



State of Wisconsin
2023 - 2024 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 393**

January 19, 2024 - Offered by Representative MURPHY.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to repeal** 961.14 (7) (mk) and 961.14 (7) (mL); and **to create** 100.365 and
2 941.41 of the statutes; **relating to:** regulating kratom and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 100.365 of the statutes is created to read:

4 **100.365 Kratom.** (1) In this section:

5 (a) "Certificate of analysis" means a confirmation in writing from an
6 independent laboratory certifying that the independent laboratory has analyzed and
7 tested a kratom product and the kratom product meets the requirements specified
8 under sub. (6) (a) 1. to 5.

9 (b) "Kratom product" means any part of a leaf of the *Mitragyna speciosa* plant
10 and any botanical supplement intended for human consumption made from any part
11 of a leaf of the *Mitragyna speciosa* plant.

1 (c) "Processor" means any person who prepares or processes a kratom product
2 and sells, offers for sale, or distributes the kratom product to a wholesaler or retail
3 seller.

4 (2) A processor may only prepare, process, sell, offer for sale, or distribute a
5 kratom product if all of the following apply:

6 (a) The processor submits to the department a certificate of analysis for the
7 kratom product for the kratom product's inclusion on the department's kratom
8 products registry list under sub. (4) (a) and, if applicable, pays the fee charged by the
9 department in accordance with sub. (4) (b).

10 (b) The processor follows the guidelines set forth in 21 CFR part 111 in regards
11 to a botanical supplement.

12 (3) (a) For in-person sales, a person may not sell, offer for sale, or distribute
13 a kratom product unless the person has on the premises of the sale, offer for sale, or
14 distribution a certificate of analysis from the kratom product's processor, and the
15 person keeps or displays the kratom product in a manner in which only the person
16 and the person's employees can access it before sale or distribution.

17 (b) For online sales, a person may not sell, offer for sale, or distribute a kratom
18 product unless the person verifies the buyer's identity, age, and location and the
19 person has posted in the same online location as the sale, offer for sale, or distribution
20 a certificate of analysis from the kratom product's processor.

21 (4) (a) The department shall maintain a publicly accessible registry of kratom
22 products for which it has received a certificate of analysis.

23 (b) To maintain the registry under par. (a), the department may charge kratom
24 product processors who submit a certificate of analysis under sub. (2) (a) a reasonable
25 fee.

1 **(5)** A person who violates sub. (2) (a) or (3) shall be subject to a fine not to exceed
2 \$500 or imprisonment not to exceed 30 days, or both.

3 **(6)** (a) A processor may not sell, offer for sale, or distribute a kratom product
4 if any of the following applies:

5 1. The kratom product is mixed or packed with a substance other than kratom
6 product that affects the quality or strength of the kratom product to such a degree
7 that the kratom product may cause injury.

8 2. The kratom product contains a poisonous or otherwise deleterious ingredient
9 other than kratom, including any controlled substance, as defined in s. 961.01 (4),
10 or any controlled substance analog, as defined in s. 961.01 (4m).

11 3. The kratom product contains a level of 7-hydroxymitragynine in the alkaloid
12 fraction that is greater than 2 percent of the alkaloid composition of the kratom
13 product in the recommended serving size as shown on the kratom product's
14 registered product label.

15 4. The kratom product contains any synthetic alkaloid, including synthetic
16 mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived
17 compound of the *Mitragyna speciosa* plant.

18 5. The kratom product does not include a product label on its packaging that
19 states the amount of mitragynine and 7-hydroxymitragynine contained in the
20 recommended serving size as shown on the kratom product's registered product
21 label.

22 (b) A processor who violates par. (a) may be subject to a fine not to exceed \$500
23 or imprisonment not to exceed 30 days, or both.

24 (c) A processor does not violate par. (a) if the processor shows by a
25 preponderance of the evidence that the processor relied in good faith on the

1 representation of a manufacturer, a packer, a distributor, or another processor
2 relating to a product represented to be a kratom product.

3 **SECTION 2.** 941.41 of the statutes is created to read:

4 **941.41 Kratom. (1)** No person may sell, offer for sale, or distribute a kratom
5 product, as defined in s. 100.365 (1) (b), to any person under the age of 21.

6 **(2)** A person who violates sub. (1) is guilty of a Class C misdemeanor.

7 **SECTION 3.** 961.14 (7) (mk) of the statutes is repealed.

8 **SECTION 4.** 961.14 (7) (mL) of the statutes is repealed.

9 **SECTION 5. Nonstatutory provisions.**

10 (1) NOTICE OF SCHEDULING. Before September 1, 2024, the controlled substances
11 board shall meet and determine if published and peer-reviewed research provides
12 clear and convincing evidence that the substances under s. 961.14 (7) (mk) and (mL)
13 in their natural state in the leaf of the *Mitragyna speciosa* plant meet the criteria for
14 scheduling under s. 961.11 (1m). If the controlled substances board determines that
15 the substances do meet the criteria, the board shall notify the legislative reference
16 bureau of its determination.

17 (2) VOIDING TREATMENTS. If the notice specified in sub. (1) is received by the
18 legislative reference bureau before September 1, 2024, the treatment of ss. 100.365,
19 941.41, and 961.14 (7) (mk) and (mL) is void.

20 **SECTION 6. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) KRATOM REGULATION. Unless the treatments are voided under SECTION 5 (2)
23 of this act, the treatment of ss. 100.365, 941.41, and 961.14 (7) (mk) and (mL) takes
24 effect on September 1, 2024.

25 (END)