

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 764

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Controlled Substances

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 764 makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).¹ An exception is created for FDA-approved drugs. The bill also makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

II. Present Situation:

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties which may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for

¹ Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc.* 2012 Dec; 112(12): 792-9, at p. 792 (abstract). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last viewed on February 23, 2015).

abuse² and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.³

Non-Trafficking Controlled Substance Offenses

The bill does not amend s. 893.135, F.S., the drug trafficking statute. Section 893.13, F.S., contains the general penalties for possession, sale, etc., of controlled substances.⁴

Under the bill, mitragynine and 7-hydroxymitragynine are listed in s. 893.03(1)(c), F.S. (Schedule I(c) of the controlled substance schedules). Generally, selling, manufacturing, delivering, or possessing with intent to sell, manufacture, or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.⁵ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁶ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.⁷

Possessing, purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.⁸

Kratom

The Florida Department of Law Enforcement (FDLE) has provided the following information regarding kratom:

Kratom (*Mitragyna speciosa* korth) is a tropical tree which is indigenous to areas of Southeast Asia (e.g. Thailand, Malaysia, and Myanmar); and is in the same family as the coffee tree. The ingestion of Kratom involves the use of the leaves either whole or crushed, prepared as a tea, smoked and/or chewed; it can also be found in the form of an extract, and/or encapsulated powder. Kratom is not currently enumerated as a controlled substance under federal law (Controlled Substances Act);⁹ or within Florida under

² “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.

³ Section 893.03(1), F.S.

⁴ Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

⁵ Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁶ Section 893.13(1)(c)-(f) and (h), F.S.

⁷ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁸ Section 893.13(2)(a)2. and (6)(a), F.S.

⁹ Kratom is on the Drug Enforcement Administration’s list of Drugs or Chemicals of Concern. Drug Fact Sheet/Kratom, available at http://www.dea.gov/druginfo/drug_data_sheets/Kratom.pdf (last viewed on February 23, 2015).

Florida Statute 893 (Drug Abuse Prevention and Control). This means that all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. However, in June 2014, the U. S. Food and Drug Administration (FDA) issued an Import Alert regarding shipments of dietary supplements and bulk dietary ingredients that are, or contain *Mitragyna speciosa* or Kratom.¹⁰ The FDA has not approved Kratom for human consumption.¹¹ The substance is available on the Internet and in some instances is marketed as a legal psychoactive product with alleged medicinal benefits. Research by University of Mississippi, School of Pharmacy suggests that mitragynine may have a role in treating the withdrawal symptoms of opiate addiction.

Kratom has been described as producing both stimulant and sedative effects. At low doses it produces stimulant effects with users reporting increased alertness, physical energy, talkativeness and sociable behavior. At high doses, opiate effects are produced in addition to sedative and euphoric effects. Acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination and loss of appetite. Kratom consumption can lead to addiction (study of Thai Kratom addicts who chewed Kratom leaves daily from 3 to 30 years).¹²

Information on the illicit use of Kratom in the U.S. is anecdotal. In a notable study (Sweden) the primary chemical component found in Kratom (Mitragynine)¹³ was one of the components found to be present in nine (9) incidents of fatal intoxication involving a product sold on the internet called “Krypton”. In the reporting, “Krypton” consisted of powdered Kratom leaves together with a more potent substance (O-Desmethyltramadol). Two deaths in 2013 reference Kratom as a factor. A Colorado man died from what was reportedly apparent acute mitragynine toxicity; and in Washington, a woman who had reportedly ingested Kratom also died, but in that case, no determination could be made that Kratom was a key factor that led to the death because another potent substance was also present in the toxicology. In Palm Beach County (2014), the family of a man who committed suicide attributed his death to an addiction to Kratom. A few states have banned or restricted the sale, possession, and/or use of Kratom. Sarasota County is among a few counties in Florida that have enacted ordinances focused on the marketing,

¹⁰ As a result of this alert, specified products from firms listed in the alert can be detained without physical examination. Import Alert 54-15 (February 12, 2015), U.S. Food and Drug Administration, available at http://www.accessdata.fda.gov/cms_ia/importalert_1137.html (last viewed on February 23, 2015).

¹¹ There is also no approved medical use for kratom in the United States. Kratom (*Mitragyna speciosa korth*), Office of Diversion Control, Drug Enforcement Administration (January 2013), available at http://www.deaiversion.usdoj.gov/drug_chem_info/kratom.pdf (last viewed on February 21, 2015).

¹² An article by the Natural Standard Research Collaboration provides an extensive discussion of the scientific literature. Ulbricht C, Costa D, Dao J, Isaac R., LeBlanc YC, Rhoades J, Windsor RC. An evidence-based systematic review of kratom (*Mitragyna speciosa*) by the Natural Standard Research Collaboration. *Journal of Dietary Supplements*, 2013; 10:2: 152-170. (This article is on file with the Senate Committee on Criminal Justice). The National Standard Research Collaboration is “an international research collaboration that aggregates and synthesizes data on complementary and alternative therapies.” See <http://libguides.butler.edu/Pharmacy> (last viewed on February 23, 2015).

¹³ “Most of the opioid-like activity of kratom has been attributed to the presence of the indole alkaloids, mitragynine and 7-hydroxymitragynine. Both compounds have been shown to have analgesic and antinociceptive effects in animals, although 7-hydroxymitragynine is more potent.” Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc*. 2012 Dec; 112(12):792-9, at p. 796 (footnotes omitted). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last viewed on February 23, 2015).

packaging and sale of so called “designer drugs” by regulating retail establishments to attack the abuse of synthetic drugs rather than focusing on the chemical components of designer drugs which can be modified molecularly nearly as fast as the chemical components are scheduled. Kratom was included in the Sarasota County ordinance though Kratom itself is not a synthetic.¹⁴ To date, FDLE laboratory submissions from 2011 – 2014 have been low; 2011 (1); 2012 (0); 2013 (4), 2014 (2). Nine states responded to a request for information relative to the status of Kratom. One state (Indiana) responded that Kratom is illegal; Wisconsin reported that the compounds in Kratom are considered a Schedule I stimulant. Five (5) states indicated that Kratom was legal or legal for persons over 18. One state indicated that Kratom is not illegal, but indicated that it was illegal to possess something that is intended to be used as a drug unless it is approved as a drug by the U. S. Food and Drug Administration. One state responded that there were no reports of Kratom being used in that state.¹⁵

III. Effect of Proposed Changes:

The bill makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).¹⁶ The bill also schedules in Schedule 1 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of these substances. An exception is created for FDA-approved drugs.

The bill also makes it a first degree misdemeanor¹⁷ to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

The bill takes effect on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Proposed Ordinance No. 2014-013, Sarasota County, Florida, available at <https://www.scgov.net/HumanServices/Documents/Designer%20Drugs%20Ordinance.pdf> (last viewed on February 23, 2015).

¹⁵ Analysis of SB 764 (February 11, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis.”

¹⁶ See footnote 1.

¹⁷ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Businesses in Florida could be subject to first degree misdemeanor penalties for selling any product containing mitragynine and 7-hydroxymitragynine.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. A preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have a positive insignificant prison bed impact (the bill may increase the Department of Corrections' prison bed population by less than 10 inmates annually).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on available information, legislative staff was able to confirm that the following states prohibit or impose restrictions on kratom or constituents of kratom:

- Illinois (prohibits minors from purchasing or possessing kratom and prohibits selling kratom to minors);¹⁸
- Indiana (schedules 7-hydroxymitragynine and mitragynine in Schedule I);¹⁹
- Louisiana (prohibits distribution of products containing *Mitragyna speciosa* to minors);²⁰
- Tennessee (prohibits possession, sale, etc., of mitragynine and hydroxymitragynine);²¹
- Vermont (7-hydroxymitragynine is listed as a regulated drug);²² and
- Wisconsin (places mitragynine and 7-hydroxymitragynine in Schedule I).²³

VIII. Statutes Affected:

This bill substantially amends sections 893.03 and 893.13 of the Florida Statutes.

¹⁸ 720 Ill. Comp. Stat. § 642/5.

¹⁹ Sec. 4.(d)(35) of IC 35-48-2-4, lists synthetic drugs as defined in IC 35-31.5-2-321 as Schedule I controlled substances. IC 35-31.5-2-321 (1)(LL) and (HHH) lists 7-hydroxymitragynine and mitragynine as synthetic drugs.

²⁰ La. Rev. Stat. Ann. § 40:989.3.

²¹ Tenn. Code Ann. § 39-17-452.

²² See http://healthvermont.gov/hc/med_board/2013/documents/Agenda_bmp_010213.pdf, http://healthvermont.gov/regs/documents/regulated_drugs_rule.pdf, and Vt. Stat. Ann. tit. 18, § 4205.

²³ Wis. Stat. § 961.14.

This bill also reenacts the following sections of the Florida Statutes to incorporate the amendment made to s. 893.03, F.S., in references to that statute: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 787.06, 817.563, 831.31, 856.015, 893.02, 893.035, 893.0356, 893.05, 893.12, 893.13, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 10, 2015:

- Makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances.
- Makes isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of these substances Schedule I controlled substances.
- Makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

B. Amendments:

None.