

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 287 Controlled Substances

SPONSOR(S): Criminal Justice Subcommittee; Jacobs and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 764

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|-----------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N, As CS | Cox | Cunningham |
| 2) Justice Appropriations Subcommittee | | McAuliffe | Lloyd |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse” of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. Cannabis and heroin are examples of Schedule I drugs.

Mitragyna speciosa korth, also known as “Kratom,” is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia. The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States, but anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.

Kratom abuse is not currently monitored by any national drug abuse surveys and it is not scheduled under the Controlled Substances Act.

The bill directs the Office of the Attorney General (AG), in collaboration with the Department of Children and Families’ Substance Abuse and Mental Health Program Office and the Florida Department of Law Enforcement, to gather specified information on mitragyna speciosa korth and make a recommendation on whether the substance should be placed in a controlled substance schedule. The bill requires the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

According to the AG and the Florida Department of Law Enforcement, the reporting requirements of this bill will have an insignificant impact and can be absorbed within current resources.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 893, F.S.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Controlled Substance Act) and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substance listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I drugs.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substance involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Section 395.035(5), F.S., authorizes the AG to request from the Department of Health and the Department of Law Enforcement a medical and scientific evaluation of any new substance that is considered to have potential for abuse similar to or greater than a schedule I substance, to recommend the appropriate classification, if any, of any new substance as a controlled substance.

Kratom

Kratom, also known as *mitragyna speciosa* korth, is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia.⁶ Kratom is primarily used orally as a tea or by chewing the leaves,⁷ and has been used as an herbal drug in Southeast Asia for decades, most notably as a stimulant or a substitute for opium.⁸ It has also been used to manage opioid withdrawal symptoms by chronic opioid users.⁹ It has recently become very prevalent in the United States.

The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States.¹⁰ However, anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.¹¹

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

² See, s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ *Kratom*, Drug Enforcement Administration, Office of Divison Control, Drug and Chemical Evaluation section, p. 1 (on file with the Criminal Justice Subcommittee)(hereinafter cited as “DEA Report”).

⁷ DEA Report, p. 1 and *What is Kratom and is it Dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Kratom under attack in Florida legislature and Palm Beach County*, <http://www.examiner.com/article/kratom-under-attack-florida-legislature-and-palm-beach-county> (last visited March 19, 2015).

Kratom has been described to have both sedative and stimulant effects.¹² At low doses, it is reported to increase alertness, physical energy, talkativeness, and social behavior.¹³ At high doses, opiate, sedative, and euphoric effects, such as pain relief and relaxation, are produced.¹⁴ The effects occur within five to ten minutes after ingestion and last for two to five hours.¹⁵ The DEA states that acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination, and loss of appetite.¹⁶

There are some reports of deaths associated with Kratom, but often the victims also had other psychiatric drugs in their system or the person was taking a mixture of the drug with a known opioid compound.¹⁷

Kratom abuse is not currently monitored by any national drug abuse surveys and is not scheduled under the Controlled Substances Act.¹⁸

Recent Efforts to Ban Kratom

Several Florida counties have attempted to ban Kratom, including Broward, Palm Beach, and Sarasota counties. Sarasota County does currently regulate the distribution of Kratom.¹⁹ Both Palm Beach County and Broward County failed to pass ordinances that banning the substance during recent county commission meetings.²⁰ Many of the commissioners in both counties stated that there was a need for more research before moving forward on a ban of Kratom.²¹

Kratom has been banned by the U.S. Army and Navy and has been placed on a watch list by DEA.²²

Effect of the Bill

The bill directs the Office of the Attorney General (AG), in collaboration with the Department of Children and Families' (DCF) Substance Abuse and Mental Health Program Office and the Florida Department of Law Enforcement (FDLE), to gather specified information on *mitragyna speciosa korth* and make a recommendation on whether the substance should be placed in a controlled substance schedule. The bill requires the AG to consult and gather information from the following:

- Substance abuse treatment providers;
- Local law enforcement agencies;
- Local governments, including those who have banned the substance;
- DCF;
- FDLE;
- Research from medically accepted journals; and
- Medical doctors specializing in addiction medicine or currently researching the effects of *mitragyna speciosa korth*.

The bill requires the AG to collect various types of data on *mitragyna speciosa korth* including:

- Whether the substance has an actual or relative potential for abuse;
- Any scientific evidence of the substance's pharmacological effect;
- The current scientific knowledge related to psychological or physical dependence on the substance;

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *What is kratom and is it dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

¹⁸ DEA Report, p. 1.

¹⁹ *Sarasota County bans sale of synthetic marijuana*, <http://www.heraldtribune.com/article/20140212/ARTICLE/140219895/0/search> (last visited March 19, 2015). The Sarasota County ordinance regulates the marketing and packaging of the substance

²⁰ *Broward opts not to ban kratom – for now*, <http://www.sun-sentinel.com/local/broward/fl-kratom-ban-broward-20141028-story.html> (last visited March 19, 2015).

²¹ *Id.*

²² *Id.*

- The history and current pattern of abuse of the substance, including the scope, duration, and significance of abuse; and
- What, if any, risk the substance poses to the public health.

The bill requires the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

The bill also provides the following legislative findings:

WHEREAS, the Legislature finds that substance abuse is a major health problem that affects multiple service systems and leads to such profoundly disturbing consequences as serious impairment, chronic addiction, criminal behavior, vehicular casualties, spiraling health care costs, AIDS, and business losses, and significantly affects the culture, socialization, and learning ability of children within our schools and educational systems, and

WHEREAS, the threat of Designer Drugs and Misbranded Consumer Commodities is significant and presents a threat to the public health, safety, and welfare of Floridians, and

WHEREAS, there is no currently accepted medicinal use of mitragyna speciosa korth, and any compound or derivative thereof, also known as "Kratom," and

WHEREAS, in the absence of FDA testing and regulation and with a lack of knowledge regarding the long term health effects and addictive properties of mitragyna speciosa korth, and any compound or derivative thereof, there is a need for further research into this substance.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute directing the Attorney General to conduct a study on mitragyna speciosa korth.

Section 2. Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

According to the AG and the FDLE the reporting requirements of this bill will have an insignificant impact and can be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 395.035(5), F.S., authorizes the AG to request from the Department of Health (DOH) and the Department of Law Enforcement a medical and scientific evaluation of any new substance that is considered to have potential for abuse similar to or greater than a schedule I substance, to recommend the appropriate classification, if any, of any new substance as a controlled substance.

Because of this, DOH would be the more appropriate agency to assist in the reporting requirements of this bill. According to DCF, they are inappropriate agency to assist with the determination as to whether Kratom needs to be scheduled.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Criminal Justice Subcommittee adopted one strike-all amendment and an amendment to the strike-all amendment and reported the bill favorably. The amendments collectively:

- Provide legislative findings;
- Direct the AG to gather specified information on mitragyna speciosa korth and make a recommendation on whether the substance should be placed in a controlled substance schedule; and
- Require the AG to report its findings and present them to the President of the Senate and the Speaker of the House of Representatives by December 31, 2015.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.