

SUBJECT: Regulating the sale and labeling of kratom products; creating penalties

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Allison, Campos, Coleman, Collier, Jetton, Oliverson,
Price, Smith, Zwiener

0 nays

1 absent — Guerra

WITNESSES: For — Peter Candland, American Kratom Association; Curt Bramble;
Murray Holcomb; (*Registered, but did not testify*: Vanessa MacDougal;
Dan Finch, Texas Medical Association; Idona Griffith)

Against — (*Registered, but did not testify*: James Parnell, Dallas Police
Association; Frederick Frazier, Texas State Fraternal Order of Police)

On — (*Registered, but did not testify*: Stephen Pahl, Department of State
Health Services)

DIGEST: CSHB 1097 would establish the Texas Kratom Consumer Health and
Safety Protection Act, which would provide labeling requirements for
kratom products, prohibit the sale or distribution of kratom to minors, and
create civil and criminal penalties.

Definitions. The bill would define "kratom" as any part of the leaf of the
plant *Mitragyna speciosa*.

"Kratom product" would mean a food, including an extract, capsule, or
pill, containing any form of kratom.

"Kratom processor" would be defined as a person who:

- manufactured, prepared, distributed, or maintained kratom products
for sale;

- advertised, represented, or held oneself out as a seller, preparer, or manufacturer of kratom products;
- was responsible for ensuring the purity and proper labeling of kratom products; or
- packaged or labeled kratom products.

"Kratom retailer" would mean a kratom processor who engaged in selling kratom products to consumers or who advertised, represented, or held oneself out as a person who sells kratom products to consumers.

Labeling requirements. Under the bill, a kratom retailer could not sell a kratom product that did not meet certain labeling requirements.

The bill would require a kratom processor to label each kratom product with directions necessary to ensure safe and effective use of the product by a consumer, including the product's recommended serving size.

Prohibited kratom products. The bill would prohibit a kratom processor or retailer from preparing, distributing, selling, or offering to sell a kratom product that:

- was adulterated with a dangerous non-kratom substance affecting the product's quality or strength to a degree that rendered the product injurious to a consumer;
- was contaminated with a poisonous or otherwise deleterious non-kratom substance, including any controlled substance under the Texas Controlled Substances Act;
- had a level of 7-hydroxmitragynine in the alkaloid fraction that was greater than two percent of the overall alkaloid composition of the product; or
- contained any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Criminal penalty. Under the bill, a person would commit a class C misdemeanor (maximum fine of \$500) if the person distributed, sold, or

exposed for sale a kratom product to someone younger than 18 years of age.

Civil penalty. A person who violated the bill's provisions would be subject to a civil penalty of:

- \$250 for the first violation;
- \$500 for the second violation; and
- \$1,000 for each subsequent violation.

Each day a violation continued or occurred would be a separate violation for imposing a penalty.

Exemptions. A kratom retailer would not be liable for a civil penalty under the bill if the retailer proves by a preponderance of evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

Enforcement. The bill would authorize the attorney general and applicable district, county, or municipal attorney to bring an action to recover a civil penalty.

Other provisions. Penalties prescribed by the bill would be in addition to any other penalties prescribed by law, including under the Texas Food, Drug, and Cosmetic Act and Texas Controlled Substances Act.

The bill would allow the executive commissioner of the Health and Human Services Commission to adopt rules to ensure the safe consumption and distribution of kratom and kratom products.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 1097 would strengthen protections for consumers of kratom by prohibiting the sale of adulterated kratom products and establishing certain labeling requirements while also prohibiting the sale of kratom to minors and creating civil and criminal penalties for violations of the bill's

provisions.

Kratom is a tree in the coffee family that grows in Southeast Asia, a region where people traditionally chew its leaves or make them into a tea that is used to combat fatigue and improve work productivity. Many people also consume kratom as an alternative to prescription pain relievers, including opioids, to manage acute and chronic pain. However, some distributors of kratom adulterate and/or otherwise fail to disclose kratom products that have been laced with controlled substances, such as fentanyl, tramadol, and benzodiazepines.

By requiring kratom products to be properly labeled, the bill would provide consumers with transparent product information. While kratom is not approved by the Food and Drug Administration as a safe and effective alternative to opioids, the federal Food, Drug, and Cosmetic Act properly classifies kratom as a food.

CRITICS
SAY:

CSHB 1097 would not address the risks that kratom products could create for consumers. Kratom has a wide range of potential side effects, depending on the dosage. Along with nausea, vomiting, chills, sweating, itching, and loss of appetite, more serious problems can occur, such as hallucinations or delusions. While kratom can be consumed at safe, low doses and produce good results, high doses pose a substantial risk to consumers. Many people may have difficulty adhering to the recommended serving size on the required label, especially if they currently struggle with opioid addiction.

The bill also should consider enacting a ban on kratom products until the Food and Drug Administration (FDA) approves its safe and effective use. Additional research is needed to help regulatory agencies identify whether the causes of consumers' hospitalizations, intubations, and deaths are due to pure kratom or adulterated kratom products. Consumers of kratom should wait for it to be fully tested and approved by the FDA as a safe or effective treatment option for opioid addiction.