



2023 ASSEMBLY BILL 393

September 5, 2023 - Introduced by Representatives MURPHY, BROOKS and MACCO, cosponsored by Senators CABRAL-GUEVARA and FELZKOWSKI. Referred to Committee on State Affairs.

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 products, granting
3 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill defines kratom products as products intended for human or animal consumption, including food, drink, chewing gum, and food supplements, made from any part of a leaf of the *Mitragyna speciosa* plant, and legalizes the manufacture, distribution, delivery, and possession of kratom.

Under current law, kratom is classified as a Schedule I controlled substance and if a person manufactures, distributes, or delivers kratom, he or she is guilty of a Class H felony, and if a person possesses kratom he or she is guilty of a misdemeanor. The bill removes kratom from the schedule of controlled substances and legalizes the manufacture, distribution, delivery, and possession of kratom, subject to certain limitations.

Under the bill, a person who prepares or processes a kratom product (a processor) may not distribute the product if it 1) is mixed or packed with another substance that affects the kratom product's quality or strength to such a degree that it may cause injury; 2) contains a poisonous ingredient, controlled substance, or controlled substance analog; 3) contains a level of 7-hydroxymitragynine that is greater than 1 percent; 4) contains any synthetic alkaloid; or 5) does not include a label that states the amount of mitragynine and 7-hydroxymitragynine contained in the product. The bill also prohibits the sale of a kratom product to any person

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under the age of 21. A person who violates either of these provisions is guilty of a Class C misdemeanor.

The bill also requires a processor to obtain a food processing plant license from the Department of Agriculture, Trade and Consumer Protection, and to register a kratom product before distributing it. In addition, the bill requires a person selling or distributing a kratom product via in-person sales to keep the kratom product in a manner in which only store employees can access the kratom product before sale, and for online sales to verify the identity, age, and location of the buyer. A processor who prepares, processes, sells, offers for sale, or distributes a kratom product that is not registered with DATCP or without a food processing license is subject to a monetary penalty, to be determined by DATCP by rule, as is a person who sells or distributes the kratom product in violation of the bill's in-person and online sales requirements.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 **100.365 Kratom. (1)** In this section:

3 (a) "Kratom product" means any part of a leaf of the *Mitragyna speciosa* plant
4 and any product intended for human or animal consumption, including food, drink,
5 chewing gum, and food supplements, made from any part of a leaf of the *Mitragyna*
6 *speciosa* plant.

7 (b) "Processor" means any person who prepares or processes a kratom product
8 and sells, offers for sale, or distributes the kratom product to a wholesaler or retail
9 seller.

10 **(2)** A processor may not prepare, process, sell, offer for sale, or distribute a
11 kratom product if any of the following applies:

12 (a) The kratom product is not registered with the department under sub. (4).

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1 (b) The processor is not licensed as a food processing plant under s. 97.29.

2 (3) A person may not sell, offer for sale, or distribute a kratom product unless
3 any of the following applies:

4 (a) For in-person sales, the person keeps or displays the kratom product in a
5 manner in which only store employees can access the kratom product before sale.

6 (b) For online sales, the person verifies the buyer's identity, age, and location.

7 (4) The department shall maintain a registry, accessible by the public, that
8 includes the kratom products that may be sold in this state.

9 (5) The department may seize and destroy any kratom products offered for sale
10 in this state that are not registered under sub. (4).

11 (6) The department shall promulgate rules for the administration and
12 enforcement of this section, including all of the following:

13 (a) Standards for testing a kratom product for safety for human or animal
14 consumption.

15 (b) Standards for accurate labeling.

16 (c) Requirements and methods for adding a kratom product to the registry
17 under sub. (4).

18 (d) A fee for registering a product under sub. (4).

19 (e) Monetary penalties for violating subs. (2) (a) or (b) and (3) (a) or (b).

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

21 **941.41 Kratom. (1)** In this section:

22 (a) "Kratom product" has the meaning given in s. 100.365 (1) (a).

23 (b) "Processor" has the meaning given in s. 100.365 (1) (b).

24 (2) (a) A processor may not sell, offer for sale, or distribute a kratom product
25 if any of the following applies:

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

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

7 3. The kratom product contains a level of 7-hydroxymitragynine in the alkaloid
8 fraction that is greater than 1 percent of the alkaloid composition of the kratom
9 product.

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

13 5. The kratom product does not include a product label on its packaging that
14 states the amount of mitragynine and 7-hydroxymitragynine contained in the
15 packaged kratom product.

16 (b) A processor who violates par. (a) is guilty of a Class C misdemeanor.

17 (c) A processor does not violate par. (a) if the processor shows by a
18 preponderance of the evidence that the processor relied in good faith on the
19 representation of a manufacturer, a packer, a distributor, or another processor
20 relating to a product represented to be a kratom product.

21 **(3)** (a) No person may sell, offer for sale, or distribute a kratom product to any
22 person under the age of 21.

23 (b) A person who violates par. (a) is guilty of a Class C misdemeanor.

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

