

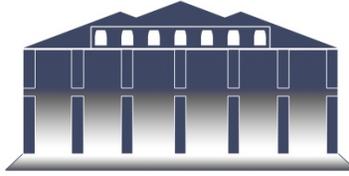
**Compromise Process for Resolving ABC
Administrative Violations Lacks Policies and
Procedures, Rationale, and Transparency, Resulting
in Disproportionate Penalties**



**Final Report to the Joint Legislative
Program Evaluation Oversight Committee**

Report Number 2020-02

March 9, 2020



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John W. Turcotte
Director

March 9, 2020

Senator Brent Jackson, Co-Chair, Joint Legislative Program Evaluation Oversight Committee
Representative Craig Horn, Co-Chair, Joint Legislative Program Evaluation Oversight Committee

North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Honorable Co-Chairs:

Session Law 2019-182 directed the Program Evaluation Division to evaluate the proportionality and comprehensiveness of penalties for ABC administrative violations and to examine best practices in other states.

I am pleased to report that the ABC Commission cooperated with us fully and was at all times courteous to our evaluators during the evaluation.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Turcotte".

John W. Turcotte
Director

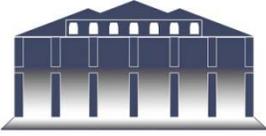
Mandatory Evaluation Components

Report 2020-02:

N.C. Gen. § 120-36.14 requires the Program Evaluation Division to include certain components in each of its evaluation reports, unless exempted by the Joint Legislative Program Evaluation Oversight Committee. The table below fulfills this requirement and, when applicable, provides a reference to the page numbers(s) where the component is discussed in the report.

N.C. Gen. § 120-36.14 Specific Provision	Component	Program Evaluation Division Determination	Report Page
(b)(1)	Findings concerning the merits of the program or activity based on whether the program or activity		
(b)(1)(a)	Is efficient	Overall, the process for handling alleged ABC administrative violations is inefficient because the compromise process—which is used in 96% of cases—costs more and takes longer to administer than the alternative option of processing these allegations through the administrative court system. However, given the ABC Commission’s expertise, functional differences in the types of cases handled through each process, and the complementary (as opposed to duplicative) relationship between the two processes, the Program Evaluation Division does not recommend any structural changes.	Page 22-23
(b)(1)(b)	Is effective	Analysis of ABC administrative violations shows mixed results. ABC administrative penalties were shown to be effective at reducing the prevalence of violations but did not affect the rate of repeat offenses.	Pages 19-22
(b)(1)(c)	Aligns with entity mission	The mission of the ABC Commission is to provide uniform control over the sale, purchase, transportation, manufacture, consumption, and possession of all alcoholic beverages in the state. Enforcing administrative penalties aligns with this mission.	Page 5
(b)(1)(d)	Operates in accordance with law	The ABC Commission operates in accordance with state law. Statute gives the ABC Commission the authority to impose and enforce administrative penalties.	Page 24
(b)(1)(e)	Does not duplicate another program or activity	The Program Evaluation Division found that no duplication exists between the procedures for settling alleged ABC administrative violations. The ABC Commission compromise process and the administrative court process function in a complementary manner.	Page 9
(b)(1a)	Quantitative indicators used to determine whether the program or activity		
(b)(1a)(a)	Is efficient	The Program Evaluation Division determined the efficiency of procedures for settling administrative violation allegations by comparing cases settled through the compromise process with cases settled in administrative court. The following performance measures were collected from Fiscal Year 2013–14 to Fiscal Year 2017–18: <ul style="list-style-type: none"> • processing time (in days) and • cost per case settled. 	Page 23

(b)(1a)(b)	Is effective	<p>The Program Evaluation Division determined effectiveness of the procedure for settling alleged administrative violations by analyzing administrative violations and penalties. The following performance measures were collected from Fiscal Year 2013–14 to Fiscal Year 2017–18:</p> <ul style="list-style-type: none"> • ratio of permittees receiving violations to new permittees per year, • repeat violations, and • length of suspensions. 	Pages 18-21
(b)(1b)	Cost of the program or activity broken out by activities performed	<p>In Fiscal Year 2013–14 through 2017–18, the ABC Commission spent an estimated \$1.4 million to settle ABC administrative violation cases through the compromise process. In this time period, the yearly cost per case settled fluctuated between \$164 per case and \$249 per case with a five-fiscal-year-average of \$215 per case. In comparison, the average cost of setting cases through the administrative courts during these five fiscal years was \$134 per case.</p>	Pages 23-24
(b)(2)	Recommendations for making the program or activity more efficient or effective	<p>The report makes no recommendations to improve the efficiency or effectiveness of settling cases of alleged ABC administrative violation.</p>	N/A
(b)(2a)	Recommendations for eliminating any duplication	<p>The Program Evaluation Division did not find evidence of duplication in the procedure for settling ABC administrative violation cases.</p>	Page 9
(b)(4)	Estimated costs or savings from implementing recommendations	<p>There are no costs or savings from implementing this report's recommendations.</p>	N/A



PROGRAM EVALUATION DIVISION

NORTH CAROLINA GENERAL ASSEMBLY

March 2020

Report No. 2020-02

Compromise Process for Resolving ABC Administrative Violations Lacks Policies and Procedures, Rationale, and Transparency, Resulting in Disproportionate Penalties

Highlights

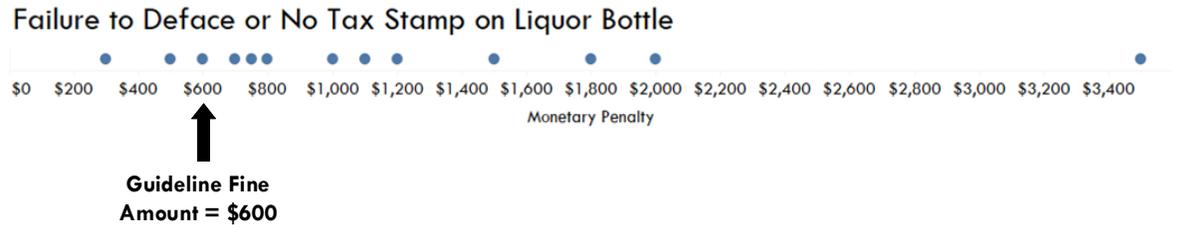
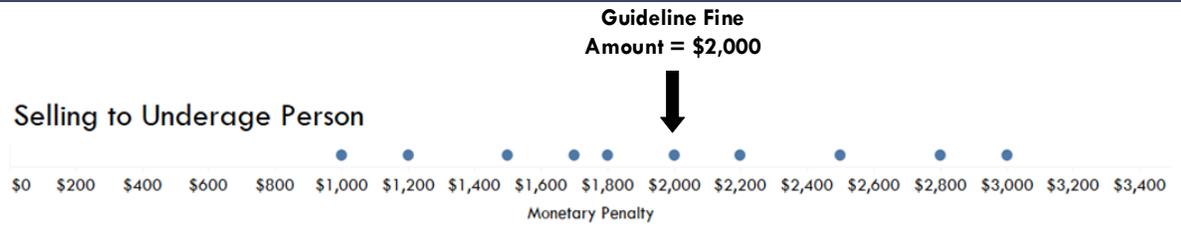
IN BRIEF: The Alcoholic Beverage Control (ABC) Commission sets and enforces administrative penalties for alcohol-related violations to reduce potentially dangerous behavior and ensure compliance with state regulations. Recent changes to the administrative penalty structure and the severity of penalties provides an opportunity to examine how well the Commission is accomplishing these goals. The Program Evaluation Division found that administrative penalties are not proportional, lacking policies, procedures, and guidelines that would limit variance and subjectivity. The General Assembly should consider requiring the Commission to set guidelines that ensure penalties are proportional to offenses, increase transparency for permittees, and establish performance management criteria.

BACKGROUND: Session Law 2019-182 directed the Program Evaluation Division to evaluate the proportionality and comprehensiveness of penalties for ABC administrative violations and to examine best practices in other states. States regulate the sale and distribution of alcoholic beverages by issuing regulations, granting permits for eligible activities, and imposing civil penalties on permittees for violations. In North Carolina, the ABC Commission performs these regulatory and enforcement functions. The most common administrative violation is providing alcohol to minors.

The ABC Commission lacks an established rationale for determining the severity of administrative penalties and does not notify permittees of changes in penalty guidelines. Penalty guidelines are subject to change based on the policy priorities of the ABC Commission, are not publicly disseminated, and lack documented rationale. The ABC Commission's penalty guidelines also raise questions about how the severity of penalties coincide with the magnitude and type of the infraction. The Commission argues it needs discretion to apply different penalties as individual circumstances merit. However, without policies and procedures to guide these considerations, the application of different penalties becomes subjective.

Assignment of monetary fines varies for similar violations, rendering administrative penalties disproportionate. The Program Evaluation Division found that the ABC Commission's valuation of voluntary suspension disincentivizes permittees differently and that financial penalties for identical infractions are not the same. Distribution of penalties for similar violations shows a high degree of variance and subjectivity.

Highlights



Recommendation:

The General Assembly should direct the ABC Commission to develop and publicize guidelines for determining penalty structures, monetary fines, and suspension lengths, in addition to studying opportunities and challenges of adopting a throughput-based or sales-based fine structure.

Performance metrics are not systematically collected or reported. This evaluation represents the first effort to collect and report on the effectiveness and efficiency metrics identified throughout the report. These benchmarks help measure how well the current administrative penalty structure is achieving policy goals. To better assist future administrative penalty enforcement and oversight, these metrics could be included in the ABC Commission’s ongoing reporting structure.

Recommendation:

The General Assembly should direct the ABC Commission to report on the effectiveness criteria developed in this report, including proportion of permittees committing a violation and repeat offense rate, in order to evaluate future efforts at deterring repeat violations. These effectiveness criteria should be included in the ABC Commission’s 2020–21 annual report and any future relevant presentations to the General Assembly.

Purpose and Scope

Session Law 2019-182 directed the Program Evaluation Division to examine the actions the Alcoholic Beverage Control (ABC) Commission is authorized to take under N.C. Gen. Stat. § 18B-104 for violations of Chapter 18B of the General Statutes. The ABC Commission is responsible for the oversight, processing, and enforcement of administrative penalties for alcohol-related violations. Recent legislative changes to the administrative penalty structure present an opportunity for an evaluation of its proportionality. In addition, this evaluation reports on the effectiveness and efficiency of administrative penalties in terms of achieving their intended goal of reducing violations and increasing regulatory compliance.

Four research questions guided this evaluation:

1. Are administrative penalties in North Carolina proportional to violations?
2. Which, if any, alcohol-related permittee activities within North Carolina lack penalties for associated violations?
3. How do North Carolina's processes and penalties for alcohol-related administrative violations compare to other states?
4. Are North Carolina alcohol-related administrative penalties effective?

The Program Evaluation Division collected and analyzed data from several sources, including

- review of statute and regulations;
- review of audited financial statements;
- data query and document request from the ABC Commission;
- analysis of ABC permittee-level data, including:
 - nature and frequency of violations,
 - monetary fine amounts,
 - sales data, and
 - longitudinal analysis to determine trends in compliance;
- analysis of permittee-level administrative court data and outcomes;
- interviews with stakeholders including industry lobbyists, associations and trade groups, and Alcohol Law Enforcement (ALE); and
- review and interviews of alcohol control commissions in other states.

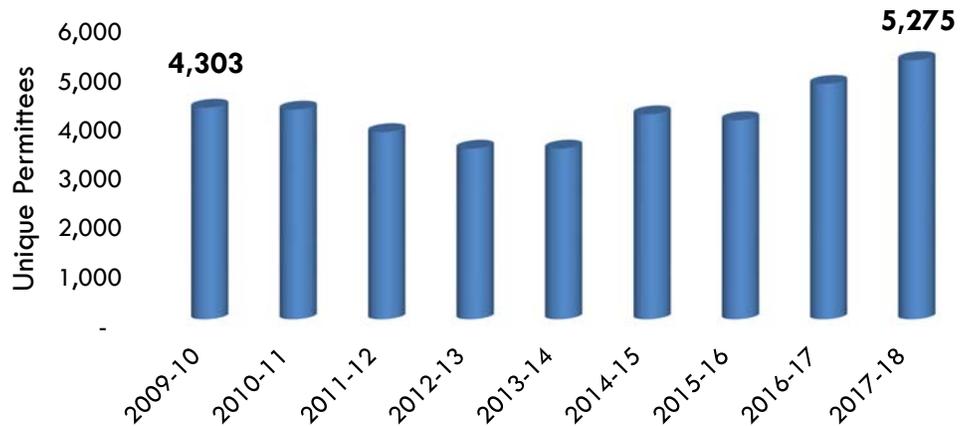
Background

State governments control the sale and distribution of alcoholic beverages. As the Program Evaluation Division found in previous studies on the topic, regulation of the sale of alcoholic beverages varies among states.¹ However, state governments universally regulate access to the marketplace by issuing permits. Permittees include producers like breweries and distilleries, distributors such as wholesalers, and retailers such as bars, restaurants, and clubs.

During the past nine fiscal years, the number of permittees increased by more than 20%. In North Carolina, 76 permits are available covering manufacturing, wholesale, and retail activities related to alcoholic beverages. A single permittee often holds multiple permits to conduct business (e.g., a restaurant serving mixed beverages and beer would require different permits). Appendix A lists all permit types. Exhibit 1 shows the growth in the number of unique permittees between Fiscal Years 2009–10 and 2017–18. In Fiscal Year 2017–18, the Commission issued 5,275 new permits in North Carolina, an increase of 23% from Fiscal Year 2009–10.

Exhibit 1

Number of Unique Permittees Increased by 23% Between Fiscal Years 2009–10 and 2017–18



Source: Program Evaluation Division based on data from the ABC Commission.

States regulate permittees in the production, distribution, and retail sale of alcoholic beverages to achieve two public policy goals. The first goal is administrative compliance, which includes:

- collecting tax receipts and sales records,
- ensuring proper procurement of alcoholic beverages, and
- increasing transparency in production, distribution, and retail.

The second goal is public safety, which focuses on

- limiting over-intoxication, including serving intoxicated individuals, and
- preventing underage drinking and access.

¹ Program Evaluation Division. (2019, February). *Changing How North Carolina Controls Liquor Sales Has Operational, Regulatory, and Financial Ramifications*. Report to the Joint Legislative Program Evaluation Oversight Committee. Raleigh, NC: General Assembly.
 Program Evaluation Division. (2018, May). *Follow-Up Report: Implementation of PED Recommendations Has Improved Local ABC Board Profitability and Operational Efficiency*. Report to the Joint Legislative Program Evaluation Oversight Committee. Raleigh, NC: General Assembly.

The Commission levies administrative penalties for violations of permit requirements, administrative code, or relevant state law. Alcohol-related administrative penalties include any violation of ABC laws in Chapter 18B or Article 2C of Chapter 105 of the General Statutes. In North Carolina, the Alcoholic Beverage Control (ABC) Commission, housed within the Department of Public Safety, is responsible for approving permit applications, regulating permittees, and processing administrative penalties.²

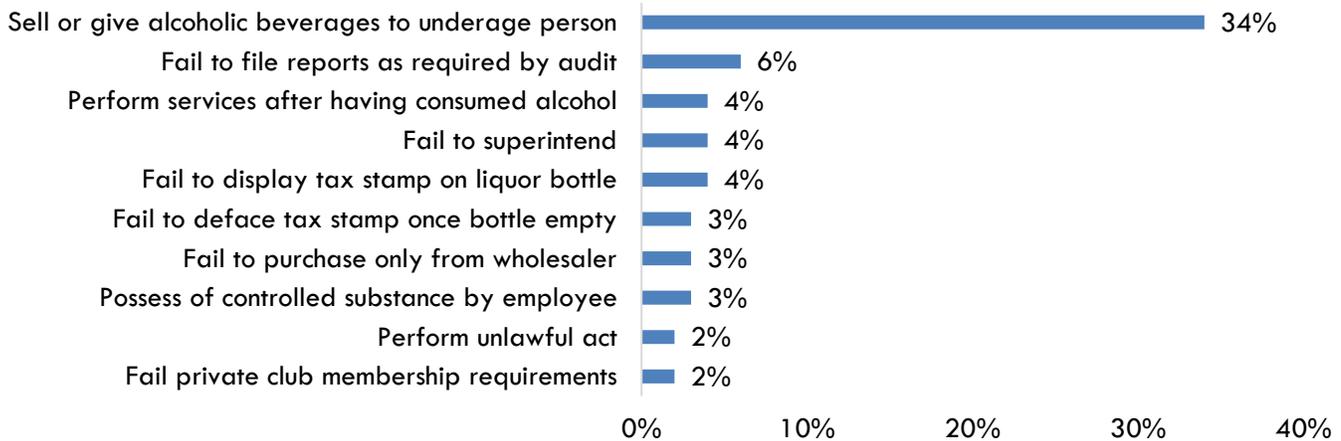
Administrative penalties differ from criminal penalties in both nature and severity. Criminal violations typically involve greater degrees of harm and are processed through criminal courts. Administrative penalties, often referred to as civil penalties, result from permittees violating regulatory or state statute related to their permitted activities.

Penalties for ABC administrative violations include fines and permit suspensions or revocations. Certain violations may carry both criminal and administrative penalties. For example, if an underage individual purchases alcohol from a retailer, both the buyer and the seller may be charged with committing a criminal violation. Meanwhile, an administrative penalty is issued to the permit holder of the retail establishment where the sale took place.

The most common alcohol-related violations involve consumption of and access to alcohol, specifically involving minors. The Commission also levies penalties for violations of various administrative and compliance requirements. Exhibit 2 shows the most commonly cited violations from Fiscal Year 2009–10 to Fiscal Year 2017–18. More than a third of all administrative violations submitted by law enforcement during the observed period involved selling or giving alcoholic beverages to underage persons. Preventing underage persons from gaining access to alcohol is one of the main priorities of the ABC Commission's administrative penalty system. To gauge permittee compliance, the ABC Commission coordinates with ALE and law enforcement to conduct campaigns wherein underage persons working under the direction of law enforcement attempt to purchase alcoholic beverages.

² N.C. Gen. Stat. § 18B-104(a) establishes the ABC Commission's authority to impose administrative penalties.

Exhibit 2: Most Common Administrative Penalty Involves Underage Access to Alcohol



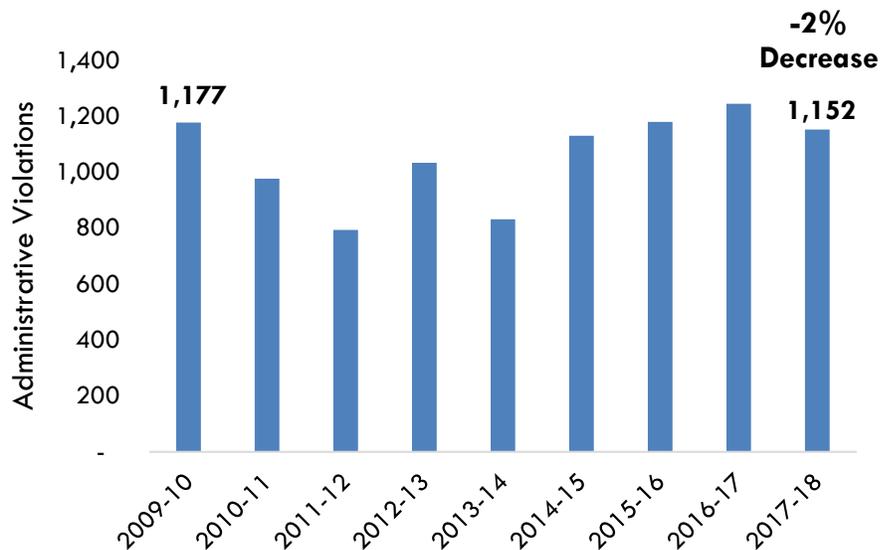
Note: “Fail to superintend” includes offenses ranging from violations that a permittee reasonably should have known were occurring on the premises to employees leaving a bar under the supervision of a patron.

Source: Program Evaluation Division based on data from the ABC Commission.

Exhibit 3 shows the number of violations by year. The number of violations has fluctuated from year to year; overall it has decreased by 2% from Fiscal Year 2009–10 to Fiscal Year 2017–18. This fluctuation may be the result of changes in permittee behavior, ALE training initiatives, Commission policy priorities, and/or changes in law. Viewing these totals alongside the year-by-year number of permittees shown in Exhibit 1 reveals that growth in the number of permittees from the beginning to the end of this nine-year period outpaced total violations.

Exhibit 3

Despite Increase in Number of New Permittees, Total Violations Remained Steady Between Fiscal Years 2009–10 and 2017–18



Note: Data represents total violations received by ABC Commission.

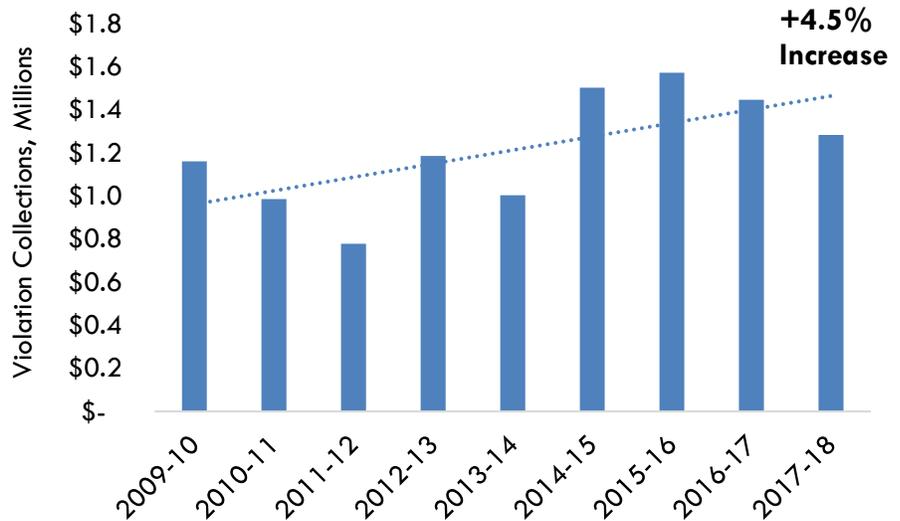
Source: Program Evaluation Division based on data from the ABC Commission.

Whereas the number of violations decreased slightly, collections from fines increased. The ABC Commission remits the fines it collects from violations to the Civil Penalty and Forfeiture Fund and redirects them to the school board in the county in which the violation took place.

Exhibit 4 shows penalty collections by year. The State collected \$1.3 million in Fiscal Year 2017–18. Collections increased by an average rate of 4.5% from Fiscal Year 2009–10 to Fiscal Year 2017–18. Examining penalty collections alongside the yearly violation totals shown in Exhibit 3 emphasizes the fact that collections grew even as the number of violations remained relatively steady between the beginning and end of the observed period. As discussed later in the report, the Commission periodically adjusts minimum fine amounts for violations to reflect policy priorities. These changes in policy objectives, either through increased fine amounts for high priority violations or through the introduction of new violation categories, have contributed to the increase in collections.

Exhibit 4

Administrative Penalty Collections Have Steadily Increased

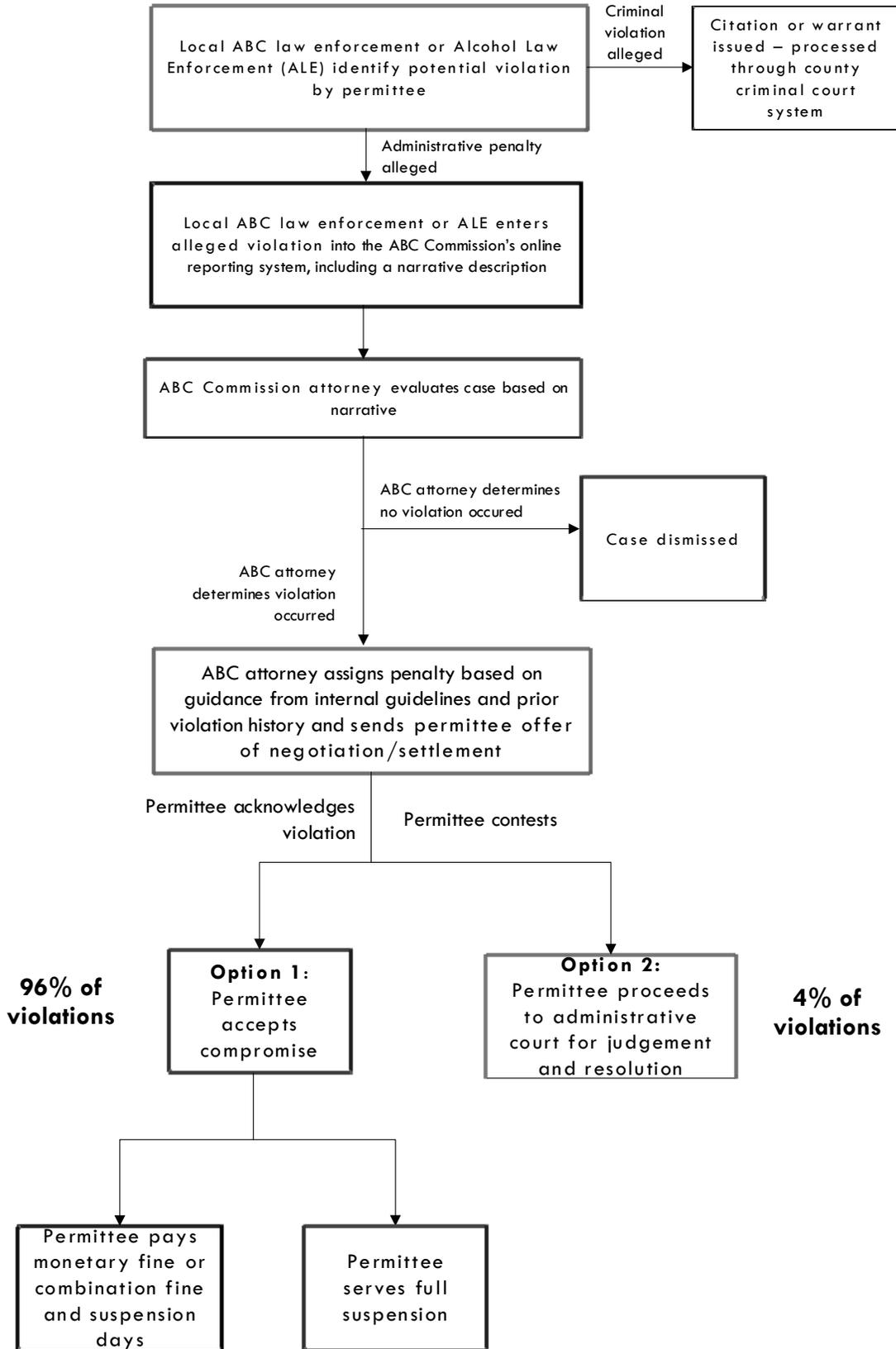


Note: The dotted line represents the linear trend.

Source: Program Evaluation Division based on data from the ABC Commission.

The State relies on a collaborative effort to identify, enforce, and process administrative penalties for alcohol-related violations. Exhibit 5 shows the process for discovering and processing an ABC related administrative violation in North Carolina. Alcohol Law Enforcement (ALE) provides targeted enforcement efforts along with some local ABC boards that employ their own security personnel. The Commission also relies on local law enforcement to identify administrative violations within their jurisdictions. A law enforcement officer completes a summary and narrative description of any alleged administrative violation and sends it to the ABC Commission.

Exhibit 5: There are Two Options for Settling ABC Administrative Violations



Source: Program Evaluation Division based on information provided by the ABC Commission.

The ABC Commission oversees the collection of fines from administrative penalties for alcohol-related offenses and provides two options for settling administrative violations. An ABC attorney reviews the summary completed by law enforcement to determine if an administrative violation has occurred. After determination, the ABC attorney prepares a notice of alleged violation letter. Appendix B depicts a sample violation letter. This letter provides two options for the permittee to adjudicate the alleged violation:³

- **Settlement Compromise.** The offer for settlement compromise requires the permittee to acknowledge the violation and accept a penalty of suspension or a monetary fine. The ABC Commission may propose a fine of up to \$5,000. For severe violations, the Commission will impose a mandatory suspension term; however, the optional monetary fine will mitigate the length of the suspension. The Commission bases penalties on guidelines that reflect the severity of the violation and the permittee's prior violation history.⁴
- **Administrative Hearing.** If a permittee refuses to accept the compromise, the case proceeds to an administrative court with the ABC Commission recommending that the permittee receive both the maximum monetary fine and a mandatory suspension. Administrative judges within the Office of Administrative Hearings adjudicate these cases. Statute establishes a graduated tier of maximum monetary fines for cases heard through the administrative courts based on the number of repeat violations within a three-year window:
 - \$500 for a first offense,
 - \$750 for a second offense, and
 - \$1,000 for a third offense.⁵

Most permittees who receive alleged violation letters accept the offer of settlement compromise. Although there are two different processes that permittees can undertake in settling allegations of administrative violation, they must ultimately decide to choose one option. In Fiscal Year 2017–18, permittees in 96% of cases of alleged violation chose the compromise process, a proportion which has remained consistent over time. As a result, this evaluation focuses on the administrative penalties associated with the compromise process. The compromise process provides an opportunity for the ABC Commission to actively communicate with permittees, allowing the Commission the flexibility to respond to various mitigating scenarios and account for the permittee's past actions. By contrast, the Office of Administrative Hearings represents a final, judicial step in adjudicating disagreements with the compromise process. These two processes are complementary, and therefore the Program Evaluation Division determined no duplication exists.

³ In some circumstances a permittee may also choose to surrender its permits.

⁴ The ABC Commission may levy a fine, suspend a license, or revoke a license. A monetary fine may be levied in conjunction with a license suspension, but a fine cannot be combined with a license revocation.

⁵ N.C. Sess. Law 2019-49 increased the maximum monetary fine for violations involving acts of violence, controlled substances, or prostitution. For all other violations, the tiers were established by N.C. Sess. Laws 1981-412 and thus have not been adjusted in nearly four decades for severity, public safety focus, or inflation.

Determining proportionality of administrative penalties involves considering whether penalties are applied uniformly and whether there is a rationale for the severity of penalties for an infraction. Criminal justice literature posits many theories concerning the proportionality of penalties. For this evaluation, proportionality focuses on retributive justice. The fundamental principle of retributive justice is that the severity of the punishment should be commensurate with the seriousness of the infraction.⁶ With retributive justice in mind, assessment of the proportionality of penalties applies three principles:

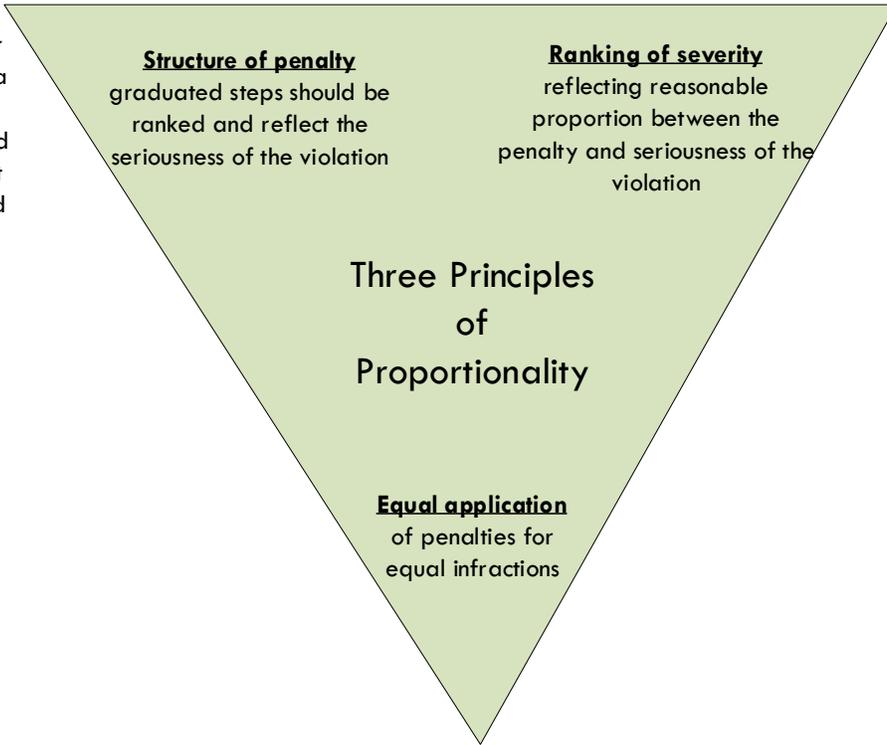
- structure of penalties, meaning increases in penalties for repeat offenses reflect agency policy and priorities for enforcement;
- ranking of severity, with the most severe violations receiving the largest magnitude of penalty; and
- equal application, or the principle that permittees committing similar violations receive the same penalties.

Justifications and internal policies establishing the first two principles—ranking of severity and structure of penalties—help ensure the third principle, equal application. These principles, along with examples of how they relate to the Commission’s administrative penalty structure, are illustrated in Exhibit 6.

⁶ Balmer, Thomas. (2008). *Thoughts on Proportionality*. Oregon Law Review: Vol. 87, No. 3, p. 783-818. Von Hirsch, A. (1983). Commensurability and crime prevention: Evaluating formal sentencing structures and their rationales. *Journal of Criminal Law and Criminology*, 70, 1, 209-248.

Exhibit 6: Proportionality of ABC Administrative Penalties Can Be Determined Using Three Principles

Example:
Graduated steps for repeat offenses for a violation should be rooted in documented rationale and reflect agency priorities and policy



Example:
Penalty tiers are established, with most serious violations receiving largest penalties

Example:
Permittees receive similar penalties for identical violations

Source: Program Evaluation Division based on criminal justice literature on penalties and sentencing.

Imperative to fairness and proportionality is the equal application of penalties for equivalent infractions, which is achieved through controls put in place by the administrative unit charged with settling the administrative penalties. Administrative controls reflect the rules, policies, procedures, or guidelines for ranking the severity and establishing proportions between penalties based on the seriousness of each infraction. These components establish the rationale for the penalty structure.

Prior to this evaluation however, no previous studies had examined the proportionality of administrative penalties for alcohol-related offenses in North Carolina. Further, there has not been a systematic review of the effectiveness or efficiency of administrative penalties or the Commission’s process. This evaluation presents an opportunity to assess the proportionality, efficiency, and effectiveness of administrative penalties for ABC violations.

Findings

Finding 1. The ABC Commission lacks documented rationale for its administrative penalty guidelines that could help ensure objectivity and does not notify permittees of changes to these guidelines.

Administrative rules, documented policies and procedures, and guidelines all demonstrate the rationale of administrative penalties and establish objectivity in penalty administration. Rationale for penalties is typically illuminated through the process by which penalty amounts and graduated tiers within a penalty for repeat violations are determined. For example, ranking penalties from most to least severe with corresponding rationale and penalty gradients is a tactic commonly used by alcohol control agencies in other states.

The Program Evaluation Division requested the policies and procedures that guide the Commission's process for handling administrative penalties. The Commission responded there are no written policies and procedures and could only provide penalty guidelines. However, even these penalty guidelines possess shortcomings. The guidelines are subject to frequent change, possess limited transparency by not being publicly available, and lack rationale in the ranking of severity and structure of penalties.

The Commission's penalty guidelines change frequently. The Program Evaluation Division reviewed penalty guidelines dating back to 2013 and observed many changes over time to the infractions penalized and the magnitude of specific penalties. For example, in April 2013, the Commission issued written warnings for first-time offenses of permittees running gambling pools. Five months later, the Commission increased the penalty for a first-time instance of this infraction to a \$500 fine or a five-day voluntary suspension. Similarly, a first-time offense for selling to underage persons incurred a \$1,200 fine or 12-day voluntary suspension in April 2013 accompanied by mandatory training. However, 2019 guidelines impose a \$2,000 fine or 20-day voluntary suspension, without the training requirement.

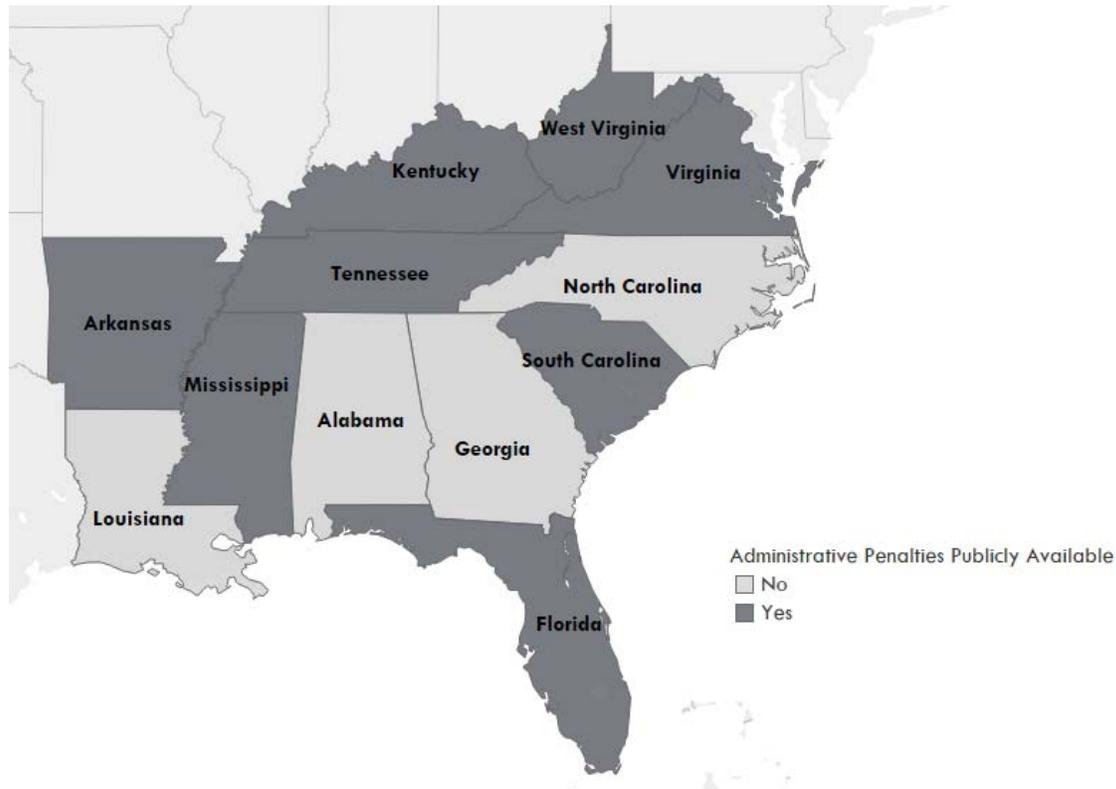
Potential negative consequences of these frequent changes are exacerbated when guidelines and penalty structures are not made publicly available to permittees. Changes to these guidelines can reflect changes in law, but they can also reflect changes in policy priorities upon the appointment of new ABC Commission members. Unless permittees are being notified of these changes, they are unaware of the penalties that can be imposed on them for given infractions and are likewise unaware of potential shifts in the policy priorities of the Commission.

Penalty guidelines are not publicly disseminated, limiting transparency for ABC permittees. The Commission uses guidelines to determine the magnitude of penalties for administrative violations. However, these penalty guidelines are not made public. This lack of transparency is problematic because permittees are thereby not made aware of the financial or operational risks that accompany various administrative infractions.

The ABC Commission does not make penalty guidelines publicly available through administrative code or statute, nor are current penalty structures,

amounts, and levels of severity publicized. As illustrated in Exhibit 7, the Program Evaluation Division determined that two-thirds of southeastern states make their administrative penalties publicly available through administrative code or statute. Educating permittees on the penalty amounts for corresponding violations would improve transparency, better ensure equal application of penalties, and allow permittees to better adapt employee training.

Exhibit 7: Most Southeastern States Make Administrative Penalties Publicly Available



Source: Program Evaluation Division based review of Southeastern State Statute and Administrative Code.

The Commission's penalty guidelines lack documented rationale that explains the severity and structure of penalties. The ABC Commission was also unable to provide a rationale for differences between the severity of penalties for similar violations or for how the magnitude of penalties for specific offenses escalated for repeat infractions. Exhibit 8 displays some example infractions and the corresponding penalties levied according to the number of repeat offenses. The Program Evaluation Division requested documentation that showed why the penalties for first and second violations related to video poker gambling were five times greater than those for the more general gambling infraction. Likewise, PED inquired why penalties for selling to underage persons—a problem fundamental to the enforcement of ABC laws—were less severe than penalties levied for the video poker violation. In response, the ABC Commission could not provide any documentation or rationale for the differences between certain penalties or the magnitude of penalties for repeat infractions.

Exhibit 8: ABC Commission Lacks Rationale to Govern the Severity and Magnitude of Penalties

Offense	Gambling	Video Poker	Sale to Underage
1 st	\$500 or 5A	\$2,500 or 25A	\$2,000 or 20A
2 nd	\$1,000 or 10A	\$5,000 or 50A	\$3,500 or 35A
3 rd	\$2,000 or 20A	Revocation	\$5,000 & 5A or 60A
4 th	N/A	N/A	\$5,000 & 15A or 90A

Note: Penalties with numeric values followed by an “A” represent the number of days of voluntary active suspension. For example, a first offense through the compromise process for video poker can result in either a \$2,500 fine or 25-day active suspension.

Source: Program Evaluation Division based on documentation provided by the ABC Commission.

In summary, the ABC Commission has not demonstrated sufficient rationale in establishing the structure and ranking of severity of administrative penalties. As discussed in the Background, absence of these two principles of proportionality challenges objectivity in the dispensation of penalties. Further, transparency of the current penalty structure is challenged by penalty guidelines not being made publicly available.

Finding 2. The Commission’s compromise process presents different compromise offers to permittees charged with identical violations; further, monetary penalties are not equally applied. In the context of administrative penalties, proportionality is understood by examining the severity of a punishment in relation to the violation. Ensuring the proportionality of penalties is important because it establishes fairness and can induce compliance when structured appropriately.

The Program Evaluation Division did not measure proportionality based on an analysis of violations in relation to the value of a penalty (e.g., does a certain violation merit a monetary penalty or suspension length?). Program Evaluation Division staff determined that this measurement of direct proportionality is a policy-related question.

As discussed in the Background, proportionality for administrative violations is predicated on the equal application of penalties for equivalent violations. Finding 1 showed how administrative penalties are subject to frequent changes, lack rationale for their structure and severity, and are not publicized with sufficient transparency. The absence of these safeguards challenges the objectivity of assigning penalties. These gaps in proportionality occur because the Commission has not taken measures to ensure proportionality across and within the administrative penalty structure.

Equal application of penalties for an infraction is central to ensuring proportionality; analysis of the impact of compromise options on different permittees shows that this principle is not being achieved. The compromise process offered by the Commission lacks proportionality because the choice to submit voluntarily to a suspension of a permit instead of paying a monetary fine translates into different consequences for each permittee. To achieve proportionality, the same penalty needs to be

applied for the same infraction, which is not happening because of the compromise process.

As discussed in the Background, when permittees violate ABC law they receive a notice of alleged violation that conveys the nature of the complaint and lays out options for adjudicating the violation. This notice gives each alleged offender the option to either a) accept the compromise or b) petition the case before an Administrative Law Judge, whereby the ABC Commission will pursue a maximum monetary penalty and suspension.

Choosing the settlement in compromise option represents an acknowledgment of the charges and presents the permittee with the further choice of either voluntarily submitting to a suspension of permits or paying a fine. The ABC Commission uses its penalty guidelines to determine the number of suspension days and the fine amount.

The Commission values voluntary suspension at \$100 per day. Using that logic, a compromise offer made to a permittee would be presented as a choice between voluntary suspension of ABC permits for five days or payment of a \$500 fine. However, this equivalence underestimates the real cost of voluntary suspension and fosters an unequal application of penalties for permittees to consider in the compromise offer.

The Program Evaluation Division analyzed a sample of alleged violation letters along with alcohol sales data for each of the corresponding permittees and found the actual value of voluntary suspension for most permittees exceeded the ABC Commission’s valuation. As Exhibit 9 shows, the average amount of lost revenue from a single day of voluntary suspension is nearly \$950, which far surpasses the \$100-per-day valuation that forms the basis of the compromise offer.

Exhibit 9

Value of a Single Day of Suspension Varies Widely for Permittees

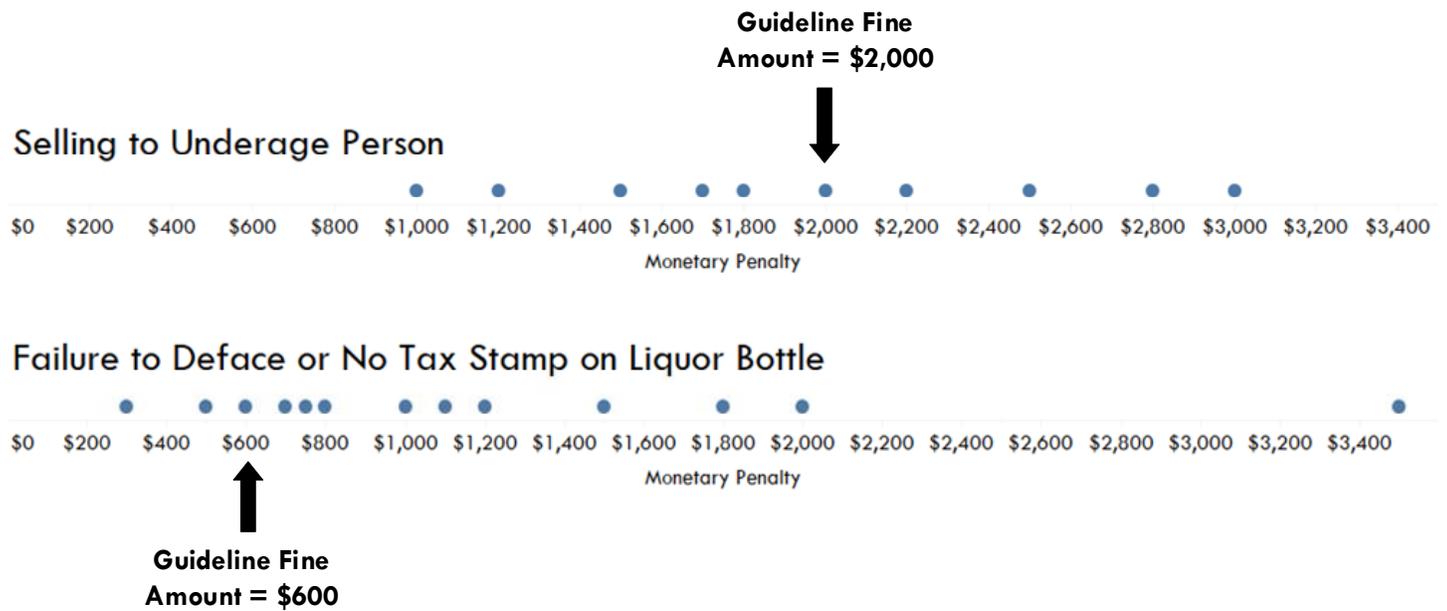
Estimated Costs Per One Day of Suspension	
Maximum	\$7,838
Minimum	\$0.66
Average	\$946
ABC Estimated Value	\$100

Source: Program Evaluation Division based on analysis of ABC permittee sales data.

Examining the sample of permittees shows wide variation in the value of one day of suspension, costing as little as \$0.66 to more than \$7,800 in lost revenue. This variability violates important criteria of proportionality that require equal application of penalties. When the compromise settlement offers voluntary suspension as an option for adjudication and that suspension holds a different value for each permittee, proportionality is not being achieved. As expected, given the discrepancy between the valuation of suspension and the actual amounts of potential lost revenue for permittees, most alleged offenders pay the fine. Further inhibiting proportionality is the fact that the fines themselves are being inconsistently applied by the ABC Commission.

The Commission imposes different monetary fines for the same infractions. Exhibit 10 illustrates this inconsistency. The sample analyzed by the Program Evaluation Division included first-time alleged violators for two types of frequently occurring infractions: 1) selling to underage persons and 2) failure to deface or possession of liquor bottles without a tax stamp. The exhibit shows that most of the fine amounts offered by the Commission cluster around the penalty guidelines, yet individual circumstances exist in which the fine amount for a first offense varied by nearly six times the amount stated in the guidelines, further supporting the conclusion that the administrative penalties enforced by the ABC Commission through the compromise process are not proportional.

Exhibit 10: Fines Levied by the ABC Commission Are Not Always Equally Applied for First Offenses of the Same Infraction



Note: Data represents a sample of ABC violations for first-time, single-infraction violations. Each dot represents a single violation.

Source: Program Evaluation Division based on analysis of alleged ABC violation letters and penalty data.

Although there may be circumstances that justify mitigated or increased penalty amounts, the Program Evaluation Division was unable to determine if these deviations are justified without documented policies and procedures to indicate when and to what extent penalties can deviate from guidelines.

Barriers exist that prevent North Carolina from using a throughput-based penalty structure for administrative penalties. The Program Evaluation Division considered whether concerns regarding proportionality would be alleviated by the State adopting a throughput-based or sales-based penalty structure. Other states use these throughputs to determine monetary penalties for administrative violations. For example, Colorado and California set permittee fines as a percentage of alcohol sales. As a result, each penalty is proportional to the size of the entity.

However, the ABC Commission does not currently collect the data necessary to implement a throughput-based or sales-based penalty structure.

Specifically, the Commission does not record the total volume of alcoholic beverages sold by permittees, hindering the development of any throughput-based penalty structure. Further, the ABC Commission only has access to data from permittees on spirituous liquor sales; the data does not include beer and wine sales. This data is only available at the individual ABC board level and is not currently shared with the ABC Commission. Modifications to the ABC Commission's data collection system would be required if the General Assembly decided to make a policy decision to pursue a throughput-based or sales-based penalty structure.

In summary, penalties levied by the ABC Commission lack proportionality because of variance in both the valuation of suspensions and the dispensation of penalties. The compromise process presents permittees with options concerning acceptance of suspension versus payment of a monetary fine that affect permittees differently depending on the potential revenues lost from suspension. There are also no policies or procedures guiding how mitigating or exacerbating circumstances can increase or decrease the size of a penalty. As a result, penalties for the same infraction sometimes differ between permittees.

Finding 3. Consumption-related violations have decreased, suggesting administrative penalties are operating effectively, but the repeat offense rate has increased. As discussed in the Background, there have been no previous evaluations of the effectiveness of the State's administrative penalties for violations of alcohol-related law and statute. The ABC Commission completes an annual review and reports to the General Assembly when requested. These reports typically include revenue and distribution information on sales, taxes collected, and profit of ABC boards, along with data on total violations and collections received via administrative penalties. However, these reporting metrics do not include comprehensive criteria for assessing the effectiveness of administrative penalties.

Evaluating the effectiveness of administrative penalties is based on the criminal justice theory of deterrence. Deterrence refers to the ability of penalties to disincentivize future violations. Penalties for administrative violations can also be designed to reduce the likelihood of repeat offenses by previous violators. As a result, two criteria are used to gauge effectiveness of administrative penalties:

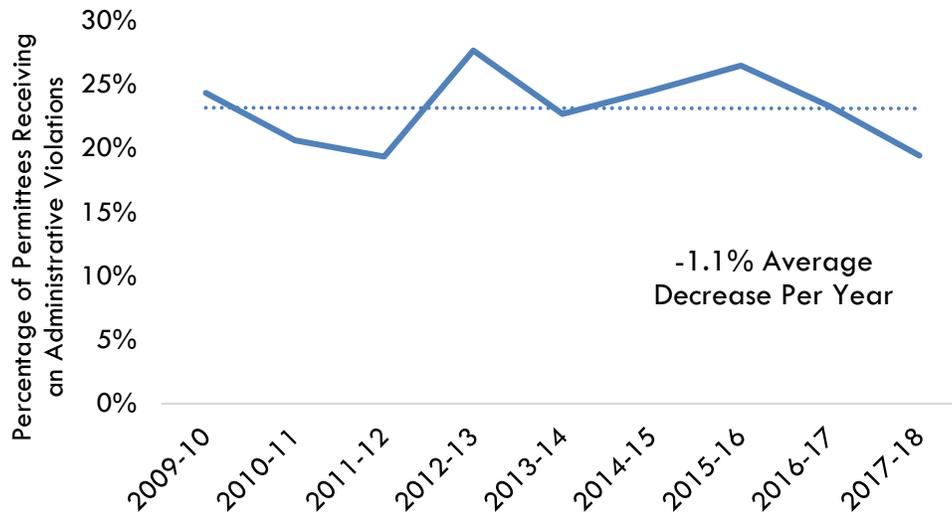
- the proportion of total permittees receiving a violation and
- the rate at which violating permittees commit a subsequent violation of any type.⁷

The percentage of permittees receiving a violation has largely remained unchanged. As seen in Exhibit 11, in Fiscal Year 2009–10, the proportion of permittees with a violation was 24.3%. In Fiscal Year 2017–18, the rate

⁷ A repeat offense is defined here as a violating permittee receiving a notice of alleged violation at any time in the subsequent fiscal year. The violation need not be of the same type. This definition of repeat violation differs from the ABC Commission's methodology of ascribing repeat offender status to a permittee who commits the same type of violation within three years. The Program Evaluation Division used a different approach in order to capture the effectiveness of administrative penalties at deterring any future violation, regardless of whether the violations were identical.

was 19.4%. Over the observed time period, the percentage of administrative violations has remained consistent, decreasing by an average of 1.1% per year.

Exhibit 11: Prevalence of Administrative Penalties Has Remained Consistent



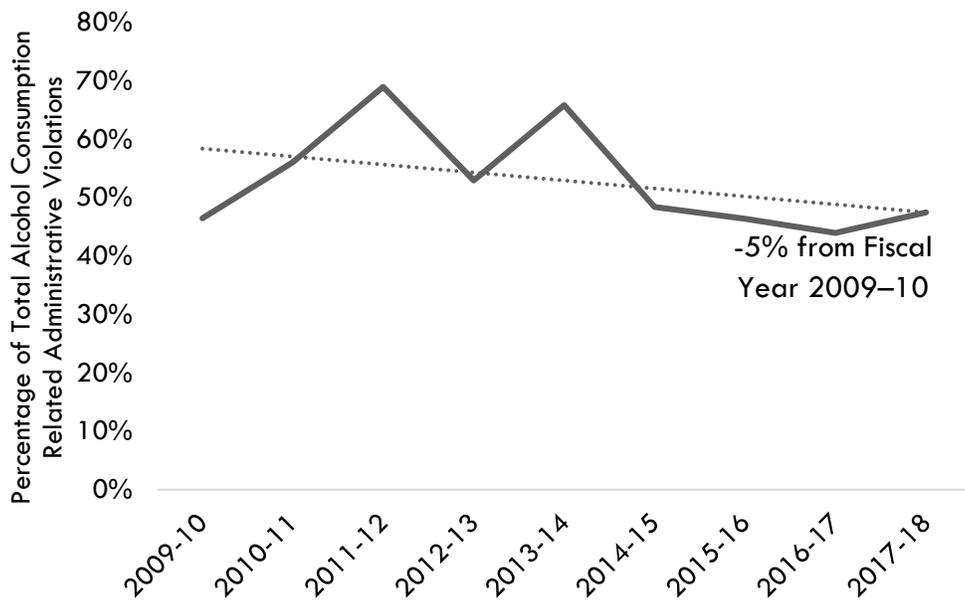
Note: The dotted line represents the linear trend.

Source: Program Evaluation Division based on data provided by the ABC Commission.

The proportion of permittees who received a penalty has fluctuated year to year but has remained relatively unchanged overall. This finding suggests that administrative penalties are ineffective at reducing the proportion of permittees who commit a violation. However, analyzing violation prevalence by type of infraction offers further context on the capacity of administrative penalties to deter behavior that results in an allegation of violation.

The frequency of consumption-related violations decreased despite the number of violators remaining consistent. Limiting consumption-related offenses, which include selling alcohol to minors or to over-intoxicated patrons, is central to the ABC Commission’s efforts to achieve its core public safety goals. As Exhibit 12 shows, the proportion of consumption-related violations has decreased steadily since Fiscal Year 2009–10, falling by an average of 5% per year. This finding suggests that penalties reduce the frequency of alcohol consumption-related violations, a central goal of the administrative penalty system. As discussed in Finding 1, shifts in the policy focus of the ABC Commission lead to changes in penalty guidelines for violations. Exhibit 12 shows that increased focus on curbing consumption-related violations has succeeded, although the prevalence of all other types of administrative and compliance violations has correspondingly increased.

Exhibit 12: Consumption-Related Violations Have Decreased in Over Nine Fiscal Years



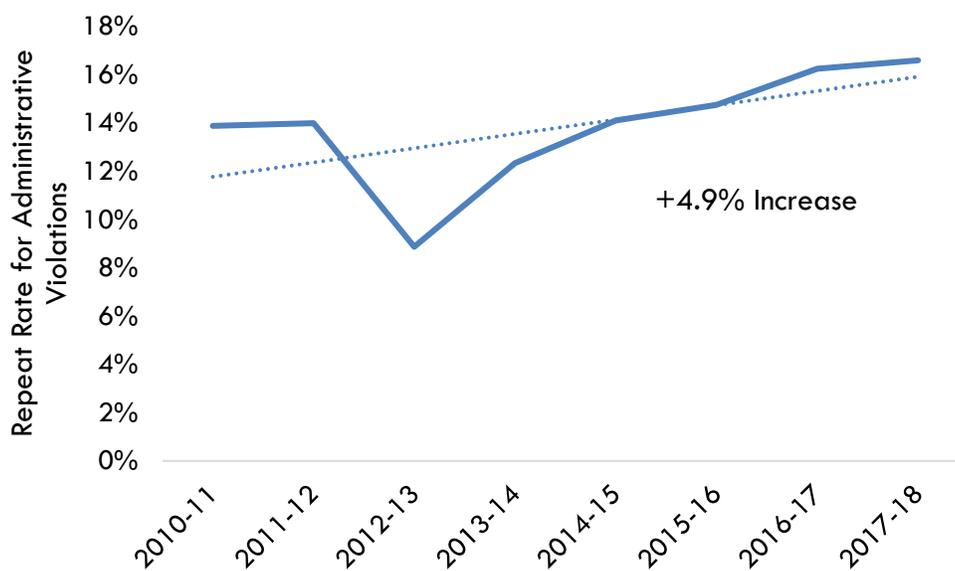
Note: The dotted line represents the linear trend.

Source: Program Evaluation Division based on data provided by the ABC Commission.

Although consumption related violations decreased, the rate at which violators commit a repeat violation increased. Exhibit 13 shows the proportion of violating permittees committing another offense of any type in the following fiscal year. In Fiscal Year 2010–11, 13.9% of violators were classified as repeat offenders.⁸ This rate dropped to 8.9% in Fiscal Year 2012–13 but has increased during the past eight years, growing by an average of 4.9% per year. In Fiscal Year 2017–18, the proportion had increased to 16.6%. The rate of repeat offense shows that administrative penalties are failing to deter permittees from committing future violations.

⁸ Fiscal Year 2010–11 was the first year for which data was available to analyze whether issuance of a violation in one-year deterred rates of future violations in the following year.

Exhibit 13: Rate of Repeat Violations Is Increasing



Note: The dotted line represents the linear trend. Fiscal Year 2010–11 is the first-year data is available for the analysis.

Source: Program Evaluation Division based on data provided by the ABC Commission.

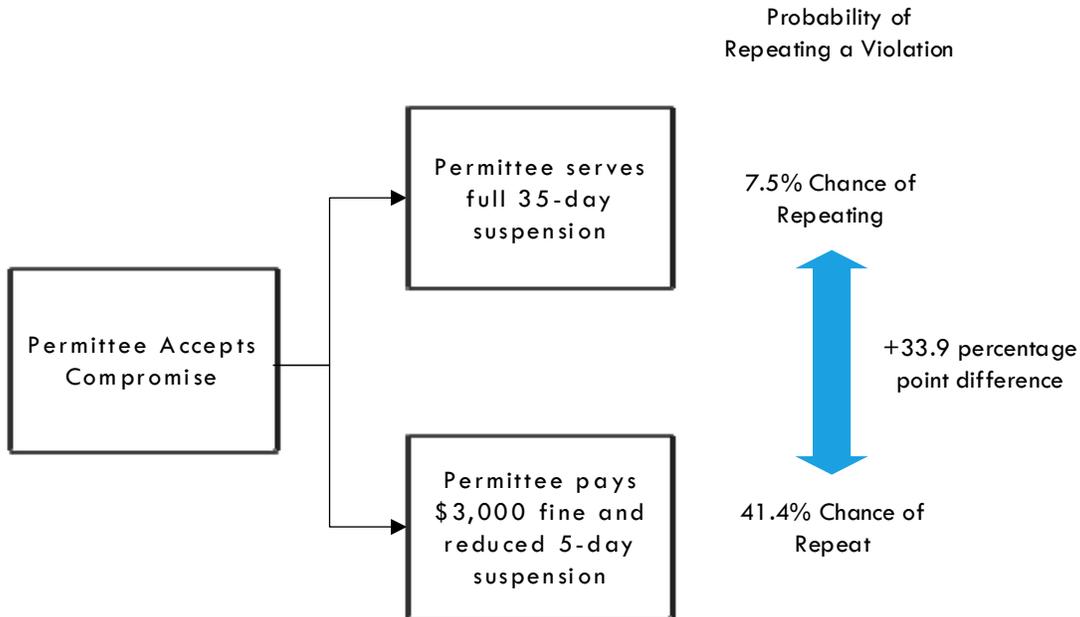
Data limitations prevented an evaluation of how repeat violation rates were affected by whether permittees accepted the monetary penalty or opted for suspension. As discussed previously, the ABC Commission may levy monetary fines, suspensions or revocations, or a combination of a monetary fine and suspension as penalty for administrative violations. Inability to catalogue cases where permittees opt for suspension instead of a monetary fine as part of the compromise process hindered further analysis of the relative efficacy of these options. However, in discussing repeat offenses during interviews, ALE officials cited suspensions, particularly lengthier suspensions, as a much more effective method of reducing repeat offenses. The Program Evaluation Division sought to test whether the data supported this theory.

The Program Evaluation Division found that among violating permittees who receive suspensions, longer suspension lengths reduce the likelihood of repeat offenses more than shorter suspensions. The Program Evaluation Division analyzed a sample of violations and found 82% of alleged offenders opted to avoid suspension by paying a monetary fine offered by the compromise. Further, the Division discovered a statistically significant effect on repeat rates when the length of suspension reached a large enough magnitude. For example, permittees avoided longer suspension lengths of 35 days by paying a \$3,000 monetary fine and serving a reduced five-day suspension. However, if the permittee in these cases accepted the longer suspension, the probability of repeat offense decreased by 33.9 percentage points.⁹ Hence, longer

⁹ The Program Evaluation Division analyzed probability of repeating an offense by constructing a logistic regression model. Using permittee-level data provided by the ABC Commission, the model estimates changes in the likelihood of a permittee repeating a violation.

suspension lengths are more effective at reducing the probability of re-offending. Exhibit 14 shows these results and the propensity for repeat offenses.

Exhibit 14: Permittee Acceptance of a Full 35-Day Suspension Instead of a Monetary Fine and Reduced Five-Day Suspension Diminishes Repeat Offense Rate



Source: Program Evaluation Division based on data from the ABC Commission.

In summary, the total proportion of permittees committing violations has remained relatively consistent, whereas the underlying prevalence of consumption-related violations has decreased. However, repeat offense rates are increasing. Longer suspension lengths were found to be effective at reducing reoffending rates, supporting anecdotal information provided by ALE.

Finding 4. Though handling cases through the ABC Commission takes longer and costs more than adjudication through administrative court, differences in how the two entities function and the types of cases they process provide arguments against fully transferring responsibility to the courts. Measuring efficiency is critical to understanding how well state resources are being used to achieve policy goals. As mentioned in the Background, the ABC Commission processes 96% of cases through the compromise process, whereas only 4% of cases are adjudicated through administrative court. Given the imbalance in use of the two procedures, it is necessary to ensure the State is using the most efficient means of settling administrative violation allegations whenever practical. Measuring the resources it takes to produce a given output allows analysis of efficiency. In terms of handling alleged alcohol-related offenses by permittees, the resources involved are

- processing time—the average time spent processing each case from procurement to the ultimate rendering of a ruling or decision and¹⁰
- cost per case—the cost in full time equivalents (salary plus benefits) divided by the number of cases¹¹.

Processing time and cost per case provide quantitative measures of efficiency. The two measures offer an opportunity to compare procedures for settling allegations of administrative violation. The Program Evaluation Division compared the efficiency of cases handled through the ABC Compromise process to cases handled through administrative courts to determine which process was operating more efficiently.

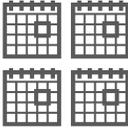
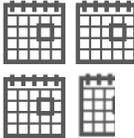
The ABC Commission compromise process is more time-consuming and costlier than administrative court. On average, it takes the Commission 118 days to process a case through the compromise process, whereas cases handled via the administrative courts take 108 days. The compromise process takes longer because it often involves multiple rounds of communication with permittees and potentially several steps for negotiating proposed penalties or suspensions. However, the ABC Commission has made improvements in this metric in recent years, decreasing average processing time by 19% from a high of 134 days in 2014 to 109 in 2018.

The bottom-line efficiency measure is the cost to settle or adjudicate each case. The cost to the State is higher when cases are processed through the compromise process compared to the administrative courts. Administrative violations processed through the ABC Commission compromise process cost, on average, \$215 per case, whereas these cases cost an average of \$134 when handled through administrative courts. Exhibit 15 summarizes these comparisons of efficiency criteria between the two processes.

¹⁰ The Program Evaluation Division developed definitions that would best capture the timeframe within which a case is processed. For the ABC Commission's compromise process, processing time is defined as spanning from the date that the violation case is electronically sent to the Commission to the date of the settlement being accepted, accounting only for those permittees who eventually accept the compromise. For the administrative court process, the timeframe is defined as encompassing the time from the date the case was filed in court to the date of eventual disposition.

¹¹ Full-time equivalent includes salary plus benefits.

Exhibit 15: Efficiency Criteria for Administrative Penalties, Fiscal Years 2013–14 to Fiscal Year 2017–18

	ABC Commission	Administrative Hearing
Processing Time	118 Days 	108 Days 
Cost	\$215 per case 	\$134 per case 

Source: Program Evaluation Division based on information from the ABC commission and the Office of The Administrative Courts

Given the fact that administrative courts process cases in less time and at a lower cost to the State, the Program Evaluation Division considered the implications of fully transferring responsibility for processing administrative violations from the ABC Commission to administrative courts. The Program Evaluation Division identified the following concerns that would arise from such a policy change:

- the ABC Commission’s active processing of cases includes educating and communicating with permittees as well as utilizing its expertise in determining potential mitigation of penalties;
- currently, the nature of cases processed by the two entities are different—the ABC Commission processes most cases whereas the administrative courts serve as the final judicial step in resolving permittee disagreements with alleged violations; and
- as previously mentioned in the report, the ABC Commission compromise process and administrative court process are complementary, not duplicative.

Given these concerns, the Program Evaluation Division does not recommend the General Assembly make any structural changes to the current method by which administrative violations are processed between the ABC Commission and the administrative courts.

In summary, the ABC Commission’s compromise process is operating less efficiently compared to processing cases through the administrative courts. Although the compromise process yields longer processing times for permittees and greater cost to the State compared to adjudicating cases in court, the Program Evaluation Division does not recommend eliminating the ABC Commission’s responsibility for processing administrative violations, given the Commission’s expertise in handling permits and permittees, the differing types of cases each entity currently handles, and the

complementary functionality of the ABC Commission compromise process and administrative court adjudication.

Finding 5. Current law sufficiently covers all permittee activities that may be considered subject to administrative penalty. Session Law 2019-182 directed the Program Evaluation Division to identify areas of law that may be lacking regarding administrative penalties for alcohol-related offenses. Determining whether any areas of permittee operations are insufficiently covered or if any area of current coverage could be improved or modified would improve the enforcement of administrative penalties.

Stakeholders asserted to the Program Evaluation Division that current ABC laws are sufficient to enforce administrative penalties for alcohol-related violations. To determine if current law and statute are lacking in any area, the evaluation team interviewed a variety of stakeholders, including:

- ABC Commission,
- Alcohol Law Enforcement,
- North Carolina Beer and Wine Wholesalers,
- North Carolina Craft Brewer's Guild,
- North Carolina Retail Merchants Association, and
- alcohol control commissions in other states.

Based on interviews with several state stakeholders, the Program Evaluation Division did not identify any areas that lacked coverage under the law. No stakeholders mentioned any areas in which the law was insufficient. Interviews with alcohol control commissions in other states identified areas of enforcement and coverage under the law similar to those used in North Carolina. As a result, the Program Evaluation Division determined that the current coverage under the law is sufficient and requires no modification.

Recommendations

Recommendation 1. The General Assembly should direct the ABC Commission to create policies and procedures that establish a rationale for administrative penalties, improve transparency for permittees, and report on opportunities and challenges in adopting a throughput-based or sales-based system for penalties.

As discussed in Finding 1, this report identified issues pertaining to the proportionality of administrative penalties. Of particular concern was the lack of policies and procedures establishing the rationale for applying penalty guidelines. Without these controls in place, subjectivity may be introduced into the administrative process, increasing the likelihood of disproportionality. Further, there is a lack of transparency surrounding monetary fines for ABC permittees. The Commission is not publishing information about the severity of punishments in relation to various violations. Permittees and the public would better understand ABC Commission policy priorities if the Commission publicized penalty guidelines.

To address these concerns, the General Assembly should direct the ABC Commission to develop policies and procedures that provide information regarding when it is appropriate and merited to deviate from penalty guidelines, in addition to providing justification for penalty structures within the compromise process. Any adjustments, including inflationary changes or shifts in prioritization, should include corresponding rationale and documentation. Penalty structures should be made public to ABC permittees, thereby assisting permittees in better understanding the consequences they may face for various violations along with better informing permittees about their options if they enter the compromise process.

Finally, as mentioned in Finding 2, North Carolina does not use a throughput-based or sales-based penalty structure for determining monetary penalties for administrative violations. The General Assembly should direct the ABC Commission to study the opportunities, challenges, and resources needed for implementing such a system and any ramifications such a system would have on the proportionality of penalties on permittees. The ABC Commission should report to the General Assembly on the results of this study by December 1, 2020.

Recommendation 2. The General Assembly should direct the ABC Commission to establish effectiveness criteria to evaluate future efforts at deterring repeat violations.

Finding 3 reports on the effectiveness of administrative penalties at reducing the number of violations and repeat offenses. This evaluation represents the first effort in the state to evaluate these effectiveness criteria as they pertain to administrative penalties for alcohol-related offenses. To properly monitor and measure future efforts at achieving policy goals, performance criteria should be systematically collected and periodically reported to the General Assembly. Establishing benchmarks or

goals at the commencement of each ABC Commission annual report would help chart the long-term effectiveness of administrative penalties.

The General Assembly should direct the ABC Commission to include the effectiveness criteria used in this report in its annual reports and presentations to the General Assembly, including

- total percentage of permittees committing a violation and
- repeat offense rate.

These reporting requirements should be included in the ABC Commission's annual report for 2020–21 and every year thereafter.

Appendices

Appendix A: ABC Permits Available in North Carolina

Appendix B: Example of ABC Commission Administrative Violation
Compromise Offer Letter

Agency Response

A draft of this report was submitted to the North Carolina Alcoholic Beverage Control Commission to review. Its response is provided following the appendices.

Program Evaluation Division Contact and Acknowledgments

For more information on this report, please contact Sean Hamel at Sean.Hamel@ncleg.gov.

Staff members who made key contributions to this report include Jacob Ford and Sidney Thomas. John W. Turcotte is the director of the Program Evaluation Division.

Appendix A: ABC Permits Available in North Carolina

Permit Name	Description	Application Fee	Renewal Fee	Register Fee
Brewery	Manufacture Malt Beverages	\$300	-	-
Malt Beverage On Premise	Sell At Retail Malt Beverage On Premise	\$400	-	\$400
Malt Beverage Off Premise	Sell At Retail Malt Beverage Off Premise	\$400	-	\$400
Unfortified Wine On Premise	Sell At Retail Unfortified Wine On Premise	\$400	-	\$400
Unfortified Wine Off Premise	Sell At Retail Unfortified Wine Off Premise	\$400	-	\$400
Fortified Wine On Premise	Sell At Retail Fortified Wine On Premise	\$400	-	\$400
Fortified Wine Off Premise	Sell At Retail Fortified Wine Off Premise	\$400	-	\$400
Brown Bagging Restaurant (small)	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$200	\$200	-
Brown Bagging Restaurant (large)	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$400	\$400	-
Special Occasion	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$400	\$400	-
Brown Bagging Private Club	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$400	\$400	-
Malt Beverage Importer	Import, Store And Sell Malt Beverage On The Approved List	\$300	-	-
Wine Importer	Import, Store And Sell Wine On The Approved List	\$300	-	-
Culinary	Allow The Use Of Fortified Wine And Spirituous Liquor For Culinary Purposes	\$200	-	-
Air Carrier	Purchase, Transport And Store Alcoholic Beverages At The Above Address	-	-	-
Fuel Alcohol Distiller	Distill Fuel Alcohol	\$100	-	-
Mixed Beverages Restaurant	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Private Club	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Salesman	Sell At Wholesale, Products Of Distributor Listed Above	\$100	-	-
Vendor Representative	Vendor Representative	\$50	-	-
Unfortified Winery	Manufacture Unfortified Wine	\$300	-	-
Fortified Winery	Manufacture Fortified Wine	\$300	-	-
Distillery	Manufacture Spirituous Liquor	\$300	-	-
Nonresident Malt Beverage Vendor	Sell And Ship Approved Malt Beverage Into North Carolina Pursuant To Nc Gs 18B-1113	\$100	-	-
Nonresident Wine Vendor	Sell And Ship Approved Wine Into North Carolina Pursuant To Nc Gs 18B-1114	\$100	-	-
Ship Chandler	Sell Alcoholic Beverages To Ocean-Going Vessels	-	-	-
Spirituous Liquor Warehouse	Transport, Store, Package & Label Alcoholic Beverages For Shipment In The State	-	-	-
Bottler	Transport, Bottle And Sell Malt Beverage, Unfortified And Fortified Wine	\$300	-	-
Malt Beverage Wholesaler	Receive, Transport And Sell At Wholesale, Approved Malt Beverage	\$300	-	-
Wine Wholesaler	Receive, Transport And Sell At Wholesale, Approved Unfortified And Fortified Wine	\$300	-	-

Permit Name	Description	Application Fee	Renewal Fee	Register Fee
Mixed Beverages Convention Center	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Community Theater	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Brown Bagging Community Theater	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$400	\$400	-
Malt Beverage (on only) Tour Boat	Sell At Retail Malt Beverage On Premise	\$400	-	\$400
Unfortified Wine (on only) Tour Boat	Sell At Retail Unfortified Wine On Premise	\$400	-	\$400
Fortified Wine (on only) Tour Boat	Sell At Retail Fortified Wine On Premise	\$400	-	\$400
Mixed Beverages Sports Club	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Nonprofit Organization	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Political Organization	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Brown Bagging Veterans Organization	Allow The Possession And Consumption Of Fortified Wine And Spirituous Liquor	\$400	\$400	-
Mixed Beverages Catering	Serve Mixed Beverages Liquor At Catered Events	\$200	\$200	-
Mixed Beverages Guest Room Cabinet	Sell Malt Beverage, Wines And Liquor From Guest Room Cabinets	\$1,000	\$1,000	-
Winery Special Event	Conduct Tastings And Sales At Winery Special Events	\$200	-	-
Liquor Importer/Bottler	Import, Bottle, Store And Transport Liquor	\$500	-	-
Limited Special Occasion	Limited Special Occasion	\$50	-	-
Special One-Time	Special One-Time	\$50	-	-
Limited Winery	Limited Winery	\$300	-	-
Wine Special Order	Wine Special Order	-	-	-
Cider and Vinegar Manufacturer	Manufacture Cider And Vinegar	\$200	-	-
Brew On Premises	Brew On Premises	\$400	\$400	-
Commercial Transportation	Transport Beer And Wine Commercially	-	-	-
Mixed Beverages Hotel	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Tourism Resort	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Tour Boat	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Residential Private Club	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Commercial Transportation Spirituous Liquor	Transport Spirituous Liquor Commercially	-	-	-
Wine Tasting	Conduct Wine Tastings	\$100	\$100	-
Wine Producer	Engage In The Activities Authorized By Chapter 18B For Wine Producers	\$300	-	-
Viticulture/Enology Course	Manufacture, Possess And Sell Wine For Certain Limited Purposes	-	-	-
Wine Shipper	Ship Wine Pursuant To North Carolina General Statute 18B-1001-1.	-	-	-

Permit Name	Description	Application Fee	Renewal Fee	Register Fee
Mixed Beverages Tourism ABC Establishment	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Wine Shop	Sell Unfortified Wine On/Off-Premise. Sell Malt Beverages And Fortified Wine Off-Premise.	\$100	\$500	-
Winemaking on Premise	Winemaking On Premises By Customers	\$400	\$400	-
Wine Shipper Packager	Packaging And Shipment Of Wine	\$100	\$100	-
Mixed Beverages Historic ABC Establishment	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Malt Beverage Tasting	Conduct Malt Beverage Tastings	\$100	\$100	-
Malt Beverage Special Event	Conduct Tastings And Sales At Malt Beverage Special Events	\$200	-	-
Spirituos Liquor Tasting	Conduct A Consumer Tasting Event	\$100	-	-
Brewing, Distillation and Fermentation Course	Manufacture, Posses And Sell Malt Beverage for Certain Limited Purposes	-	-	-
Antique Spirituous Liquor	Purchase, Possess And Sell At Retail Antique Spirituous Liquor For Use In Mixed Beverages For Consumption On Premises	\$100	-	-
Spirituos Liquor Special Event	Conduct Tastings Only Of Spirituous Liquor At Special Events	\$200	-	-
Mixed Beverages Sports and Entertainment Venue	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverages Private Bar	Sell Mixed Beverages At Retail	\$1,000	\$1,000	-
Mixed Beverage Distillery	Sell Mixed Beverages At Retail At Distillery	\$1,000	\$1,000	-
Common Area Entertainment	Allow Customers Of Tenants Holding ABC Retail Permits To Carry And Consume Alcoholic Beverages In A Designated Common Area Marked By The Permittee While Entertainment Activities Are Provided	\$750	\$750	-
Delivery Service	Allow Employees To Carry Malt Beverages and/or Wine From ABC-Permitted Establishments And To Deliver The Alcoholic Beverages To An Individual Who Had Previously Purchased The Malt Beverages Or Wine From The Retail-Permitted Establishment	\$400	\$400	-

Source: Program Evaluation Division based on data from the ABC Commission.

Appendix B: Example of ABC Commission Administrative Violation Compromise Offer Letter

A. D. "ZANDER" GUY, JR.
CHAIRMAN

AGNES C. STEVENS
ADMINISTRATOR



State of North Carolina
ALCOHOLIC BEVERAGE CONTROL COMMISSION

NORMAN A. MITCHELL, SR.
COMMISSIONER

KAREN L. STOUT
COMMISSIONER

John Doe's Bar
123 Anywhere Road
Raleigh, North Carolina

December 15th, 2019

NOTICE OF ALLEGED VIOLATION

Case # 12345

Dear Permittee,

A complaint has been filed with the Commission claiming the following violation of the State Alcoholic Beverage Control laws:

Permittee's employee, James Doe, sold a malt beverage to Jane Doe, a person less than 21 years old, while on the licensed premises, on or about December 1st, 2019, at 12:00 PM, in violation of G.S. §18B-302(a)(1).

Your options are:

1. **SPEAK** with the undersigned attorney
2. **SETTLE** the case by completing the date and permittee signature lines of the enclosed "Proposed Stipulation and Offer in Compromise" and return to the attorney before January 14, 2019. **Settling means you give up your right to have a judge decide the facts of the case.** This is a settlement that must be approved by the ABC Commission at its meeting on February 13, 2020.
3. **FAIL TO RESPOND.** The Commission will assume you want a hearing and will file a petition with the Office of Administrative Hearings where there is a possibility of both an active suspension of your ABC permits and a monetary penalty.

If you settle, return only the enclosed form.

*Do NOT send payment or begin the suspension until **AFTER** receiving the "Final Agency Decision."*

Appendix B: Cont'd

John Doe's Bar
123 Anywhere Road
Raleigh, North Carolina

PROPOSED STIPULATIONS
and
OFFER IN COMPROMISE
Case # 12345

It is stipulated and agreed by the undersigned parties, subject to ratification by the full ABC Commission, that:

A. Permittee holds the following permit issued by this ABC Commission on:

- Off-Premise Malt Beverage (issued January 31, 2009)

B. Permittee has no previous ABC violations.

C. The pending ABC violation to be settled by this Proposed Compromise is as follows:

Permittee's employee, James Doe, sold a malt beverage to Jane Doe, a person less than 21 years old, while on licensed premises, on or about December 1st, 2019, at 12:00 PM, in violation of G.S. §18B-302(a)(1).

Based upon the foregoing stipulations and in accordance with the provisions of G.S. §18B-104(b), Permittee proposes the following Offer in Compromise in lieu of any other or further penalty:

Permittee's ABC permits shall be suspended for 20 days beginning December 13, 2019. Such suspension may be avoided upon the permittee's payment of a penalty of \$2,000.00 on or before December 6, 2019.

This the _____ day of _____, 2019.
(day) (month)

Signature (for the Permittee)

ABC attorney to initial

Do NOT send payment or begin the suspension until AFTER receiving the "Final Agency Decision."

Sign, Date and Return one (1) copy before January 14, 2019.

Source: Program Evaluation Division based on data from the ABC Commission.



ABC

COMMISSION
NORTH CAROLINA

Alcoholic Beverage Control

February 25, 2020

CHAIRMAN:

A. D. "Zander" Guy, Jr.

COMMISSIONERS:

Norman A. Mitchell, Sr.
Charlotte

Karen L. Stout
Black Mountain

ADMINISTRATOR:

Agnes Stevens

John Turcotte

Director

N.C. General Assembly Legislative Services Office

Program Evaluation Division

Suite 100 LOB

300 N. Salisbury Street

Raleigh NC 27603 - 5925

Dear Director Turcotte,

LOCATION:

400 East Tryon Road
Raleigh NC 27610

MAILING:

4307 Mail Service Center
Raleigh NC 27699-4307

PHONE: (919) 779-0700

<http://abc.nc.gov/>

Thank you for providing the ABC Commission with the opportunity to respond to the recommendations of your team's March 2020 report on the Compromise Process related to ABC Violations.

As the report notes, the statute regarding administrative penalties has been unchanged for many years, including the maximum penalty typically allowed via compromise. The Commission staff does an excellent job in evaluating the facts of each case before proposing a penalty, which a permittee can accept, reject or counteroffer. The 96 percent settlement rate noted in the report demonstrates the merits of our current practices.

The Commission also strongly agrees with your statement on page 18 related to the falling number of consumption-related offenses: "the frequency of consumption-related violations decreased despite the number of violators remaining consistent. Limiting consumption-related offenses, which include selling alcohol to minors or over-intoxicated patrons, is central to the ABC Commission's efforts to achieve its core public safety goals."

Likewise, we agree that related to the issue of repeat offenses, as noted on page 19, "the rate of repeat offenses shows that administrative penalties are failing to deter permittees from committing future violations." We disagree however, with the report's suggestion that removing the choice that business owners currently have to pay fines rather than serve lengthy permit suspensions would serve as an effective remedy. In fact, we believe the maximum financial penalty of \$5,000 currently allowed in most cases is too low (the maximum settlement fine is \$10,000 for violations involving violence, controlled substances and prostitution, and \$5,000 for other violations.) Giving the Commission an option to impose greater financial penalties for violations such as sales to underage, along with the current suspension choice, would more effectively deter repeat violations, in my opinion.

Also, I believe your research may have missed what I believe is a key reason that businesses with longer suspensions of alcohol permits have a relatively low rate of recurrence of violations: Business that receive long, mandatory

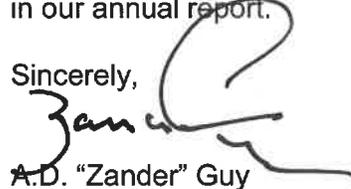
suspensions often turn in their permits and go out of business. They do not repeat because they are not operating – though they may apply for new permits and violate again.

As your report notes, the Commission uses guidelines that are updated from time to time within the limits set by current laws. We regularly share these guidelines that outline the range of financial penalties and/or permit suspensions with permittees and their attorneys. This is a standard part of the negotiated settlement process that your report notes is used by 96 percent of permittees. I would point out that in negotiations, the priority of one business might differ from that of another, so not all resulting penalties are – or should be – identical, even for the same category of violation. Similarly, eliminating the option for businesses with pending ABC violations to pay a penalty in lieu of all, or most, of a suspension would hamstring the negotiated settlement process that your team found to be effective.

Regarding the consideration that penalties (whether suspensions or fines) be calibrated to the sales or profits from alcohol, it is important to note that we at the Commission do not have that sales/revenue data or ready access to it. To learn what the specific alcohol sales are for a particular convenience store, grocery store or private bar/club, the Commission would need to rely on other agencies, primarily the Department of Revenue, to provide the alcohol sales tax records those businesses pay. I will note that individual and business tax records are not generally public records, but the records of the Commission are public. So, using individual business alcohol sales tax information to calibrate a financial penalty or a suspension would be cumbersome and could raise serious privacy issues.

In closing, the Commission is always pleased to work with your staff, and we thank you for the opportunity. I believe that organizations always can be improved. And, I accept that the Commission's administrative penalty process can benefit from some modification including the recommendations that this report makes for developing specific penalty policies and including violation data in our annual report.

Sincerely,



A.D. "Zander" Guy
Chairman