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Mark Leno bill puts fruits, veggies back in booze

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Monday, December 6, 2010



Creative barkeeps around the state may soon be breathing a sigh of relief - and breaking out the fruit, vegetables and spices - if lawmakers approve a bill being introduced by a state senator today.

The bill by Sen. Mark Leno, D-San Francisco, would clarify a post-Prohibition section of legal code that state regulators have used to crack down on bars and restaurants that infuse alcohol with different flavors - think fruit-flavored vodka or homemade sangria.

Since 2008, the state's Department of Alcoholic Beverage Control has read the decades-old section of code that prohibits "rectification" of distilled spirits to mean that house-infused drinks are illegal under California law.

Leno's bill would explicitly permit businesses to "engage in the artisanal practice of making small amounts of spirits flavored with fruits, vegetables and spices" for use at that establishment, according to a memo from his office.

The law was drafted in consultation with ABC officials, Leno said, adding that agency chief Steve Hardy expressed support for the change after meeting with small-business owners in San Francisco earlier this year.

A spokesman for the ABC could not be reached for comment.

"I put it in the context of the fiscal crisis, and the challenges to San Francisco's small businesses," Leno said. "This is exactly the wrong time for government to be interfering with the entrepreneurial spirit and opportunities for local businesses to attract customers. This will benefit restaurants and bars throughout the state, but San Francisco really leads the way in innovative service, so it will especially help businesses here."



Infusions have been an issue since the ABC sent out an advisory in 2008 defining rectification as "any process or procedure whereby distilled spirits are cut, blended, mixed or infused with any ingredient" that "changes the character" of the alcohol.

The memo left the dozens of San Francisco establishments that lure in customers with their creative concoctions - such as whiskey infused with pears, or jalapenos drowned in vodka - wondering if they could end up on the wrong side of the law. The ABC said simply mixing a drink was permissible, so long as it was immediately consumed. But in visits to bars and restaurants, they told barkeeps to forget about soaking anything longer in order to create a new flavor element, said attorney John Hinman.

"If you read the advisory, you can't make a cocktail at home," said Hinman, who had a number of clients affected by the interpretation. "It's just utterly ridiculous. ... It was simply an example of regulators gone berserk."

The code was initially written to protect drinkers from bad, homemade booze after Prohibition was lifted. ABC officials told Leno they were enforcing the arcane law in order to make sure customers were not sickened.

"I asked if in the history of the ABC has there been one reported case (where someone got ill from an infusion)," Leno said. "That's when they realized this was pretty ridiculous."

Hinman, however, doesn't think the ABC's interpretation of the code was legal in the first place. ABC agents never allowed the industry to test the theory in court, he said, because they didn't cite bars for the homemade concoctions - they would just make them pour out the libations.

He said the law, if passed, will have a major effect in San Francisco.

"We have been the center of the revolution in this particular area," Hinman said. "We are in a spirits revolution in this country, learning how to mix and match stuff we never did before. This is a very welcome move."

As he served customers late Sunday afternoon, Jason Wickler, a bartender at Americano on the Embarcadero, recalled a recent past when bars prominently displayed large jugs filled



with infusions. Yet the fruit-and-vegetable trend may have passed, he said, in favor of more subtle flavors.

"People are going for herb-infused drinks with thyme, rosemary or sage," Wickler said.

Leno hopes to garner bipartisan support for the bill, which could be taken up as early as next month. If that support exists, Leno said he will add an urgency clause that would allow it to become law as soon as it is signed by the governor, instead of the following January. For a bill to pass with an urgency clause, it must garner two-thirds support in both houses of the Legislature.

Leno, however, won't be drinking any of the newfangled concoctions.

"Quite honestly, call me old-fashioned, but I like my vodka clear," he said. "You can't improve on perfection - but I know others like infusions."

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This article appeared on page C - 1 of the San Francisco Chronicle