



# Arizona Restaurant Association



## TO-GO ALCOHOL

HB 2773 liquor; delivery; off-sale permits; leases  
(Weninger)

A guide to the newly passed legislation allowing for to-go cocktails and delivery of alcoholic beverages.

May 25, 2021

## **Executive Summary**

HB 2773, as signed by the Governor, contains three major changes and many conforming adjustments to Arizona's liquor statutes. These provisions do not go into effect until October 1, 2021 and the Arizona Department of Liquor Licenses and Control (DLLC) must still issue rules to govern these new programs, including the price of the leases and fees.

In general, the bill will allow restaurants, bars, and liquor store licensees to sell mixed cocktails (defined) for off-premises consumption under various rules. Bars and beer and wine bars will be able to lease their existing packaged goods off-premises privilege to a restaurant. This allows bars and beer and wine bars not utilizing their current off-premises privilege to monetize this dormant asset while allowing restaurants to acquire the privilege of selling bottles of wine, beer, and spirits for off-premises consumption. Finally, the bill allows for bars, beer and wine bars, restaurants, liquor stores, and beer and wine stores to utilize third-party delivery services, known as registered alcohol delivery contractors, to delivery alcoholic beverages to consumers.

Over the next several months, the Arizona Restaurant Association (ARA) will work closely with DLLC as they begin to draft their rules to implement these programs and provide much needed detail to the exact process that restaurants and other licensees will need to go through. In the meantime, we are providing this summary of the legislation and our best interpretation of how it will be implemented by the agency.

## **Off-Premises Sales**

HB 2773 creates two different ways for restaurants to access off-premises sale authority, one for mixed cocktails, and one for packaged goods. The mixed cocktails privilege is further broken into two time periods: the lease period (from October 1, 2021 through December 31, 2025) and the permit period (from January 1, 2026 – perpetuity). While the bill uses similar language to describe the mixed cocktails and packaged goods provisions, they work differently and have different restrictions. On the next page is a breakdown of these two provisions.

<b>To-go Cocktails (lease/permit)</b>	<b>Packaged Goods<sup>1</sup> Lease</b>
<p><b>Privilege:</b> the ability to sell mixed cocktails<sup>2</sup> for off-premises consumption</p>	<p><b>Privilege:</b> the ability to sell packaged goods for off-premises consumption</p>
<p><b>Bars and liquor stores:</b> May begin selling on October 1, 2021 subject to requirements. No additional permit needed.</p>	<p><b>Lease:</b> bars, beer and wine bars may lease to restaurants the ability to sell packaged goods for off-premises consumption based on their license type.</p>
<p><b><u>Restaurants (Oct. 1, 2021 – Dec 31, 2025) Lease</u></b></p> <ul style="list-style-type: none"> <li>• A number of mixed cocktail “leases” are created to equal the number of series 6 and series 9 licenses in this state (approx.. 2,800).</li> <li>• Restaurants will apply to DLLC for the ability to sell mixed cocktails for off-premises consumption.</li> <li>• Restaurants must ensure all their employees have title 4 alcohol training.</li> <li>• Once approved, the restaurant will be assigned an automatic 12-month<sup>3</sup> renewable lease for to-go cocktails.</li> </ul> <p><b>Application fee:</b> DLLC will charge an application fee for administrative and enforcement costs. This fee will be determined by DLLC at a later date, but we expect the fee to be somewhere between \$100 and \$300.</p> <p><b>Lease fee:</b> During this period, DLLC will also set a “lease” fee for the restaurant. This fee will be transferred to a randomly selected series 6 or series 9 licensee.</p>	<ul style="list-style-type: none"> <li>• Beer and wine bar (series 7) may only lease the ability to sell beer and wine to a restaurant.</li> <li>• Bar (series 6) may lease the ability to sell beer, wine, and other spirituous liquors to a restaurant.</li> <li>• All leases of privileges are governed by DLLC and will be standardized lease agreements.</li> <li>• The lessor and lessee must be within the same county.</li> <li>• DLLC must approve the lease.</li> <li>• The lessor will no longer be able to sell packaged goods for off-premises consumption during the term of the lease.</li> </ul> <p><b>Application fee:</b> DLLC will charge an application fee for administrative and enforcement costs. This fee will be determined by DLLC at a later date, but we expect the fee to be somewhere between \$100 and \$300.</p> <p><b>Lease Payment:</b> DLLC will set a “suggested price” for these leases and may have different prices for each county.</p> <ul style="list-style-type: none"> <li>• The lessor and lessee will negotiate a price or use the suggested price set by DLLC.</li> <li>• The leases are limited to 12-months.</li> </ul>

<sup>1</sup> “Packaged Goods” refers to beer, wine, liquor, and other types of spirituous liquor in the original manufacturer’s sealed container.

<sup>2</sup> “Mixed Cocktail” means any drink combined at the premises of an authorized licensee that contains a spirituous liquor and that is combined with at least one other ingredient, which may include additional spirituous liquors, fruit juice, vegetable juice, mixers, cream, flavored syrup or other ingredients except water, and that when combined contains more than one-half of one percent of alcohol by volume. It does not include a drink sold in an original manufacturer’s packaging or any drink poured from an original manufacturer’s package without the addition of all of the cocktail’s other ingredients at the premises.

<sup>3</sup> The first-year lease may be less than 12 months in order to align the lease renewal date with the renewal date of the restaurant’s series 12 liquor license. If this is the case, the payment will also be prorated.

<p><b><u>Restaurants (Jan 1, 2026 – perpetuity) Permit</u></b></p> <ul style="list-style-type: none"><li>• Restaurants will apply for a permit from DLLC to sell mixed cocktails for off-premises consumption.</li><li>• Restaurants will pay an application fee and an annual renew fee set by DLLC but no additional “lease” fee.</li><li>• The number of mixed cocktail permits will be limited to the number of series 6 and series 9 licenses in the state.</li></ul>	
<p style="text-align: center;"><b>Caps and Limitations</b></p> <ul style="list-style-type: none"><li>• Restaurants must still comply with their food to alcohol ration (40/60).</li><li>• Restaurants must ensure their employees have received liquor training.</li><li>• Restaurants may not derive more than 30% of their total alcohol sales from off-premises activities (same limitation as bars and beer and wine bars).</li><li>• Restaurants must have a food sale in conjunction with any off-premises alcohol sale. This food item may be for on or off-premises consumption.</li></ul>	

**Mixed Cocktails Rules**

Once an establishment can sell mixed cocktails for off-premises consumption, the licensee must comply with several rules.

1. **Container:**
  - a. The container must be clear and composed of a material approved by a national sanitation organization (same standard as growlers).
  - b. The container may not exceed 32 ounces.
2. **Filling:**
  - a. The container may only be filled with a mixed cocktail at the time of order (no prefilling)<sup>4</sup>.
  - b. The container must be filled by the licensee or their employee on the licensed premises (you cannot make these at a different location and bring them to the restaurant or bar).
3. **Sealing & Labeling:**
  - a. The container must be “tamper proof sealed” which means it is designed to prevent the consumption of the cocktail without the removal of a temper-proof cap, seal, cork, or closure that has a device, mechanism or adhesive that clearly shows whether the container has been opened.
  - b. The container must display a government warning label<sup>5</sup>
  - c. The container must clearly display the bar, liquor store, or restaurant’s logo or name.

<sup>4</sup> This provision is not in HB 2773, but is a requirement under the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau’s (ATTTB) regulations. .

<sup>5</sup> Government Warning under 17 U.S.C. § 215(a) “GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery and may cause health problems.”

### **Remote Ordering and Delivery**

HB 2773 creates a structure to allow for the delivery of alcohol from bars, beer and wine bars, and restaurants directly to consumers in this state. This includes the ability to utilize third-party delivery.

### **Order and Payment**

- Bars, beer and wine bars, beer and wine stores, liquor stores, and restaurants may take order for the sale and delivery of alcoholic beverages by remote means (i.e., telephone or internet).
- A sale through delivery is not considered a “sale” until delivery has been made.
- At the time that the order is placed, the establishment must inform the purchaser that state law requires a purchaser of alcoholic beverages be at least 21 years of age and that the person accepting delivery of the alcoholic beverage is required to comply with the state’s age identification requirements.<sup>6</sup>

### **Delivery**

- Establishments may utilize their own employees to make alcohol deliveries or may use a registered alcohol delivery contractor. Anyone making an alcohol delivery must be at least 21.
- The alcoholic beverage must be sealed, labeled, and loaded at the licensed premises by an employee of the establishment.
- All containers holding alcohol must be labeled with the words: “CONTAINS ALCOHOL, SIGNATURE OF PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY”
- If utilizing a registered alcohol delivery contractor, both the licensee and the contractor are liable for any violation of law or rules that occur during the delivery.
- Delivery of alcohol must take place between 6:00am and 2:00am for the next day.

### **Registered Alcohol Delivery Contractor**

- Any third-party delivery service wishing to delivery alcohol on behalf of a bar, beer and wine bar, liquor store, beer and wine store, or restaurant must register as an alcohol delivery contractor with DLLC.
- A registrant must provide DLLC with the controlling person’s identification and background information.
- A new registered alcohol delivery contractor must complete alcohol training as approved by the department.
- DLLC will maintain a list of all registered alcohol delivery contractors that are in good standing. Only companies on this list may be used for the delivery of alcoholic beverages.
- Registered alcohol delivery contractors must comply with all liquor laws and rules, including age verification and documentation requirements.
- DLLC may take enforcement action against a registered alcohol delivery contractor for any violation, including deregistration.

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<sup>6</sup> The relevant age identification requirements are outlined in [A.R.S. § 4-241\(A\) & \(K\)](#).

**Next Steps**

Over the next few months DLLC will publish more details on the actual process for implementing these changes. As more detail emerge from this process, including the pricing, we will publish new guidance. For all questions, please email Dan Bogert at [dan@azrestaurant.org](mailto:dan@azrestaurant.org)