

# STATE OF NEW YORK

168

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. HELMING, JACOBS, LANZA, ROBACH, SAVINO -- read twice and ordered printed, and when printed to be committed 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 eighteen

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,  
5 KRATOM AND SMOKING PARAPHERNALIA; DISTRIBUTION  
6 TO MINORS

7 § 2. Section 1399-aa of the public health law is amended by adding a  
8 new subdivision 14 to read as follows:

9 14. "Kratom" means any part of the plant *Mitragyna speciosa*, whether  
10 growing or not, and any compound, manufacture, salt, derivative,  
11 mixture, or preparation of such plant.

12 § 3. Article 13-F of the public health law is amended by adding a new  
13 section 1399-mmm to read as follows:

14 § 1399-mmm. Sale of kratom prohibited. 1. No person shall knowingly  
15 sell or provide kratom to any other person under eighteen years of age.  
16 Any person who violates the provisions of this subdivision shall be  
17 subject to a civil penalty of not more than five hundred dollars.

18 2.(a) Any person operating a place of business wherein kratom is sold  
19 or offered for sale is prohibited from selling such kratom to individ-  
20 uals under eighteen years of age, and shall post in a conspicuous place  
21 a sign upon which there shall be imprinted the following statement,  
22 "SALE OF KRATOM TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY

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

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1 LAW". Such sign shall be printed on a white card in red letters at  
2 least one-half inch in height.

3 (b) Sales of kratom shall be made only to an individual who demon-  
4 strates, through (i) a valid driver's license or non-driver's identifi-  
5 cation card issued by the commissioner of motor vehicles, the federal  
6 government, any United States territory, commonwealth or possession, the  
7 District of Columbia, a state government within the United States or a  
8 provincial government of the dominion of Canada, or (ii) a valid pass-  
9 port issued by the United States government or any other country, or  
10 (iii) an identification card issued by the armed forces of the United  
11 States, or (iv) any other photographic identification card issued by a  
12 governmental entity or educational institution indicating that the indi-  
13 vidual is at least eighteen years of age. Such identification need not  
14 be required of any individual who reasonably appears to be at least  
15 twenty-five years of age, provided, however, that such appearance shall  
16 not constitute a defense in any proceeding alleging the sale of kratom  
17 to an individual under eighteen years of age.

18 (c)(i) Any person operating a place of business wherein kratom is sold  
19 or offered for sale may perform a transaction scan as a precondition for  
20 such purchases.

21 (ii) In any instance where the information deciphered by the trans-  
22 action scan fails to match the information printed on the driver's  
23 license or non-driver identification card, or if the transaction scan  
24 indicates that the information is false or fraudulent, the attempted  
25 transaction shall be denied.

26 (iii) In any proceeding pursuant to section thirteen hundred ninety-  
27 nine-ee of this article, it shall be an affirmative defense that such  
28 person had produced a driver's license or non-driver identification card  
29 apparently issued by a governmental entity, successfully completed that  
30 transaction scan, and that the kratom has been sold, delivered or given  
31 to such person in reasonable reliance upon such identification and tran-  
32 saction scan. In evaluating the applicability of such affirmative  
33 defense the commissioner shall take into consideration any written poli-  
34 cy adopted and implemented by the seller to effectuate the provisions of  
35 this article. Use of a transaction scan shall not excuse any person  
36 operating a place of business wherein kratom is sold, or the agent or  
37 employee of such person, from the exercise of reasonable diligence  
38 otherwise required by this article. Notwithstanding the above  
39 provisions, any such affirmative defense shall not be applicable in any  
40 civil or criminal proceeding, or in any other forum.

41 (d) A business or agent or employee of such business shall only use a  
42 device capable of deciphering any electronically readable format, and  
43 shall only use the information recorded and maintained through the use  
44 of such devices, for the purposes contained in paragraph (c) of this  
45 subdivision. No business or agent or employee of such business shall  
46 resell or disseminate the information recorded during such a scan to any  
47 third person. Such prohibited resale or dissemination includes but is  
48 not limited to any advertising, marketing or promotional activities.  
49 Notwithstanding the restrictions imposed by this subdivision, such  
50 records may be released pursuant to a court ordered subpoena or pursuant  
51 to any other statute that specifically authorizes the release of such  
52 information. Each violation of this subdivision shall be punishable by a  
53 civil penalty of not more than one thousand dollars.

54 (e) A business or agent or employee of such business may electron-  
55 ically or mechanically record and maintain only the information from a  
56 transaction scan necessary to effectuate this section. Such information

1 shall be limited to the following: (i) name, (ii) date of birth, (iii)  
2 driver's license or non-driver identification number, and (iv) expira-  
3 tion date.

4 (f) As used in this subdivision, "a device capable of deciphering any  
5 electronically readable format", "card holder" and "transaction scan"  
6 shall have the same meanings as are ascribed to such terms by section  
7 thirteen hundred ninety-nine-cc of this article.

8 § 4. The commissioner of health shall conduct a study relating to  
9 kratom. The study shall include but not be limited to the potential  
10 health risks, benefits and effects of kratom and shall review all avail-  
11 able data relating to such. Such commissioner shall publish and submit a  
12 report of his or her findings and recommendations to the governor, the  
13 speaker of the assembly and the temporary president of the senate on or  
14 before one year from the effective date of this act.

15 § 5. This act shall take effect immediately.