

BILL ANALYSIS

C.S.H.B. 1097
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Kratom is an herbal product used by tens of thousands of Texans for purposes such as relieving pain and treating symptoms of depression. Unfortunately, there are reports of unscrupulous vendors lacing kratom with dangerous substances causing enhanced effects the consumer does not expect. Texas has a significant number of legitimate kratom processors and distributors who are disadvantaged by these unscrupulous vendors who endanger consumers and enrich themselves at the expense of the legitimate processors. C.S.H.B. 1097 seeks to address this issue and enhance consumer protections by enacting the Texas Kratom Consumer Health and Safety Protection Act, which regulates the processing and sale of kratom.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 1097 amends the Health and Safety Code to enact the Texas Kratom Consumer Health and Safety Protection Act, which regulates the processing and sale of kratom, which is any part of the leaf of the plant *Mitragyna speciosa*, and food products containing any form of kratom. Accordingly, the bill provides the following:

- a kratom processor must label each kratom product with the product use directions necessary to ensure safe and effective use of the product by a consumer, including the recommended serving size for the product;
- a kratom retailer may not sell a kratom product that is not properly labeled; and
- a kratom processor or retailer may not prepare, distribute, sell, or offer to sell a kratom product that:
 - is adulterated with a dangerous non-kratom substance affecting the quality or strength of the product to a degree that renders the product injurious to a consumer;
 - is contaminated with a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by the Texas Controlled Substances Act;
 - has a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the overall alkaloid composition of the product; or
 - contains any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

C.S.H.B. 1097 creates a Class C misdemeanor offense for a person who distributes, sells, or exposes for sale a kratom product to someone who is younger than 18 years of age.

C.S.H.B. 1097 subjects a person who violates the act to a civil penalty in the amount of \$250 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation. Each day a violation continues or occurs is a separate violation for purposes of imposing such a penalty. The bill exempts a kratom retailer from civil liability for a violation, other than with respect to distribution or sale to a minor, if the retailer proves by a preponderance of the evidence that the violation was unintentional and due to the retailer's good faith reliance on the representation of another kratom processor. The bill authorizes the attorney general or the applicable district, county, or municipal attorney to bring an action to recover a civil penalty. The bill establishes that the civil and criminal penalties it prescribes are in addition to any other penalties prescribed by law.

C.S.H.B. 1097 authorizes the executive commissioner of the Health and Human Services Commission to adopt rules consistent with the bill's provisions as necessary to ensure the safe consumption and distribution of kratom and kratom products. For purposes of the bill, "food" has the meaning assigned under the Texas Food, Drug, and Cosmetic Act.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1097 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the bill's short title and redefines the term "food."

In the original, the bill's civil penalty served as the only enforcement of the prohibition against distributing, selling, or exposing for sale a kratom product to someone who is younger than 18 years of age, whereas the substitute establishes a Class C misdemeanor as the penalty for engaging in this conduct.

The substitute includes a provision not in the original establishing that the civil and criminal penalties provided under the bill are in addition to any other penalties prescribed by law.

The substitute authorizes the executive commissioner to adopt certain rules, whereas the original granted no rulemaking authority.