STATE OF NEW YORK

5531

2019-2020 Regular Sessions

IN SENATE

May 6, 2019

Introduced by Sen. MARTINEZ -- 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 twenty-one

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 13-F of the public health law, as amended by chapter 448 of the laws of 2012, is amended to read as follows:

REGULATION OF TOBACCO PRODUCTS, HERBAL CIGARETTES, **KRATOM** AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

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

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

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

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

2.(a) Any person operating a place of business wherein kratom is sold or offered for sale is prohibited from selling such kratom to individuals under twenty-one years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF KRATOM TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW". Such sign shall be printed on a white card in red letters at least one-half inch in height.

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

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(b) Sales of kratom shall be made only to an individual who demonstrates, through (i) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a valid passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States, or (iv) any other photographic identification card issued by a governmental entity or educational institution indicating that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of kratom to an individual under twenty-one years of age.

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

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

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

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

(e) A business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii)

driver's license or non-driver identification number, and (iv) expiration date.

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

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

§ 5. This act shall take effect immediately.