

9121

I N A S S E M B L Y

January 28, 2016

Introduced by M. of A. LINARES -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the prohibition of the sale of kratom to individuals under the age of twenty-one

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

1 Section 1. The article heading of article 13-f of the public health
2 law, as amended by chapter 448 of the laws of 2012, is amended to read
3 as follows:
4 REGULATION OF TOBACCO PRODUCTS, HERBAL CIGARETTES, KRATOM AND SMOKING
5 PARAPHERNALIA; DISTRIBUTION TO MINORS
6 S 2. Section 1399-aa of the public health law is amended by adding a
7 new subdivision 14 to read as follows:
8 14. "KRATOM" MEANS ANY PART OF THE PLANT MITRAGYNA SPECIOSA, WHETHER
9 GROWING OR NOT, AND ANY COMPOUND, MANUFACTURE, SALT, DERIVATIVE,
10 MIXTURE, OR PREPARATION OF SUCH PLANT.
11 S 3. Article 13-f of the public health law is amended by adding a new
12 section 1399-mmm to read as follows:
13 S 1399-MMM. SALE OF KRATOM PROHIBITED. 1. NO PERSON SHALL KNOWINGLY
14 SELL OR PROVIDE KRATOM TO ANY OTHER PERSON UNDER TWENTY-ONE YEARS OF
15 AGE. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE
16 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS.
17 2.(A) ANY PERSON OPERATING A BUSINESS WHEREIN KRATOM IS SOLD OR
18 OFFERED FOR SALE IS PROHIBITED FROM SELLING SUCH KRATOM TO INDIVIDUALS
19 UNDER TWENTY-ONE YEARS OF AGE, AND SHALL POST IN A CONSPICUOUS PLACE A
20 SIGN UPON WHICH THERE SHALL BE IMPRINTED THE FOLLOWING STATEMENT, "SALE
21 OF KRATOM TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY
22 LAW." SUCH SIGN SHALL BE PRINTED ON A WHITE CARD IN RED LETTERS AT
23 LEAST ONE-HALF INCH IN HEIGHT.
24 (B) SALES OF KRATOM SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMON-
25 STRATES, THROUGH A DRIVER'S LICENSE OR OTHER PHOTOGRAPHIC IDENTIFICA-
26 TION CARD ISSUED BY A GOVERNMENT ENTITY OR EDUCATIONAL INSTITUTION INDI-
27 CATING THAT THE INDIVIDUAL IS AT LEAST TWENTY-ONE YEARS OF AGE. SUCH
28 IDENTIFICATION NEED ONLY BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 APPEARS TO BE AT LEAST TWENTY-FIVE YEARS OF AGE, PROVIDED, HOWEVER, THAT
2 SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING ALLEG-
3 ING THE SALE OF KRATOM TO AN INDIVIDUAL UNDER TWENTY-ONE YEARS OF AGE.

4 (C)(I) ANY PERSON OPERATING A BUSINESS WHEREIN KRATOM IS SOLD OR
5 OFFERED FOR SALE MAY PERFORM A TRANSACTION SCAN AS A PRECONDITION FOR
6 SUCH PURCHASES.

7 (II) IN ANY INSTANCE WHERE THE INFORMATION DECIPHERED BY THE TRANS-
8 ACTION SCAN FAILS TO MATCH THE INFORMATION PRINTED ON THE DRIVER'S
9 LICENSE OR NON-DRIVER IDENTIFICATION CARD, OR IF THE TRANSACTION SCAN
10 INDICATES THAT THE INFORMATION IS FALSE OR FRAUDULENT, THE ATTEMPTED
11 TRANSACTION SHALL BE DENIED.

12 (III) IN ANY PROCEEDING PURSUANT TO SECTION THIRTEEN HUNDRED
13 NINETY-NINE-EE OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT
14 SUCH PERSON HAD PRODUCED A DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION
15 CARD APPARENTLY ISSUED BY A GOVERNMENTAL ENTITY, SUCCESSFULLY COMPLETED
16 THAT TRANSACTION SCAN, AND THAT THE KRATOM HAD BEEN SOLD, DELIVERED OR
17 GIVEN TO SUCH PERSON IN REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND
18 TRANSACTION SCAN. IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE
19 DEFENSE THE COMMISSIONER SHALL TAKE INTO CONSIDERATION ANY WRITTEN POLI-
20 CY ADOPTED AND IMPLEMENTED BY THE SELLER TO EFFECTUATE THE PROVISIONS OF
21 THIS CHAPTER. USE OF A TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON
22 OPERATING A BUSINESS WHEREIN KRATOM IS SOLD, OR THE AGENT OR EMPLOYEE OF
23 SUCH PERSON, FROM THE EXERCISE OF REASONABLE DILIGENCE OTHERWISE
24 REQUIRED BY THIS CHAPTER. NOTWITHSTANDING THE ABOVE PROVISIONS, ANY SUCH
25 AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL
26 PROCEEDING, OR IN ANY OTHER FORUM.

27 (D) A BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS SHALL ONLY USE A
28 DEVICE CAPABLE OF DECIPHERING ANY ELECTRONICALLY READABLE FORMAT, AND
29 SHALL ONLY USE THE INFORMATION RECORDED AND MAINTAINED THROUGH THE USE
30 OF SUCH DEVICES, FOR THE PURPOSES CONTAINED IN PARAGRAPH (C) OF THIS
31 SUBDIVISION. NO BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS SHALL
32 RESELL OR DISSEMINATE THE INFORMATION RECORDED DURING SUCH A SCAN TO ANY
33 THIRD PERSON. SUCH PROHIBITED RESALE OR DISSEMINATION INCLUDES BUT IS
34 NOT LIMITED TO ANY ADVERTISING, MARKETING OR PROMOTIONAL ACTIVITIES.
35 NOTWITHSTANDING THE RESTRICTIONS IMPOSED BY THIS PARAGRAPH, SUCH RECORDS
36 MAY BE RELEASED PURSUANT TO A COURT ORDERED SUBPOENA OR PURSUANT TO ANY
37 OTHER STATUTE THAT SPECIFICALLY AUTHORIZES THE RELEASE OF SUCH INFORMA-
38 TION. EACH VIOLATION OF THIS PARAGRAPH SHALL BE PUNISHABLE BY A CIVIL
39 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS.

40 (E) A BUSINESS OR AGENT OR EMPLOYEE OF SUCH BUSINESS MAY ELECTRON-
41 ICALLY OR MECHANICALLY RECORD AND MAINTAIN ONLY THE INFORMATION FROM A
42 TRANSACTION SCAN NECESSARY TO EFFECTUATE THIS SECTION. SUCH INFORMATION
43 SHALL BE LIMITED TO THE FOLLOWING: (I) NAME, (II) DATE OF BIRTH, (III)
44 DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION NUMBER, AND (IV) EXPIRA-
45 TION DATE.

46 (F) AS USED IN THIS SUBDIVISION, "A DEVICE CAPABLE OF DECIPHERING ANY
47 ELECTRONICALLY READABLE FORMAT", "CARD HOLDER" AND "TRANSACTION SCAN"
48 SHALL HAVE THE SAME MEANINGS AS ARE ASCRIBED TO SUCH TERMS BY SECTION
49 THIRTEEN HUNDRED NINETY-NINE-CC OF THIS ARTICLE.

50 S 4. This act shall take effect immediately.