

The Senate Committee on Health and Human Services offered the following substitute to HB 181:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
2 relating to kratom, so as to revise definitions; to prohibit the sale or transfer of possession of
3 kratom to an individual under 21 years of age; to prohibit an individual under 21 years of age
4 from purchasing or possessing kratom; to prohibit the ingestion of kratom through a heating
5 element or vaporizing mechanism or the selling of such mechanisms; to provide for
6 penalties; to provide requirements and limitations relating to the sale of kratom products in
7 this state; to prohibit the sale of kratom unless behind a counter or in a secured display; to
8 revise packaging requirements; to require manufacturers and others to maintain a registered
9 agent in this state; to provide for violations of such requirements; to provide for related
10 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
15 substances, is amended by revising Code Section 16-13-120, relating to the definition of
16 kratom, as follows:

17 "16-13-120.

18 As used in this article, the term:

19 (1) 'Adulterated' has the same meaning as in Code Section 26-2-26.

20 (2) 'Kratom' ~~kratom~~ means the tropical evergreen known as Mitragyna speciosa, which
 21 is native to Southeast Asia and contains the alkaloid mitragynine or metabolite
 22 7-hydroxymitragynine.

23 (3) 'Kratom extract' means a kratom product that has been modified, processed, or
 24 otherwise manufactured with a food-grade solvent.

25 (4) 'Kratom product' means a product containing any part of the leaf of the plant
 26 mitragyna whether sold as a powder, capsule, pill, beverage, extract, or other form.

27 (5) 'Processor' means a person or entity that prepares, manufactures, distributes, or
 28 maintains kratom products or that advertises, represents, or holds itself out as preparing,
 29 manufacturing, distributing, or maintaining kratom products.

30 (6) 'Retailer' means a person or entity that sells or holds itself out as selling kratom
 31 products at retail to the general public; provided, however, that such person or entity shall
 32 also be included within the definition of 'processor' as set forth in this Code section to the
 33 extent that he or she engages in the business of a processor. Such term shall not include
 34 a store employee at a retailer's place of business."

35

SECTION 2.

36 Said chapter is further amended by revising Code Section 16-13-121, relating to possession
 37 of kratom by individual under age 18 and penalty, as follows:

38 "16-13-121.

39 (a)(1) No person shall knowingly sell or transfer possession of any kratom, kratom
 40 product, or kratom extract to another person under ~~18~~ 21 years of age, nor shall any
 41 person under ~~18~~ 21 years of age purchase or possess any kratom, kratom product, or

42 kratom extract. A person who is convicted of violating this Code section shall be guilty
43 of a misdemeanor.

44 (2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply
45 with respect to the sale or transfer of possession of kratom, kratom product, or kratom
46 extract by a person when such person has been furnished with proper identification
47 showing that the individual to whom the kratom, kratom product, or kratom extract is
48 sold or transferred is 21 years of age or older.

49 (B) In any case when a reasonable or prudent person could reasonably be in doubt as
50 to whether or not the individual to whom kratom, kratom product, or kratom extract is
51 to be sold or transferred is actually 21 years of age or older, it shall be the duty of such
52 person to request to see and to be furnished with proper identification. The failure to
53 make such request and verification may be considered by the trier of fact in determining
54 whether such person did knowingly sell or transfer possession in violation of paragraph
55 (1) of this subsection.

56 (b) No person shall ingest kratom in a manner that employs a heating element, power
57 source, electronic circuit, or other electronic, chemical, or mechanical means, regardless
58 of shape or size, that can be used to produce vapor in a solution or other form, including,
59 but not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic
60 pipe, or similar product or device and any vapor cartridge or other container of kratom in
61 a solution or other form that is intended to be used with or in an electronic cigarette,
62 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

63 (c) No person shall sell, deliver, cause to be delivered, or assist in the delivery of any
64 kratom in or to this state that can be ingested in a manner that violates subsection (b) of this
65 Code section.

66 (d) No person shall offer for sale kratom in this state unless such product is behind a
67 counter in an area only accessible to store employees or in a secured display which is only
68 accessible with the intervention of a store employee.

69 (e) Any person that commits an act in violation of this Code section shall be guilty of a
70 misdemeanor; provided, however, that, for a conviction of a first offense, such individual
71 shall be punished by a fine not to exceed \$250.00; for a conviction of a second offense,
72 such individual shall be punished by a fine of up to \$500.00; and for a conviction of a third
73 offense and each subsequent offense, such individual shall be punished by a fine of up to
74 \$1,000.00."

75 **SECTION 3.**

76 Said chapter is further amended by revising Code Section 16-13-122, relating to required
77 labeling, as follows:

78 "16-13-122.

79 (a) All kratom products sold in, or delivered to, this state shall be derived from the natural
80 kratom plant, and any manufactured or processed kratom product, including kratom
81 extracts, shall not be modified, chemically or otherwise, processed, synthesized, or
82 otherwise treated in any way that increases the levels of mitragynine or
83 7-hydroxymitragynine, beyond those described in subsection (b) of this Code section.

84 (b) No kratom product sold in, or delivered to, this state shall have a concentration ratio
85 that is:

- 86 (1) Greater than 150 mg of mitragynine per serving;
87 (2) Greater than 0.5 mg 7-hydroxymitragynine per gram; or
88 (3) Greater than 1 mg 7-hydroxymitragynine per serving.

89 (c) A processor or retailer shall not prepare, distribute, sell, or expose for sale any of the
90 following:

- 91 (1) A kratom product that is adulterated;
92 (2) A kratom product that contains or uses in its processing or manufacturing a food
93 substance that is not generally recognized as safe in food products;

94 (3) A kratom product containing any synthetic alkaloids or metabolite including
95 synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived
96 compounds of the kratom plant; or

97 (4) A kratom product in a form that employs a heating element, power source, electronic
98 circuit, or other electronic, chemical, or mechanical means, regardless of shape or size,
99 that can be used to produce vapor in a solution or other form, including, but not limited
100 to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or
101 similar product or device and any vapor cartridge or other container of kratom in a
102 solution or other form that is intended to be used with or in an electronic cigarette,
103 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

104 (d) A processor shall maintain a registered agent in this state for service of process for the
105 entire duration of such entity's engagement in the business of a processor.

106 (e) Kratom packaging shall be accompanied by a label bearing the following information
107 prior to its sale in this state:

108 (1) Clearly labeled ingredients;

109 (2) That the sale or transfer possession of kratom to another person under ~~18~~ 21 years of
110 age is prohibited;

111 (3) The amount of mitragynine and 7-hydroxymitragynine contained in such product;

112 (4) The total amount of mitragynine and 7-hydroxymitragynine contained in the
113 packaging for such product;

114 (5) The common or usual name of each ingredient used in the manufacture of such
115 product, listed in descending order of predominance;

116 (6) The name, physical address, and ~~the~~ principal mailing address of the manufacturer
117 or the person responsible for distributing such product;

118 (7) Clear and adequate directions for the consumption ~~and safe and effective use~~ of such
119 product, including the recommended serving size and the time frame within which safe
120 consumption should occur; and

121 (8) Any precautionary statements as to the safety and effectiveness of such product,
122 including a warning that a consumer should consult their physician on questions about
123 use of kratom, and state that the kratom product is not intended to 'diagnose, treat, cure
124 or prevent any disease'; and

125 (9) A statement that a kratom product label is prohibited from making any therapeutic
126 claims unless approved by the United States Food and Drug Administration.

127 (f)(1) A processor who knowingly or with criminal negligence commits an act in
128 violation of this Code section shall, upon a first conviction thereof, be guilty of a
129 misdemeanor of a high and aggravated nature, and upon a subsequent conviction, be
130 guilty of a felony, and shall be punished by imprisonment for not less than one year nor
131 more than 15 years, by a fine not to exceed \$100,000.00, or both.

132 (2) A processor who negligently commits an act in violation of this Code section shall
133 be guilty of a misdemeanor and subject to a fine not to exceed \$1,000.00.

134 (g)(1) A retailer who knowingly or with criminal negligence commits an act in violation
135 of subsection (a), (b), (c), or (e) of this Code section shall, upon a first conviction thereof,
136 be guilty of a misdemeanor of a high and aggravated nature, and upon a subsequent
137 conviction, be guilty of a felony, and shall be punished by imprisonment for not less than
138 one year nor more than 15 years, by a fine not to exceed \$100,000.00, or both.

139 (2) A retailer who negligently commits an act in violation of subsection (a), (b), (c), or
140 (e) of this Code section shall be guilty of a misdemeanor; provided, however, that, for a
141 conviction of a first offense, such individual shall be punished by a fine not to exceed
142 \$250.00; for a conviction of a second offense, such individual shall be punished by a fine
143 of up to \$500.00; and for a conviction of a third offense, such individual shall be
144 punished by a fine of up to \$1,000.00; provided, further, that upon each subsequent
145 conviction after a third conviction, such individual shall be guilty of a high and
146 aggravated misdemeanor and shall be imprisoned for not less than ten days nor more than
147 12 months and punished by a fine of not less than \$1,000.00 nor more than \$5,000.00.

148 (3) A retailer shall have a defense to prosecution under this subsection if such retailer
149 proves by a preponderance of the evidence that the retailer relied in good faith upon the
150 representations of a processor that the kratom, kratom product, or kratom extract and
151 labeling complied with the provisions of this Code section."

152 **SECTION 4.**

153 This Act shall become effective on January 1, 2025, and shall apply to offenses committed
154 on or after such date.

155 **SECTION 5.**

156 All laws and parts of laws in conflict with this Act are repealed.