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R STREET POLICY STUDY NO. 228

May 2021

REVISITING ALCOHOL LICENSING CAPS IN 21ST CENTURY AMERICA

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INTRODUCTION

Alcohol licensing has been used since the early days of colonial settlement in America to regulate both who can serve and sell alcohol and when and how they can do so. Unsurprisingly, many types of licensing restrictions create unintended effects and can hamper efforts to modernize alcohol markets for the 21st century. However, as a result of the COVID-19 pandemic, laws surrounding alcoholic beverages in the United States are being rethought and reformed. For example, many of these changes involve developments like allowing to-go cocktails from restaurants, home alcohol delivery and more open container zones within our cities. However, licensing regimes for alcohol remain an issue. Specifically, restrictions on the *availability* of alcohol licenses—i.e., who can own a license and how many licenses should exist in a given area—are facing increasing scrutiny. This is as it should be because many of these rules are outdated and serve merely to decrease competition. In light of this, it is time for legislators and regulators across the country to consider updating them.

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HISTORY OF ALCOHOL LICENSING

The licensing of drinking establishments in the United States traces its history back to sixteenth century England. English inns in that era were granted licenses that gave them a monopoly over serving alcohol in their respective regions.¹ This tradition of licensing roadside inns and taverns hopped the ocean to colonial America.² It both served as a form of economic stimulus (by attracting travelers and consumers to an area), as well as a means to regulate safety.

America's system of localized licensing continued to flourish and expand as new types of drinking establishments emerged, including the saloon. Saloons began to proliferate across America and eventually became key targets for temperance forces in the nineteenth and early-twentieth century.³ In many cities, saloon licenses were easy to obtain and powerful groups like the Anti-Saloon League criticized saloons for a whole host of societal ills in the lead up to Prohibition.⁴ When Prohibition went into effect in 1920, saloons and bars across the country were forced to close *en masse*.

But drinking establishments—and alcohol licensing—would return again. In the aftermath of Prohibition's repeal, temperance advocates actively sought alternatives to replace federal Prohibition. To advance these efforts, John D. Rockefeller, a prominent temperance enthusiast and teetotaler, commissioned a book entitled *Toward Liquor Control*, which laid out various state and local options for regulating and controlling alcohol.

Among its regulatory possibilities, *Toward Liquor Control* included ideas like control systems (in which the government would operate alcohol retail stores) and licensing systems (where each stakeholder in the alcohol marketplace

1. Phil Mellows, "How did historic alehouses, taverns and inns evolve into the pubs we see today?," *The Morning Advertiser*, March 5, 2019. <https://www.morningadvertiser.co.uk/Article/2019/03/05/How-did-historic-alehouses-taverns-and-inns-evolve-into-the-pubs-we-see-today>.

2. Steven Struzinski, "The Tavern in Colonial America," *The Gettysburg Historical Journal*, Vol. 1, Art. 7, 2002. <https://cupola.gettysburg.edu/cgi/viewcontent.cgi?article=1026&context=gjh>.

3. Jake Smith, "Why Did So Many Chicago Bars Disappear?," *NPR*, April 9, 2019. <https://www.npr.org/local/309/2019/04/09/711475546/why-did-so-many-chicago-bars-disappear>.

4. See, e.g., Michael A. Lerner, "Going Dry," *Humanities* 32:5 (September/October 2011). <https://www.neh.gov/humanities/2011/septemberoctober/feature/going-dry>.

would be licensed by the government).⁵ The authors provided recommendations on ways to establish licensing regimes, including the creation of a licensing board with broad control over the hours of operation of licensees and how alcohol could be sold or advertised.⁶

To this day, alcohol licensure is used as one of the primary regulatory tools to control both alcohol sales and potential societal harms associated with excessive alcohol consumption (e.g., disorderly conduct or driving under the influence).

Part of the impetus for a licensing regime is to transfer regulatory responsibility over potential negative externalities associated with alcohol from government officials to private actors. As Marian Valverde notes: “[T]he licensing of public drinking establishments—like the licensing of other problem spaces, such as dance halls or ‘adult’ bookstores—works by contracting out the governmental work of preventing disorder and monitoring risks to the private sector.”⁷ The idea being that private businesses have an inherent vested interest in controlling negative externalities related to their products to ensure the continuation of their businesses. And, for this reason, licensing often receives less scrutiny than other forms of governmental power.⁸

Given this backdrop, licensing has long been recognized as one of the key tools for regulating alcohol throughout U.S. history. In fact, it is still used as the primary form of alcohol regulation in the United States today, and governments use licensing to shape and control when, where and how alcohol is accessed in nearly every neighborhood in the country.

RESTRICTIONS ON LICENSING

While an alcohol license itself is a regulatory tool, governments have also found creative ways to use the *availability* of licenses to shape and control behavior. There are roughly three types of availability restrictions—sometimes called “caps”—that governments use: population-based, residence-based and ownership-quantity-based.

Population-based Restrictions

Taking them in turn, population or quota-based licensing restrictions are perhaps the most well-known variety. Even

casual observers will often hear stories of particular restaurants having trouble obtaining a liquor license in a certain area because of these caps.

Restricting licenses based on the population in a region means that only a pre-set number of licenses are available for that area. This inevitably creates situations where the demand for licenses outstrips supply, meaning only some businesses are able to obtain a license. According to an effort in 2014 by *Slate* to count which states have population quotas for (on-premise) liquor licenses, at least 17 have such limits.⁹

One of the most notorious examples is New Jersey’s quota system, which allows municipalities to issue one liquor license per 3,000 residents.¹⁰ Restaurants that possess a license in New Jersey can serve alcohol, whereas the ones that do not are locked out of selling alcohol completely. This distinction creates an arbitrary pool of winners and losers given that alcohol often generates some of the highest profit margins for restaurants and bars. Those establishments without licenses can have a much more difficult time making ends meet and staying in business.

Population caps can lead to many unintended outcomes based on unexpected population changes. In states like Michigan, for example, the quota law allows for one on-premise license per 1,500 residents, and population changes can greatly affect license availability.¹¹ In Detroit, downward trends in census counts calculate 476 on-premise licenses allowed based on population, but 523 have already been issued by the state.¹² As a result, no additional quota licenses would be available in Detroit until the population increased by 70,500 people or more to bring the quota level back in check.¹³ However, adjustments take time, with quota counts updated every 10 years based on the last federal decennial census.¹⁴

To make matters even more complicated, exceptions are often layered into these licensing regimes. For instance, some businesses in Michigan have found quota loopholes by getting approval for “resort” licenses, which do not operate under the same quota law. A handful of these are

5. Laura Napoli, “A Regulatory Roadmap: The Importance of *Toward Liquor Control to Modern Alcohol Policy*,” Center for Alcohol Policy, 2011, p. 9. <https://www.centerforalcoholpolicy.org/wp-content/uploads/2012/06/Center-for-Alcohol-Policy-2011-Winning-Essays.pdf>.

6. *Ibid.*, p. 10.

7. Marian Valverde, “Police Science, British Style: Pub Licensing and Knowledges of Urban Disorder,” *Economy and Society* 32:2 (2003), p. 238. <https://www.tandfonline.com/doi/abs/10.1080/0308514032000073419>.

8. Valverde, p. 239. <https://www.tandfonline.com/doi/abs/10.1080/0308514032000073419>.

9. Jim Saksa, “Rum Deal,” *Slate: Moneybox*, June 12, 2014. <https://slate.com/business/2014/06/americas-booze-laws-worse-than-you-thought.html>.

10. “New Jersey Liquor Licenses by Population,” Project WNYC. <https://projectwnyc.org/nj-liquor-licenses>.

11. “Alcohol Information Management System, Local Governmental Unit Quota Search,” Michigan Liquor Control Commission. https://customers.mlcc.michigan.gov/Som_LGUs.

12. *Ibid.*

13. *Ibid.*

14. MCL 436.1533 (14). [http://www.legislature.mi.gov/\(S\(hmqg3aymf2wixlzc2jllif\)\)/mileg.aspx?page=getobject&objectname=mcl-436-1533](http://www.legislature.mi.gov/(S(hmqg3aymf2wixlzc2jllif))/mileg.aspx?page=getobject&objectname=mcl-436-1533).

discretionarily given out each year statewide.¹⁵ Moreover, the quota law has been further modified by another Michigan law based on economic development necessities that essentially allow unlimited licenses for businesses that meet certain criteria for economic development.¹⁶

Since population caps affect the geographical distribution of licenses within an area, their impact on economic development can be substantial.¹⁷ Restaurants often will not enter real estate leases or open their doors without assurances that they will be able to obtain a license. Furthermore, the question of which establishments get the small number of available licenses can be controversial. In areas with stringent alcohol licensing caps for drinking establishments, the result, then, is often a higher concentration of licensed restaurants in gentrified areas and fewer restaurants in non-gentrified areas.

In other words, when a cap exists that makes obtaining a license difficult, business owners will often ignore more disadvantaged zip codes. In fact, the importance of a readily-obtainable alcohol license becomes even more important for restaurants that are considering opening in less-developed, up-and-coming neighborhoods since they likely face a tougher business environment.

In many locales with population caps, a secondary market also operates wherein licenses that are no longer being used can be resold to new owners. Under these regimes, if a long-time neighborhood bar shuts its doors after the owner dies, a new restaurant moving into the area could theoretically purchase the bar's old license. But the ironclad reality of economics creates an artificially inflated marketplace, and when these licenses are sold on the secondary market, they are in high demand and therefore extremely expensive.¹⁸

However, purchasing a dormant license on the secondary market is sometimes the only way to obtain a license, which means that every unlicensed establishment is forced to compete with one another to win the license. The result

is eye-popping market rates. For example, in the Back Bay neighborhood of Boston, licenses on the secondary market can cost up to \$450,000, while establishments in New Jersey have been known to pay over a million dollars for a liquor license.¹⁹ (It should be noted that the market-distorting effects of quotas are common even in non-alcohol contexts, underscoring the undeniable laws of economics at play).²⁰ Unsurprisingly, when licenses become so sought-after—to the point that business owners view them as make-or-break necessities to stay afloat—the dark side of the political underworld can thrive. Charges of corruption and insider dealing among officials in charge of distributing and granting licenses become rampant.

Justifications for population caps often center on the idea that a certain area can have too many alcohol licenses, which could be deleterious to the community by encouraging more drinking and therefore creating more negative externalities from alcohol. However, the data does not necessarily support this idea. For example, the national average annual alcohol consumption in 2018 was estimated to be 2.35 gallons of ethanol per capita.²¹ The National Institutes of Health also provides state-level data on per capita ethanol consumption by classifying states into one of three categories from highest to lowest: >2.31 gallons; 2.10-2.31 gallons; 1.89-2.10 gallons; and <1.89 gallons.²²

With its strict system of population caps for alcohol licenses, New Jersey was classified as one of the high-level consumption states (>2.31 gallons) when it came to drinking.²³ The aforementioned Michigan also falls into this category, as does Pennsylvania, another state with population quotas for alcohol licenses.²⁴ Also of note, the city of Boston, with its own city-wide licensing quota system, has long been recognized as one of the top cities in America for drinking among its populace.²⁵

15. See, e.g., Austin Metz, "Making sense of Michigan liquor licensing," *Holland Sentinel*, Aug. 30, 2017. <https://www.hollandsentinel.com/news/20170830/making-sense-of-michigan-liquor-licensing>; Kelly A. Allen, "Liquor Licensing: What You Need to Know," Michigan Municipal League, 2015. <http://blogs.mml.org/wp/cc/files/2015/03/PRECON-Liquor-Licensing.pdf>.

16. MCL 436.1531. [http://www.legislature.mi.gov/\(S\(hmggtc3aymf2wixlzc2jilif\)\)/mileg.aspx?page=getobject&objectname=mcl-436-1531](http://www.legislature.mi.gov/(S(hmggtc3aymf2wixlzc2jilif))/mileg.aspx?page=getobject&objectname=mcl-436-1531); MCL 436.1521. [http://www.legislature.mi.gov/\(S\(i1pyf1lwwxarnlkmvnl2pd\)\)/mileg.aspx?page=getobject&objectname=mcl-436-1521](http://www.legislature.mi.gov/(S(i1pyf1lwwxarnlkmvnl2pd))/mileg.aspx?page=getobject&objectname=mcl-436-1521); MCL 436.1521a. [http://www.legislature.mi.gov/\(S\(i1pyf1lwwxarnlkmvnl2pd\)\)/mileg.aspx?page=getobject&objectname=mcl-436-1521a](http://www.legislature.mi.gov/(S(i1pyf1lwwxarnlkmvnl2pd))/mileg.aspx?page=getobject&objectname=mcl-436-1521a).

17. Ethan Forman, "Cities, towns see liquor licenses as economic development boosters," *The Salem News*, May 21, 2017. https://www.salemnews.com/news/local_news/cities-towns-see-liquor-licenses-as-economic-development-boosters/article_1380f161-f40b-5914-80ce-6c3c6ebc767d.html.

18. Jim Saska, "Rum Deal," *Slate: Moneybox*, June 12, 2014. <https://slate.com/business/2014/06/americas-booze-laws-worse-than-you-thought.html>.

19. See, e.g., Lisa van der Pool, "Interactive Map: Every Liquor License in Massachusetts," *Boston Business Journal*, Nov. 9, 2011. <https://www.bizjournals.com/boston/news/2011/11/09/map-liquor-licenses-massachusetts.html>; Esther Davidowitz and Nicholas Pugliese, "Liquor licenses in New Jersey cost \$350k and it's crippling the state's dining scene," *NorthJersey.com*, Oct. 21, 2018. <https://www.northjersey.com/story/entertainment/dining/2018/10/18/liquor-license-laws-new-jersey/1429787002>.

20. Bryan Riley, "Tariffs Are Bad. Import Quotas Are Worse," National Taxpayers Union Foundation, April 23, 2019. <https://www.ntu.org/foundation/detail/tariffs-are-bad-import-quotas-are-worse>.

21. Megan E. Slater and Hillel R. Alpert, "Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977-2018," National Institute on Alcohol Abuse and Alcoholism, April 2020. <https://pubs.niaaa.nih.gov/publications/surveillance115/CONS18.htm>.

22. *Ibid.*

23. *Ibid.*

24. "The Retail Liquor License Quota," Pennsylvania Liquor Control Board, 2021. <https://www.lcb.pa.gov/Licensing/Topics-of-Interest/Pages/Quota-System.aspx>.

25. See, e.g., Jennifer Messimer et al., "These are America's Booziest Cities," *Men's Health*, Jan. 19, 2021. <https://www.menshealth.com/health/a35226992/americas-booziest-cities-dangerous-drinking-in-the-us>; Jay Gentile, "The Top 10 Booziest Cities in America," *Thrillist*, Dec. 22, 2017. <https://www.thrillist.com/culture/drunkest-cities-in-america>.

Binge drinking statistics show a similar trend. Based on Centers for Disease Control data, the average percentage of adults categorized as binge drinkers across all fifty states in the U.S. is 17.3 percent (the CDC defines binge drinking as drinking five or more drinks on one occasion for men and four or more drinks on one occasion for women).²⁶ New Jersey (17.0 percent), Michigan (19.8 percent), and Pennsylvania (18.5 percent) were all near or above this average.²⁷ Boston, as a city, also has been reported to exceed the national average for binge drinking.²⁸

Finally, underage drinking rates show similar trends. According to data from the Substance Abuse and Mental Health Services Administration on underage drinking rates (defined as the percentage of individuals ages 12-20 who have consumed alcohol in the last month), the national average of underage drinkers is 18.8 percent.²⁹ New Jersey (18.8 percent), Michigan (20.8 percent), and Pennsylvania (19.2 percent) were all at or above this average.³⁰

This data is not meant to endorse one state's system of alcohol regulation over another, but rather to demonstrate that legal regimes like licensing caps are not necessarily predictive of drinking levels nor are they directly correlated to reduced drinking rates among the populace. At the very least, the data shows that many factors can affect alcohol consumption beyond the number of licenses in a region.

Efforts to reform or un-cap population quotas for alcohol licenses usually face fierce resistance from incumbent license holders. Establishments that already possess licenses—and in some cases obtained them by paying hundreds of thousands of dollars on the secondary market—are unsurprisingly reluctant to give up this privileged status. They develop reliance interests that lead them to rigorously oppose any effort to allow competitor businesses to obtain licenses at a cheaper level.

One way to potentially mitigate this is to offer a tax credit or deduction to these incumbent businesses to compensate them for their prior investment in a license, but the reality is

that any type of reform to population caps will face an uphill political slog.³¹

Residence-based Restrictions

Another form of licensing restriction that has attracted more recent attention—at least in policy and legal circles—is residence-based restrictions, which limit licenses to only individuals or businesses that have resided for a certain amount of time in the locale or jurisdiction in which they are operating.

For instance, until recently, Tennessee only permitted liquor store licenses to be held by individuals who had resided in the state for several years. This law prevented a family who had recently moved to the state from opening a liquor store, and promptly led to a legal challenge that made it all the way to the United States Supreme Court.³² In the most significant alcohol-related high court decision in over a decade, the Court struck down Tennessee's residency requirement for liquor store licenses as unconstitutional.³³

The result is that all forms of residence-based license restrictions now face significant legal scrutiny under the Supreme Court's decision. This has already led to follow-up challenges to residence-based license limitations in states across the country.³⁴ Although residency requirements are on extremely shaky legal ground these days, they remain on the books in many states and will likely continue to do so until successfully challenged in court.

The purported rationale for residency requirements stems from the idea that locally based licensees have more attachment to their communities and therefore will act more responsibly when it comes to serving alcohol.³⁵ However, there is no clear evidence to support this notion. In terms of alcohol consumption, for example, states with residency requirements still on the books feature both higher and more moderate levels of consumption. As examples, Wisconsin and Missouri both have residency requirements, and both are in the high-level category (>2.31 gallons) of alcohol consumption for states, while Maryland and Indiana also have versions of residency requirements, and are in the

26. "Data on Excessive Drinking," Centers for Disease Control and Prevention, Sept. 3, 2020. <https://www.cdc.gov/alcohol/data-stats.htm>. Note: Data analysis conducted by the R Street Institute.

27. Ibid.

28. Frank O'Laughlin, "Report: Massachusetts has one of the biggest drinking problems in America," *7News Boston*, March 5, 2020. <https://whdh.com/news/local/report-massachusetts-has-one-of-the-biggest-drinking-problems-in-america>.

29. "Underage Drinking by State," Oxford Treatment Center, July 15, 2020. <https://oxfordtreatment.com/substance-abuse/alcohol/underage-drinking-statistics-state>.

30. Ibid.

31. "House Passes Alcohol Deliveries For New Mexico's Restaurants," *The Grant County Beat*, Feb. 23, 2021. <https://www.grantcountybeat.com/news/mew-mexico-legislative-session-2021/63230-house-passes-alcohol-deliveries-for-new-mexico-s-restaurants>.

32. *Tennessee Wine & Spirits Retailers Assn. v. Thomas*, No. 18-96, 2018.

33. Emma Balter, "U.S. Supreme Court Strikes Down Tennessee Residency Law," *Wine Spectator*, June 26, 2019. <https://www.winespectator.com/articles/supreme-court-strikes-down-tennessee-residency-law>.

34. Joe Harris, "Florida Wine Retailer Loses Challenge to Missouri Liquor Licensing Rules," *Courthouse News Service*, Feb. 16, 2021. <https://www.courthousenews.com/florida-wine-retailer-loses-challenge-to-missouri-liquor-licensing-rules>.

35. Adam Liptak, "Supreme Court Strikes Down Tennessee Liquor Law," *The New York Times*, June 26, 2019. <https://www.nytimes.com/2019/06/26/us/politics/supreme-court-tennessee-liquor-law.html>.

middle categories (1.89-2.10 gallons and 2.10-2.31 gallons, respectively).³⁶

In terms of binge drinking, Wisconsin (24.4 percent) and Missouri (17.7 percent) are both above the national average for binge drinking rates, while Maryland (14.7 percent) and Indiana (16.6 percent) are below.³⁷ For underage drinking, Wisconsin (20.9 percent) and Missouri (18.7 percent) are again near or above the national average, whereas Maryland (16.8 percent) and Indiana (17.8 percent) are below.³⁸

Regardless, with the recent ruling in the *Tennessee Wine* case, it seems clear that residence-based licensing restrictions are likely destined for the legal dustbin in the years ahead.

Ownership-quantity Restrictions

Perhaps the least-known variety of licensing restriction is the ownership-quantity limitation. Outside of industry insiders, few people are aware of limits on how many licenses a single entity can possess. Despite this, many folks will be quick to point out—often as a matter of quirky trivia—that their home state does not allow grocery stores or chain stores to sell alcohol, without realizing that the reason is often because of ownership-quantity caps. Similar to residence-based restrictions, ownership-quantity restrictions are aimed at “keeping things local” and preventing larger out-of-state corporations from selling alcohol within a community. Unlike residence-based restrictions, however, they have faced less legal scrutiny, although some courts have expressed skepticism.³⁹

While the vast majority of states allow grocery stores to sell at least beer and wine, the states where it is not allowed have faced increasing pressure to reform their laws.⁴⁰ Prominent examples of ownership-quantity caps include the systems in New Jersey, Maryland and Massachusetts.

Massachusetts allows a single company or entity to own only nine licenses—a limit that was recently increased from seven.⁴¹ Maryland’s constitution has both a (likely unconstitu-

tional) residence-based restriction on alcohol licensees as well as a prohibition on chain stores possessing licenses.⁴² For its part, New Jersey only allows two alcohol licenses per single owner.⁴³

There is evidence that states are finally beginning to rethink ownership-quantity restrictions. The Massachusetts Alcoholic Beverage Control Commission recently recommended eliminating the Bay State’s ownership-quantity cap, and efforts are afoot to put the issue before voters via a ballot referendum.⁴⁴ Legislation has also been introduced in Maryland to reform its system.⁴⁵

Ownership-quantity restrictions have led to some truly bizarre legal structures, such as Texas’ infamous system, which restricted the number of licenses a single owner could possess but allowed exceptions for a family owning numerous licenses. This so-called “consanguinity exception” meant that a large family could spread its licenses out among numerous relatives to achieve the same effect as operating a chain store selling alcohol.

The consanguinity exception was recently repealed, but Texas continues to ban public companies from owning alcohol licenses, which inevitably still blocks many larger chain stores from selling alcohol.⁴⁶ New Jersey’s system similarly provides a family loophole to its two-licenses-per-owner rule.⁴⁷ Somewhat in tension with these exceptions, others states have strict rules against “availing,” meaning that a single entity cannot clandestinely control or operate another licensed liquor store behind the scenes if it already possesses its own license.⁴⁸

Like other forms of licensing restrictions, ownership-quantity caps can create a host of unintended effects in alcohol

36. Wisc. Stat. Ann. Sec. 125.04(5); Mo. Rev. Stat. Sec. 311.060; Md. Code Ann., Alcoholic Beverages § 4-109(a)(4); Ind. Code § 7.1-3-21-5(a); Slater and Alpert. <https://pubs.niaaa.nih.gov/publications/surveillance115/CONS18.htm>.

37. “Data on Excessive Drinking.” <https://www.cdc.gov/alcohol/data-stats.htm>.

38. “Underage Drinking by State.” <https://oxfordtreatment.com/substance-abuse/alcohol/underage-drinking-statistics-state>.

39. C. Jarrett Dieterle, “Could Economic Liberty Litigation ‘Free the Booze?’”, *R Street Policy Study* No. 98, June 2017. <https://www.rstreet.org/wp-content/uploads/2017/06/98.pdf>.

40. Dave McIntyre, “Unlike most of the country, Maryland consumers can’t purchase alcohol at grocery stores,” *The Washington Post*, Oct. 2, 2020. https://www.washingtonpost.com/lifestyle/food/unlike-most-of-the-country-maryland-consumers-cant-purchase-alcohol-at-grocery-stores-that-may-change-soon/2020/10/02/e9528fb4-03f3-11eb-b7ed-141dd88560ea_story.html.

41. E. Macey Russell et al., “Alcohol Beverages Control Commission of Massachusetts: Task Force Report,” Dec. 27, 2017, p. 74. https://www.mintz.com/sites/default/files/media/documents/Alcohol%20Task%20Force%20Report_0.pdf.

42. McIntyre. https://www.washingtonpost.com/lifestyle/food/unlike-most-of-the-country-maryland-consumers-cant-purchase-alcohol-at-grocery-stores-that-may-change-soon/2020/10/02/e9528fb4-03f3-11eb-b7ed-141dd88560ea_story.html.

43. “NJ Grocery and Convenience Stores Look to Expand Beer, Wine, and Spirits Retail,” *Market Watch*, April 15, 2019. <https://www.marketwatchmag.com/nj-grocery-and-convenience-stores-look-to-expand-beer-wine-and-spirits-retail>.

44. See, e.g., Ibid.; Baylen Linnekin, “Massachusetts Voters May Finally Get a Chance to Repeal the State’s Awful Cap on Beer and Wine Sales,” *Reason.com*, Aug. 17, 2019. <https://reason.com/2019/08/17/massachusetts-voters-may-finally-get-a-chance-to-repeal-the-states-awful-cap-on-beer-and-wine-sales>.

45. Maryland SB 763, 2021 Regular Session. <https://legiscan.com/MD/text/SB763/2021>.

46. “Texas Raises Retail Liquor License Limit,” *Shanken News Daily*, June 17, 2019. <https://www.shankennewsdaily.com/index.php/2019/06/17/23256/texas-raises-retail-liquor-license-limit>.

47. “NJ Grocery and Convenience Stores Look to Expand Beer, Wine, and Spirits Retail.” <https://www.marketwatchmag.com/nj-grocery-and-convenience-stores-look-to-expand-beer-wine-and-spirits-retail>.

48. Don Cazentre, “Why state regulators came down so hard in the Wegmans-liquor store case,” *Syracuse.com*, Dec. 13, 2018. <https://www.syracuse.com/state/2018/12/why-state-regulators-came-down-so-hard-in-the-wegmans-liquor-store-case.html>.

markets. One salient reality that has reared its head during COVID-19 is the impact on alcohol delivery. Large chain grocery stores are often the entities best equipped to conduct grocery deliveries to consumers' homes—a service that has become increasingly popular during the pandemic.

Now that more states are allowing alcohol to be delivered alongside groceries, limiting grocery stores from selling alcohol at all can arbitrarily handicap alcohol delivery options.⁴⁹ The reality is that grocery stores already have efficient delivery systems in place, and preventing them from also selling alcohol limits the scalability and feasibility of alcohol delivery.

Another concern echoes the geographical distribution problems discussed above for population caps. Alcohol sales are profitable, and therefore allowing more types of stores to sell alcohol can increase the incentives to open more stores. This is especially important in areas designated as “food deserts” that might have few, if any, stores selling food. Allowing for a more profitable business model—by allowing alcohol sales—could encourage more grocery stores to open up new locations in up-and-coming areas.

Once again, efforts to rethink ownership-quantity caps often face resistance, including claims that more licenses would lead to more alcohol consumption and more underage access to alcohol. Like with other types of licensing restrictions, however, the evidence does not necessarily support this notion.

As demonstrated by the inconsistent drinking habits recorded in high and medium-consumption states, ownership-quantity caps do not seem to impact drinking habits. Both Massachusetts and New Jersey are classified among high-level consumption states (>2.31 gallons per capita), while Maryland is in one of the middle categories (1.89-2.10).⁵⁰ In terms of binge drinking, both Massachusetts (18.7 percent) and New Jersey (17.0 percent) are close to or above average, while Maryland (14.7 percent) is several points below average.⁵¹ For underage drinking, Massachusetts (28.7 percent) and New Jersey (18.8 percent) are at or above average, whereas Maryland (16.8 percent) is once again below.⁵² (Of

note, Massachusetts has the highest rate of underage drinking of any state in the country).⁵³

Other states with ownership-quantity caps show similarly inconclusive results. New York, which limits licenses for wine and liquor stores to one per person or entity,⁵⁴ is in one of the middle categories for consumption (2.10-2.31),⁵⁵ but is above the national average for binge drinking (17.6 percent)⁵⁶ and underage drinking (19.1 percent)⁵⁷ rates.

A final concern is that allowing more chain store sales could hurt local Mom-and-Pop alcohol outlets that have become longtime community fixtures. But today's highly diversified alcohol marketplace can allow these entities to fill different market niches. Some stores will capture alcohol sales from the weekend grocery store crowd, while others might cater to high-end craft beverage aficionados.

One legitimate point many independent liquor store owners often bring up is that while grocery and box stores can sell a host of items, state laws often forbid liquor stores from selling anything but alcohol (or only a very small number of non-alcohol items).⁵⁸ Regulators are quick to require food sales along with on-premise alcohol purchases, yet create a public policy anomaly by not even allowing food options for many off-premise liquor stores. Allowing these stores to sell a broader variety of products could help alleviate marketplace availability for all products without unduly restricting alcohol sales in other types of stores.

The reality is that the United States' dynamic craft alcohol market can support many types of alcohol retailers, and the opinions of consumers reflect this. Consumers are often the most overlooked interest group in public policy debates given that they are comprised of diffuse and diverse interests, yet surveys have consistently demonstrated that allowing grocery store alcohol sales is an extremely popular reform.⁵⁹

49. See, e.g., “Georgia Enacts Permanent Alcohol Delivery Law,” *DrinksReform.org*, June 26, 2020. <http://www.drinksreform.org/blog-1/2020/6/26/georgia-enacts-permanent-alcohol-delivery-law>; “Louisiana Just Expanded Alcohol Delivery,” *DrinksReform.org*, June 9, 2020. <http://www.drinksreform.org/blog-1/2020/6/9/louisiana-just-expanded-alcohol-delivery>; and “Bill to make alcohol delivery, curbside sales permanent in Oklahoma signed into law,” *KOCO News 5*, May 21, 2020. <https://www.koco.com/article/here-are-the-videos-youre-going-to-want-to-watch-from-this-week/35650898>.

50. Slater and Alpert. <https://pubs.niaaa.nih.gov/publications/surveillance115/CONS18.htm>.

51. “Data on Excessive Drinking.” <https://www.cdc.gov/alcohol/data-stats.htm>.

52. “Underage Drinking by State.” <https://oxfordtreatment.com/substance-abuse/alcohol/underage-drinking-statistics-state>.

53. *Ibid.*

54. Don Cazentre, “Why state regulators came down so hard in the Wegmans-liquor store case,” *Syracuse.com*, Dec. 13, 2018. <https://www.syracuse.com/state/2018/12/why-state-regulators-came-down-so-hard-in-the-wegmans-liquor-store-case.html>.

55. Slater and Alpert. <https://pubs.niaaa.nih.gov/publications/surveillance115/CONS18.htm>.

56. “Data on Excessive Drinking.” <https://www.cdc.gov/alcohol/data-stats.htm>.

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58. Alfred Branch, “CT Package & Convenience Stores Fight Proposed Alcohol Sale Plans,” *Patch.com*, Feb. 6, 2021. <https://patch.com/connecticut/across-ct/ct-package-convenience-stores-fight-proposed-alcohol-sale-bills>.

59. Josh Kurtz, “Poll Shows Strong Support for Supermarket Beer and Wine Sales,” *Maryland Matters*, Sept. 30, 2020. <https://www.marylandmatters.org/blog/poll-shows-strong-support-for-supermarket-beer-and-wine-sales>.

CONCLUSION

The impact of COVID-19 on our way of life continues to require U.S. policymakers to find creative and dynamic ways to adapt. The alcohol marketplace faces some of the greatest challenges of any industry during the pandemic—often because it labors under more outdated legal rules than nearly any other sector. This is why it is paramount that legislators and regulators focus on reforming government guidelines in a way that allows the marketplace to adapt and grow. Reforming onerous licensing restrictions is a good place to start.

ABOUT THE AUTHOR

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