

1 ENGROSSED SENATE
BILL NO. 809

By: Coleman of the Senate

2
3 and

4 McEntire of the House
5

6 An Act relating to alcoholic beverages; amending 37A
7 O.S. 2021, Section 1-103, which relates to
8 definitions; defining term; expanding term; amending
9 37A O.S. 2021, Sections 7-102, as amended by Section
10 1, Chapter 373, O.S.L. 2022 and 7-103, as amended by
11 Section 2, Chapter 373, O.S.L. 2022 (37A O.S. Supp.
12 2022, Sections 7-102 and 7-103), which relate to
13 definitions and requirements; modifying definition;
14 allowing certain licensee to participate in curbside
pickup or delivery of sealed alcoholic beverages;
lowering the age of employee allowed to deliver
sealed alcoholic beverage; allowing for sealed
alcoholic beverage to be carried out by customer;
requiring notification to customer purchasing sealed
alcoholic beverage through a drive-through; updating
statutory reference; updating statutory language; and
providing an effective date.

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17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 37A O.S. 2021, Section 1-103, is
19 amended to read as follows:

20 Section 1-103. As used in the Oklahoma Alcoholic Beverage
21 Control Act:

22 1. "ABLE Commission" or "Commission" means the Alcoholic
23 Beverage Laws Enforcement Commission;
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1 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
2 alcohol, ethanol or spirits of wine, from whatever source or by
3 whatever process produced. It does not include wood alcohol or
4 alcohol which has been denatured or produced as denatured in
5 accordance with Acts of Congress and regulations promulgated
6 thereunder;

7 3. "Alcoholic beverage" means alcohol, spirits, beer and wine
8 as those terms are defined herein and also includes every liquid or
9 solid, patented or not, containing alcohol, spirits, wine or beer
10 and capable of being consumed as a beverage by human beings;

11 4. "Applicant" means any individual, legal or commercial
12 business entity, or any individual involved in any legal or
13 commercial business entity allowed to hold any license issued in
14 accordance with the Oklahoma Alcoholic Beverage Control Act;

15 5. "Beer" means any beverage of alcohol by volume and obtained
16 by the alcoholic fermentation of an infusion or decoction of barley,
17 or other grain, malt or similar products. ~~"Beer"~~ Beer may or may
18 not contain hops or other vegetable products. ~~"Beer"~~ Beer includes,
19 among other things, beer, ale, stout, lager beer, porter and other
20 malt or brewed liquors, but does not include sake, known as Japanese
21 rice wine;

22 6. "Beer keg" means any brewer-sealed, single container that
23 contains not less than four (4) gallons of beer;

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1 7. "Beer distributor" means and includes any person licensed to
2 distribute beer for retail sale in the state, but does not include a
3 holder of a small brewer self-distribution license or brewpub self-
4 distribution license. The term "~~distributor~~ distributor", as used
5 in the Oklahoma Alcoholic Beverage Control Act, shall be construed
6 to refer to a beer distributor;

7 8. "Bottle club" means any establishment in a county which has
8 not authorized the retail sale of alcoholic beverages by the
9 individual drink, which is required to be licensed to keep, mix and
10 serve alcoholic beverages belonging to club members on club
11 premises;

12 9. "Bottle service" means the sale and provision of spirits in
13 their original packages by a mixed beverage licensee to be consumed
14 in that mixed beverage licensee's club suite;

15 10. "Brand" means any word, name, group of letters, symbol or
16 combination thereof, that is adopted and used by a licensed brewer
17 to identify a specific beer, wine or spirit and to distinguish that
18 product from another beer, wine or spirit;

19 11. "Brand extension" means:

20 a. after October 1, 2018, any brand of beer or cider
21 introduced by a manufacturer in this state which
22 either:
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1 (1) incorporates all or a substantial part of the
2 unique features of a preexisting brand of the
3 same licensed brewer, or

4 (2) relies to a significant extent on the goodwill
5 associated with the preexisting brand, or

6 b. any brand of beer that a brewer, the majority of whose
7 total volume of all brands of beer distributed in this
8 state by such brewer on January 1, 2016, was
9 distributed as low-point beer, desires to sell,
10 introduces, begins selling or theretofore has sold and
11 desires to continue selling a strong beer in this
12 state which either:

13 (1) incorporates or incorporated all or a substantial
14 part of the unique features of a preexisting low-
15 point beer brand of the same licensed brewer, or

16 (2) relies or relied to a significant extent on the
17 goodwill associated with a preexisting low-point
18 beer brand;

19 12. "Brewer" means and includes any person who manufactures for
20 human consumption by the use of raw materials or other ingredients
21 any beer or cider upon which a license fee and a tax are imposed by
22 any law of this state;

23 13. "Brewpub" means a licensed establishment operated on the
24 premises of, or on premises located contiguous to, a small brewer,

1 that prepares and serves food and beverages, including alcoholic
2 beverages, for on-premises consumption;

3 14. "Cider" means any alcoholic beverage obtained by the
4 alcoholic fermentation of fruit juice, including but not limited to
5 flavored, sparkling or carbonated cider. For the purposes of the
6 manufacture of this product, cider may be manufactured by either
7 manufacturers or brewers. For the purposes of the distribution of
8 this product, cider may be distributed by either wine and spirits
9 wholesalers or beer distributors;

10 15. "Club suite" means a designated area within the premises of
11 a mixed beverage licensee designed to provide an exclusive space
12 which is limited to a patron or patrons specifically granted access
13 by a mixed beverage licensee and is not accessible to other patrons
14 of the mixed beverage licensee or the public. A club suite must
15 have a clearly designated point of access for a patron or patrons
16 specifically granted access by the mixed beverage licensee to ensure
17 that persons present in the suite are limited to patrons
18 specifically granted access by the mixed beverage licensee and
19 employees providing services to the club suite;

20 16. "Cocktail" means a type of mixed beverage as defined in
21 Section 7-102 of this title;

22 17. "Convenience store" means any person primarily engaged in
23 retailing a limited range of general household items and groceries,
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1 with extended hours of operation, whether or not engaged in retail
2 sales of automotive fuels in combination with such sales;

3 ~~17.~~ 18. "Convicted" and "conviction" mean and include a finding
4 of guilt resulting from a plea of guilty or nolo contendere, the
5 decision of a court or magistrate or the verdict of a jury,
6 irrespective of the pronouncement of judgment or the suspension
7 thereof;

8 ~~18.~~ 19. "Designated products" means the brands of wine or
9 spirits offered for sale by a manufacturer that the manufacturer has
10 assigned to a designated wholesaler for exclusive distribution;

11 ~~19.~~ 20. "Designated wholesaler" means a wine and spirits
12 wholesaler who has been selected by a manufacturer as a wholesaler
13 appointed to distribute designated products;

14 ~~20.~~ 21. "Director" means the Director of the ABLE Commission;

15 ~~21.~~ 22. "Distiller" means any person who produces spirits from
16 any source or substance, or any person who brews or makes mash, wort
17 or wash, fit for distillation or for the production of spirits
18 (except a person making or using such material in the authorized
19 production of wine or beer, or the production of vinegar by
20 fermentation), or any person who by any process separates alcoholic
21 spirits from any fermented substance, or any person who, making or
22 keeping mash, wort or wash, has also in his or her possession or use
23 a still;

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1 ~~22.~~ 23. "Distributor agreement" means the written agreement
2 between the distributor and brewer as set forth in Section 3-108 of
3 this title;

4 ~~23.~~ 24. "Drug store" means a person primarily engaged in
5 retailing prescription and nonprescription drugs and medicines;

6 ~~24.~~ 25. "Dual-strength beer" means a brand of beer that,
7 immediately prior to April 15, 2017, was being sold and distributed
8 in this state:

9 a. as a low-point beer pursuant to the Low-Point Beer
10 Distribution Act in effect immediately prior to
11 October 1, 2018, and

12 b. as strong beer pursuant to the Oklahoma Alcoholic
13 Beverage Control Act in effect immediately prior to
14 October 1, 2018,

15 and continues to be sold and distributed as such on October 1, 2018.
16 Dual-strength beer does not include a brand of beer that arose as a
17 result of a brand extension as defined in this section;

18 ~~25.~~ 26. "Fair market value" means the value in the subject
19 territory covered by the written agreement with the distributor or
20 wholesaler that would be determined in an arm's length transaction
21 entered into without duress or threat of termination of the
22 distributor's or wholesaler's rights and shall include all elements
23 of value, including goodwill and going-concern value;

24 ~~26.~~ 27. "Good cause" means:

1 a. failure by the distributor to comply with the material
2 and reasonable provisions of a written agreement or
3 understanding with the brewer, or

4 b. failure by the distributor to comply with the duty of
5 good faith;

6 ~~27.~~ 28. "Good faith" means the duty of each party to any
7 distributor agreement and all officers, employees or agents thereof
8 to act with honesty in fact and within reasonable standards of fair
9 dealing in the trade;

10 ~~28.~~ 29. "Grocery store" means a person primarily engaged in
11 retailing a general line of food, such as canned or frozen foods,
12 fresh fruits and vegetables, and fresh and prepared meats, fish and
13 poultry;

14 ~~29.~~ 30. "Hotel" or "motel" means an establishment which is
15 licensed to sell alcoholic beverages by the individual drink and
16 which contains guestroom accommodations with respect to which the
17 predominant relationship existing between the occupants thereof and
18 the owner or operator of the establishment is that of innkeeper and
19 guest. For purposes of this section, the existence of other legal
20 relationships as between some occupants and the owner or operator
21 thereof shall be immaterial;

22 ~~30.~~ 31. "Legal newspaper" means a newspaper meeting the
23 requisites of a newspaper for publication of legal notices as
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1 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma
2 Statutes;

3 ~~31.~~ 32. "Licensee" means any person holding a license under the
4 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
5 employee of such licensee while in the performance of any act or
6 duty in connection with the licensed business or on the licensed
7 premises;

8 ~~32.~~ 33. "Low-point beer" shall mean any beverages containing
9 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
10 not more than three and two-tenths percent (3.2%) alcohol by weight,
11 including but not limited to, beer or cereal malt beverages obtained
12 by the alcoholic fermentation of an infusion by barley or other
13 grain, malt or similar products;

14 ~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier
15 or bottler of any alcoholic beverage (other than beer) and its
16 subsidiaries, affiliates and parent companies;

17 ~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned
18 salesperson who is the agent authorized to act on behalf of the
19 manufacturer or nonresident seller in the state;

20 ~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner
21 and at least part of which is cooked on the licensed premises and
22 requires the use of dining implements for consumption. Provided,
23 that the service of only food such as appetizers, sandwiches, salads
24 or desserts shall not be considered "meals";

1 ~~36.~~ 37. "Mini-bar" means a closed container, either
2 refrigerated in whole or in part, or nonrefrigerated, and access to
3 the interior of which is:

- 4 a. restricted by means of a locking device which requires
- 5 the use of a key, magnetic card or similar device, or
- 6 b. controlled at all times by the licensee;

7 ~~37.~~ 38. "Mixed beverage cooler" means any beverage, by whatever
8 name designated, consisting of an alcoholic beverage and fruit or
9 vegetable juice, fruit or vegetable flavorings, dairy products or
10 carbonated water containing more than one-half of one percent (1/2
11 of 1%) of alcohol measured by volume but not more than seven percent
12 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
13 packaged in a container not larger than three hundred seventy-five
14 (375) milliliters. Such term shall include but not be limited to
15 the beverage popularly known as a "wine cooler";

16 ~~38.~~ 39. "Mixed beverages" means one or more servings of a
17 beverage composed in whole or part of an alcoholic beverage in a
18 sealed or unsealed container of any legal size for consumption on
19 the premises where served or sold by the holder of a mixed beverage,
20 beer and wine, caterer, public event, charitable event or special
21 event license; provided, that a beer, cider, or wine mixed with
22 ingredients nonalcoholic in nature including, but not limited to,
23 water, juice, sugar, fruits, or vegetables and sold by a small

1 brewer, brewpub, small farm winery, or winemaker, shall not be
2 considered a mixed beverage;

3 ~~39.~~ 40. "Motion picture theater" means an establishment which
4 is licensed by Section 2-110 of this title to sell alcoholic
5 beverages by the individual drink and where motion pictures are
6 exhibited, and to which the general public is admitted;

7 ~~40.~~ 41. "Nondesignated products" means the brands of wine or
8 spirits offered for sale by a manufacturer that have not been
9 assigned to a designated wholesaler;

10 ~~41.~~ 42. "Nonresident seller" means any person licensed pursuant
11 to Section 2-135 of this title;

12 ~~42.~~ 43. "Retail salesperson" means a salesperson soliciting
13 orders from and calling upon retail alcoholic beverage stores with
14 regard to his or her product;

15 ~~43.~~ 44. "Occupation" as used in connection with "occupation
16 tax" means the sites occupied as the places of business of the
17 manufacturers, brewers, wholesalers, beer distributors, retailers,
18 mixed beverage licensees, on-premises beer and wine licensees,
19 bottle clubs, caterers, public event and special event licensees;

20 ~~44.~~ 45. "Original package" means any container of alcoholic
21 beverage filled and stamped or sealed by the manufacturer or brewer;

22 ~~45.~~ 46. "Package store" means any sole proprietor or
23 partnership that qualifies to sell wine, beer and/or spirits for
24 off-premises consumption and that is not a grocery store,

1 convenience store or drug store, or other retail outlet that is not
2 permitted to sell wine or beer for off-premises consumption;

3 ~~46.~~ 47. "Patron" means any person, customer or visitor who is
4 not employed by a licensee or who is not a licensee;

5 ~~47.~~ 48. "Person" means an individual, any type of partnership,
6 corporation, association, limited liability company or any
7 individual involved in the legal structure of any such business
8 entity;

9 ~~48.~~ 49. "Premises" means the grounds and all buildings and
10 appurtenances pertaining to the grounds including any adjacent
11 premises if under the direct or indirect control of the licensee and
12 the rooms and equipment under the control of the licensee and used
13 in connection with or in furtherance of the business covered by a
14 license. Provided that the ABLE Commission shall have the authority
15 to designate areas to be excluded from the licensed premises solely
16 for the purpose of:

- 17 a. allowing the presence and consumption of alcoholic
18 beverages by private parties which are closed to the
19 general public, or
20 b. allowing the services of a caterer serving alcoholic
21 beverages provided by a private party.

22 This exception shall in no way limit the licensee's concurrent
23 responsibility for any violations of the Oklahoma Alcoholic Beverage
24 Control Act occurring on the licensed premises;

1 ~~49.~~ 50. "Private event" means a social gathering or event
2 attended by invited guests who share a common cause, membership,
3 business or task and have a prior established relationship. For
4 purposes of this definition, advertisement for general public
5 attendance or sales of tickets to the general public shall not
6 constitute a private event;

7 ~~50.~~ 51. "Public event" means any event that can be attended by
8 the general public;

9 ~~51.~~ 52. "Rectifier" means any person who rectifies, purifies or
10 refines spirits or wines by any process (other than by original and
11 continuous distillation, or original and continuous processing, from
12 mash, wort, wash or other substance, through continuous closed
13 vessels and pipes, until the production thereof is complete), and
14 any person who, without rectifying, purifying or refining spirits,
15 shall by mixing (except for immediate consumption on the premises
16 where mixed) such spirits, wine or other liquor with any material,
17 manufactures any spurious, imitation or compound liquors for sale,
18 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
19 or any other name;

20 ~~52.~~ 53. "Regulation" or "rule" means a formal rule of general
21 application promulgated by the ABLE Commission as herein required;

22 ~~53.~~ 54. "Restaurant" means an establishment that is licensed to
23 sell alcoholic beverages by the individual drink for on-premises
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1 consumption and where food is prepared and sold for immediate
2 consumption on the premises;

3 ~~54.~~ 55. "Retail container for spirits and wines" means an
4 original package of any capacity approved by the United States
5 Bureau of Alcohol, Tobacco ~~and~~, Firearms and Explosives;

6 ~~55.~~ 56. "Retailer" means a package store, grocery store,
7 convenience store or drug store licensed to sell alcoholic beverages
8 for off-premises consumption pursuant to a Retail Spirits License,
9 Retail Wine License or Retail Beer License;

10 ~~56.~~ 57. "Sale" means any transfer, exchange or barter in any
11 manner or by any means whatsoever, and includes and means all sales
12 made by any person, whether as principal, proprietor or as an agent,
13 servant or employee. The term ~~"sale"~~ sale is also declared to be
14 and include the use or consumption in this state of any alcoholic
15 beverage obtained within or imported from without this state, upon
16 which the excise tax levied by the Oklahoma Alcoholic Beverage
17 Control Act has not been paid or exempted;

18 ~~57.~~ 58. "Short-order food" means food other than full meals
19 including but not limited to sandwiches, soups and salads. Provided
20 that popcorn, chips and other similar snack food shall not be
21 considered ~~"short-order food"~~ short-order food;

22 ~~58.~~ 59. "Small brewer" means a brewer who manufactures less
23 than sixty-five thousand barrels of beer annually pursuant to a
24 validly issued Small Brewer License hereunder;

1 ~~59.~~ 60. "Small farm wine" means a wine that is produced by a
2 small farm winery with seventy-five percent (75%) or more Oklahoma-
3 grown grapes, berries, other fruits, honey or vegetables;

4 ~~60.~~ 61. "Small farm winery" means a wine-making establishment
5 that does not annually produce for sale more than fifteen thousand
6 (15,000) gallons of wine as reported on the United States Department
7 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
8 Wine Premises Operations (TTB Form 5120.17);

9 ~~61.~~ 62. "Sparkling wine" means champagne or any artificially
10 carbonated wine;

11 ~~62.~~ 63. "Special event" means an entertainment, recreation or
12 marketing event that occurs at a single location on an irregular
13 basis and at which alcoholic beverages are sold;

14 ~~63.~~ 64. "Spirits" means any beverage other than wine or beer,
15 which contains more than one-half of one percent (1/2 of 1%) alcohol
16 measured by volume, and obtained by distillation, whether or not
17 mixed with other substances in solution and includes those products
18 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
19 fortified wines and similar compounds, but shall not include any
20 alcohol liquid completely denatured in accordance with the Acts of
21 Congress and regulations pursuant thereto;

22 ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,
23 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage
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1 Control Act, Section ~~501~~ 1-101 et seq. of ~~Title 37 of the Oklahoma~~
2 ~~Statutes~~ this title;

3 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a
4 brewer, a cider manufacturer or an importer that acquires rights to
5 a beer or cider brand from a predecessor brewer;

6 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;

7 ~~67.~~ 68. "Territory" means a geographic region with a specified
8 boundary;

9 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits
10 distributor" means and includes any sole proprietorship or
11 partnership licensed to distribute wine and spirits in the state.
12 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage
13 Control Act, shall be construed to refer to a wine and spirits
14 wholesaler;

15 ~~69.~~ 70. "Wine" means and includes any beverage containing more
16 than one-half of one percent (1/2 of 1%) alcohol by volume and not
17 more than twenty-four percent (24%) alcohol by volume at sixty (60)
18 degrees Fahrenheit obtained by the fermentation of the natural
19 contents of fruits, vegetables, honey, milk or other products
20 containing sugar, whether or not other ingredients are added, and
21 includes vermouth and sake, known as Japanese rice wine;

22 ~~70.~~ 71. "Winemaker" means and includes any person or
23 establishment who manufactures for human consumption any wine upon
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1 which a license fee and a tax are imposed by any law of this state;
2 and

3 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment
4 operated off the licensed premises of the holder of a small farm
5 winery or winemaker license, which serves wine for on-premises or
6 off-premises consumption.

7 Words in the plural include the singular, and vice versa, and
8 words imparting the masculine gender include the feminine, as well
9 as persons and licensees as defined in this section.

10 SECTION 2. AMENDATORY 37A O.S. 2021, Section 7-102, as
11 amended by Section 1, Chapter 373, O.S.L. 2022 (37A O.S. Supp. 2022,
12 Section 7-102), is amended to read as follows:

13 Section 7-102. As used in this act:

14 1. "Cocktail" or "mixed drink" means any beverage obtained by
15 combining ingredients alcoholic in nature, whether brewed,
16 fermented, or distilled, with ingredients nonalcoholic in nature,
17 such as, but not limited to, fruit juice, lemonade, cream, or a
18 carbonated beverage;

19 2. "Single-serve wine" means a bottle or sealed container,
20 containing seven (7) fluid ounces, or less, of wine;

21 3. "Original container" means, for the purposes of ~~this act~~ the
22 Oklahoma Cocktails To Go Act of 2021 only, a container that is
23 filled, sealed and secured with a tamper-evident lid or cap by the
24 original manufacturer of the mixed drink or by a mixed beverage

1 licensee's or caterer licensee's employee at the mixed beverage
2 licensee's or caterer licensee's location;

3 4. "Sealed container" means a rigid container that contains a
4 mixed drink, is new, has never been used, has a secured lid or cap
5 designed to prevent consumption without removal of the lid or cap
6 and is tamper evident. Sealed container does not include a
7 container with a lid with sipping holes or openings for straws or a
8 container made of plastic, paper or polystyrene foam; and

9 5. "Tamper evident" means a lid or cap that has been sealed
10 with tamper-evident covers, including, but not limited to, wax dip
11 or heat-shrink wrap.

12 SECTION 3. AMENDATORY 37A O.S. 2021, Section 7-103, as
13 amended by Section 2, Chapter 373, O.S.L. 2022 (37A O.S. Supp. 2022,
14 Section 7-103), is amended to read as follows:

15 Section 7-103. A cocktail, mixed drink, or single-serve wine in
16 its original container may be transferred and sold for off-premises
17 consumption if the following requirements are met:

18 1. The cocktail, mixed beverage, or single-serve wine is
19 transferred within the licensed premises by a curbside pickup or by
20 delivery by an employee of the mixed beverage licensee, mixed
21 beverage/caterer combination licensee, or retail licensee who:

22 a. is at least ~~twenty-one (21)~~ eighteen (18) years of
23 age, and

24

1 b. upon delivery, verifies the age of the person to whom
2 the cocktail is being delivered;

3 2. If the employee delivering the cocktail, mixed drink, or
4 single-serve wine is not able to safely verify a person's age or
5 level of intoxication upon delivery, the employee shall cancel the
6 sale of alcohol and return the product to the mixed beverage license
7 holder, mixed beverage/caterer combination license holder, or retail
8 license holder;

9 3. The sealed container is placed in the trunk of the vehicle
10 or, if there is no trunk, in the vehicle's rear compartment that is
11 not readily accessible to the passenger area;

12 4. In the case of a mixed drink sealed by the mixed beverage or
13 caterer licensee, the sealed container shall be affixed with a label
14 or tag that contains the following information:

15 a. the cocktail, mixed drink or single-serve wine
16 ingredients, type and name of the alcohol,

17 b. the name, license number and address of the mixed
18 beverage licensee or caterer licensee who filled the
19 original container and sold the product,

20 c. the volume of the cocktail, mixed drink or single-
21 serve wine in the sealed container, and

22 d. verification that the sealed container was filled less
23 than seven (7) days before the date of sale; ~~and~~

