

SUBJECT: Prohibiting certain malt liquor drinks containing certain stimulants

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Hamilton, Quintanilla, Geren, Gutierrez, Harless, Kuempel, Menendez, Thompson

0 nays

1 absent — Driver

WITNESSES: For — Vickie Adams, Amy Bradley, Grace Stafford

Against — Alan Gray, Licensed Beverage Distributors; (*Registered, but did not testify*: Rick Donley, The Beer Alliance of Texas; Don McFarlin, Beer Alliance of Texas; Ralph Townes, Licensed Beverage Distributors; JP Urrabazo, The Beer Alliance of Texas)

On — Nicole Holt, Texans Standing Tall

BACKGROUND: The Alcoholic Beverage Code prohibits beverages made from certain materials. Sec. 101.66 prohibits a person from making or selling a beverage containing alcohol exceeding one-half of 1 percent by volume and no more than 4 percent of alcohol by weight, except for beer, wine coolers, and spirit coolers.

DIGEST: CSHB 882 would prohibit a person from making, importing, selling, or possessing for the purpose of sale malt liquor in a sealed container that contained caffeine, ginseng, taurine, or guarana.

The bill would not apply to malt liquor that contained caffeine that was a natural constituent of an ingredient other than ginseng, taurine, or guarana.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS
SAY:

Beverages that mix alcohol and certain stimulants pose serious and potentially deadly health risks. Consumption of these drinks has led to heart attacks, deadly car accidents, and serious injury.

A normal response to alcohol is to become tired or uncoordinated, but the stimulants in these beverages cancel out these effects. Caffeine can mask the sensory cues that normally would signal to a person how intoxicated he or she had become, leading to a “wide awake drunk.” Such a mental state causes people to engage in riskier behavior, such as driving while intoxicated. Increased instances of sexual assault also have been linked to consumption of these drinks, on the part of both victims and perpetrators.

The drinks are especially dangerous for young people, who lack the maturity to exercise proper judgment. Alcohol and caffeine also are both dehydrating, adding to health concerns.

The beverages build upon the popularity of energy drinks and are obviously marketed for illegal consumption by minors. The packaging closely resembles nonalcoholic energy drinks, making it difficult for retailers, parents, and consumers to identify them.

In 2010, the Food and Drug Administration (FDA) sent a warning letter to the four major manufacturers of these products about the safety risks of combining alcohol and caffeine, but the FDA cannot ban the products. In Texas, the Texas Alcoholic Beverage Commission (TABC) issued a voluntary removal request to retailers, with which most retailers complied. However, HB 882 would go a step further and protect all Texans by requiring the removal of these drinks.

The exception that the bill would provide for malt liquor beverages containing caffeine resulting naturally from an ingredient in a drink would ensure that products such as chocolate beer would not be unintentionally prohibited.

OPPONENTS
SAY:

Some alcoholic beverages have naturally occurring caffeine from other ingredients. HB 882 could have the unintended consequence of banning alcoholic drinks that contained caffeine, like kahlua. The exception in the bill should be worded differently to ensure this would not occur.

In the unfortunate cases noted, the people involved already were breaking other laws and engaging in risky behavior. Banning certain beverages would not stop people from making bad choices.

HB 882 would create a slippery slope of regulating alcoholic beverages containing caffeine. Many popular caffeinated cocktails, such as Red Bull and vodka and rum and Coke, could be affected. This bill would set a dangerous precedent for beverage regulation.

The bill also is unnecessary because when the TABC issued a voluntary recall, the beverages in question were removed and the large retailers stopped selling them.