

## Mixed-Cocktails FAQs- A.R.S. § 4-203.06

### Mixed-Cocktails

These Frequently Asked Questions are intended as helpful descriptions of HB2773 and are not intended as legal advice or to cover every possible scenario. Licensees and applicants should consult with legal counsel if they have questions specific to their business operations.

#### **Who can sell mixed cocktails to-go?**

Under A.R.S. § 4-203.06, a Restaurant licensee may apply to the Department to lease mixed cocktails to-go privileges.

Under A.R.S. § 4-244(32)(d), Bar and Liquor Store licensees may sell mixed cocktails to-go under their licenses without the need to apply for the privileges. No other license types may sell mixed cocktails to-go.

#### **Can any license other than Restaurant (Series 12) apply to lease mixed cocktails to-go privileges?**

No, only Restaurant (Series 12) licensees may apply to lease mixed cocktails to-go privileges from Bars (Series 6) and Liquor Stores (Series 9). Bars and Liquor Stores may sell mixed cocktails to-go without the need to apply to the Department. *See* A.R.S. § 4-244(32)(d). No other license types were granted this privilege.

#### **When can I apply for the privilege?**

The Department is working diligently to ensure that it is prepared to accept applications for mixed cocktails to-go privileges on October 1, 2021.

#### **I have a Restaurant license, what is the process to apply for the privilege to sell mixed cocktails to-go?**

Restaurant licensees may apply to the Department using the application form to lease the privilege to sell mixed cocktails to-go and the Department-approved standard-form lease. *See* A.R.S. § 4-203.06. After the Department approves the application and selects the Bar or Liquor Store licensee to pair with the Restaurant licensee, the Restaurant licensee must pay an annual lease payment (which may be prorated in the first year based on the

Restaurant's annual renewal date) in full. *See* A.R.S. § 4-203.06(B)(5). Upon Department approval of the application and confirmation of the payment, the Restaurant licensee may begin selling mixed cocktails for off-premises consumption.

**I am a Bar or Liquor Store, how can I be included in or opt out of the pool of licensees that the Department will pair with Restaurants for mixed cocktails to-go leases?**

No action is required to be included in the pool of licenses that the Department will pair with Restaurants for mixed cocktails to-go leases. Bars and Liquor Stores may not opt out of the random selection pool. The Department will notify Bars and Liquor Stores who have been selected through the Department's random selection process. *See* A.R.S. § 4-203.06(B)(2). Bars and Liquor Stores may not lease their mixed cocktails to-go privileges outside of this Department process.

**Where can I find the application form and standard form lease agreement?**

All of the Department's forms are located on the [Application Kits and Forms](#) section of its website. The Department is in the process of finalizing the application forms and standard-form lease agreements.

**Do I have to apply in person or can I apply online?**

You may apply in person, via mail, or online through the Department's e-licensing system, which you can login to at <https://dllc.azliquor.gov/azdlprod/pub/Login.aspx>. If you do not already have a login please go to <https://azliquor.gov/ELicensing/ELicensingInfo.cfm>, to request your personal access code.

**What will it cost to apply?**

The initial application fee for Restaurants to apply to lease a mixed cocktails to-go privilege is \$200. You can pay application fees with cash, checks, cashier checks, money orders, direct deposits, wire transfers, or credit cards in person, through the mail, or online through the department's e-licensing system at <https://dllc.azliquor.gov/azdlprod/pub/Login.aspx> There is no Department fee for Bars and Liquor Stores that the Department randomly selects to pair with a Restaurant.

### **What are the qualifications for obtaining a mixed cocktails to-go privilege?**

Under A.R.S. § 4-203.06(B)(4), the Director may deny an application to lease a mixed cocktails to-go privilege based on the proposed location or history of the proposed lessee (Restaurant).

### **How can I pay lease payments?**

Application fees and lease payments are due at different times, and should be paid separately. You can pay lease payments with cash, checks, cashier checks, money orders, direct deposits, wire transfers, or credit cards in person, through the mail, or online through the department's e-licensing system at <https://dllc.azliquor.gov/azdlprod/pub/Login.aspx>. The Department will transfer the lease payments to the appropriate Bar or Liquor Store.

### **Do I need to draft my own lease form?**

No, the Department will provide a standard-form lease that will be available on the [Application Kits and Forms](#) section of the Department's website.

### **Can I add additional provisions to the standard lease agreement prepared by the state?**

The Department will only accept the standard lease form; no changes may be made to the forms.

### **How much will it cost to lease a mixed cocktails to-go privilege?**

Under A.R.S. § 4-203.06, the Department will establish a standard lease amount that will apply to all leases of mixed cocktails to-go privileges. The Department will publish this amount when it has been established. Restaurants may not agree to a different lease amount with Bar or Liquor Store licensees.

### **I am a Restaurant, when can I begin to sell mixed cocktails?**

Restaurants may not sell mixed cocktails to-go until the Department approves the application and has confirmed the payment of the annual lease amount. *See* A.R.S. § 4-203.06(B)(5). There is no interim permit to sell mixed-cocktails for a Restaurant applying for a mixed cocktail privilege.

**I am a Bar or Liquor Store, do I lose my privilege to sell mixed cocktails to-go after I am paired with a Restaurant licensee to lease mixed cocktails to-go privileges?**

No. There is no impact on a Bar or Liquor Store's license privileges when they are paired with a Restaurant seeking to lease mixed cocktails to-go privileges. You may continue to sell mixed cocktails to-go. *See* A.R.S. § 203.06(B)(8); A.R.S. § 4-244(32)(d).

**I am a Bar or Liquor Store, am I responsible if a Restaurant leasing my mixed-cocktails to-go privilege violates Title IV?**

No. H.B. 2773 states "All violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee" *See* A.R.S. § 4-203.06(B)(3)(i).

**Do I need to annually renew my mixed cocktails to-go privilege?**

Yes, Restaurants must renew their mixed cocktails to-go privilege. Renewal deadlines will coincide with a Restaurant's annual renewal deadline, with the term of the first year pro-rated to conclude on the Restaurant renewal date. *See* A.R.S. § 4-203.06(B)(3)(b).

**I am a Bar or Liquor Store, do I need to take any action to renew the lease of my mixed cocktails to-go privilege to a restaurant?**

No. Bars and Liquor Stores that the Department has paired with a Restaurant licensee do not need to renew a mixed cocktails to-go lease with the Department. If a Restaurant has not renewed its mixed cocktails to-go privilege, or has had its privilege suspended or revoked, the Department will return the Bar or Liquor Store to the pool of licensees from which the Department randomly selects for pairing with Restaurants.

**Do I have to sell food with a mixed cocktail to-go?**

For Restaurant licensees, under A.R.S. § 4-244(32)(d)(iv), "the sale of mixed cocktails for consumption off the licensed premises is accompanied by the sale of menu food items for consumption on or off the licensed premises." Furthermore, under A.R.S. § 4-205.02(L), "a restaurant licensee shall cease selling spirituous liquor, including mixed cocktails, for off premises consumption when the licensee ceases regular kitchen service for food."

Bars and Liquor Stores do not need to sell "menu food items" with the sale of mixed cocktails to-go.

### **What is a “menu food item?”**

Under A.R.S. § 4-101(24), a “menu food item” means “a food item from a regular menu, special menu or happy hour menu that is prepared by the licensee or the licensee’s employee.”

### **Are there any limits on the amount of mixed cocktails to-go that a Restaurant, Bar, or Liquor Store can sell?**

Yes. For Bars and Restaurants, the total sales price of mixed cocktails to-go cannot exceed thirty percent (30%) of the total sales price of on-sale spirituous liquors by the licensee at the premises. *See* A.R.S. § 4-203.06(B)(9). This limit does not apply to Liquor Stores.

For Bars, Liquor Stores, and Restaurants, a container of mixed cocktails cannot exceed thirty-two ounces. *See* A.R.S. § 4-244(32)(d).

### **I have a Restaurant license, do sales of mixed cocktails to-go change the requirement to derive at least 40% of my gross revenue from the sale of food.**

No, “Gross Revenue” means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether food or beverages are sold for consumption off the licensed premises. *See* A.R.S. § 4-205.02(J).

### **Do I have to seal and label containers of mixed cocktails to-go?**

Yes, containers of mixed cocktails sold for off-premises consumption must be “tamper proof sealed by the licensee” and must “display a government warning label.” *See* A.R.S. § 4-244(32)(d)(ii). The container must also “clearly display the Bar’s, Liquor Store’s, or Restaurant’s logo or name.” *See* A.R.S. § 4-244(32)(d)(iii).

“Tamper proof sealed” means “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 a container has been opened.” *See* A.R.S. § 4-101(38).

Government warning label requirements are established by the Federal government. The current health warning label for alcoholic beverages is as follows:

**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.

**Can a “to go” container just contain the distilled spirits, beer, or wine be mixed with water only?**

No, any alcoholic beverage sold “to go” must follow the statutory definition of a “mixed cocktail”.

**What is a mixed-cocktail?**

Under A.R.S. § 4-101(26), a “mixed-cocktail” means “(a) 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.” Mixed-cocktail 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 of the licensed bar, liquor store, or restaurant.”

**How much alcohol can I put in a “to go” container?**

A mixed cocktail may be served in a container that is up to 32 ounces, there is not a limit on the amount of alcohol that can be in the container as long as it has one of the additives required by the definition of Mixed Cocktail.

**Is there a limit on the number of drinks that can be sold to one customer at a time for takeout, or delivered to a person?**

No, there is no limit on the amount of to-go mixed cocktails that are sold to the consumer.

**What other laws apply to the sale of Mixed Cocktail?**

A licensee must follow all other statutes as it relates to Title IV Liquor Laws. Please see the DLLC’s website for a complete [Title IV book](#).

**My Restaurant (Series 12) is within 300 feet of a church or public or private school under A.R.S. § 4-207, can I sell mixed cocktails to-go?**

Yes, the “300 foot rule” does not apply to mixed cocktails to-go. The rule continues to apply, however, to Growler permits issued under A.R.S. § 4-244(32)(c).

**May I sell mixed cocktails to-go for carry-out, delivery, and drive-thru?**

Yes, under Title IV, licensees with mixed cocktails to-go privileges may sell mixed cocktails for carry-out, delivery, and drive-thru. Restaurants must, regardless of the manner of service, only sell mixed cocktails to-go in connection with the sale of a menu food item. *See* A.R.S. § 4-101(24); A.R.S. § 4-244(32)(d)(iv).

Bar, Beer and Wine Bar, and Restaurant licensees must comply with A.R.S. § 4-203(S) and (T) for the delivery of alcohol by the licensee or a registered alcohol delivery driver. Liquor Store and Beer and Wine Store licensees may deliver alcohol under A.R.S. § 4-203(J), as well as A.R.S. § 4-203(S), and (T).

Licensees may sell mixed cocktails to-go using a drive-thru window, subject to A.R.S. § 4-210(D) (which allows suspension of drive-thru privileges) and any applicable local regulations. Please note, HB2844 also eliminated A.R.S. § 4-244(32)(c)(iii), which had prohibited retailers selling Growlers from using a drive-thru window.

**I am a Restaurant, what happens if the Bar or Liquor Store that the Department paired me with to lease a mixed cocktails to-go privilege sells its license, does not renew or is revoked or suspended?**

If a Bar or Liquor Store licensee sells its license, the new owner of the license becomes the new lessor under the pending mixed cocktails to-go lease. *See* A.R.S. § 4-203.06(B)(3)(g). If a Bar or Liquor Store licensee does not renew, is suspended, or is revoked, the Restaurant licensee may continue to sell mixed cocktails to-go until the conclusion of the annual lease term. *See* A.R.S. § 4-203.06(B)(3)(f). The Department would then pair the Restaurant with a new Bar or Liquor Store if available.

**I am a Restaurant, may I transfer a mixed cocktails to-go lease to a person that acquires control of my business?**

Yes, a Restaurant may transfer a mixed cocktails to-go lease to a person that acquires control of its business. *See* A.R.S. § 4-203.06(B)(3)(e).

**I am a Restaurant, how do I know which Bar or Liquor Store license name and number to put on the Standard Form Lease?**

Restaurants should leave the name and license number of the Bar or Liquor Store (“Lessor”) blank when submitting their application. The Department will randomly select a Bar or Liquor Store licensee and input that information into the lease.

**What is the maximum size mixed cocktail to go that can be sold?**

32 ounces

**How many mixed cocktail to go can be sold at one time to one person?**

There is not a limit on the number of mixed cocktails that can be sold.

**What type of physical container can I not use?**

Anything larger than 32oz, that doesn't have the licensee's name or logo, that doesn't display the government warning label, and that isn't a tamper proof sealed container. (example - Styrofoam cup with a plastic lid and a piece of tape over the lid.)