

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 73 Controlled Substances
SPONSOR(S): Jacobs; Harrell and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cox	White
2) Justice Appropriations Subcommittee	12 Y, 1 N, As CS	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.

Chapter 893, F.S., also contains a variety of provisions criminalizing behavior related to controlled substances.

Mitragyna speciosa korth, also known as “Kratom,” is a botanical derived from 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. However, the DEA has listed Kratom as a Drug and Chemical of Concern.

The bill amends s. 893.03(1)(c), F.S., adding mitragyna speciosa, the substance known as Kratom, to Schedule I of Florida’s controlled substances schedules. This classification includes any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, of Kratom.

The bill also provides that the schedule classification does not apply to any drug product approved by the United States Food and Drug Administration which contains Kratom.

The bill amends s. 893.13, F.S., creating a new misdemeanor offense for selling, delivering, manufacturing, or bringing into this state, the scheduled substance known as Kratom.

On October 28, 2015, the Criminal Justice Impact Conference determined that the bill will have no impact on prison beds. The bill creates a new misdemeanor offense for possessing, purchasing, selling, delivering, manufacturing, or bringing into this state the substance known as Kratom.

To the extent that persons become subject to such criminal penalties, the bill may result in an indeterminate positive jail bed impact on local governments.

The bill is effective on October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.

Kratom

In recent years, synthetic drugs have emerged in Florida. Synthetic drugs are used as recreational drugs and have been marketed as a legal alternative to illegal methods of getting “high.”⁶ They can be purchased on the Internet, in smoke shops, and convenience stores.⁷ One of the newest substances that has emerged in Florida is a botanical substance known as “Kratom.” Kratom, while not a synthetic drug, has been marketed and distributed in very similar manner as synthetic drugs.

Kratom, also known as *mitragyna speciosa* korth or 7-Hydroxymitragynine (an active ingredient of Kratom), is a botanical derived from a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia.⁸ Kratom is primarily used orally as a tea or by chewing the leaves,⁹ and has been used as an herbal drug in Southeast Asia for decades, most notably as a stimulant or a substitute for opium.¹⁰ It has also been used to manage opioid withdrawal symptoms by chronic opioid users.¹¹ It has recently become very prevalent in the United States.

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 U.S. DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in “Spice” and K2” Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited Jan. 29, 2016).

⁷ Fla. Fusion Ctr., *Synthetic Substances Ban, Brief # 12-150*, FLA. DEPT. OF LAW ENFORCEMENT (March 23, 2012), www.tspd.us/Substances_Ban.pdf (last visited Jan. 27, 2016).

⁸ *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”).

⁹ 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 January 26, 2016).

¹⁰ *Id.*

¹¹ *Id.*

The United States Food and Drug Administration (FDA) provides Kratom is a botanical that qualifies as a dietary ingredient.¹² Further, FDA reports that there does not appear to be a history of use or other evidence of safety establishing that Kratom will reasonably be expected to be safe as a dietary ingredient.¹³ Additionally, the Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States.¹⁴ 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.¹⁵

Kratom has been described to have both sedative and stimulant effects.¹⁶ At low doses, it is reported to increase alertness, physical energy, talkativeness, and social behavior.¹⁷ At high doses, opiate, sedative, and euphoric effects, such as pain relief and relaxation, are produced.¹⁸ The effects occur within five to ten minutes after ingestion and last for two to five hours.¹⁹ The DEA states that acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination, and loss of appetite.²⁰

Kratom has been linked to seizures and respiratory depression, but deaths related to it appear rare.²¹ 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.²²

Kratom abuse is not currently monitored by any national drug abuse surveys and is not scheduled under the Controlled Substances Act.²³ This means that all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription.²⁴

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.²⁵ Both Palm Beach County and Broward County failed to pass ordinances banning the substance during recent county commission meetings.²⁶ Many of the commissioners in both counties stated that there was a need for more research before moving forward on a ban of Kratom.²⁷

Kratom has been banned by the U.S. Army and Navy and recently listed as a Drug and Chemical of Concern by DEA.²⁸ Indiana, Tennessee, Vermont, and Wisconsin have banned the substance.²⁹

¹² United States Food and Drug Administration, *Import Alert 54-15*, January 22, 2016 (on file with the Criminal Justice Subcommittee).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *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 January 26, 2016).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Alan Schwarz, *Kratom, an Addict's Alternative, Is Found to Be Addictive Itself*, *The New York Times*, January 2, 2016, http://mobile.nytimes.com/2016/01/03/us/kratom-an-addicts-alternative-is-found-to-be-addictive-itself.html?_r=1&referrer=https://www.google.com/ (last visited January 26, 2016) (hereinafter cited as "NEW YORK TIMES ARTICLE").

²² *What is kratom and is it dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited January 26, 2016).

²³ DEA Report, p. 1.

²⁴ *Kratom – Mitragnyna speciosa, The Impact to Florida*, Florida Department of Law Enforcement, Office of Statewide Intelligence, Drug Report, December 2015, at p. 4-5 (on file with the Criminal Justice Subcommittee) (hereinafter cited as "FDLE Report").

²⁵ *Sarasota County bans sale of synthetic marijuana*, <http://www.heraldtribune.com/article/20140212/ARTICLE/140219895/0/search> (last visited January 26, 2016). The Sarasota County ordinance regulates the marketing and packaging of the substance.

²⁶ *Broward opts not to ban kratom – for now*, <http://www.sun-sentinel.com/local/broward/fl-kratom-ban-broward-20141028-story.html> (last visited January 26, 2016).

²⁷ *Id.*

²⁸ *Drugs of Abuse 2015 Edition: A DEA Resource Guide*; U.S. Department of Justice, Drug Enforcement Administration, at pg 84 <http://www.dea.gov/druginfo/factsheets.shtml> (last visited January 26, 2016). See also Paul Brennan, *Banning kratom: Wisconsin*

Florida Department of Law Enforcement (FDLE) Drug Report on Kratom

In December 2015, FDLE published a drug report which examined the extent to which Kratom is impacting public safety in the state of Florida.³⁰ The report provides background on the plant, the current legal status in Florida and other states, and makes conclusions about its effect on Florida. To arrive at its conclusions, FDLE evaluated the number of cases reported in Florida and other states which cite to the use or abuse of Kratom and the facts surrounding these cases linked to Kratom.³¹ Information evaluated by FDLE included, but was not limited to, the frequency of Kratom-linked reports, any negative effects of Kratom use or abuse, and anecdotal reports regarding such use or abuse.³² FDLE also conducted investigations in the Pensacola area to determine the ease of accessing Kratom in local stores and online.³³

The report also mentioned that academic studies, including research by the University of Mississippi, School of Pharmacy, are ongoing.³⁴

Based on its research, FDLE concluded that Kratom does not currently constitute a significant risk to the safety and welfare of Florida residents.³⁵ Additionally, the report cites that the Florida Department of Health has found that there are no pervasive health issues can be attributed to the ingestion of Kratom products in Florida.³⁶ FDLE concluded that diagnostic tests to reveal the presence of Kratom are not routinely conducted during emergency room visits and that there is an intelligence gap in reporting related to the ingestion and exposure of Kratom.³⁷

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., adding the substance known as Kratom, to Schedule I, category (c) of Florida's controlled substances schedules, which by definition is a substance or chemical with no currently accepted medical use and high potential for abuse. The bill describes the substance Kratom to include:

Mitragynine or 7-Hydroxymitragynine, except for any drug product approved by the United States Food and Drug Administration which contains Mitragynine or 7-Hydroxymitragynine, including any of their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

The bill further provides that the Schedule 1 classification does not apply to any drug product approved by the United States Food and Drug Administration which contains Mitragynine or 7-Hydroxymitragynine.

Additionally, the bill amends s. 893.13, F.S., related to prohibited acts, creating a new first degree misdemeanor for a person selling, delivering, manufacturing, or bringing into this state a controlled substance described in s. 893.03(1)(c)181. (Kratom).³⁸

As noted above, the bill classifies Kratom as a Schedule 1 controlled substance. The bill also reenacts a number of criminal offenses involving Schedule 1 controlled substances, including, in part, driving or

treats a safe herbal supplement like a dangerous drug, November 25, 2015, <http://watchdog.org/249079/wi-kratom-ban/> (last visited February 3, 2016).

²⁹ NEW YORK TIMES ARTICLE

³⁰ FDLE Report, at p. 4.

³¹ FDLE Report, p. 7-13.

³² *Id.*

³³ FDLE Report, p. 7

³⁴ FDLE Report, p. 4.

³⁵ FDLE Report, p. 13.

³⁶ *Id.*

³⁷ *Id.*

³⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

boating under the influence, murder, and open house parties. Thus, a person may be subject to the criminal penalties under any of the reenacted offenses based on Kratom.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Reenacts s. 39.01, F.S., relating to definitions.

Section 4. Reenacts s. 316.193, F.S., relating to driving under the influence; penalties.

Section 5. Reenacts s. 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.

Section 6. Reenacts s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."

Section 7. Reenacts s. 440.102, F.S., relating to drug-free workplace program requirements.

Section 8. Reenacts s. 458.3265, F.S., relating to pain-management clinics.

Section 9. Reenacts s. 459.0137, F.S., relating to pain-management clinics.

Section 10. Reenacts s. 782.04, F.S., relating to murder.

Section 11. Reenacts s. 787.06, F.S., relating to human trafficking.

Section 12. Reenacts s. 817.563, F.S., relating to controlled substance named or described in s. 893.03; sale of substance in lieu thereof.

Section 13. Reenacts s. 831.31, F.S., relating to counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.

Section 14. Reenacts s. 856.015, F.S., relating to open house parties.

Section 15. Reenacts s. 893.02, F.S., relating to definitions.

Section 16. Reenacts s. 893.035, F.S., relating to control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.

Section 17. Reenacts s. 893.0356, F.S., relating to control of new substances; findings of fact; "controlled substance analog" defined.

Section 18. Reenacts s. 893.05, F.S., relating to practitioners and persons administering controlled substances in their absence.

Section 19. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

Section 20. Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 21. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 22. Provides an effective date of October 1, 2016.

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:

On October 28, 2015, the Criminal Justice Impact Conference determined that the bill will have no impact on prison beds.

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 creates a new first degree misdemeanor for possessing, purchasing, selling, delivering, manufacturing, or bringing into this state the substance known as Kratom. To the extent that persons possessing, purchasing, selling, delivering, manufacturing, or bringing into this state the substance Kratom are subject to the criminal penalties of this new offense, the bill may result in an indeterminate jail bed impact on local governments (i.e., increase the need for jail beds).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2016, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the penalties for persons who purchase or

possess Kratom, leaving only the selling, delivering, manufacturing, or bringing into this state Kratom subject to a first degree misdemeanor charge.