



Arizona Restaurant Association



TO-GO ALCOHOL

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

Updated Guidance on To-go Alcohol implementation

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Executive Summary

HB 2773 is the piece of legislation passed this year that brings about the first opportunity to sell mixed cocktails to-go in Arizona. The bill contains three major changes and many conforming adjustments to Arizona's liquor statutes.

In general, the bill allows restaurants, bars, and liquor store licensees to sell mixed cocktails (defined) for off-premises consumption under various rules. Additionally, bars and beer & 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 to deliver alcoholic beverages to consumers.

The Department of Liquor Licenses and Control (DLLC) has published several FAQ documents to help operators navigate these new laws. These FAQs are published on the DLLC website, here: https://azliquor.gov/FAQ/FAQ_ToGo.cfm. The ARA does anticipate the DLLC will update these documents and may issue additional guidance and rules in the coming months. It is advised that operators continue to check back.

Summary of Changes:

- Add [mixed cocktail definition and rules](#) section.
- Adds a [“how to” section](#) for restaurants interested in gaining to-go cocktail privileges.
- Adds detail analysis of [container requirements](#) for mixed cocktails, including:
 - [Physical container requirements](#)
 - [Filling the container with a mixed cocktail](#)
 - [Sealing and tamper-proofing the mixed cocktail](#)
- Adds clarification to previous sections, to include pricing and links to DLLC documents

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.

Mixed Cocktails (lease/permit)	Packaged Goods¹ Lease
<p>Privilege: the ability to sell mixed cocktails² for off-premises consumption</p>	<p>Privilege: the ability to sell packaged goods for off-premises consumption</p>
<p>Bars and liquor stores: May begin selling on October 1, 2021 subject to requirements. No additional permit needed.</p> <p><u>Restaurants (Oct. 1, 2021 – Dec 31, 2025) Lease</u></p> <ul style="list-style-type: none"> • 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). • Restaurants will apply to DLLC for the ability to sell mixed cocktails for off-premises consumption. • Once approved, the restaurant will be assigned an automatic 12-month³ renewable lease for to-go cocktails. <p>Application fee: DLLC will charge a \$200 application fee for administrative and enforcement costs.</p> <p>Lease fee: Restaurant licensees will also be required to pay a \$1,000 lease fee.</p> <p><u>Restaurants (Jan 1, 2026 – perpetuity) Permit</u></p> <ul style="list-style-type: none"> • Restaurants will apply for a permit from DLLC to sell mixed cocktails for off-premises consumption. • Restaurants will pay an application fee and an annual renew fee set by DLLC but no additional “lease” fee. • The number of mixed cocktail permits will be limited to the number of series 6 and series 9 licenses in the state. 	<p>Lease: 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> <ul style="list-style-type: none"> • Beer and wine bar (series 7) may only lease the ability to sell beer and wine to a restaurant. • Bar (series 6) may lease the ability to sell beer, wine, and other spirituous liquors to a restaurant. • All leases of privileges are governed by DLLC and will be standardized lease agreements. • The lessor and lessee must be within the same county. • DLLC must approve the lease. • The lessor will no longer be able to sell packaged goods for off-premises consumption during the term of the lease. <p>Application fee: DLLC will charge a \$200 application fee for administrative and enforcement costs.</p> <p>Lease Payment: DLLC has set a suggested price for these leases.</p> <ul style="list-style-type: none"> • The lessor and lessee will negotiate a price or use the suggested price set by DLLC. • The leases are limited to 12-months.

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

² “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.

³ 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.

Caps and Limitations

- Restaurants must still comply with their food to alcohol ratio (40/60).
- Restaurants must ensure their employees have received liquor training.⁴
- 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).
- 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.

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 clean 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 after an order has been placed (no prefilling)⁵.
- 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 label⁶
- c. The container must clearly display the bar, liquor store, or restaurant’s logo or name.

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).

⁴ Series 12 licensees will have until 2025 to ensure all their employees have received approved liquor training.

⁵ 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.

⁶ 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.”

- 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.⁷

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 of the next day.

Registered Alcohol Delivery Contractor

- Any third-party delivery service wishing to deliver 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.

⁷ The relevant age identification requirements are outlined in [A.R.S. § 4-241\(A\) & \(K\)](#).

Mixed Cocktails – How to for Series 12 Licensees

Restaurants with a series 12 liquor license that are interested in selling mixed cocktails will need to follow these steps:

- Check with your insurance broker to ensure your current policy is sufficient to cover to-go cocktail operations.
- Select and secure a supplier for to-go cocktails containers and tamper-evident seals (see Mixed Cocktail Container section for more info).
- Review the FAQ document of the Department of Liquor Licenses and Control (DLLC) Website: https://azliquor.gov/FAQ//FAQ_DLLC_MixedCocktail.pdf
- Complete and submit the DLLC Mixed Cocktails application form and pay the \$200 application fee: https://azliquor.gov/forms/lic_ToGo_Cocktails_app.pdf
- Complete and submit the DLLC standard Mixed Cocktails Lease form: https://azliquor.gov/forms/lic_ToGo_Cocktails_Lease.pdf
- Submit your \$2,500 lease payment to DLLC. – May be prorated the first year.
- Receive approval from DLLC.
- Train staff on to-cocktail protocols
- Begin selling cocktails to-go.

During the first year, DLLC may prorate the 12-month lease period for restaurants to align the renewal of the mixed cocktail privilege with the restaurant's series 12 renewal date. If this is the case, DLLC will also prorate the lease cost. Each renewal after this initial period will be for a full 12-months.

Mixed Cocktail Definition and Rules

Mixed cocktail are defined in A.R.S. § 4-101(26) as:

1. 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, 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.
2. Does not include any drink sold in an original manufacturer's packaging or any drink poured from an original manufacturer's package without the addition of all the cocktail's other ingredients at the premises of the licensed bar, liquor store or restaurant.

This essentially means that in order to qualify as a mixed cocktail, a drink must contain two separate ingredients that originate from separate bottles. Bars, restaurants, and liquor stores are prohibited from pouring any manufacturer's premixed cocktail into a to-go container without the addition of separate ingredients.

- Best practice: Although not prohibited by law, the ARA suggests that all mixed cocktails sold for off premises consumption be sold without the presence of ice. This is not only a quality control issue, but it will also discourage the immediate consumption of the cocktail out of fear that the drink will become diluted. If a customer requests ice, you are encouraged to provide the ice in a separate container from the sealed to-go cocktail.

Mixed Cocktails Containers

As mentioned under the Mixed Cocktails Rules section, the containers for mixed cocktails must meet certain standards. This section goes into more detail about the rules surrounding mixed cocktail containers and gives several examples from the ARA's interpretation.

Physical Container

- A.R.S. § 4-244(32)(d) specifies that mixed cocktails must be transferred to “a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed thirty-two ounces.”
- **Container material:** the container should be composed of material rated for storage of alcohol. Certain materials will leach chemicals when brought into contact with alcohol, so it is important that any container used for the purpose is designed to carry alcohol. Most glass is safe, but if you are considering plastics, enamel, or other material, please ensure it is safe.
- **Container size:** you may use any size of container you desire so long as the internal dimensions do not exceed a capacity of thirty-two fluid ounces. While it is not required by law, the ARA strongly recommends that any container used has the size (in fluid ounces) print on it.
 - While the law limits the size of individual containers, there is no limit on the number of mixed cocktails that can be included in any order.

Filling of the Container with a Mixed Cocktail

- A.R.S. § 4-244(32)(d)(i) requires that “the licensee or licensee’s employee fills the container with the mixed cocktail on the licensed premises...”
- **Mixing of the Cocktail:** cocktails may be premixed in batches (such as Bloody Marries). However, if any premixed batch of cocktails is to be used for a to-go order, the batch should also be used to fulfill on-premises orders.
- **Location Matters:** Mixed cocktails to be sold for to-go orders must be made on site at the licensed establishment from which they will be sold. You may not make cocktails at a different location.
- **Timing Matters:** While the actual mixed cocktail may be premade in batches (see above), you may not containerize the cocktail for a to-go order until the order has been made by a customer.
 - **Example 1:** Restaurant A sells a signature Bloody Mary and they premix five gallons before each shift to be used for both on-premises order and for to-go orders. Restaurant A receives a to-go order over the phone that includes a Bloody Mary, and the Bloody Mary is poured from the premixed five-gallon batch into the to-go container and placed with the rest of the order. – **This is allowed.**
 - **Example 2** Restaurant B also sells a signature Blood Mary and they also premix five gallons before each shift. However, they also use half of the batch to fill and seal to-go containers before an order is placed. – **This is not allowed.** Restaurant B has now

violated federal tax law.⁸ The ATTTB considers this a function of an alcohol producer since the drink was made and sealed in a container to be sold at a later date/time.

Sealing the Container

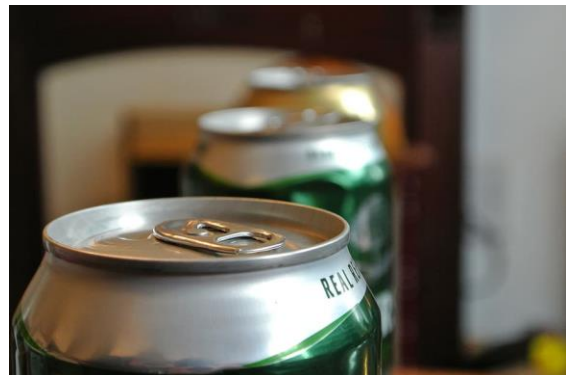
- A.R.S. § 4-244(32)(d)(ii) requires that “the container is tamper proof sealed by the licensee or the licensee’s employee and displays a government warning label. A.R.S. § 4-244(32)(d)(iii) requires that “the container clearly displays the bar’s, liquor store’s, or restaurant’s logo OR name.

- **Tamper Proof Sealed:** is defined as “designed to prevent consumption without the removal of a tamper-proof cap, seal, cork or closure that has a device, mechanism or adhesive that clearly shows whether the container has been opened.” see [A.R.S. § 4-101\(38\)](#)
- **Government Warning Label:** each container must contain a government warning label that reads:

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 impair your ability to drive a car or operate machinery, and may cause health problems.

- **Name or Logo:** each to-go cocktail container must clearly display either the restaurant’s name or logo.
- **Sealing:** The Department of Liquor Licenses and Control has not published any further clarifying information about the definition of sealed or tamper proof, but the statutory language does provide a set of standards. Under the ARA’s interpretation, any closure that prevents access to the drink and spillage of the drink without the removal of the closure should count as sealed. To meet the requirement of tamper-proof, the ARA suggests utilizing any material or device that will clearly show when the closure has been removed – this may be accomplished by selecting a closure that can not be reattached after opening. Below are a few examples of how this may be accomplished and what to avoid. However, this should not be viewed as a comprehensive list of allowable or disallowable ways.

- **Example 1:** Restaurant A uses an aluminum canning machine to containerize their to-go cocktails by filling the container with the cocktail and then sealing with an aluminum pop-top. – **This is allowed** – because the aluminum can is now sealed no leakage will occur and no one has access to the drink without the use of



⁸ 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.

the aluminum pop top which serves as a tamper proofing device since there is no way to reseal the container once opened.

- **Example 2:** Restaurant B uses glass bottles with a cork top to containerize their to-go cocktails by filling the container with the cocktail, inserting the cork, and then adding a piece of tamper evident tape that crosses over the cork from one side of the bottle to the next. – **This is allowed** – because in order to remove the cork, the tape must be broken and there is no way to reattach the tape.



- **Example 3:** Restaurant C uses Styrofoam cups with plastic lids and a piece of electrical tape to cover the straw holes and keep the lid on the cup. – **This is not allowed** – the plastic lid and Styrofoam cup set up still allows for leaks. Additionally, even though the restaurant is using tape to keep the lid on and cover up the straw hole, the type of tape used is not tamper evident and can easily be replaced.

- **Labeling:** Statute tells us which labels need to be included on the container but does not specify exactly how those labels need to be applied. Under the ARA's interpretation, operators may utilize several methods. This includes acquiring containers that have the required labels preprinted, or the utilization of stickers that are applied to the container on the premises. The important thing here is that each individual container has a government warning label and either the name or logo of the restaurant.