

SUBJECT: Regulating the processing and sale of kratom and kratom products

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Klick, Campos, Jetton, A. Johnson, J. Jones, V. Jones,
Oliverson, Price, Smith, Tinderholt

0 nays

1 absent — Collier

WITNESSES: For — Mac Haddow, American Kratom Association; Curt Bramble
(*Registered, but did not testify*: Dennis Borel, Coalition of Texans with
Disabilities; M Paige Williams, Dallas County Criminal District Attorney
John Creuzot; David Reynolds, Texas Chapter American College of
Physicians; Matt Dowling, Texas Medical Association)

Against — (*Registered, but did not testify*: Kevin Hale, Libertarian Party
of Texas; Sarah Reyes, Texas Center for Justice & Equity; Joyce H; Susan
Stewart)

DIGEST: HB 861 would define “kratom processor” as a person who:

- manufactured, represented, distributed, or maintained kratom products for sale;
- advertised or represented themselves as a manufacturer, preparer, or seller of kratom products;
- was responsible for ensuring the purity and proper labelling of kratom products; or
- packaged or labeled kratom products.

Kratom retailers would be kratom processors who sold kratom products to consumers or advertised themselves as a seller of kratom products. Kratom products would include a food, extract, capsule, or pill containing any form of kratom.

HB 861 would require kratom processors to label each kratom product with use directions necessary to ensure safe use of the product, including recommended serving sizes. Kratom retailers could only sell kratom products that were properly labeled.

Kratom processors or retailers could not prepare, distribute, sell, or offer to sell a kratom product that was adulterated with a dangerous non-kratom product that rendered it injurious to a consumer or contaminated with a poisonous or deleterious non-kratom substance, including controlled substances. Kratom products would be required to contain a level of 7-hydroxymitragynine in the alkaloid fraction that is two percent or less of the overall alkaloid composition of the product and could not contain any synthetic alkaloids.

The bill would establish a class C misdemeanor (maximum fine of \$500) for distributing, selling, or exposing for sale a kratom product to someone younger than 18 years old. A person who violated provisions of the bill would be subject to certain civil penalties, including \$250 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation. Each day a violation continued or occurred would be a separate violation for the purposes of imposing a penalty. A kratom retailer would not be liable for a civil penalty if the retailer proved by a preponderance of the evidence that the violation was unintentional and due to the retailer's good faith reliance on the representation of another kratom processor. These penalties would be in addition to any other penalties prescribed by law.

The attorney general or the district or county attorney for the area where the violation was alleged to have occurred could bring an action to recover a penalty under the provisions of the bill. The executive commissioner of the Health and Human Services Commission could adopt rules consistent with the bill as necessary to ensure the safe consumption and distribution of kratom and kratom products.

The bill would take effect September 1, 2023, and would be known as the

Texas Kratom Consumer Health and Safety Protection Act.

SUPPORTERS
SAY:

HB 861 would ensure the safe consumption and distribution of kratom by setting quality standards and ensuring proper labelling of kratom products. Pure kratom products are safe, have a legitimate use as pain relievers, and can potentially treat opioid withdrawal. The bill would create labelling requirements for kratom products that are similar to requirements for food safety. Requiring clear labels and safe manufacturing would protect consumers from adulterated or contaminated kratom products. The bill's regulations and penalties are intended for kratom processors, not individuals.

CRITICS
SAY:

HB 861 could have unintended consequences by creating a penalty for people who distributed kratom products to minors. If an 18 year old gave a kratom product to an individual who was around the same age but under 18, the 18 year old could receive a class C misdemeanor. Lawmakers also should not penalize the sale, distribution, or use of kratom products since they can be used to treat drug dependency.