No. 25-1366

IN THE

Supreme Court of the United States

D. ANDREW WILSON, ATTORNEY GENERAL OF OHIO,
Petitioner,

v.

KENNETH M. MILLER, HOUSE OF GLUNZ, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE MICHIGAN BEER AND WINE WHOLESALERS ASSOCIATION AS *AMICUS CURIAE* IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Question Presented is: under §2 of the Twenty-first Amendment, may a State restrict out-of-state retailers from directly shipping alcohol to in-state consumers and may it cap the amount of alcohol that individuals may personally transport into the State?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

Other Authorities

OPINIONS BELOW

Petitioners seek review of the decision of the United States Court of Appeals for the Sixth Circuit in *Block v. Canepa*, 175 F.4th 642 (6th Cir. 2026), which reversed the decision of the United States District Court for the Southern District of Ohio, reported at 771 F. Supp. 3d 1010 (S.D. Ohio 2025).

INTEREST OF *AMICUS CURIAE*

The Michigan Beer and Wine Wholesalers Association ("MB&WWA") is a Michigan non-profit association of licensed Michigan beer and wine wholesalers.[1] Its members distribute over 90% of all wine and beer sold to licensed retailers in Michigan.

MB&WWA is committed to working with regulators and others for responsible and effective regulation of the sale of alcoholic beverage products. MB&WWA believes that laws concerning the structure of a state's alcoholic beverage distribution system are entitled to judicial deference and that the power delegated to the states under the Twenty-first Amendment of the U.S. Constitution should be upheld.

[1] Pursuant to Sup. Ct. R. 37.6, *amicus curiae* and its counsel state that no counsel for any party authored this brief in whole or in part. No party or party's counsel contributed money for the preparation or submission of this brief. No person other than *amicus curiae* (or its members) contributed money that was intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties have been provided timely notice to this filing.

MB&WWA is intimately familiar with the practical workings of the alcoholic beverage industry and with how state laws operate in practice, particularly in Michigan, which has a long-standing three-tier distribution system for beer and wine.

MB&WWA brings a unique perspective to this case, having been involved, as either an intervenor or *amicus curiae*, in numerous federal and state lawsuits where state alcoholic beverage laws were challenged.

As an intervenor, MB&WWA participated in *Granholm v. Heald*, 544 U.S. 460 (2005) and *Lebamoff Enterprises, Inc. v. Whitmer*, 956 F.3d 863 (6th Cir. 2020). Additionally, MB&WWA participated as *amicus curiae* in *Tennessee Wine and Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504 (2019). As with the instant case, these three cases dealt with the interplay between the dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3 and the U.S. Const. amend. XXI.

MB&WWA opposes the Petitioner's Request for Writ of Certiorari.[2]

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[2] This brief addresses only the direct shipment portion of the Petition, which is the predominant topic being presented to this Court, and not the Ohio-specific transportation restrictions.

CORPORATE DISCLOSURE STATEMENT

MB&WWA has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

SUMMARY OF THE ARGUMENT

This case involves whether a state's alcoholic beverage laws violate the dormant Commerce Clause in the face the Twenty-first Amendment. This Court provided guiding principles concerning the standard to evaluate such laws in *Granholm v. Heald*, 544 U.S. 460 (2005) and recently in *Tennessee Wine and Spirts Retailers Ass'n v. Thomas*, 588 U.S. 504 (2019). In *Tennessee Wine* the Court provided that a discriminatory state liquor law will survive a dormant Commerce Clause challenge if "the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Id.* at 539. "Where the predominant effect of a law is protectionism, not the protection of public health or safety, it is not shielded by §2." *Id.* at 540. The analysis required by *Tennessee Wine* was applied in this case.

Petitioner asserts that other circuits have upheld direct shipping restrictions by out-of-state retailers to consumers based on "per se valid features of a three-tier system." Brief for Petitioner at 21-23, *Yost v. Miller*, No. 25-1366 (2026). Petitioner contends that a "clean (and lopsided) circuit split" warrants granting the Petition. *Id.* at 3. Petitioner is incorrect.

Tennessee Wine recognized that three-tier distribution systems adopted by various states differ and "each variation must be judged based on its own features." 588 U.S. at 535. Here, the Sixth Circuit analyzed the challenged law in light of Ohio's unique statutory scheme and the presented evidence. See *Block v. Canepa*, 175 F.4th 642, 654-55 (6th Cir. 2026). Citing a number of broad exceptions found in Ohio's regulatory system—which allow the sale of wine to consumers without first passing through the in-state wholesaler tier or the in-state retailer tier—the Sixth Circuit found that "Ohio does not actually have a three-tier system with respect to wine" and that the challenged laws were not saved by the Twenty-first Amendment. *Id. Tennessee Wine* anticipates that different statutory schemes may result in different outcomes. 588 U.S. at 515-520, 530-533.

The Sixth Circuit's decision here is legally consistent with its earlier decision in *Lebamoff Enters.*, *supra*, which upheld Michigan's retail direct shipping restrictions under a materially different statutory system and different facts.[3] See 956 F.3d at 867, 875-877.

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[3] A panel of the Sixth Circuit "cannot overrule the decision of another panel." *Salmi v. Secretary of Health & Human Services*, 774 F.2d 685, 689 (1985). A prior decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or if [the Sixth Circuit] sitting *en banc* overrules the prior decision." *Id.* at 689.

Here, in essence, the Sixth Circuit found that the statutorily mandated distribution systems for wine in Michigan and Ohio are materially different and that the evidence presented did not support Ohio's rationale for its regulations. See 175 F.4th at 654-655. In *Lebamoff*, the Sixth Circuit acknowledged that "Michigan has presented enough evidence…to show its in-state retailer requirement serves the public health." *Lebamoff*, 956 F.3d at 877 (McKeague, J. concurring, joined by Donald, J.). Significantly, the Sixth Circuit's decision here is the first and only case since *Tennessee Wine* where a circuit court of appeals has concluded there to be no foundational three-tier distribution system for wine. See *Block*, 175 F. 4th at 654-655. That conclusion differentiates this case from each of the circuit court opinions which have upheld state laws prohibiting retailer direct shipping to consumers.

A writ of certiorari should not be granted "except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 79 (1955) (internal citation omitted).

Simply because a court reaches a different conclusion on the constitutionality of a state's liquor laws based on a markedly different regulatory framework and different facts does not create a split in the circuits warranting the grant of a petition. In fact, this is the result that *Tennessee Wine* would suggest: Different facts and laws may result in different outcomes.

This Court has already denied certiorari in each of the post-*Tennessee Wine* cases addressing restrictions to retailer direct shipments. This Court should deny the petition for certiorari.

ARGUMENT – REASONS FOR DENYING THE PETITION

I. This case does not meet the high bar for the granting of certiorari.

A. Certiorari does not exist to correct an evidentiary record in a particular case.

Certiorari jurisdiction exists "to clarify the law," and its "exercise 'is not a matter of right, but of judicial discretion.'" *City & Cnty. of San Francisco*, 575 U.S. 600, 610 (2015). This Court is not tasked to evaluate the weight of the evidence in a given case or to correct the evidentiary record of the lower courts; rather, its role, in relevant part, is to settle important and differing legal opinions of the circuit court of appeals that could cause "real and embarrassing" conflict. *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498 (1951).

As discussed below, the Sixth Circuit found the Ohio regulatory system for wine to be significantly different from the regulatory systems in other court of appeals' decisions, such as *Lebamoff*. See *Block*, 175 F.4th at 654-655. This difference distinguished

Ohio from other regulatory systems and undercut the proffered claim that the challenged laws were justified as a public health or safety measure or for some other non-protectionist purpose. Nonetheless, even assuming arguendo that the Sixth Circuit's conclusion was incorrect in this particular case correction of that error does not warrant the grant of certiorari.

B. No meaningful conflict exists among the circuit courts of appeals that have addressed direct out-of-state retailer shipping to consumers under different regulatory systems.

In *Tennessee Wine*, this Court following its footsteps in *Granholm*, set forth a two-part test to determine whether a state alcohol law is constitutional. 588 U.S. at 518, 532-535, 539-540. The first inquiry is whether the challenged state law discriminates against nonresidents. *Tennessee Wine*, 588 U.S. at 518. If not, then the law will be upheld. See *id.* at 518, 532-540. If it does, however, the second test is "whether the challenged requirement can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground." *Tennessee Wine*, 588 U.S. at 539. "Where the predominant effect of a law is protectionism, not the protection of public health or safety, it is not shielded by §2." *Id.*

Petitioner argues that a conflict exists because the Sixth Circuit Court of Appeals found Ohio's restrictions on direct shipping by out-of-state retailers discriminatory and unconstitutional, whereas other circuit courts have upheld state liquor laws which prohibit similar conduct. See Petition, *supra* at 21.[4]

The two pre-*Tennessee Wine* decisions, *Arnold's Wines, Inc v. Boyle*, 571 F.3d 185, 192 (2d Cir. 2009) and *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809, 821 (5th Cir. 2010), found the challenged direct shipping laws constitutional based upon the statutory schemes at issue and the facts presented. In addition, one of the cited decisions by Petitioner, *Jean Paul Weg LLC v. Dir. of N.J. Div. of Alcoholic Beverage Control*, 133 F.4th 227 (3d Cir. 2025), was vacated by Third Circuit approximately two (2) months after its issuance due to the opinion having been issued in error. See *Jean-Paul Weg LLC v. Dir. of the N.J. Div. of Alcoholic Bev. Control*, 2025 U.S. App. LEXIS 4851 (2025). The Third Circuit later, in a separate ruling, simply affirmed the finding of the United States District Court for the District of New Jersey without further explanation. See *Jean-Paul Weg LLC v. Dir. of the N.J. Div. of Alcoholic Bev. Control*, 2025 U.S. App. LEXIS 7864 (3d Cir. 2025).

The post-*Tennessee Wine* cases upholding the challenged out-of-state retailer direct shipping restrictions acknowledged *Tennessee Wine* as controlling authority.[5]

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[4] Of the seven circuit court opinions cited by Petitioner, two were decided before *Tennessee Wine* and five afterwards. See Petition at 21 and 22.

[5] *Day v. Henry*, 152 F.4th 961, 973 (9th Cir. 2025); *Chicago Wine Co. v. Braun,* 148 F.4th 530, 531-32 (7th Cir. 2025); *B-21 Wines,*

In the Seventh Circuit, *Chicago Wine Co. v. Braun*, one panelist, Judge Easterbrook, found Indiana's direct retailer shipping laws to be nondiscriminatory and did not conduct further analysis. See 148 F.4th at 534. The other panelist, Judge Scudder, found Indiana's challenged law to be discriminatory, but ultimately concluded that the law was constitutional under *Tennessee Wine* because the evidence presented by the state showed that the challenged restriction promoted Indiana's health and safety goals, including temperance, policing underage drinking, and ensuring that the regulatory authorities could effectively enforce alcohol regulations. See *id.* at 539-40 (Scudder, J. concurring). In essence, Indiana, through its evidence, was able to establish that its "'challenged laws [are] reasonably necessary to protect [Indiana's] asserted interests.'" *Id.* at 540, 544-545 (quoting *Tennessee Wine*, 588 U.S. at 533).

In the Ninth Circuit the court examined the impact of the challenged restrictions on health and safety concerns promoted by Arizona's three-tier system and agreed with the district court that "opening the state to direct deliveries from retailers without in-state premises would "'effectively eliminate the role of Arizona's wholesalers and 'create a sizable hole in the three-tier system.'" *Day*, 152 F.4th at 973 (quotations omitted). This hole would have a detrimental effect on the state's ability to

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Inc. v. Bauer, 36 F.4th 214, 222 (4th Cir. 2022); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1180 (8th Cir. 2021); and *Lebamoff*, 956 F.3d 863, 869.

conduct thousands of on-site inspections and determine whether a retailer is complying with Arizona liquor laws. *Id.* at 973-974. As a result, the court, noting *Tennessee Wine*, acknowledged that the law, particularly as to the physical-premise requirement, did bear on the state's ability "to support public health and safety." *Id.* at 974-975.

The Fourth Circuit stressed the importance of having an in-state physical presence that is made available for inspection and recognized that North Carolina had "remained committed to the core of the three-tier system" and "strict regulatory control." *B-21 Wines,* 36 F.4th at 219. The court held that allowing out-of-state direct retail shipping would "open the North Carolina wine market to less regulated wine, undermining the State's three-tier system and the established public interest of safe alcohol consumption that it promotes." *Id.* at 228. Notably, the court's "analysis of North Carolina's Retail Wine Importation Bar under the *Tennessee Wine* framework" led it to "conclude that, although the Bar discriminates against interstate commerce, it is nevertheless justified on the legitimate non-protectionist ground of preserving North Carolina's three-tier system." *Id.* at 229.

In the Eighth Circuit, the court acknowledged that "[c]ourts must take into account a State's valid interests in regulating alcohol, such as promoting responsible consumption, preventing underage drinking, and collecting taxes." *Sarasota,* 987 F.3d at 1180. The court noted that it was an important state interest to require a physical presence for retailers of alcohol to enforce the state's legitimate objectives. See *id.* at 1180-1185. Ultimately, in considering *Tennessee Wine*, the court concluded that Missouri's regulatory scheme advanced Missouri's three-tier system and non-protectionist objectives.[6] See *id.*

Each of these post-*Tennessee Wine* cases recognized that the challenged law was justified as a public health or safety measure or was otherwise justified based on some other legitimate nonprotectionist ground. See *Day*, 152 F.4th at 974-975; *B-21 Wines,* 36 F.4th at 229; and *Sarasota,* 987 F.3d at 1180-1185. Thus, the challenged restrictions satisfied the test established by *Tennessee Wine*.

II. The Sixth Circuit found that the many exceptions to Ohio's regulatory scheme undercut its stated health and safety goals.

The foundation of the Sixth Circuit's decision is the Court's conclusion that Ohio does not have a three-tier system with respect to wine due to the numerous "exceptions" that allow suppliers and retailers to bypass the traditional requirement that wine be funneled through in-state wholesalers and sold by in-state retailers. See *Block*, 175 F.4th at 654-

[6] In their analysis, two circuit decisions, the Eight and the Fourth, put great emphasis on the fact that the states involved had strong three-tier systems and that the challenged laws were essential to the working of these systems. See *id.* at 1184; *B-21 Wines*, 36 F.4th at 219, 229. These decisions also found that the challenged laws were not predominantly protectionist and that they provided public health and welfare. *B-21 Wines*, 36 F.4th at 229; *Sarasota,* 987 F.3d at 1180-1185.

655. The court zeroed in on the fact that Ohio: (1) allows out-of-state wineries to sell wine directly to Ohio retailers without going through an in-state wholesaler; (2) allows wine to be shipped to consumers by unlicensed out-of-state fulfillment warehouses without going through in-state wholesalers and/or in-state retailers; (3) allows some out-of-state retailers to ship wine directly to consumers pursuant to being "grandfathered" under repealed laws without that wine being funneled through an in-state wholesaler or an in-state retailer; and, (4) allows out-of-state wineries to potentially ship large amounts of wine per year to each Ohio household. See *id.* at 642, 646-47. The Sixth Circuit found that connection between the direct shipping restrictions by out-of-state retailers and "Ohio's purported health and safety objectives [was] tenuous or nonexistent." *Id.* at 653.

The post-*Tennessee Wine* circuits that have upheld retailer direct shipping prohibitions have done so in states without significant "exceptions" to their regulatory scheme and where the regulatory schemes promoted health and safety concerns.[7]

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[7] Since *Granholm*, every circuit court (other than the instant case involving more and broader exceptions) that has addressed prohibitions against out-of-state retailer direct shipping upheld the restrictions even though the state permitted only limited exceptions (primarily allowing only wineries to sell their own products to consumers) to otherwise pervasive three-tier distribution systems. See *Day,* 152 F.4th at 973; *B-21 Wines,* 36 F.4th at 218; *Chicago Wine Co.*, 148 F.4th at 534-35; and *Lebamoff*, 956 F.3d at 867, 874-877 (explicitly upholding the state's three-tier distribution system while acknowledging a limited exception).

In contrast, the Sixth Circuit found that the numerous exceptions to Ohio's three-tier system belie the claim that its challenged law is necessary to promote health and welfare of its citizens and were essential or critical to a three-tier regulatory scheme. *Block*, 175 F.4th at 642, 646-47, 653-655.

III. The Sixth Circuit's decision in *Lebamoff* does not contradict the decision in *Block*.

The Sixth Circuit has implicitly recognized that *Tennessee Wine* anticipates that different regulatory schemes (and different facts) can result in different conclusions as to the constitutionality of out-of-state retailer direct shipping restrictions. Unlike Ohio, Michigan does not permit unlicensed fulfillment centers, which "sit beyond the reach of [state] inspectors," to ship wine to consumers, bypassing in-state wholesaler warehouses and in-state retailers.[8] *Block*, 175 F.4th at 657. Michigan does not permit the volume of wine that Ohio allows to be directly shipped from out-of-state wineries to its residents.[9] Michigan

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[8] It is MB&WWA's understanding that the fulfillment centers or warehouses are owned by third-parties, not wineries, and stock wine and ship directly to consumers. Ohio defines a "fulfillment warehouse" as a "person that operates a warehouse that is located outside [Ohio] and has entered into a written agreement with an S-2 permit holder to fulfill orders of the S-2 permit holder's wine to personal consumers via delivery by an H permit holder." Ohio Revised Code § 4303.234(A)(1).

[9] In Ohio, out-of-state wineries with an S-1 or S-2 permit can directly ship up to 24 cases or 288 bottles of wine to each in-state household. See Ohio Revised Code §§ 4303.232, 4303.233, and 4303.236. According to the United States Census Bureau's

does not allow out-of-state wineries to sell directly to in-state retailers and bypass in-state wholesalers. Michigan does not allow some out-of-state retailers to ship directly to its consumers, bypassing in-state wholesalers. *Lebamoff* makes clear that Michigan does not create "numerous pathways" for wine from out-of-state to enter Michigan's market outside its three-tier system for wine. *Lebamoff*, 956 F.3d at 872-875. And, in *Lebamoff*, the court found that Michigan presented a factual record that its regulatory system promoted public health and safety and was not primarily protectionist. See *id.* at 873-877. The regulatory systems in Ohio and Michigan are substantially different, which justifies different holdings with respect to the direct retailer shipping laws examined by the courts in *Block* and *Lebamoff*.

IV. This Court has denied certiorari in five of the decisions cited by Petitioner.

Since *Tennessee Wine,* this Court has consistently denied certiorari in the circuit court decisions involving state laws that prohibit out-of-state retailers from shipping alcohol directly to consumers. See *Chicago Wine Co. v. Braun*, 148 F.4th 530, 539 (7th Cir. 2025), *cert. denied*, 2026 U.S.

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estimates for 2020 through 2024, Ohio has 4,863,191 households, which, if correct, equates to 1,400,599,008 bottles of wine. See United States Census Bureau, QuickFacts Ohio – People, Families & Living Arrangements (2020-2024), https://www.census.gov/quickfacts/fact/table/OH/PST045225 (last visited on July 23, 2024). On the other hand, in Michigan, direct shippers are capped at 1,500 9-liter cases (13,500 liters) per year. See MCL 436.1203(4)(h).

LEXIS 2081 (2026); *Day v. Henry*, 152 F.4th 961, 973 (9th Cir. 2025), *cert. denied*, 2026 U.S. LEXIS 2076 (2026); *B-21 Wines, Inc. v. Bauer*, 36 F.4th 214 (4th Cir. 2022), *cert. denied*, 2023 U.S. LEXIS 136 (2023); *Sarasota Wine Mkt., LLC v. Schmitt*, 987 F.3d 1171, 1180 (8th Cir. 2021), *cert. denied*, 2021 U.S. LEXIS 5097 (2021); *Lebamoff Enters., Inc. v. Whitmer*, 956 F.3d 863 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 1049 (2021). The same result should occur here.

CONCLUSION

MB&WWA respectfully requests that the Court deny the Petition.

Respectfully submitted,

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Dated: September 3, 2026

APPENDIX TABLE OF CONTENTS

APPENDIX A

Jean-Paul Weg LLC v. Dir. of the N.J. Div. of Alcoholic Bev. Control

United States Court of Appeals for the Third Circuit
September 17, 2024, Argued; April 2, 2025, Decided

No. 23-2922

Reporter

2025 U.S. App. LEXIS 7864 *; 2025 LX 35056; __ F.4th __; 2025 WL 980282

JEAN-PAUL WEG LLC, DBA The Wine Cellarage; LARS NEUBOHN, Appellants v. DIRECTOR OF THE NEW JERSEY DIVISION OF ALCOHOLIC BEVERAGE CONTROL; ATTORNEY GENERAL NEW JERSEY; FEDWAY ASSOCIATES; ALLIED BEVERAGE GROUP LLC; OPICI FAMILY DISTRIBUTING; NEW JERSEY LIQUOR STORE ALLIANCE, Intervenor-Defendants

Prior History: **[*1]** On Appeal from the United States District Court for the District of New Jersey. (D.C. No. 2:19-cv-14716). District Judge: Honorable Julien X. Neals.

Jean-Paul Weg., LLC v. Graziano, 2023 U.S. Dist. LEXIS 147044, 2023 WL 5370522 (D.N.J., Aug. 22, 2023) Jean-Paul Weg., LLC v. Graziano, 2023 U.S. Dist. LEXIS 184297, 2023 WL 6795068 (D.N.J., Oct.

13, 2023)

Core Terms

entry of judgment, certificate of compliance, petition for rehearing, bill of costs

Counsel: For NEW JERSEY LIQUOR STORE ALLIANCE, Intervenor-Defendant - Appellee: Christopher S. Porrino, Lauren E. Van Driesen, Peter M. Slocum, Lowenstein Sandler, Roseland, NJ.

For ATTORNEY GENERAL NEW JERSEY, DIRECTOR OF THE NEW JERSEY DIVISION OF ALCOHOLIC BEVERAGE CONTROL, Defendants - Appellees: Daniel M. Vannella, Liza B. Fleming, Michael L. Zuckerman, William C. Kennedy, Office of Attorney General of New Jersey, Trenton, NJ.

For ALLIED BEVERAGE GROUP LLC, OPICI FAMILY DISTRIBUTING, Intervenors - Defendants - Appellees: Deborah A. Skakel, Blank Rome, New York, NY; Jonathan M. Korn, Blank Rome, Princeton, NJ; Leon J. Sokol, Cullen & Dykman, Hackensack, NJ.

For AMERICAN BEVERAGE LICENSEES, WINE & SPIRITS WHOLESALERS OF AMERICA INC, Amicus Appellee: Frederick R. Yarger, Wheeler Trigg O'Donnell, Denver, CO; William P. Sowers Jr., Richmond, VA.

For JEAN-PAUL WEG LLC, LARS NEUBOHN, Plaintiffs - Appellants: Gary S. Redish, Michael J. Cohen, Winne Banta Hetherington Basralian & Kahn, Hackensack, NJ; James A. Tanford, Epstein Seif Porter & Beutel, Bloomington, **[*2]** IN; Robert D. Epstein, Epstein Seif Porter & Beutel, Indianapolis, IN.

For BEER WHOLESALERS ASSOCIATION OF NEW JERSEY, NATIONAL BEER WHOLESALERS ASSOCIATION, Amicus Appellee: John C. Neiman Jr., Mollie G. Hughes, Maynard Nexsen, Birmingham, AL.

For FEDWAY ASSOCIATES, Intervenor- Defendant - Appellee: Leon J. Sokol, Cullen & Dykman, Hackensack, NJ.

For DIRECTOR OF THE NEW JERSEY DIVISION OF ALCOHOLIC BEVERAGE CONTROL, Defendant - Appellee: Phoenix N. Meyers, Office of Attorney General of New Jersey, Trenton, NJ.

Judges: Before: RESTREPO, PHIPPS and MCKEE, Circuit Judges.

Opinion

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was argued on September 17, 2024. On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's Orders entered on August 22, 2023 and October 13, 2023 are hereby **AFFIRMED**. Costs shall be taxed against Appellants. All of the above in accordance with the Opinion of this Court.

Dated: April 2, 2025

ENTRY OF JUDGMENT

Today, April 02, 2025, the Court entered its judgment in the above-captioned matter pursuant to *Fed. R. App. P. 36*.

If you wish to seek review of the Court's decision, you may file a petition for **[*3]** rehearing. The procedures for filing a petition for rehearing are set forth in *Fed. R. App. P. 35* and *40*, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to *Fed. R. App. P. 32(g)*.

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. A party seeking both forms of rehearing must file the petitions as a single document. *Fed. R. App. P. 40(a).*

A party who is entitled to costs pursuant to *Fed.R.App.P. 39* must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the *Fed. R. App. P. 41.*

Please consult the Rules of the Supreme Court of the United **[*4]** States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Patricia S. Dodszuweit, Clerk

By: /s/ Alicia

Case Manager

267-299-4948

APPENDIX B

MCLS § 436.1203

This document is current through Act 26 of the 2026 Regular Legislative Session

Michigan Compiled Laws Service > Chapter 436 Alcoholic Beverages (§§ 436.1 — 436.2303) > Act 58 of 1998 (Chs. 1 — 13) > Chapter 2 (§§ 436.1201 — 436.1235)

§ 436.1203. Sale, delivery, or importation of alcoholic liquor or wine common carrier; duties of direct shipper of wine; verification that individual accepting delivery is 21 years of age or older; original purchase and importation into state of spirits for sale, use, storage, or distribution; requirements; exceptions; direct shipper license required; application; fee; violation; delivery of beer and wine to home or designated location of consumer; holder of specially designated merchant license; sale or delivery of spirits by qualified small distiller requirements; delivery or sale of beer, wine, mixed spirit drink, or spirits by third party facilitator; reports; record retention; disclosure; definitions.

Sec. 203.

(1) Except as provided in this section and section 301, a person shall not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission.

(2) Notwithstanding *R 436.1011(7)(b)* and *R 436.1527 of the Michigan Administrative Code* and except as provided in subsections (3), (12), (13), (14), (15), and (16), a retailer shall not deliver alcoholic liquor to a consumer in this state at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise this state's authority under section 2 of Amendment XXI of the Constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:

> **(a)** To promote the public health, safety, and welfare.
>
> **(b)** To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to consumers in this state by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), a qualified retailer that holds a specially designated merchant license located in this state may use a common carrier to deliver beer, wine, and mixed spirit drink to a consumer in this state. A qualified retailer that holds a specially designated distributor license located in this state may use a common carrier to deliver spirits to a consumer in this state. A qualified retailer that uses a common carrier to deliver beer, wine, mixed spirit drink, or spirits to a consumer under this subsection shall comply with all of the following:

(a) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. On the request of the department of treasury, a qualified retailer shall furnish an affidavit to verify payment.

(b) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(c) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by using an identification verification service. The person receiving and accepting the order on behalf of the qualified retailer shall record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.

(d) On request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the beer, wine, mixed spirit drink, or spirits from the qualified retailer.

(e) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older.". The recipient at the time of the delivery shall provide identification verifying his or her age and sign for the delivery.

(f) Place a label on the top panel of the shipping container containing the name and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order.

(g) For a qualified retailer that has been issued licenses at 2 or more locations, the shipment of the beer, wine, mixed spirit drink, or spirits must be fulfilled from the location nearest to the consumer unless that location does not have the beer, wine, mixed spirit drink, or spirits ordered in stock.

(4) For purposes of subsection (1), a direct shipper may sell, deliver, or import wine to consumers in this state by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper that sells, delivers, or imports wine to a consumer under this subsection shall comply with all of the following:

(a) Hold a direct shipper license.

(b) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. On the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.

(c) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(d) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by using an identification verification service. The person receiving and accepting the order on behalf of the direct shipper shall record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.

(e) On request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the wine from the direct shipper.

(f) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older.”. The recipient at the time of the delivery shall provide photo identification verifying his or her age and sign for the delivery.

(g) Place a label on the top panel of the shipping container containing the name and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order. The direct shipper must have received a registration number of approval from the commission for any wine imported into this state. However, the registration number of approval from the commission is not required to be on the invoice or on the label of the wine that the direct shipper sells, delivers, or imports to a consumer in this state.

(h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to consumers in this state. If a direct shipper, whether located in this state or outside this state, owns, in whole or in part, or commonly manages 1 or more direct shippers, it shall not in combination ship to consumers in this state more than 13,500 liters of wine in the aggregate.

(i) Pay wine taxes quarterly and report to the commission quarterly the total amount of wine, by type, brand, and price, shipped to consumers in this state during the preceding calendar quarter, and the order numbers.

(j) Authorize and allow the commission and the department of treasury to conduct an audit of the direct shipper's records.

(k) Consent and submit to the jurisdiction of the commission, the department of treasury, and the courts of this state concerning enforcement of this section and any related laws, rules, and regulations.

(l) For a direct shipper that is a wine manufacturer as described in subsection (10)(b), direct ship only the wine that the wine manufacturer has manufactured and registered with the commission, wine purchased from another wine manufacturer and further manufactured or bottled and registered with the commission, or labeled shiners purchased from another manufacturer in compliance with section 204a and registered with the commission.

(5) For a delivery of beer, wine, mixed spirit drink, or spirits through the use of a common carrier under subsection (3), a person taking the order on behalf of the qualified retailer shall comply with subsection (3)(b) to (f). For a sale, delivery, or importation of wine occurring by any means described in subsection (4), a person taking the order on behalf of the direct shipper shall comply with subsection (4)(c) to (g).

(6) A person that delivers the wine for a direct shipper under this section shall verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older currently occupying or present at the address, or is an individual otherwise authorized through a rule promulgated under this act by the commission to receive alcoholic liquor under this section. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not 21 years of age or older, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchaser or direct shipper.

(7) All spirits for sale, use, storage, or distribution in this state must originally be purchased by and imported into the state by the commission, or by prior written authority of the commission.

(8) This section does not apply to alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by an individual 21 years of age or older at the time of reentry into this state from outside the territorial limits of the United States if the individual has been outside the territorial limits of the United States for more than 48 hours and has not brought alcoholic liquor into the United States during the preceding 30 days.

(9) An individual 21 years of age or older may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:

> **(a)** Personally transport from another state, once in a 24-hour period, not more than 312 ounces of alcoholic liquor for that individual's personal use,

notwithstanding subsection (1).

(b) Ship or import from another state alcoholic liquor for that individual's personal use if that personal importation is done in compliance with subsection (1).

(10) A direct shipper shall not sell, deliver, or import wine to a consumer unless it applies for and is granted a direct shipper license from the commission. This subsection does not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled or wine manufactured for that wine maker by another wine manufacturer, if done in compliance with this act. Only the following persons qualify for the issuance of a direct shipper license:

(a) A wine maker.

(b) A wine manufacturer that is located inside this country but outside of this state and that holds both a federal basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury and a license to manufacture wine in its state of domicile.

(11) An applicant for a direct shipper license shall submit an application to the commission in a written or electronic format provided by the commission and accompanied by an application and initial license fee of $100.00. The initial application must be accompanied by a copy or other verifiable evidence of the existing federal basic permit or license, or both, held by the applicant. The direct shipper may renew its license annually by submission of a license renewal fee of $100.00 and a completed renewal application. The commission shall use the fees collected under this section to conduct investigations and audits of direct shippers. The failure to renew, or the revocation or suspension of, the applicant's existing Michigan license, federal basic permit, or license to manufacture wine in its state of domicile is grounds for revocation or denial of a direct shipper license. If a direct shipper is found guilty of violating this act or a rule promulgated by the commission, the commission shall notify both the alcoholic liquor control agency in the direct shipper's state of domicile and the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury of the violation.

(12) A retailer that holds a specially designated merchant license, a brewpub, a micro brewer, or an out-of-state entity that is the substantial equivalent of a brewpub or micro brewer may deliver beer, wine, or mixed spirit drink, as allowed by the license the retailer holds, to the home or other designated location of a consumer in this state if all of the following conditions are met:

(a) The beer, wine, or mixed spirit drink is delivered by the retailer's, brewpub's, or micro brewer's employee.

(b) The retailer, brewpub, or micro brewer or its employee who delivers the beer or wine, or both, verifies that the individual accepting delivery is at least 21 years of age.

(c) If the retailer, brewpub, or micro brewer or its employee intends to provide service to consumers, the retailer, brewpub, or micro brewer or its employee providing the service has successfully completed a server training program as provided for in section 906.

(13) A retailer that holds a specially designated merchant license may use a third party that provides delivery service to municipalities in this state that are surrounded by water and inaccessible by motor vehicle to deliver beer, wine, and mixed spirit drink to the home or other designated location of that consumer if the delivery service is approved by the commission and agrees to verify that the individual accepting delivery of the beer, wine, and mixed spirit drink is at least 21 years of age.

(14) A retailer that holds a specially designated distributor license may deliver spirits to the home or other designated location of a consumer in this state if all of the following conditions are met:

(a) The spirits are delivered by the retailer's employee.

(b) The retailer or its employee who delivers the spirits verifies that the individual accepting delivery is at least 21 years of age.

(c) If the retailer or its employee intends to provide service to consumers, the retailer or its employee providing the service has successfully completed a server training program as provided for in section 906.

(15) A qualified retailer that holds a specially designated merchant license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer, wine, or mixed spirit drink to be delivered to the home or designated location of a consumer as provided in subsection (12), this subsection, or subsection (3), and a third party facilitator service may deliver beer, wine, or mixed spirit drink to a consumer on behalf of a qualified retailer that holds a specially designated merchant license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers beer, wine, or mixed spirit drink under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer, wine, or mixed spirit drink is at least 21 years of age.

(b) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not aid or assist the third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and the third party facilitator service does not accept the same.

(d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(16) A qualified retailer that holds a specially designated distributor license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of spirits to be delivered to the home or designated location of a consumer as provided in subsection (14) or this subsection, and a third party facilitator service may deliver spirits to a consumer on behalf of a retailer that holds a specially designated distributor license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers spirits under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the spirits is at least 21 years of age.

(b) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits, or outstate seller of mixed spirit drink does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.

(d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(17) A third party facilitator service shall not deliver beer, wine, mixed spirit drink, or spirits to a consumer under subsection (15) or (16), as applicable, and shall not facilitate the sale of beer, wine, mixed spirit drink, or spirits under subsection (15) or (16), as applicable, unless it applies for and is granted a third party facilitator service license by the commission. The commission may charge a reasonable application fee, initial license fee, and annual license renewal fee. The commission shall establish a fee under this subsection by written order.

(18) If a third party facilitator service used by a retailer that holds a specially designated merchant or specially designated distributor license under subsection (15) or (16), as applicable, violates this section, the commission shall not treat the third party facilitator service's violation as a violation by the retailer.

(19) A common carrier that carries or transports alcoholic liquor into this state to a person in this state shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

(a) The name and business address of the person that ships the alcoholic liquor.

(b) The name and address of the recipient of the alcoholic liquor.

(c) The weight of the alcoholic liquor delivered to a consignee.

(d) The date of the delivery.

(20) For purposes of subsection (1), a qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller may sell and deliver spirits that it manufactured to a retailer licensed to purchase and sell spirits in this state if all of the following conditions are met:

(a) The spirits are sold and delivered by an employee of the qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller, not an agent, and are transported and delivered using a vehicle owned by the qualified small distiller or the out-of-state entity that is the substantial equivalent of a qualified small distiller.

(b) The qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller complies with all applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act including, but not limited to, those requirements related to each of the following:

(i) Employees that sell and deliver spirits to retailers.

(ii) Vehicles used to deliver spirits to retailers.

(iii) Uniform pricing established by the commission under section 233.

(iv) Labeling and registration of spirits under *R 436.1829 of the Michigan Administrative Code*.

(v) Payment of taxes.

(c) The spirits are not listed in the state of Michigan price book.

(21) A common carrier described in subsection (19) shall maintain the books, records, and documents supporting a report submitted under subsection (19) for 3 years unless the commission notifies the common carrier in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the common carrier shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the common carrier shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the carrier resides or does business.

(22) A third party facilitator service that delivers beer, wine, mixed spirit drink, or spirits to a consumer under subsection (15) or (16), as applicable, shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

> **(a)** The name and business address of the person that ships beer, wine, mixed spirit drink, or spirits.
>
> **(b)** The name and address of the recipient of beer, wine, mixed spirit drink, or spirits.
>
> **(c)** The weight of beer, wine, mixed spirit drink, or spirits delivered to a consignee.
>
> **(d)** The date of the delivery.

(23) A third party facilitator service shall maintain the books, records, and documents supporting a report submitted under subsection (22) for 3 years unless the commission notifies the third party facilitator service in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the third party facilitator service shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the third party facilitator service shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the third party facilitator service resides or does business.

(24) A report submitted under subsection (19) or (22) is subject to disclosure under the freedom of information act, 1976 PA 442, *MCL 15.231* to *15.246*.

(25) As used in this section:

> **(a)** "Common carrier" means a company that transports goods, on reasonable request, on regular routes and at set rates.
>
> **(b)** "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(c) “Computer network” means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(d) “Computer program” means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(e) “Computer system” means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(f) “Consumer” means an individual who purchases beer, wine, mixed spirit drink, or spirits for personal consumption and not for resale.

(g) “Device” includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(h) “Diligent inquiry” means a diligent good faith effort to determine the age of an individual, that includes at least an examination of an official Michigan operator’s or chauffeur’s license, an official Michigan personal identification card, or any other bona fide picture identification that establishes the identity and age of the individual.

(i) "Direct shipper" means either of the following:

> **(i)** A wine manufacturer that sells, delivers, or imports wine it has manufactured, bottled, and registered with the commission, to consumers in this state or that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.
>
> **(ii)** A wine manufacturer that purchases wine from another wine manufacturer and further manufactures or bottles the wine or purchases shiners of wine from another wine manufacturer in compliance with section 204a, registers the wine with the commission and sells the wine to consumers in this state that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

(j) "Facilitate" means, subject to subdivision (k), advertising on behalf of a retailer, by means of the internet or mobile application, and pursuant to a written or oral agreement, the brands and prices of beer, wine, or spirits products sold by a retailer and 1 or more of the following:

(i) Assisting the retailer, in any manner, in the arrangement of delivery as allowed in this section.

(ii) Assisting the retailer, in any manner, in the processing of payment by the consumer for the beer, wine, or spirits.

(iii) Transmitting customer information to the retailer.

(iv) Assisting the retailer by providing customer service.

(v) If the retailer maintains supervision and control over the day-to-day operation of its business, providing other normal and customary operational services.

(k) "Facilitate" does not include web designing, operating an internet search engine, or publishing an internet version of a newspaper.

(l) "Identification verification service" means an internet-based service approved by the commission specializing in age and identity verification.

(m) "Mobile application" means a specialized software program downloaded onto a wireless communication device.

(n) "Qualified retailer" means a retailer licensed to sell alcoholic liquor for consumption off the premises that complies with all of the following:

(i) The retailer maintains physical licensed premises that are open to the general public for face-to-face sales transactions of alcoholic liquor, packaged food, and other products to consumers.

(ii) At least 25% of the retailer's annual gross sales of alcoholic liquor must be from face-to-face sales transactions with consumers on the premises described in subparagraph (i) unless the retailer's physical licensed premises is less than 15,000 square feet in total.

(iii) The retailer holds and maintains either of the following for the premises described in subparagraph (i):

(A) A retail food establishment license issued under the food law, *2000 PA 92*, *MCL 289.1101* to *289.8111*. As used in this sub-subparagraph, "retail food establishment" means that term as defined in section 1111 of the food law, *2000 PA 92*, *MCL 289.1111*.

(B) An extended retail food establishment license issued under the food law, *2000 PA 92*, *MCL 289.1101* to *289.8111*. As used in this sub-subparagraph, "extended retail food establishment" means that term as defined in section 1107 of the food law, *2000 PA 92*, *MCL 289.1107*.

(o) "Qualified small distiller" means a small distiller, or an out-of-state entity that is the substantial equivalent of a small distiller, that sells under 3,000 gallons of spirits per calendar year directly to retailers located in this state or out-of-state entities that are the substantial equivalent of retailers. If a small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller manufactures spirits at more than 1 location, the total number of gallons of spirits sold to retailers or out-of-state entities that are the substantial equivalent of retailers from all locations must be combined to determine the 3,000-gallon threshold.

(p) "Third party facilitator service" means a person licensed by the commission to do any of the following:

> **(i)** Facilitate the sale of beer, wine, and mixed spirit drink to a consumer as provided in subsection (15) on behalf of a qualified retailer that holds a specially designated merchant license located in this state.
>
> **(ii)** Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a qualified retailer that holds a specially designated distributor license located in this state.
>
> **(iii)** Deliver beer, wine, and mixed spirit drink to a consumer as provided in subsection (15) on behalf of a qualified retailer that holds a specially designated merchant license located

in this state.

(iv) Deliver spirits to a consumer as provided in subsection (16) on behalf of a qualified retailer that holds a specially designated distributor license located in this state.

History

Pub Acts 1998, No. 58, Ch. 2, § 203, imd eff April 14, 1998; amended by *Pub Acts 2000, No. 289*, imd eff July 10, 2000; *2005, No. 268*, imd eff December 16, 2005; *2008, No. 474*, eff March 31, 2009; *Pub Acts 2014, No. 50*, effective March 25, 2014; *Pub Acts 2016, No. 520*, effective March 29, 2017; *Pub Acts 2020, No. 106*, effective July 1, 2020; *Pub Acts 2021, No. 16*, effective August 23, 2021.

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APPENDIX C

ORC Ann. 4303.232

Current through Files 74 to 90, 92 to 94, and 96 to 99 of the 136th General Assembly (2025-2026)

Page's Ohio Revised Code Annotated > Title 43: Liquor (Chs. 4301 — 4399) > Chapter 4303: Liquor Permits (§§ 4303.01 — 4303.99)

§ 4303.232 S permit.

(A)

(1) The division of liquor control may issue an S-1 permit to a person that manufactures beer or less than two hundred fifty thousand gallons of wine per year. If the person resides outside this state, the person shall comply with the requirements governing the issuance of licenses or permits that authorize the sale of beer or intoxicating liquor by the appropriate authority of the state in which the person resides and by the alcohol and tobacco tax and trade bureau of the United States department of the treasury.

(2) The fee for the S-1 permit is twenty-five dollars.

(3) An S-1 permit holder may sell beer or wine to a personal consumer by receiving and filling orders that the personal consumer submits to the permit holder. The permit holder shall sell only beer or wine that the permit holder has manufactured to a personal consumer.

(4) An S-1 permit holder shall renew the permit in accordance with section *4303.271* of the Revised Code, except that the renewal shall not be subject to the notice and hearing requirements established in division (B) of that section.

(5) The division may refuse to renew an S-1 permit for any of the reasons specified in section *4303.292* of the Revised Code or if the holder of the permit fails to do any of the following:

> **(a)** Collect and pay all applicable taxes specified in division (B) of this section;
>
> **(b)** Pay the permit fee;
>
> **(c)** Comply with this section or any rules adopted by the liquor control commission under section *4301.03* of the Revised Code.

(B)

(1) An S-1 permit holder who sells wine shall collect and pay the taxes relating to the delivery of wine to a personal consumer that are levied under sections 4301.421, 4301.43, and 4301.432 and Chapters 5739 and 5741 of the Revised Code.

(2) An S-1 permit holder who sells beer shall collect and pay the taxes relating to the delivery of beer to a personal consumer that are levied under sections 4301.42 and 4301.421 and Chapters 4305., 4307., 5739., and 5741 of the Revised Code.

(C)

(1) An S-1 permit holder shall send a shipment of beer or wine that has been paid for by a personal consumer to that personal consumer via an H permit holder. Prior to sending a shipment of beer or wine to a personal consumer, an S-1 permit holder, or an employee of the permit holder, shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age. The shipment of beer or wine shall be shipped in a package that clearly states that it contains alcohol. No person shall fail to comply with division (C)(1) of this section.

(2) Upon delivering a shipment of beer or wine to a personal consumer, an H permit holder, or an employee of the permit holder, shall verify that the personal consumer is at least twenty-one years of age by checking the personal consumer's driver's or commercial driver's license or identification card issued under sections 4507.50 to *4507.52* of the Revised Code.

(3) An S-1 permit holder shall keep a record of each shipment of beer or wine that the permit holder sends to a personal consumer. The records shall be used for all of the following:

(a) To provide a copy of each beer or wine shipment invoice to the tax commissioner in a manner prescribed by the commissioner. The invoice shall include the name of each personal consumer that purchased beer or wine from the S-1 permit holder in accordance with this section and any other information required by the tax commissioner.

(b) To provide annually in electronic format by electronic means a report to the division. The report shall include the name and address of each personal consumer that purchased beer or wine from the S-1 permit holder in accordance with this section, the quantity of beer or wine purchased by each personal consumer, and any other information requested by the division. The division shall prescribe and provide an electronic form for the report and shall determine the specific electronic means that the S-1 permit holder must use to submit the report.

(c) To notify a personal consumer of any health or welfare recalls of the beer or wine that has been purchased by the personal consumer.

(D) As used in this section, "personal consumer" means an individual who is at least twenty-one years of age, is a resident of this state, does not hold a permit issued under this chapter, and intends to use beer or wine purchased in accordance with this section for personal consumption only and not for resale or other commercial purposes.

(E) An S-1 permit holder shall comply with this chapter, Chapter 4301 of the Revised Code, and any rules adopted by the liquor control commission under section *4301.03* of the Revised Code.

History

152 v H 119, § 101.01, eff. 9-29-07; *152 v S 150*, § 1, eff. 7-1-08; *2011 HB 114*, § 101.01, eff. June 29, 2011; *2021 hb110*, § 101.01, effective September 30, 2021.

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APPENDIX D

ORC Ann. 4303.233

Current through Files 74 to 90, 92 to 94, and 96 to 99 of the 136th General Assembly (2025-2026)

Page's Ohio Revised Code Annotated > Title 43: Liquor (Chs. 4301 — 4399) > Chapter 4303: Liquor Permits (§§ 4303.01 — 4303.99)

§ 4303.233 S-2 permit.

(A) As used in this section, "personal consumer" means an individual who is at least twenty-one years of age, is a resident of this state, does not hold a permit issued under this chapter, and intends to use wine purchased in accordance with this section for personal consumption only and not for resale or other commercial purposes.

(B)

(1) The division of liquor control may issue an S-2 permit to a person that manufactures two hundred fifty thousand gallons or more of wine per year. If the person resides outside this state, the person shall comply with the requirements governing the issuance of licenses or permits that authorize the sale of beer or intoxicating liquor by the appropriate authority of the state in which the person resides and by the alcohol and tobacco tax and trade bureau of the United States department of the treasury.

(2) An S-2 permit holder may sell wine to a personal consumer by receiving and filling orders that the personal consumer submits to the permit holder. The permit holder shall sell only wine that the permit holder has manufactured to a personal consumer. An S-2 permit holder may use a fulfillment warehouse registered under section *4303.234* of the Revised Code to send a shipment of wine to a personal consumer. A fulfillment warehouse is an agent of an S-2 permit holder and an S-2 permit holder is liable for violations of this chapter and Chapter 4301 of the Revised Code that are committed by the fulfillment warehouse regarding wine shipped on behalf of the S-2 permit holder.

(C) An S-2 permit holder shall collect and pay the taxes relating to the delivery of wine to a personal consumer that are levied under sections 4301.421, 4301.43, and 4301.432 and Chapters 5739 and 5741 of the Revised Code.

(D)

(1) An S-2 permit holder shall send a shipment of wine that has been paid for by a personal consumer to that personal consumer via an H permit holder. Prior to sending a shipment of wine to a personal consumer, the S-2 permit holder, or an employee of the permit holder, shall make a bona fide effort to ensure that the personal consumer is at least twenty-one years of age. The shipment of wine shall be shipped in a package that clearly states that it contains alcohol. No person shall fail to comply with division (D)(1) of this section.

(2) Upon delivering a shipment of wine to a personal consumer, an H permit holder, or an employee of the permit holder, shall verify that the personal consumer is at least twenty-one years of age by checking the personal consumer's driver's or commercial driver's license or identification card issued under sections 4507.50 to *4507.52* of the Revised Code.

(3) An S-2 permit holder shall keep a record of each shipment of wine that the permit holder sends to a personal consumer. The records shall be used for all of the following:

> **(a)** To provide a copy of each wine shipment invoice to the tax commissioner in a manner prescribed by the commissioner. The invoice shall include the name of each personal consumer that purchased wine from the S-2 permit holder in accordance with this section and any other information required by the tax commissioner.
>
> **(b)** To provide annually in electronic format by electronic means a report to the division. The report shall include the name and address of each personal consumer that purchased wine from the S-2 permit holder in accordance with this section, the quantity of wine purchased by

each personal consumer, and any other information requested by the division. If the S-2 permit holder uses a fulfillment warehouse registered under section *4303.234* of the Revised Code to send a shipment of wine on behalf of the S-2 permit holder, the S-2 permit holder need not include the personal consumer information for that shipment in the report. The division shall prescribe and provide an electronic form for the report and shall determine the specific electronic means that the S-2 permit holder must use to submit the report.

(c) To notify a personal consumer of any health or welfare recalls of the wine that has been purchased by the personal consumer.

(E) An S-2 permit holder shall comply with this chapter, Chapter 4301 of the Revised Code, and any rules adopted by the liquor control commission under section *4301.03* of the Revised Code.

(F)

(1) An S-2 permit holder shall renew the permit in accordance with section *4303.271* of the Revised Code, except that the renewal shall not be subject to the notice and hearing requirements established in division (B) of that section.

(2) The division may refuse to renew an S-2 permit for any of the reasons specified in section *4303.292* of the Revised Code or if the permit holder fails to do any of the following:

(a) Collect and pay all applicable taxes specified in division (C) of this section;

(b) Pay the permit fee;

(c) Comply with this section or any rules adopted by the liquor control commission under section *4301.03* of the Revised Code.

(G) The fee for the S-2 permit is two hundred fifty dollars.

History

2021 hb110, § 101.01, effective September 30, 2021; *2025 hb96*, § 101.01, effective September 30, 2025.

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APPENDIX E

ORC Ann. 4303.234

Current through Files 74 to 90, 92 to 94, and 96 to 99 of the 136th General Assembly (2025-2026)

Page's Ohio Revised Code Annotated > Title 43: Liquor (Chs. 4301 — 4399) > Chapter 4303: Liquor Permits (§§ 4303.01 — 4303.99)

§ 4303.234 Shipment of wine from S-2 permit holder to personal consumer via delivery by H permit holder.

(A) As used in this section:

(1) "Fulfillment warehouse" means a person that operates a warehouse that is located outside this state and has entered into a written agreement with an S-2 permit holder to fulfill orders of the S-2 permit holder's wine to personal consumers via delivery by an H permit holder.

(2) "Personal consumer" has the same meaning as in section *4303.233* of the Revised Code.

(B) A fulfillment warehouse may send a shipment of wine sold by an S-2 permit holder to a personal consumer via an H permit holder. A fulfillment warehouse shall provide annually in electronic format by electronic means a report to the division not later than March first. The annual report shall include all of the following:

(1) The name and address of the fulfillment warehouse. The fulfillment warehouse shall include the address of each location owned or operated by the fulfillment warehouse that is used to ship wine to personal consumers in this state.

(2) The name and address of each S-2 liquor permit holder with which the fulfillment warehouse has entered into an agreement:

(3) The name and address of each personal consumer that the fulfillment warehouse sends wine to and the quantity of wine purchased by the personal consumer:

(4) The shipping tracking number provided by the H permit holder for each shipment of wine delivered to a personal consumer. The division shall prescribe and provide an electronic form for the report and shall determine the specific electronic means that the fulfillment warehouse must use to submit the report.

(E) The division may adopt rules in accordance with Chapter 119 of the Revised Code necessary to administer and enforce this section.

History

2021 hb110, § 101.01, effective September 30, 2021.

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