

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 147

(Senator Young)

Judicial Proceedings

Judiciary

Criminal Law – Kratom – Prohibited Purchase, Distribution, or Sale

This bill prohibits a person from purchasing for, distributing, or selling kratom to an individual younger than age 18, except under specified circumstances. A person who violates this prohibition is subject to a civil penalty of up to \$300 for a first violation, \$1,000 for a second violation occurring within 24 months after the first violation, and \$3,000 for each subsequent violation occurring within 24 months after the preceding violation. If a violation is committed by a person acting on behalf of a retailer, the retailer must pay the civil penalty. The bill establishes provisions relating to the issuance of civil citations as well as procedural requirements for the prosecution of violations.

Fiscal Summary

State Effect: General fund expenditures increase by \$56,400 in FY 2021 only for the Judiciary to make one-time computer programming changes. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	56,400	0	0	0	0
Net Effect	(\$56,400)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local health department expenditures increase for training and enforcement, as discussed below. Minimal increase in local revenues due to the bill’s monetary penalty provisions.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Kratom” means the plant *Mitragyna speciosa* or any part of the plant, including all derivatives, extracts, isomers, acids, salts, and salts of isomers, whether growing or not, containing mitragynine or 7-hydroxymitracynine.

The bill’s prohibition does not apply to the distribution of kratom to an individual younger than age 18 who is acting solely as the agent of the individual’s employer if the employer distributes kratom for commercial purposes.

In a prosecution for a violation, it is a defense that the defendant examined the purchaser’s or recipient’s driver’s license or other valid government-issued identification that positively identified the purchaser or recipient as at least 18 years of age.

A sworn law enforcement officer, a county health officer, or a designee of a county health officer may issue a civil citation for a violation of the bill’s prohibition. A “designee” is a retired sworn law enforcement officer employed by a county health officer or an employee of a local health department trained in civil enforcement.

The bill requires a citation to contain specified information and establishes procedural requirements for the prosecution of violations, including elections to stand trial. Adjudication of a violation of the prohibition is not a criminal conviction for any purpose.

The District Court must remit any penalties collected for a violation of the prohibition to the county in which the violation occurred.

Current Law/Background: There is no ban on kratom in the State. Kratom is an herbal extract that comes from the leaves of an evergreen tree (*Mitragyna speciose*) grown in Southeast Asia. Kratom leaves can be chewed, and dry kratom can be swallowed or brewed. Kratom extract can be used to make a liquid product. Liquid kratom is marketed as a muscle pain reliever, appetite suppressor, and as a treatment for cramps and diarrhea.

Mitragynine, a chemical contained in kratom, works like opioid drugs, such as codeine and morphine. Some practitioners of Asian traditional medicine consider kratom to be a substitute for opium. The effects of kratom vary by dosage. At low doses, kratom acts as a stimulant, making users feel more energetic. At higher doses, it reduces pain and may bring on euphoria. At very high doses, kratom acts as a sedative.

According to the National Conference of State Legislatures, as of April 2018, at least six states (Alabama, Arkansas, Indiana, Tennessee, Vermont, and Wisconsin) and four cities (Denver, San Diego, Sarasota, and Washington, DC) had banned kratom, and Illinois and Louisiana had banned the sale of kratom to minors.

In a statement released on February 6, 2018, the U.S. Food and Drug Administration (FDA) advised that it has received information regarding 44 reported deaths associated with kratom. FDA expressed particular concern about the use of kratom to treat opioid withdrawal. According to FDA, an analysis of fatal cases raises concern that kratom is being used in combination with other drugs that affect the brain, including illicit drugs, prescription opioids, benzodiazepines, as well as various over-the-counter medications.

State Expenditures: General fund expenditures for the Judiciary increase by \$56,352 in fiscal 2021 only for one-time computer reprogramming of District Court cash registers to remit civil penalties to the county where the violation occurred, as required by the bill.

Local Revenues: The bill directs any civil penalties collected to the county in which the violation occurred. Accordingly, local revenues increase minimally as a result of the bill's civil penalty provisions.

Local Expenditures: The bill authorizes a sworn law enforcement officer, a county health officer, or a designee of a county health officer to issue a civil citation for a violation of the bill's prohibition. To the extent local health departments enforce the bill, expenditures increase. The Maryland Association of County Health Officers (MACHO) advises that local health departments are unable to enforce the bill's prohibition without additional funding for training, enforcement activities, and submission of violations. MACHO further advises that even if local health departments work with police officers to conduct enforcement, they will still have to conduct the processing and paperwork required for any violations.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 283 (Delegate Kerr, *et al.*) - Judiciary.

Information Source(s): Howard, Montgomery, and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Maryland Association of County Health Officers; Department of Public Safety and Correctional Services; Department of State Police; U.S. Food and Drug Administration; Mayo Clinic; National Conference of State Legislatures; WebMD; Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2020
rh/aad Third Reader - March 18, 2020
Revised - Amendment(s) - March 18, 2020

Analysis by: Hillary J. Cleckler

Direct Inquiries to:
(410) 946-5510
(301) 970-5510