STATE OF NEW YORK

6104

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to enacting the "New York state kratom consumer protection act"

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

Section 1. Short title. This act shall be known and may be cited as the "New York state kratom consumer protection act".

§ 2. The agriculture and markets law is amended by adding a new article 17-C to read as follows:

ARTICLE 17-C
NEW YORK STATE KRATOM
CONSUMER PROTECTION ACT

Section 223. Definitions.
223-a. Kratom product labeling.
223-b. Violations.
223-c. Penalties.
223-d. Rules and regulations.

§ 223. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Dealer" shall mean any individual, partnership, limited liability company, corporation, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative of any such entity who sells, prepares, or maintains kratom products, or advertises, represents, or holds itself out to be selling, preparing, or maintaining kratom products.

2. "Food" shall mean any food, food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption.

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

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3. "Kratom product" shall mean any food containing any part, extract, or byproduct of the leaf of the plant mitragyna speciosa.

§ 223-a. Kratom product labeling. Any dealer who prepares, distributes, sells, or exposes for sale a food that is represented to be a kratom product shall disclose on the label of such kratom product the factual basis upon which such representation is made.

§ 223-b. Violations. 1. No dealer shall prepare, distribute, sell, or expose for sale any of the following:

(a) Any kratom product that is adulterated with a dangerous non-kratom substance. A kratom product is adulterated with a dangerous non-kratom substance if such kratom product is mixed or packed with a non-kratom substance and such substance affects the quality or strength of such kratom product to a degree which renders such kratom product injurious to consumers.

(b) Any kratom product that is contaminated with a dangerous non-kratom substance. A kratom product is contaminated with a dangerous non-kratom substance if such kratom product contains a poisonous or otherwise deleterious non-kratom ingredient, including, but not limited to, the substances listed in section thirty-three hundred six of the public health law.

(c) Any kratom product containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the alkaloid composition of such product.

(d) Any kratom product containing any synthetic alkaloids including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant.

(e) Any kratom product that does not include on its package or label the amount of mitragynine and 7-hydroxymitragynine contained in such product, and directions for safe and effective use by consumers.

2. No dealer shall distribute or sell any kratom product to an individual under eighteen years of age.

§ 223-c. Penalties. 1. A dealer found to be in violation of section two hundred twenty-three-a of this article shall be subject to an administrative fine of up to five hundred dollars for the first offense and up to one thousand dollars for any subsequent offense. Any person charged with a fine pursuant to this subdivision shall have the right to request a hearing to challenge such fine.

2. A dealer found to be in violation of section two hundred twenty-three-a or section two hundred twenty-three-b of this article shall be guilty of a misdemeanor, punishable by imprisonment up to ninety days, a fine of up to five hundred dollars, or both.

3. Any person aggrieved by a violation of this article may, in addition to and distinct from any other remedy at law or equity, bring a private cause of action in a competent court of jurisdiction, for any damages resulting from such violation, including but not limited to, economic, noneconomic, and consequential damages.

4. A dealer shall not be in violation of this article where such dealer has demonstrated by a preponderance of the evidence that such dealer relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of a kratom product that such product was in compliance with this section.

§ 223-d. Rules and regulations. The department shall promulgate rules for the administration and enforcement of this article, including but not limited to, the format, size, and placement of the disclosure label required by section two hundred twenty-three-a of this article, in addi-

tion to the information which shall be included on such disclosure label.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.