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THIRD REPRINT

A.B. 322

ASSEMBLY BILL NO. 322—ASSEMBLYMEN NGUYEN, YEAGER,
GONZÁLEZ; BROWN-MAY, DICKMAN, D’ SILVA AND GALLANT

MARCH 16, 2023

JOINT SPONSORS: SENATORS HANSEN; AND NGUYEN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to kratom products.
(BDR 52-763)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to public health; prohibiting a person from selling or offering to sell a kratom product to an end user unless the kratom product has been registered with the Division of Public and Behavioral Health of the Department of Health and Human Services; setting forth requirements for the registration of a kratom product with the Division; requiring a person who registers a kratom product to pay certain expenses and report certain information relating to the kratom product to the Division; authorizing the Division to adopt certain regulations governing kratom products; revising provisions establishing certain prohibited acts relating to kratom products; exempting a person who engages in certain acts relating to kratom products from certain criminal or legal penalties if certain substances in those products are designated as controlled substances; providing penalties; making an appropriation; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

1 Existing law defines "kratom product" to mean, in general, any product or
2 ingredient containing any part of the leaf of the *Mitragyna Speciosa* plant if the
3 plant contains the alkaloid mitragynine or 7-hydroxymitragynine, or any synthetic
4 material that contains the alkaloid mitragynine or 7-hydroxymitragynine. Existing
5 law prohibits a person from: (1) selling or offering to sell any material, compound,
6 mixture or preparation containing a kratom product to a child under the age of 18
7 years; (2) preparing, distributing, advertising, selling or offering to sell a kratom
8 product that is adulterated with certain substances; and (3) selling a kratom product
9 that does not have a label that meets certain requirements. Existing law provides for
10 the imposition of a civil penalty of not more than \$1,000 against a person who
11 violates those prohibitions. (NRS 597.998)

12 **Section 5** of this bill revises the definition of kratom product to mean food
13 containing any part of the leaf of the *Mitragyna Speciosa* plant. **Section 9** of this
14 bill revises the prohibited acts relating to kratom products set forth under existing
15 law to revise: (1) requirements relating to the type of kratom products that a person
16 is prohibited from preparing, distributing, advertising, selling or offering to sell;
17 and (2) the information that must be included on a label for a kratom product.
18 **Section 9** eliminates the civil penalty imposed for engaging in such prohibited acts
19 and **section 8.7** of this bill instead provides for the imposition of administrative
20 fines by the Division of Public and Behavioral Health of the Department of Health
21 and Human Services for certain violations relating to kratom products.

22 **Section 6** of this bill prohibits a person from selling or offering to sell a kratom
23 product to an end user unless the kratom product has been registered with the
24 Division. **Section 6** sets forth certain requirements for a person to register a kratom
25 product with the Division.

26 **Sections 6.5 and 8** of this bill set forth circumstances under which the Division
27 may require a person who registers a kratom product to submit the kratom product
28 to a laboratory for certain additional testing. **Section 7.5** of this bill requires a
29 person who registers a kratom product to submit to the Division a copy of certain
30 reports concerning the kratom product that are required to be submitted to the
31 United States Food and Drug Administration.

32 **Section 7** of this bill authorizes the Division to adopt certain regulations to
33 carry out the provisions of this bill. **Section 9.8** of this bill makes an appropriation
34 from the State General Fund to the Division for personnel, travel, operating,
35 equipment and information services expenses to carry out the provisions of this bill.

36 Existing law sets forth the Uniform Controlled Substances Act, which
37 establishes various provisions relating to controlled substances, including, without
38 limitation, provisions establishing certain offenses concerning controlled
39 substances and the penalties for those offenses. (NRS 453.011-453.348)

40 Existing law authorizes the State Board of Pharmacy to adopt regulations to
41 add, delete or reschedule substances as controlled substances in schedules I, II, III,
42 IV or V pursuant to the Uniform Controlled Substances Act. (NRS 453.146)

43 **Section 8.3** of this bill provides that if mitragynine or any of its constituent
44 alkaloids is added to a schedule of controlled substances, a person who engages in
45 the possession, delivery, production, sale or use of a kratom product that meets the
46 requirements of this bill and who confines his or her activities to those authorized
47 by this bill does not commit a violation of any law, ordinance, rule or regulation of
48 this State or any political subdivision of this State and any such conduct must not
49 constitute the basis for any investigation, detention, search, seizure, arrest,
50 prosecution or other legal penalty against the person. **Section 9.7** of this bill
51 provides that the Uniform Controlled Substances Act and certain other provisions
52 governing controlled substances do not apply to the extent that they are inconsistent
53 with the provisions of **sections 2-9** of this act.



54 Sections 2.5-4.5 of this bill define certain other words and terms for the
55 purposes of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 597 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 8.7, inclusive, of this
3 act.

4 Sec. 2. *As used in NRS 597.998 and sections 2 to 8.7,*
5 *inclusive, of this act, unless the context otherwise requires, the*
6 *words and terms defined in sections 2.5 to 5, inclusive, of this act*
7 *have the meanings ascribed to them in those sections.*

8 Sec. 2.5. *“Certificate of analysis” means a document*
9 *produced by a laboratory describing the results of the laboratory’s*
10 *testing of a kratom product.*

11 Sec. 3. *“Division” means the Division of Public and*
12 *Behavioral Health of the Department of Health and Human*
13 *Services.*

14 Sec. 4. *“Food” means any food, food product, food*
15 *ingredient, dietary ingredient, dietary supplement or beverage*
16 *intended for ultimate human consumption.*

17 Sec. 4.5. *“Kratom extract” means a kratom product*
18 *containing any part of the leaf of the Mitragyna Speciosa plant*
19 *that has been extracted and concentrated to provide a dosage that*
20 *is more standardized.*

21 Sec. 5. *“Kratom product” means food containing any part of*
22 *the leaf of the Mitragyna Speciosa plant, or an extract thereof,*
23 *which is manufactured as a powder, capsule, pill or other edible*
24 *form.*

25 Sec. 6. 1. *A person shall not sell or offer to sell a kratom*
26 *product to an end user unless the kratom product has been*
27 *registered with the Division pursuant to this section.*

28 2. *A person who wishes to register a kratom product must*
29 *submit to the Division:*

30 (a) *An application on a form prescribed by the Division.*

31 (b) *A fee in an amount established by the Division by*
32 *regulation.*

33 (c) *A certificate of analysis for the kratom product which:*

34 (1) *Is produced by an independent laboratory that meets*
35 *any requirements set forth in regulations adopted by the Division*
36 *pursuant to section 7 of this act. Such requirements may include,*
37 *without limitation, a requirement that the independent laboratory*
38 *meet any accreditation standards required by the Division relating*
39 *to the testing of food.*



1 (2) Provides sufficient information about the kratom
2 product to enable the Division to determine whether the kratom
3 product complies with the provisions of NRS 597.998 and sections
4 2 to 8.7, inclusive, of this act.

5 (d) Any other information and documentation that the
6 Division deems necessary to ensure that the kratom product meets
7 the requirements of NRS 597.998 and sections 2 to 8.7, inclusive,
8 of this act and the regulations adopted pursuant thereto.

9 3. A registration issued pursuant to this section expires 1 year
10 after issuance and may be renewed by submitting to the Division
11 an application for renewal and the same fees and materials
12 required by paragraphs (b), (c) and (d) of subsection 2 for an
13 initial registration.

14 **Sec. 6.5.** 1. If the Division has reasonable cause to believe
15 that the information contained on the label of, or the certificate of
16 analysis for, a kratom product is inaccurate, the Division may
17 require the person who registered the kratom product to send the
18 kratom product to a laboratory selected by the Division to conduct
19 testing on the kratom product.

20 2. After the testing conducted pursuant to subsection 1 is
21 completed, the Division shall send the person who registered the
22 kratom product a bill for the costs of the testing. If the person fails
23 to pay those costs within a period of time after the receipt of the
24 bill established by the Division by regulation, the Division shall
25 revoke the registration of the kratom product.

26 **Sec. 7.** The Division may adopt regulations as it determines
27 to be necessary or advisable to carry out the provisions of NRS
28 597.998 and sections 2 to 8.7, inclusive of this act.

29 **Sec. 7.5.** 1. If a person submits to the United States Food
30 and Drug Administration a report pursuant to 21 U.S.C. § 379aa-1
31 concerning a serious adverse event involving a kratom product
32 that the person has registered pursuant to section 6 of this act, the
33 person shall send a copy of that report to the Division by certified
34 mail within a period of time established by the Division by
35 regulation.

36 2. Failure to send to the Division a copy of the report
37 described in subsection 1 within the time required by subsection 1,
38 constitutes grounds for the revocation of the registration of the
39 kratom product about which the report relates.

40 **Sec. 8.** 1. Any person may report to the Division on a form
41 prescribed by the Division a suspected violation of NRS 597.998 or
42 sections 2 to 8.7, inclusive, of this act.

43 2. If the Division determines that the allegations in a
44 complaint are credible and relate to the content or labeling of, or a
45 certificate of analysis for, a kratom product, the Division shall



1 *require the person who committed the alleged violation to obtain*
2 *and provide to the Division, within a period of time prescribed by*
3 *the Division by regulation, a new certificate of analysis which*
4 *complies with paragraph (c) of subsection 2 of section 6 of this act*
5 *for the kratom product.*

6 3. *If a person fails to provide the Division with a certificate of*
7 *analysis pursuant to subsection 2, the Division shall revoke the*
8 *registration for the kratom product.*

9 **Sec. 8.3.** *Notwithstanding any other provision of law, if*
10 *mitragynine or any of its constituent alkaloids are added to*
11 *schedule I, II, III, IV or V by the State Board of Pharmacy by*
12 *regulation pursuant to NRS 453.146, a person who engages in the*
13 *possession, delivery, production, sale or use of a kratom product*
14 *that meets the requirements of NRS 597.998 and sections 2 to 8.7,*
15 *inclusive, of this act and who confines his or her activities to those*
16 *authorized by NRS 597.998 and sections 2 to 8.7, inclusive, of this*
17 *act does not violate any law, ordinance, rule or regulation of this*
18 *State or any political subdivision of this State and such conduct*
19 *may not constitute the basis for any investigation, detention,*
20 *search, seizure, arrest, prosecution or other legal penalty against*
21 *the person.*

22 **Sec. 8.7.** 1. *A person who violates any provision of NRS*
23 *597.998 and sections 2 to 8.7, inclusive, of this act is subject to an*
24 *administrative fine in an amount not to exceed \$500 for a first*
25 *offense and \$1,000 for a second or subsequent offense.*

26 2. *Upon the request of a person to whom an administrative*
27 *fine is issued, the Division shall provide notice of and conduct a*
28 *hearing in accordance with the provisions of chapter 233B of*
29 *NRS.*

30 **Sec. 9.** NRS 597.998 is hereby amended to read as follows:

31 597.998 1. A person shall not knowingly *distribute*, sell or
32 offer to sell any material, compound, mixture or preparation
33 containing a kratom product to a child under the age of 18 years.

34 2. A person shall not knowingly prepare, distribute, advertise,
35 sell or offer to sell a kratom product that ~~is~~ :

36 (a) *Is adulterated, as defined in 21 U.S.C. § 342, or combined*
37 *or packaged with* ~~is~~ :

38 (1) *A controlled substance or a dangerous drug, as defined*
39 *in chapter 454 of NRS, or any poisonous or deleterious substance;*
40 *or*

41 (2) *Any substance that affects the quality or strength of the*
42 *kratom product to such a degree as to render the kratom product*
43 *injurious to a consumer* ~~[. A person has not violated the provisions~~
44 ~~of this subsection if he or she can show by a preponderance of~~
45 ~~evidence that he or she relied in good faith upon the representations~~



~~of a manufacturer, processor, packer or distributor of the kratom product.~~

~~3. A person shall not sell a kratom product that does not have a label that clearly sets forth the ingredients and directions for the safe and effective use of the kratom product.~~

~~4. A person who violates any provision of this section is subject to a civil penalty of not more than \$1,000 for each violation.~~

~~5. As used in this section, "kratom product" means any product or ingredient containing:~~

~~(a) Any part of the leaf of the *Mitragyna Speciosa* plant if the plant contains the alkaloid mitragynine or 7-hydroxymitragynine; or~~

~~(b) A synthetic material that contains the alkaloid mitragynine or 7-hydroxymitragynine;~~

~~regardless of whether the product or ingredient is labeled or sold for human consumption.];~~

(b) Contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 1 percent of the alkaloid composition of the kratom product;

(c) Contains a synthetic alkaloid, including, without limitation, synthetic mitragynine, synthetic 7-hydroxymitragynine or any synthetically derived compound of the Mitragyna Speciosa plant;

(d) Does not include a label that complies with any requirements for the labeling of food established by the State Board of Health by regulations adopted pursuant to NRS 439.200 or 446.940 and that clearly sets forth:

(1) The recommended size of an individual serving;

(2) The maximum limits for individual servings per day;

(3) The number of servings equal to the size of one recommended individual serving that are contained in the package; and

(4) Directions for the safe and effective use of the kratom product.

(e) A kratom extract which contains levels of residual solvents that exceed the levels authorized by chapter 467 of the United States Pharmacopeia-National Formulary, published by the United States Pharmacopeial Convention.

Sec. 9.5. (Deleted by amendment.)

Sec. 9.7. NRS 453.005 is hereby amended to read as follows:

453.005 The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of **[title]** :

1. Title 56 of NRS.

2. NRS 597.998 and sections 2 to 8.7, inclusive, of this act.

Sec. 9.8. 1. There is hereby appropriated from the State General Fund to the Division of Public and Behavioral Health of the Department of Health and Human Services for personnel, travel,



1 operating, equipment and information services expenses to carry out
2 the provisions of this act the following sums:

3	For the Fiscal Year 2023-2024	\$121,162
4	For the Fiscal Year 2024-2025	\$140,010

5 2. Any balance of the sums appropriated by subsection 1
6 remaining at the end of the respective fiscal years must not be
7 committed for expenditure after June 30 of the respective fiscal
8 years by the entity to which the appropriation is made or any entity
9 to which money from the appropriation is granted or otherwise
10 transferred in any manner, and any portion of the appropriated
11 money remaining must not be spent for any purpose after
12 September 20, 2024, and September 19, 2025, respectively, by
13 either the entity to which the money was appropriated or the entity
14 to which the money was subsequently granted or transferred, and
15 must be reverted to the State General Fund on or before
16 September 20, 2024, and September 19, 2025, respectively.

17 **Sec. 10.** 1. This section becomes effective upon passage and
18 approval.

19 2. Section 9.8 of this act becomes effective on July 1, 2023.

20 3. Sections 1 to 9.7, inclusive, of this act become effective:

21 (a) Upon passage and approval for the purpose of adopting any
22 regulations and performing any other preparatory administrative
23 tasks that are necessary to carry out the provisions of this act; and

24 (b) On January 1, 2024, for all other purposes.

