

BILL ANALYSIS

H.B. 861
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

"Kratom" refers to an herbal substance derived from a certain plant that is used to manage pain, depression, and addiction. While studies supported by the National Institute on Drug Abuse have validated the legitimate use of kratom and kratom-based products, there are also reports of unscrupulous vendors who chose to sell adulterated or low-quality kratom. Multiple states have passed laws to ensure that kratom is used safely. H.B. 861 seeks to join those states and establish needed consumer protections with respect to the sale of kratom in Texas by enacting the Texas Kratom Consumer Health and Safety Protection Act.

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

H.B. 861 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. Accordingly, the bill provides the following:

- a kratom processor must label each kratom product with the product use directions necessary to ensure safe use of the product by a consumer, including the recommended serving size for the product;
- a kratom retailer may only sell a kratom product that is 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;
 - contains 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.

H.B. 861 creates a Class C misdemeanor offense for a person who distributes, sells, or exposes for sale a kratom product to an individual younger than 18 years of age.

H.B. 861 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 of the act, 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.

H.B. 861 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's provisions, H.B. 861 defines the following terms:

- "food" has the meaning assigned under the Texas Food, Drug, and Cosmetic Act;
- "kratom" means any part of the leaf of the plant *Mitragyna speciosa*;
- "kratom processor" means a person who:
 - manufactures, prepares, distributes, or maintains kratom products for sale;
 - advertises, represents, or holds oneself out as a manufacturer, preparer, or seller of kratom products;
 - is responsible for ensuring the purity and proper labeling of kratom products; or
 - packages or labels kratom products;
- "kratom product" means a food, including an extract, capsule, or pill, containing any form of kratom; and
- "kratom retailer" means a kratom processor who sells kratom products to consumers or who advertises, represents, or holds oneself out as a person who sells kratom products to consumers.

EFFECTIVE DATE

September 1, 2023.