

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 1182

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Controlled Substances

DATE: February 16, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1182 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 (maximum penalty of one year in jail) to:

- Sell or deliver mitragynine or 7-hydroxymitragynine to a person younger than 18 years of age; or
- Possess mitragynine or 7-hydroxymitragynine with the intent to sell or deliver such substance to a person younger than 18 years of age.

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 visited on February 2, 2016).

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

Controlled Substance Offenses (s. 893.13, F.S.)

Section 893.13, F.S., contains the general penalties for possession, sale, etc., of controlled substances.⁴

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

Generally, 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:

Mitragynine and 7-Hydroxymitragynine are the major active alkaloids found in the Kratom plant (*Mitragyna speciosa* korth), a tropical tree which is indigenous to areas of Southeast Asia (e.g. Thailand, Malaysia, and Myanmar). 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. Neither Mitragynine nor 7-Hydroxymitragynine is currently enumerated as a controlled

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.

substance under federal law (Controlled Substances Act);⁹ or within Florida under 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. 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. Import Alert 54-15,¹⁰ was issued by the FDA regarding the detention (by FDA Inspectors) without physical examination of specified products from identified firms. The specified dietary supplements and bulk dietary ingredients from the identified firms within the Import Alert were found to contain Kratom. 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. Some literature suggests that Kratom/Mitragynine may have a role in treating the withdrawal symptoms of opiate addiction. Academic studies including research by University of Mississippi, School of Pharmacy, are ongoing.

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 effects¹² 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).¹³

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) 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-Desmethylnaloxone). 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

⁹ Kratom is on the Drug Enforcement Administration’s list of Drugs or Chemicals of Concern. *Drugs of Abuse* (2015), p. 84, Drug Enforcement Administration, U.S. Department of Justice, available at http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=8 (last visited on February 2, 2016).

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 visited on February 2, 2016).

¹¹ According to the DEA, there is no legitimate medical use for kratom in the United States. *Id.*

¹² “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. 792 (abstract). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last visited on February 2, 2016).

¹³ 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).

that Kratom was a key factor that led to the death because another potent substance was also present in the toxicology. In a Florida death (2014), the family of a subject who committed suicide attributed the death to an addiction to Kratom. In that case, Mitragynine quantification was not available. The presence of other controlled substances may have contributed to the subject's state of mind at the time of the suicide. 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, 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. To date, FDLE laboratory submissions from 2011 – 2015 have been low; 2011 (1); 2012 (0); 2013 (4), 2014 (3); and through 1st and 2nd Quarter 2015 (5).¹⁴

In a 2015 drug report on kratom, the FDLE stated:

A review of information currently available through identified law enforcement and laboratory sources in Florida indicates that Kratom does not constitute a significant risk to the safety and welfare of Florida residents. The Florida Department of Health (DOH) reports no pervasive health issues attributed to the ingestion of Kratom products in Florida, though diagnostic tests that would reveal the presence of Mitragynine are not routinely performed on patients during emergency room visits. It is unclear how many Mitragynine exposures resulted in harm. Kratom use or abuse is not monitored by any national drug abuse surveys and much of the information regarding possible deleterious effects of Kratom use or abuse remains anecdotal.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 I 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 misdemeanor (maximum penalty of one year in jail)¹⁷ to:

- Sell or deliver mitragynine or 7-hydroxymitragynine to a person younger than 18 years of age; or
- Possess mitragynine or 7-hydroxymitragynine with the intent to sell or deliver such substance to a person younger than 18 years of age.

¹⁴ Analysis of SB 1182 (January 15, 2016), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

¹⁵ *Kratom – Mitragyna speciosa (The Impact to Florida)* (December 2015), Office of Statewide Intelligence, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

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.

The bill takes effect on October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 estimated that the original bill would not have a prison bed impact. Changes to the original bill do not effect this estimate. CS/SB 1182 only provides for a first degree misdemeanor penalty, which means there is no state prison bed impact.

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

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.

- 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.

This bill also reenacts the following sections or provisions of sections of the Florida Statutes: 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 February 16, 2016:

- Provides that it is a first degree misdemeanor to sell or deliver mitragynine or 7-hydroxymitragynine to a person younger than 18 years of age.
- Provides that it is a first degree misdemeanor to possess mitragynine or 7-hydroxymitragynine with the intent to sell or deliver such substance to a person younger than 18 years of age.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 and http://healthvermont.gov/regs/documents/regulated_drugs_rule.pdf (last visited on February 2, 2016). See also Vt. Stat. Ann. tit. 18, § 4205.

²³ Wis. Stat. § 961.14.