Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Commerce and Labor

This measure may be considered for action during today's work session.

ASSEMBLY BILL 322

Revises provisions relating to kratom products. (BDR 52-763)

Sponsored By:	Assembly Members Nguyen, Yeager, and González, and Senator Hansen, et al.
Date Heard:	March 27, 2023
Fiscal Notes:	Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility. Effect on the State: Yes.

Assembly Bill 322 defines a kratom product to mean any food containing any part of the leaf of the Mitragyna Speciosa plant. The measure prohibits a person from preparing, distributing, advertising, selling, or offering to sell a kratom product unless the product has been registered with the State Board Oriental Medicine. The Board is authorized to impose an administrative fine for a violation of this prohibition and seize and destroy a kratom product. The Board may adopt regulations to carry out the provisions of this bill.

Amendments: Assemblyman Nguyen proposes the following amendments (attached):

1. Delete the provisions of the bill which provide for the registration and regulation of kratom products by the State Board of Oriental Medicine and instead enact the provisions of the Kratom Consumer Protection Act, which: (1) revise the definitions of various terms associated with kratom products; (2) provide for the registration of kratom products with the State Department of Agriculture; (3) revise certain prohibited acts relating to kratom products; and (4) set forth certain penalties for violations.

2. Amend *Nevada Revised Statutes* 453.2186 to prohibit the State Board of Pharmacy from including mitragynine, or any of its constituent alkaloids, on any schedule of controlled substances unless such a substance is designated as a controlled substance pursuant to federal law.

3. Amend the bill to provide that if mitragynine, or any of its constituent alkaloids, is designated as a controlled substance, a person who engages in the possession, delivery, production, sale, or use of a kratom product that is registered and meets the requirements of the Kratom Consumer Protection Act is not subject to any state criminal penalty or other state legal penalty applicable to controlled substances for engaging in such conduct.

April 4, 2023

Amendment to AB322

Amendment to be submitted to the Assembly Committee on Commerce and Labor
EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Submitted to: Chair Elaine Marzola, Assembly Commerce and Labor

Submitted by: Assemblyman Nguyen

Amendment Summary:

Part 1: The Board of Pharmacy will not be prevented from scheduling kratom. If scheduled, then any registered product will be exempt from penalties and bans associated with controlled substances at the state level (similar to the cannabis framework previously implemented):

Part 2: Adopts the language of the Kratom Consumer Protection Act.

Proposed Amendment Language:

Part 1 adds subsection (a), referencing federal scheduling, to paragraph (1), within NRS 453.2186:

NRS 453.2186 Board prohibited from including certain substances on schedule; exceptions; required considerations.

1. Authority to control pursuant to NRS 453.146, 453.218, 453.2182 and 453.2184 does not extend to distilled spirits, wine, malt beverages or tobacco.

(a) mitragynine or any of its constituent alkaloids can only be scheduled if designated as a controlled substance by federal law as provided in NRS 453.2182.

Part 2 adds the language of the Kratom Consumer Protection Act to NRS 597:

KRATOM CONSUMER PROTECTION ACT

This chapter shall be known and may be cited as the "Kratom Consumer Protection Act."

Definitions.

As used in this chapter:

1) "Director" means the director of the department of Agriculture [or insert other department assignment].
2) "Food" means a food, food product, food ingredient, dietary ingredient, dietary supplement, or beverage for human consumption.

3) "Kratom product" means a food product or dietary ingredient containing any part of the leaf of the plant mitragyna speciosa or an extract of it; is manufactured as a powder, capsule, pill, beverage, extract, or other edible form; and all kratom products are foods.
4) “Kratom extract” means a food product or dietary ingredient containing any part of the leaf of the plant mitragyna speciosa that has been extracted in order to provide more standardized dosing.
5) "Processor" means a person that sells, prepares, manufactures, distributes, or maintains kratom products, or advertises, represents, or holds itself out as selling, preparing, or maintaining kratom products.
6) “Retailer” means any person that sells, distributes, advertises, represents, or holds itself out as selling or maintaining kratom products.

Kratom product limitations.

A processor shall not prepare, distribute, sell, or expose for sale any of the following:

1) A kratom product that is adulterated with a dangerous non-kratom substance. A kratom product is adulterated with a dangerous non-kratom substance if the kratom product is mixed or packed with a non-kratom substance and that substance affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer.
2) A kratom product that is contaminated with a dangerous non-kratom substance. A kratom product is contaminated with a dangerous non-kratom substance if the kratom product contains a poisonous or otherwise deleterious non-kratom ingredient, including, but not limited to, the substances listed in the state’s controlled substances list.
3) A kratom extract that contains levels of residual solvents higher than is allowed in the U.S. Pharmacopeia 467.
4) A kratom product containing a level of 7-hydroxymitragynine in the and alkaloid fraction that is greater than one percent (1%) of the overall alkaloid composition of the product.
5) A kratom product containing any synthetic alkaloids including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant.

6) That does not provide adequate labeling directions necessary for safe use by consumers, including a recommended serving size, the recommended number of servings per day, and the number of servings in the package that is sold.

Age Limits.

A processor shall not distribute, sell, or expose for sale a kratom product to an individual under eighteen (18) years of age.

Kratom Product Registration.

1) Processor Registration. A processor shall register annually any kratom product intended to be offered for sale to an end consumer that is in an approved kratom delivery form and pay a fee (adjusted annually) to cover all administrative costs for processing and administering such registrations. The registration shall include a certificate of analysis (COA) from a certified independent third-party laboratory showing compliance with the requirements for kratom products in this Act.
2) Product non-compliance reports. Upon receipt of a credible violation report of non-compliance with provisions of this Act on a kratom product offered for sale, the Department shall require the processor to produce an updated and current COA in a reasonable time frame from a certified independent third-party laboratory showing compliance with the KCPA requirements for safe kratom products. If the processor does not provide the COA in the specified time frame, the registration for that product is revoked.
3) Adverse Event Reports. Upon receipt of any adverse event (AE) related to a registered kratom product, the processor shall be required to submit a copy via certified mail to the Department of their AE report that is required to be submitted to the U.S. Food and Drug Administration (FDA) under Section 761 of the Federal Food Drug & Cosmetic Act. Any documented failure to report an AE to the Department shall authorize the Department to revoke the product's registration.
4) Third Party Verification: If the Department has a reasonable basis to require an independent third-party test of a registered kratom product by a laboratory of the Department's choice, the processor shall be required to submit payment for the test

within a reasonable time frame. If the processor does not tender payment to the Department within a set time period upon receipt of the invoice for the testing, the Department shall revoke the registration for that product.

Violations.

1) A processor that violates this Act is subject to an administrative fine of not more than five hundred dollars ($500) for the first offense and not more than one thousand dollars ($1,000) for a second or subsequent offense. Upon the request of a person to whom an administrative fine is issued, the director shall conduct a hearing in accordance with the procedures as set forth in the state's administrative procedures act.