50 PM), <http://wilsontimes.com/stories/our-opinion-privatize-states-wasteful-abc-monopoly,137762>.

171. *See Control State Directory and Info*, *supra* note 168.

172. Nora Maynard, *Buying Liquor: State vs. Private Stores Straight Up Cocktails and Spirits*, KITCHN BLOG (Mar. 11, 2011), <https://www.thekitchn.com/buying-liquor-state-vs-private-141292>. *See also generally* Tim Stockwell et al., *Impact on Alcohol-Related Mortality of a Rapid Rise in the Density of Private Liquor Outlets in British Columbia: A Local Area Multi-Level Analysis*, 106 SOC’Y FOR STUDY ADDICTION 768, 768 (2011) (finding that increased number of liquor stores directly correlated with increased rates of alcohol consumption and alcohol-related death).



alcohol regulation agency, the alcohol control system has been heavily criticized, and many states are moving away from this model.<sup>173</sup>

### *C. Alcohol Regulation in Georgia*

Georgia's system is more similar to South Carolina's system than North Carolina's system, as alcohol is primarily regulated by the Georgia Department of Revenue (GDOR), not an alcoholic beverage control commission.<sup>174</sup> GDOR, however, specifically allocates alcohol regulation to its Alcohol & Tobacco Division, which is further divided into two sections: the Law Enforcement Section and the Operations Section.<sup>175</sup> The Operations Section receives and processes applications for wholesalers, importers, brokers, manufacturers, and retailers of alcoholic beverages and tobacco products.<sup>176</sup> The Law Enforcement Section enforces all laws and regulations pertaining to the manufacture, possession, transportation, and sale of alcoholic beverages as well as tobacco products.<sup>177</sup> Within the Law Enforcement Section exist Special Agents who conduct specialized investigations into licensing background checks and potential violations, sales of alcoholic beverages to minors, tax evasion on alcohol, tobacco, and certain motor fuel products, and other related matters.<sup>178</sup> Unlike South Carolina, Georgia's system allocates alcohol-related duties to two agencies whose primary purpose is enforcement of alcohol regulations.<sup>179</sup>

Like South Carolina, Georgia regulates alcohol based on health and safety concerns, although there is a special focus on drunk driving.<sup>180</sup> One safety measure provided by Georgia law is that teens under the age of eighteen are required to complete an Alcohol and Drug Awareness Program as a

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173. *See generally* Trump, *supra* note 169.

174. *See* GA. CODE ANN. §§ 3-1-2(5), -2-1 (West, Westlaw through Act 24 of 2019 Legis. Sess).

175. *Alcohol Licenses and Permits*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/alcohol-licenses-permits> (last visited May 8, 2019).

176. *Id.*

177. *Enforcement*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/enforcement> (last visited May 8, 2019). This section also enforces the state's motor fuel and motor carrier laws. *Id.*

178. *Laws and Regulations*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/laws-regulations> (last visited May 8, 2019).

179. *Alcohol Licenses and Permits*, *supra* note 175.

180. *See* Andrew Mullen & Brian Thomas, *Alcoholic Beverages SB 10*, 28 GA. ST. U. L. REV. 255, 266-67 (2011).

prerequisite for obtaining a driver's license.<sup>181</sup> Like South Carolina, however, Georgia does not require alcohol server training.<sup>182</sup> Access to educational resources for alcohol safety and regulation appear to be limited due to the lack of a specific division allocated this duty within the GDOR.<sup>183</sup> Georgia's alcohol regulation system provides a helpful framework for appropriately allocated duties and resources, but educational resources related to alcohol are lacking when compared to North Carolina's and Virginia's. South Carolina's system would benefit from a combination of these examples.

## V. RECOMMENDATIONS FOR SOUTH CAROLINA

### A. *Overarching Issues*

Exercise of strict alcohol regulations by the state are constitutional if the state is operating within its police powers to protect the health, welfare, and morals of its citizens.<sup>184</sup> The history of alcohol regulation in South Carolina highlights numerous harms from which the state seeks to protect its citizenry, but the current system fails to reach this goal for several reasons.<sup>185</sup> First, a lack of a clear, specific system of laws<sup>186</sup> regulating alcohol caused by aged laws and sporadic amendments throughout the past few decades contributes to this failure.<sup>187</sup> Adding to this issue, businesses have found methods of semi-compliance with the law that fosters a tradition of ignoring legislative intent.<sup>188</sup> Finally, alcohol laws are not being adequately enforced due to diffusion of responsibility, statutory limitations, and lack of resources.<sup>189</sup>

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181. *Alcohol and Drug Awareness Program (ADAP/eADAP)*, GA. DEP'T OF DRIVER SERVS., <https://dds.georgia.gov/alcohol-and-drug-awareness-program-adapeadap> (last visited May 8, 2019).

182. *See Alcohol and Tobacco*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/alcohol-tobacco> (last visited May 8, 2019).

183. *See id.*

184. *See Retail Servs. & Sys., Inc. v. S.C. Dep't of Rev.*, 419 S.C. 469, 478–79, 799 S.E.2d 665, 670 (2017) (quoting *State ex rel. George v. City Council of Aiken*, 42 S.C. 222, 247, 20 S.E. 221, 230 (1894)).

185. *See generally* Krause, *supra* note 28, at 210–42 (detailing historical efforts to regulate alcohol in South Carolina for moral and health purposes).

186. *See* PALMETTO FAMILY COUNCIL, *supra* note 15 (discussing the high rates of alcohol abuse and lack of statutory enforcement in South Carolina).

187. *Id.* at 3.

188. *See* George, *supra* note 112.

189. *See generally* PALMETTO FAMILY COUNCIL, *supra* note 15, at 37.

*B. Restructure the Law to Make It Clear, Specific, and Relevant*

Changes must be made to our current alcohol regulation system in order to clarify the law so that it can be understood and applied by individual citizens as well as regulatory and enforcement entities. Regulatory entities, enforcement agencies, and alcohol retail businesses must be able to understand the law in order to follow it. For example, restaurant owners would benefit from clarification of the vague “primarily and substantially” language provided by South Carolina law.<sup>190</sup> To clarify this requirement, the General Assembly could follow the example of North Carolina, requiring thirty percent of sales to come from food, or the example of Virginia, requiring forty-five percent of sales to come from food.<sup>191</sup> Confusion exists in the process of regulating businesses through licensing,<sup>192</sup> the enforcement of laws through violations,<sup>193</sup> conformity with laws to run legitimate businesses,<sup>194</sup> and adjudication of laws in court.<sup>195</sup> The South Carolina General Assembly must closely analyze the current laws related to alcohol and make significant changes so that these laws can be uniformly understood and enforced by government agencies in our modern society.

South Carolina’s alcohol laws would be more effective in achieving the General Assembly’s purported goals if regulation responsibilities were redistributed from the system splitting duties between the already overburdened SCDOR and SLED to two agencies under the SCDOR with the primary purpose of effective alcohol regulation, similar to Georgia’s framework.<sup>196</sup> Bureaucratic agencies frequently require restructuring and updating when “program tasks are revised or activities to be evaluated and renewed,” and South Carolina has illustrated both the need—and the ability—to make these changes.<sup>197</sup>

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190. See discussion *supra* section III.A.

191. See discussion *supra* section III.A.

192. See discussion *supra* section III A.

193. See discussion *supra* section III.A.

194. See discussion *supra* section III.A.

195. If statutory language was clear, courts would need not be involved in this regulation at all. See, e.g., *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *In re Vincent J.*, 333 S.C. 233, 233, 509 S.E.2d 261, 262 (1998)) (“Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”).

196. See discussion *supra* section IV.C.

197. COLE BLEASE GRAHAM JR. & WILLIAM V. MOORE, *SOUTH CAROLINA POLITICS AND GOVERNMENT* 180 (John Kincaid et al. eds., 1994). The change from the ABC system to our

Georgia's system provides a partial example of effective streamlining of resources.<sup>198</sup> Unlike South Carolina's system of splitting alcohol duties among agencies already overburdened with other duties, the GDOR allocates responsibility for alcohol regulation to a specific division, and it further allocates specific responsibilities to two sections within that division.<sup>199</sup> Rather than diffusing responsibility of administering and enforcing alcohol regulations by allocating duties to overburdened agencies, South Carolina would be better served by allocating responsibility to a single division whose sole priority is the effective administration of alcohol laws.

*C. Proactively Regulate and Enforce the Law to Effectively Distribute Resources*

Alcohol regulation and enforcement would be more effective if alcohol regulations were proactively monitored for compliance instead of unequally burdening law enforcement with reactive measures.<sup>200</sup> Reorganization of responsibility for alcohol regulation into one division would be an effective measure to increase proactive regulation. Alternatively, stricter enforcement of existing regulations<sup>201</sup> by the SCDOR and local municipal agencies would alleviate the burden to law enforcement's limited resources.<sup>202</sup> For example, the City of Columbia has a zoning ordinance prohibiting any drinking establishment to be within 400 feet of another drinking establishment.<sup>203</sup> The existence of more than ten bars in Five Points within half a mile is a direct violation of this ordinance and results in the precise harms the ordinance seeks to prevent.<sup>204</sup> Thus, rather than overreliance on law enforcement to control issues in this area, the Zoning Board could intervene to enforce its pre-

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current system shows that alcohol is an important enough issue that legislature is willing to overhaul a system of laws to promote the public welfare. *Id.*

198. *See Alcohol Licenses and Permits*, *supra* note 175.

199. *Id.*

200. WISER ET AL., *supra* note 10, at 37.

201. *See, e.g.*, Code of Ordinances of City of Columbia § 14-106(d)(6), requiring: As part of the security plan, the permit holder shall establish a policy that: (i) Requires all floor managers, bartenders and wait staff to maintain certification in Serve Safe Alcohol, TIPS or Lexington Richland Alcohol and Drug Abuse Council's PREP training on determining when a customer is underage or apparently intoxicated or training approved by the Columbia Police Department.

202. WISER ET AL., *supra* note 10, at 37. Although the power to issue alcohol licenses may not be delegated to municipalities by the state, S.C. CONST. art. VIII-A, § 1, municipalities are not entirely preempted from regulated in this area.

203. COLUMBIA, S.C., CODE OF ORDINANCES ch. 17, art. 3, § 269(1) (2018).

204. The primary purpose of regulations limiting access to alcohol is preventing the return of the "public saloon and barroom." 1972 S.C. Op. Att'y. Gen. 79, *supra* note 11.

established proactive measures. The use of alcohol regulations already in place as a means to prevent crime—rather than just reacting to it—could significantly aid in the distribution of state resources.

Similarly, uniform enforcement of policies by law enforcement would promote uniform compliance with alcohol regulations by signaling legislative intent and setting an example of how the laws are understood.<sup>205</sup> South Carolina currently provides Alcohol Enforcement Team (AET) trainings through the South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) with the goal of equipping law enforcement officers with skills to help prevent underage drinking.<sup>206</sup> Each year, this group holds an “Out of Their Hands” (OOTH) Spring Blitz to promote messages related to keeping alcohol from underaged persons.<sup>207</sup> The AET website also provides statistics related to underage drinking in South Carolina.<sup>208</sup> Expansion of this program would ensure uniform understanding and application of alcohol regulations statewide for cohesive enforcement. Uniform enforcement would be promoted by empowering one agency to handle training, education, and enforcement—and uniform enforcement across the state would help to reverse

205. See Michael J. Licari, *Bureaucratic Discretion and Regulatory Success Without Enforcement*, in *POLITICS, POLICY, AND ORGANIZATIONS: FRONTIERS IN THE SCIENTIFIC STUDY OF BUREAUCRACY* 276, 277 (George Krause & Kenneth J. Meier eds., 2003) (discussing the effectiveness of noncoercive methods of regulation such as “signaling” to the general public about negative consequences and social norms related to the regulations).

206. DAODAS’s website further explains:

The AET model, which includes community coalition maintenance and development, merchant education, and law enforcement partnership, specifies a multi- or single-jurisdictional alcohol law enforcement approach (depending on the needs and participation of law enforcement within the target area) in a community to:

- Reduce youth access to alcohol utilizing various strategies (social and retail access)
- Measure, track, and improve merchant compliance with alcohol laws
- Provide research-based merchant education
- Build community support for enforcement of underage drinking laws through media advocacy and community coalition maintenance and development
- Develop local law enforcement support for underage drinking prevention and enforcement efforts

*Law Enforcement: Alcohol Enforcement Teams*, DEP’T OF ALCOHOL AND OTHER DRUG ABUSE SERVS., <http://www.daodas.sc.gov/prevention/law-enforcement> (last visited May 8, 2019).

207. *Id.* Each judicial circuit has its own OOTH Spring Blitz plan. *Id.* For example, the plan for the 5th Circuit AET (Richland and Kershaw counties) includes events such as “mock party” exercises with youth, PREP trainings for merchants, AET Coordinator ride along with University of South Carolina Law Enforcement, and social media promotions. *Local OOTH Plans*, SOUTH CAROLINA OUT OF THEIR HANDS, <http://www.scoutoftheirhands.org/local-ooth-plans.html> (last visited May 8, 2019).

208. *Underage Drinking in SC*, SOUTH CAROLINA OUT OF THEIR HANDS, <http://www.scoutoftheirhands.org/underage-drinking-in-sc.html> (last visited May 8, 2019).

the tradition of noncompliance with alcohol laws and set precedents to be followed by alcohol retailers.

*D. Provide State-Wide Education on the Law and Its Purpose*

Educating the alcohol retail industry and the general public about the alcohol-related harms these regulations seek to prevent is important for the promotion of self-regulation.<sup>209</sup> Education on legislative intent and the underlying issues would help to promote compliance and understanding of the law by setting a precedent of proactive prevention.<sup>210</sup> Thus, alcohol retail businesses, administrative enforcement entities, and law enforcement officers would all benefit from a clearer understanding of the basis of South Carolina's law provided by accessible training opportunities and more uniform enforcement of alcohol laws and regulations.

Currently, South Carolina does offer free classes to educate alcohol retailers and servers through DAODAS,<sup>211</sup> but they are not required by the state<sup>212</sup> and are offered in person only through a process that requires significant motivation on the part of the retailer.<sup>213</sup> Virginia's use of classes to help those selling and serving alcohol become more responsible provides a useful example to South Carolina law enforcement officials seeking to improve uniformity of enforcement of alcohol laws.<sup>214</sup> Similar to North Carolina, Virginia provides free regional and online classes to educate sellers, servers, and managers involved in alcohol retail to "become more responsible and to better understand ABC laws, rules and regulations."<sup>215</sup> Conversely, South Carolina's method of educating this population through the Palmetto Retailers Education Program (PREP) is nearly as confusing to navigate as the

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209. See Licari, *supra* note 205, for a discussion of the impact of sending signals to members of the public on effective self-regulation related to state clean indoor air laws.

210. See *id.* at 282 (suggesting that clean indoor air laws "should send signals precisely because they serve to provide information on an issue that remains confusing to this day"). Similarly, signals sent through alcohol education would serve to provide clarity on the confusion caused by the current alcohol regulation system in South Carolina.

211. *Palmetto Retailers Education Program*, DEP'T OF ALCOHOL AND OTHER DRUG ABUSE, <http://www.daodas.sc.gov/prevention/merchant-initiatives/prep> (last visited May 8, 2019).

212. Some municipalities require alcohol training, but these ordinances are not strictly enforced. See, e.g., COLUMBIA, S.C., CODE OF ORDINANCES ch. 14, art. 4, § 106(d)(6) (2018).

213. See *Palmetto Retailers Education Program*, *supra* note 211.

214. See *Virginia Information Sheet*, NAT'L ALCOHOL BEVERAGE CONTROL ASS'N (Dec. 2018), [https://www.nabca.org/sites/default/files/assets/files/Virginia\\_3.pdf](https://www.nabca.org/sites/default/files/assets/files/Virginia_3.pdf).

215. *Id.*

laws and regulations themselves. DAODAS provides PREP courses,<sup>216</sup> which are free to the consumer and funded by a federal substance abuse block grant.<sup>217</sup> The courses are offered by each county, at varying times and frequencies, and consumers must call a listed trainer in their county to obtain the location.<sup>218</sup> Due to the ambiguous process, lack of online options, and the voluntariness of the courses, South Carolina's training process requires the retailer to have unrealistic motivation to attend the course. The training process in South Carolina needs to be streamlined and required for alcohol retailers and servers.

The initiatives in neighboring states have been spearheaded by the central agencies empowered with the specific purpose of regulating, enforcing, and educating the public on alcohol-related issues.<sup>219</sup> Restructuring South Carolina's current system to provide the state with an authority strictly focused on alcohol specific issues would centralize the collection and distribution of alcohol education resources to better promote health and safety concerns of citizens.

## VI. CONCLUSION

Exercise of strict regulations by the state are only constitutional if the state is operating within the scope of its police powers to protect the health, welfare, and morals of its citizens.<sup>220</sup> The history of alcohol regulation in South Carolina highlights a pattern of harms from which the state seeks to protect its citizenry, but the current system fails to reach this goal.<sup>221</sup> In fact, underage drinking, driving under the influence, binge drinking, and alcohol abuse are still pervasive issues throughout South Carolina.<sup>222</sup> What's more, South Carolina's current laws are difficult to understand, resulting in uneven application and enforcement.<sup>223</sup> Simply stated, South Carolina alcohol laws are not being enforced as written and are thus ineffective.

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216. *Palmetto Retailers Education Program*, *supra* note 211; *see also* S.C. Mandatory Alcohol Server Training Act, S. 115, Gen. Assemb., 122d Sess. (S.C. 2017–2018) [hereinafter S.C. Training Act].

217. S.C. Training Act, *supra* note 216.

218. *Palmetto Retailers Education Program*, *supra* note 211.

219. *See* discussion *supra* Part IV.

220. *Retail Servs. & Sys., Inc. v. S.C. Dep't of Rev.*, 419 S.C. 469, 472–74, 799 S.E.2d 665, 667 (2017) (quoting *State ex rel. George v. City Council of Aiken*, 42 S.C. 222, 247, 20 S.E. 221, 230 (1894)).

221. *See* discussion *supra* sections II.A, III.B.

222. *See supra* section III.B.

223. *See supra* section V.A.

To be effective, South Carolina's alcohol regulation system must be reorganized, and power within it must be redistributed.<sup>224</sup> Alcohol laws need to be carefully reviewed and rewritten with clarity and specificity so that regulations can be proactively enforced.<sup>225</sup> Additionally, regulatory entities should create readily available educational materials for alcohol retailers and the public, thereby increasing the general understanding of alcohol laws and allowing for more cohesive enforcement of regulations.<sup>226</sup> Ultimately, until the laws are changed and the regulations are enforced, South Carolina will continue to see the pattern of alcohol-related harms that the legislature has unsuccessfully sought to prevent for over 150 years.

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224. See discussion *supra* section V.B.

225. See *supra* section V.B.

226. See *supra* sections V.C–D.



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