

SENATE BILL 147

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0lr1676
CF HB 283

By: **Senator Young**

Introduced and read first time: January 10, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 5, 2020

CHAPTER _____

AN ACT concerning

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

FOR the purpose of ~~listing certain substances on Schedule I to designate them as controlled dangerous substances that may not be legally used, possessed, or distributed, and generally relating to controlled dangerous substances~~ prohibiting a person from purchasing for, distributing, or selling kratom to an individual under a certain age, except under certain circumstances; providing a certain defense in a prosecution for a violation of this Act; establishing that a violation of this Act is a civil penalty; providing for the issuance and prosecution of a civil citation issued under this Act; providing for the applicability of this Act; defining a certain term; and generally relating to kratom.

~~BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–402(e)
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)~~

BY adding to
Article – Criminal Law
Section 10–108
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Law

~~5-402.~~

~~(e) Unless specifically excepted under this subtitle or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, or that contains their salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, is a substance listed in Schedule I:~~

~~(1) 5-(1,1-dimethylheptyl)-2-[(1r,3s)-3-hydroxycyclohexyl]-phenol (ep-47,497);~~

~~(2) 5-(1,1-dimethyloctyl)-2-[(1r,3s)-3-hydroxycyclohexyl]-phenol (ep-47,497-c8 homologue);~~

~~(3) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678)~~

~~(4) 1-butyl-3-(1-naphthoyl)indole (JWH-073);~~

~~(5) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);~~

~~(6) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);~~

~~(7) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);~~

~~(8) 1-pentyl-3-(1-(4-methoxynaphthoyl)indole (JWH-081);~~

~~(9) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122);~~

~~(10) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398);~~

~~(11) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);~~

~~(12) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);~~

~~(13) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4);~~

~~(14) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8); [and]~~

~~(15) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203);~~

~~(16) MITRAGYNE; AND~~

~~(17) 7-HYDROXYMITRAGYNINE.~~

10-108.

(A) IN THIS SECTION, “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.

(B) (1) THIS SUBSECTION DOES NOT APPLY TO THE DISTRIBUTION OF KRATOM TO AN INDIVIDUAL UNDER THE AGE OF 18 YEARS WHO IS ACTING SOLELY AS THE AGENT OF THE INDIVIDUAL’S EMPLOYER IF THE EMPLOYER DISTRIBUTES KRATOM FOR COMMERCIAL PURPOSES.

(2) A PERSON MAY NOT PURCHASE FOR OR DISTRIBUTE OR SELL KRATOM TO AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

(C) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER’S OR RECIPIENT’S DRIVER’S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY A GOVERNMENTAL UNIT THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18 YEARS OF AGE.

(D) (1) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING:

(I) \$300 FOR A FIRST VIOLATION;

(II) \$1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 24 MONTHS AFTER THE FIRST VIOLATION; AND

(III) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING WITHIN 24 MONTHS AFTER THE PRECEDING VIOLATION.

(2) IF A VIOLATION IS COMMITTED BY A PERSON ACTING ON BEHALF OF A RETAILER, THE CIVIL PENALTY IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE PAID BY THE RETAILER.

(E) (1) IN THIS SUBSECTION, “DESIGNEE” MEANS A RETIRED SWORN LAW ENFORCEMENT OFFICER EMPLOYED BY A COUNTY HEALTH OFFICER OR AN EMPLOYEE OF A LOCAL HEALTH DEPARTMENT TRAINED IN CIVIL ENFORCEMENT.

(2) 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 SUBSECTION (B) OF THIS SECTION.

(3) A CITATION ISSUED UNDER THIS SUBSECTION SHALL INCLUDE:

(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

(II) THE NATURE OF THE VIOLATION;

(III) THE LOCATION AND TIME OF THE VIOLATION;

(IV) THE AMOUNT OF THE CIVIL PENALTY;

(V) THE MANNER, LOCATION, AND TIME IN WHICH THE CIVIL PENALTY MAY BE PAID;

(VI) A NOTICE STATING THE PERSON'S RIGHT TO ELECT TO STAND TRIAL FOR THE VIOLATION; AND

(VII) A WARNING THAT FAILURE TO PAY THE CIVIL PENALTY OR TO CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:

1. IS AN ADMISSION OF LIABILITY; AND

2. MAY RESULT IN ENTRY OF A DEFAULT JUDGMENT THAT MAY INCLUDE THE CIVIL PENALTY, COURT COSTS, AND ADMINISTRATIVE EXPENSES.

(4) THE COUNTY HEALTH OFFICER OR DESIGNEE SHALL RETAIN A COPY OF THE CITATION ISSUED UNDER THIS SUBSECTION.

(5) (I) A PERSON WHO RECEIVES A CITATION FROM A COUNTY HEALTH OFFICER OR DESIGNEE UNDER THIS SUBSECTION MAY ELECT TO STAND TRIAL FOR THE VIOLATION BY FILING A NOTICE OF INTENTION TO STAND TRIAL WITH THE COUNTY HEALTH OFFICER OR DESIGNEE AT LEAST 5 DAYS BEFORE THE DATE SET IN THE CITATION FOR THE PAYMENT OF THE CIVIL PENALTY.

(II) AFTER RECEIVING A NOTICE OF INTENTION TO STAND TRIAL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COUNTY HEALTH OFFICER OR DESIGNEE SHALL FORWARD THE NOTICE AND A COPY OF THE CITATION TO THE DISTRICT COURT.

(6) (I) AFTER RECEIVING A CITATION AND NOTICE UNDER THIS SUBSECTION, THE DISTRICT COURT SHALL SCHEDULE THE CASE FOR TRIAL AND NOTIFY THE DEFENDANT OF THE TRIAL DATE.

(II) IN A PROCEEDING BEFORE THE DISTRICT COURT, A VIOLATION OF SUBSECTION (B) OF THIS SECTION SHALL BE HANDLED IN THE SAME MANNER AS A MUNICIPAL INFRACTION UNDER §§ 6-108 THROUGH 6-115 OF THE LOCAL GOVERNMENT ARTICLE.

(7) THE DISTRICT COURT SHALL REMIT ANY PENALTIES COLLECTED FOR A VIOLATION OF SUBSECTION (B) OF THIS SECTION TO THE COUNTY IN WHICH THE VIOLATION OCCURRED.

(8) ADJUDICATION OF A VIOLATION OF SUBSECTION (B) OF THIS SECTION IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.