87R19639 KKR-F

By:  Lozano H.B. No. 1097

Substitute the following for H.B. No. 1097:

By:  Klick C.S.H.B. No. 1097

A BILL TO BE ENTITLED

AN ACT

relating to the processing and sale of kratom and kratom products; providing civil penalties; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  This Act shall be known as the Texas Kratom Consumer Health and Safety Protection Act.

SECTION 2.  Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 444 to read as follows:

CHAPTER 444. MANUFACTURE, DISTRIBUTION, AND SALE OF KRATOM PRODUCTS

Sec. 444.001.  DEFINITIONS. In this chapter:

(1)  "Food" has the meaning assigned by Section 431.002.

(2)  "Kratom" means any part of the leaf of the plant Mitragyna speciosa.

(3)  "Kratom processor" means a person who:

(A)  manufactures, prepares, distributes, or maintains kratom products for sale;

(B)  advertises, represents, or holds oneself out as a seller, preparer, or manufacturer of kratom products;

(C)  is responsible for ensuring the purity and proper labeling of kratom products; or

(D)  packages or labels kratom products.

(4)  "Kratom product" means a food, including an extract, capsule, or pill, containing any form of kratom.

(5)  "Kratom retailer" means a kratom processor who engages in selling kratom products to consumers or who advertises, represents, or holds oneself out as a person who sells kratom products to consumers.

Sec. 444.002.  LABELING REQUIRED. (a) A kratom processor shall 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.

(b)  A kratom retailer may not sell a kratom product that is not properly labeled under this section.

Sec. 444.003.  ADULTERATED, CONTAMINATED, AND PROHIBITED PRODUCTS. A kratom processor or kratom retailer may not prepare, distribute, sell, or offer to sell a kratom product that:

(1)  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;

(2)  is contaminated with a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act);

(3)  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

(4)  contains any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Sec. 444.004.  OFFENSE FOR DISTRIBUTION OR SALE OF KRATOM PRODUCT TO MINOR. (a) A person commits an offense if the person distributes, sells, or exposes for sale a kratom product to someone who is younger than 18 years of age.

(b)  An offense under this section is a Class C misdemeanor.

Sec. 444.005.  CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in the amount of:

(1)  $250 for the first violation;

(2)  $500 for the second violation; and

(3)  $1,000 for each subsequent violation.

(b)  Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(c)  A kratom retailer is not liable for a civil penalty under this section for a violation of Section 444.002 or 444.003 if the kratom retailer proves by a preponderance of the evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

(d)  The attorney general, the district or county attorney for the county, or the municipal attorney of the municipality in which the violation is alleged to have occurred may bring an action to recover a civil penalty under this section.

Sec. 444.006.  PENALTIES UNDER OTHER LAW. The penalties prescribed by this chapter are in addition to any other penalties prescribed by law, including penalties prescribed by Chapters 431 and 481.

Sec. 444.007.  RULES. The executive commissioner may adopt rules consistent with this chapter as necessary to ensure the safe consumption and distribution of kratom and kratom products.

SECTION 3.  This Act takes effect September 1, 2021.