

STATE OF NEW YORK

8401

IN SENATE

January 26, 2024

Introduced by Sens. HELMING, ASHBY -- 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 Assem-
bly, 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 19 to read as follows:

9 19. "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 twenty-one years of
16 age. 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 twenty-one years of age, and shall post in a conspicuous
21 place a sign upon which there shall be imprinted the following state-
22 ment, "SALE OF KRATOM TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS
23 PROHIBITED BY LAW". Such sign shall be printed on a white card in red
24 letters at least one-half inch in height.

25 (b) Sales of kratom shall be made only to an individual who demon-
26 strates, through: (i) a valid driver's license or non-driver's iden-
27 tification card issued by the commissioner of motor vehicles, the feder-
28 al government, any United States territory, commonwealth or possession,

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

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1 the District of Columbia, a state government within the United States or
2 a provincial government of the dominion of Canada; or (ii) a valid pass-
3 port issued by the United States government or any other country, or
4 (iii) an identification card issued by the armed forces of the United
5 States, or (iv) any other photographic identification card issued by a
6 governmental entity or educational institution indicating that the indi-
7 vidual is at least twenty-one years of age. Such identification need not
8 be required of any individual who reasonably appears to be at least
9 twenty-five years of age, provided, however, that such appearance shall
10 not constitute a defense in any proceeding alleging the sale of kratom
11 to an individual under twenty-one years of age.

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

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

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

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

48 (e) A business or agent or employee of such business may electron-
49 ically or mechanically record and maintain only the information from a
50 transaction scan necessary to effectuate this section. Such information
51 shall be limited to the following: (i) name, (ii) date of birth, (iii)
52 driver's license or non-driver identification number, and (iv) expira-
53 tion date.

54 (f) As used in this subdivision, "a device capable of deciphering any
55 electronically readable format", "card holder" and "transaction scan"

1 shall have the same meanings as are ascribed to such terms by section
2 thirteen hundred ninety-nine-cc of this article.

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

11 § 5. This act shall take effect immediately.