

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 820

(Senator Hayes)

Finance

Health and Judiciary

**Alcohol, Tobacco, and Cannabis Commission - Unauthorized Consumable
Products - Enforcement and Seizure**

This bill authorizes (1) the Field Enforcement Division (FED) of the Alcohol, Tobacco, and Cannabis Commission (ATCC) to issue a citation or other charging document to a person who has committed a violation of Title 21, Subtitles 2D, 2E, and 2F of the Health – General Article; (2) the Executive Director of ATCC to seize, confiscate, or destroy an unauthorized consumable product that is offered, advertised, or displayed for sale to a consumer in the State, as specified; and (3) the District Court to impose additional sanctions. The bill prohibits a retailer from distributing, selling, exposing for sale, or advertising for sale an unauthorized consumable product, and imposes criminal and civil penalties on violators of specified provisions. The bill also expands the prohibitions against retailers advertising kratom and phenibut products to minors and requires the Maryland Department of Health (MDH) to notify ATCC of changes in the regulatory status of unauthorized consumable products, including kratom, tianeptine, and phenibut. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: ATCC can implement the bill’s enforcement provisions with existing budgeted resources. MDH can implement the bill’s notification requirement with existing budgeted resources. The civil liability and criminal penalty provisions of the bill are not anticipated to have a material impact on State finances or operations.

Local Effect: The civil liability and criminal penalty provisions of the bill are not anticipated to have a material impact on local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Retailer Prohibition – Unauthorized Consumable Product

The bill prohibits retailers from distributing, selling, exposing for sale, or advertising for sale an unauthorized consumable product.

A violator is guilty of a misdemeanor and on conviction is subject to a fine up to \$5,000.

Definitions

“Unauthorized consumable product” means specified tianeptine, kratom, and phenibut products marketed for human consumption as well as a consumable product that contains a poisonous or deleterious substance in violation of a rule or regulation adopted under specified provisions of the Health – General Article (§ 21-239(c)) and is designated by the Secretary of Health for enforcement by the Executive Director of ATCC.

“Advertise” includes packaging, labeling, or electronic communication.

“Retailer” means a person that (1) sells, prepares, or maintains unauthorized consumable products or (2) advertises, represents, or holds itself out as selling, preparing, or maintaining unauthorized consumable products. A “retailer” can include a manufacturer, wholesaler, store, restaurant, hotel, catering facility, camp, bakery, delicatessen, supermarket, grocery store, convenience store, gas station, or food/drink company.

Field Enforcement Division – Authorization to Issue Citations

The bill authorizes FED within the Office of the Executive Director of ATCC to issue a citation or other charging document to a person who has committed a violation of Title 21, Subtitle 2D (tianeptine products), Subtitle 2E (kratom products), and Subtitle 2F (phenibut products) of the Health – General Article.

Prosecution – Presumption of Evidence and Defense

In a prosecution for a violation of the sale of an unauthorized consumable product, proof that the defendant displayed or offered for sale an unauthorized consumable product or kept a place of business where an unauthorized consumable product was displayed, advertised, or offered for sale, is *prima facie* evidence that the defendant sold an unauthorized consumable product.

The bill modifies provisions regarding the defense of violations related to the sale of kratom and phenibut products by specifying that it is a rebuttable defense that the defendant relied on the representations on the manufacturer's label on a kratom or phenibut product.

Seizure and Forfeiture

The Executive Director of ATCC may seize, confiscate, or destroy (1) an unauthorized consumable product that is offered, advertised, or displayed for sale to a consumer in the State and (2) a product that is labeled, advertised, represented, or offered for sale as containing:

- 7-hydroxymitragynine in an amount that (1) for a kratom product, is greater than the amount permitted under § 21-2E-02(b)(1)(iii) of the Health – General Article or (2) is greater than 1 milligram per serving;
- tianeptine sodium;
- tianeptine sulfate; or
- beta-phenyl-gamma-aminobutyric acid HCl.

A product seized is presumed to be contraband and subject to summary forfeiture unless the person from whom the product was seized demonstrates the product is (1) if applicable, in compliance with Title 21, Subtitle 2E of the Health – General Article or (2) authorized for sale and distribution for the purposes of human consumption by MDH or the U.S. Food and Drug Administration (FDA).

The bill also adds unauthorized consumable products to alcoholic beverages and other contraband under Title 6 of the Alcoholic Beverages and Cannabis Article that is subject to seizure and forfeiture if it is kept, possessed, used, sold, manufactured, stored, or transported in violation of the Article. Thus, unauthorized consumable products seized in accordance with the bill's provisions are considered forfeited property.

Additional Sanctions

Under the bill, the District Court may order the Executive Director of ATCC, the Comptroller, or the applicable local licensing board or commission to suspend or revoke specified licenses and dispose of or destroy any unauthorized consumable product seized under the bill. Additionally, a retailer that violates the bill's provisions is liable for civil damages sustained by an individual that result from the violation.

Advertising Kratom or Phenibut Products to Minors

The bill adds to the list of prohibitions against a retailer in the advertising, promotion, packaging, or labeling of a kratom or phenibut product to a minor, by including specified

images, graphics, or features that are popularly used to advertise to children, including statements, artwork, or designs that could reasonably mislead an individual to believe that the package contains anything other than a kratom or phenibut product.

The bill also expands a prohibition against a retailer advertising or promoting a kratom or phenibut product on an outdoor billboard within 500 feet of a school to include a prohibition against placing an advertisement on the side of a building or another publicly visible location of any form, including a sign, a poster, a placard, a device, a graphic display, an outdoor billboard, or a freestanding signboard.

A retailer that violates the above provisions is guilty of a misdemeanor and on conviction is subject to a fine up to \$5,000 and/or up to 90 days of imprisonment.

Maryland Department of Health Notification

The bill requires that MDH notify ATCC within 30 days after a change is made in the regulatory or approval status of kratom products, tianeptine products, phenibut products, or any other product designated by the Secretary of Health as an unauthorized consumable product for enforcement by the Executive Director of ATCC.

Current Law:

Field Enforcement Division

FED, within the Office of the Executive Director of ATCC, may employ officers and employees who (1) must be sworn police officers; (2) have the powers, duties, and responsibilities of peace officers to enforce the provisions of the Alcoholic Beverages and Cannabis Article, as specified; (3) may issue a citation or other charging document to a person who has committed a violation of § 10-108 of the Criminal Law Article; and (4) may make cooperative arrangements for and work and cooperate with the Office of the Comptroller, local State's Attorneys, sheriffs, bailiffs, police, and other prosecuting and peace officers to enforce the Alcoholic Beverages and Cannabis Article.

FED is also responsible for seizure and forfeiture of alcoholic beverages, and other contraband kept, possessed, used, sold, manufactured, stored, or transported in violation of the Alcoholic Beverages and Cannabis Article. Generally, property is forfeited if it (1) was seized as contraband in the possession or control of a defendant who is found guilty of violating the Alcoholic Beverages and Cannabis Article; (2) is otherwise found to be contraband or in violation of the Alcoholic Beverages and Cannabis Article; (3) is seized as contraband and remains unclaimed for 30 days after seizure; and (4) has not been destroyed. Property seized by State officers and forfeited becomes State property and must be retained for official use, sold, or otherwise disposed of, as appropriate.

Tianeptine Products

A retailer is prohibited from distributing, selling, exposing for sale, or advertising for sale a tianeptine product. A violator is guilty of a misdemeanor and subject to a fine up to \$5,000 and/or imprisonment for up to 90 days. In addition to these penalties, a retailer is also liable for any civil damages sustained by an individual resulting from the violation.

Kratom and Phenibut Products

Labeling Requirement

A retailer that prepares, distributes, sells, or exposes for sale a kratom or phenibut product must disclose on the product label the factual basis on which that representation is made. A violator is subject to a maximum civil penalty of \$1,000 for a first violation and \$2,000 for each subsequent offense.

Prohibitions

A retailer may not prepare, distribute, sell, or expose for sale a kratom or phenibut product that (1) does not comply with the specified disclosure requirement or (2) has not been recognized by FDA as a dietary ingredient or approved drug. A retailer is also prohibited from preparing, distributing, selling, or exposing for sale a kratom or phenibut product that is adulterated or contaminated with a dangerous substance other than kratom or phenibut, as specified. A retailer may not distribute, sell, or expose for sale a kratom or phenibut product to an individual younger than 21.

A violator of any of the specified provisions above is guilty of a misdemeanor and on conviction is subject to a fine up to \$5,000 and/or imprisonment for up to 90 days.

In addition to any such penalty, a retailer is also liable for any civil damages sustained by an individual resulting from the violation. In a prosecution for a violation, it is a defense that the retailer relied in good faith on the representations of a manufacturer, processor, packer, or distributor of a kratom or phenibut product.

Advertising Restrictions

A retailer may not advertise (directly or indirectly) a therapeutic benefit of kratom or phenibut.

A retailer may not advertise or market (directly or indirectly) kratom or phenibut products to minors. It is a violation of this prohibition for a retailer to use specified imagery or references in the advertising, promotion, packaging, or labeling of a kratom or phenibut

product, including (1) a cartoon; (2) a superhero; (3) a video game reference; (4) an image of a food product primarily intended for minors; (5) a trademark that imitates or mimics the trademark of a product that has been advertised or marketed primarily to minors; (6) a symbol or celebrity that is primarily associated with minors or media primarily directed to minors; and (7) an image of an individual who appears to be younger than 27.

It is also a violation of this prohibition for a retailer to advertise or promote a kratom or phenibut product on an outdoor billboard or signboard that is within 500 feet of a school or at specified locations or in certain media if individuals younger than 21 constitute 15% or more of the total audience as measured by competent and reliable survey evidence, including (1) a newspaper, magazine, periodical, or other publication or (2) a concert, stadium, sporting event, or other public event.

Maryland Department of Health – Report

Chapter 748 of 2024 required MDH, in collaboration with the Maryland Hospital Association to report to the General Assembly by December 31, 2025, on the number of adverse health events observed in individuals after the use of opioid-like substances (including kratom and tianeptine). MDH's [report](#) indicates that the number of reported incidents for fiscal 2025 involving kratom (59) was higher than tianeptine (12) and phenibut (7). However, the report also notes that, overall, kratom has been associated with a smaller number of complaints, incidents, and fatalities in Maryland when compared with other substances of concern, including opioids. Nevertheless, MDH advises that ongoing monitoring of kratom is warranted given its presence in fatal toxicology, particularly when combined with illicitly manufactured fentanyl.

Small Business Effect: Small business retailers that prepare, distribute, sell, or expose for sale tianeptine, kratom, or phenibut products must comply with the bill's requirements. Violators are subject to civil and criminal penalty provisions, seizure and forfeiture of the products, and potential suspension or revocation of a license.

Additional Comments: Tianeptine is an antidepressant drug that is marketed as a supplement to treat anxiety, depression, pain, and opioid use disorder. It is a prescription drug in some countries, but it is not approved as a drug in the United States. Kratom is an herbal extract that comes from the leaves of an evergreen tree (*Mitragyna speciosa*) grown in Southeast Asia, that can be chewed, and dry kratom can be swallowed or brewed. Liquid kratom is marketed as a muscle pain reliever, appetite suppressor, and as a treatment for cramps and diarrhea. Phenibut is an anti-anxiety drug developed in Russia. It is considered a psychoactive substance and is often marketed as a supplement for relaxation, anxiety, and sleep, as well as to help with depression and post-traumatic stress disorder.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1523 (Delegate Ross, *et al.*) - Health and Judiciary.

Information Source(s): Maryland Association of County Health Officers; Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Alcohol, Tobacco, and Cannabis Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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