

BILL ANALYSIS

Senate Research Center
89R6310 KRM-D

S.B. 1868
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years there has been an explosion of dangerous drugs being sold at gas stations across this state to unsuspecting customers. Kratom, Tianeptine, and mushrooms have begun to plague our communities.

Kratom is a plant from Southeast Asia that is often synthetically altered and sold as a highly potent drug. The legislature was concerned about synthetic Kratom products in 2023 and successfully passed S.B. 497 88(R), to regulate Kratom products. Unfortunately like many other gas station drugs, regulation has been inefficient and stores continue to sell high potency synthetic Kratom products.

Additionally, Tianeptine, also known as "Gas Station Heroin," is another highly concerning drug that is widely available in this state. Tianeptine is a European pharmaceutical that was originally designed to treat depression. However, Tianeptine has never been approved by the Food and Drug Administration for use in the United States. Unfortunately, stores have begun selling extremely high doses of Tianeptine as a "supplement." These products have been shown to activate the same brain receptors as opioids do, like morphine, oxycodone, and fentanyl.

Texas has banned Psilocybin (magic mushrooms) for many years. However, clever chemists have identified additional mushroom varieties that produce similar hallucinogenic effects to Psilocybin. These mushrooms and hallucinogenic plant varieties are unregulated and widely available in this state.

S.B. 1868 seeks to add Kratom and Tianeptine to Penalty Group 1 of the Texas Controlled Substances Act. Additionally, this bill establishes a new Hallucinogenic Plant chapter that prohibits a variety of mushrooms and plants that create hallucinogenic effects. To make matters worse, many of these products are being packaged together to produce even greater intoxicating and hallucinogenic effects. This bill will help remove these dangerous drugs from our communities.

As proposed, S.B. 1868 amends current law relating to adding certain substances to the Texas Controlled Substances Act; prohibits the production, manufacture, distribution, delivery, sale, and possession of certain hallucinogenic substances; and creates criminal offenses.

RULEMAKING AUTHORITY

Rulemaking authority expressly granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 3 (Section 444.007, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 481.102, Health and Safety Code, as follows:

Sec. 481.102. PENALTY GROUP 1. Provides that Penalty Group 1 consists of certain opiates, opium derivatives, and substances, however produced, except those narcotic drugs listed in another group, including kratom and kratom products, including Mitragynine, mitragynine naturally contained in the plant *Mitragyna speciosa* Korth,

synthetic equivalents of the substances contained in the plant, and their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers and 7-Hydroxymitragynine, 7-hydroxymitragynine naturally contained in the plant *Mitragyna speciosa* Korth, synthetic equivalents of the substances contained in the plant, and their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; and Tianeptine. Makes nonsubstantive changes.

SECTION 2. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 491, as follows:

CHAPTER 491. HALLUCINOGENIC SUBSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 491.001. DEFINITION. Defines "hallucinogenic substance."

SUBCHAPTER B. PROHIBITED ACTS; PENALTIES

Sec. 491.051. OFFENSE: PRODUCTION, MANUFACTURE, DISTRIBUTION, DELIVERY, SALE, OR POSSESSION OF HALLUCINOGENIC SUBSTANCE. (a) Provides that a person commits an offense if the person knowingly produces, manufactures, distributes, delivers, sells, or possesses with intent to produce, manufacture, distribute, deliver, or sell a material, compound, mixture, or preparation that contains a hallucinogenic substance.

(b) Provides that a person commits an offense if the person knowingly possesses a material, compound, mixture, or preparation that contains a hallucinogenic substance.

(c) Provides that an offense under Subsection (a) is a state jail felony.

(d) Provides that an offense under Subsection (b) is a Class B misdemeanor.

(e) Authorizes a person, if conduct constituting an offense under this section also constitutes an offense under another provision of law, to be prosecuted under either this section or the other provision.

Sec. 491.052. CIVIL PENALTY. (a) Authorizes the attorney general or a district, county, or city attorney to institute an action in district court to collect a civil penalty from a person who produces, manufactures, distributes, delivers, sells, or possesses with intent to produce, manufacture, distribute, deliver, or sell a material, compound, mixture, or preparation that contains a hallucinogenic substance.

(b) Prohibits the civil penalty from exceeding \$25,000 a day for each offense. Provides that each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) Provides that a venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.

(d) Requires that a civil penalty recovered in a suit instituted by a local government under this section be paid to that local government.

Sec. 491.053. NO DEFENSE. Provides that in a prosecution or civil action under this subchapter, the fact that the hallucinogenic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

Sec. 491.054. PENALTIES UNDER OTHER LAW. Provides that a penalty imposed for an offense under this subchapter is in addition to any civil or administrative penalty or other sanction imposed by law.

SECTION 3. Repealer: Chapter 444 (Manufacture, Distribution, and Sale of Kratom Products), Health and Safety Code, as added by Chapter 2 (S.B. 497), Acts of the 88th Legislature, Regular Session.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Provides that, to the extent of any conflict, this Act prevails over another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: September 1, 2025.