ASSEMBLY, No. 3281

STATE OF NEW JERSEY

217th LEGISLATURE

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Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Criminalizes manufacture, sale, and possession of substances containing kratom.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning controlled dangerous substances, amending N.J.S.2C:35-2 and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2C:35-2 is amended to read as follows:

2C:35-2. As used in this chapter:

"Administer" means the direct application of a controlled dangerous substance or controlled substance analog, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (1) a practitioner (or, in his presence, by his lawfully authorized agent), or (2) the patient or research subject at the lawful direction and in the presence of the practitioner.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

"Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), **[**or**]** in section 2 of P.L.2013, c.35 (C.2C:35-5.3b), or in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

"Controlled substance analog" means a substance that has a chemical structure substantially similar to that of a controlled dangerous substance and that was specifically designed to produce an effect substantially similar to that of a controlled dangerous

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

substance. The term shall not include a substance manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21 U.S.C. s.355).

"Counterfeit substance" means a controlled dangerous substance or controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled dangerous substance or controlled substance analog, whether or not there is an agency relationship.

"Dispense" means to deliver a controlled dangerous substance or controlled substance analog to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. "Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog. "Distributor" means a person who distributes.

"Drugs" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections (a), (b), and (c) of this section; but does not include devices or their components, parts, or accessories.

"Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

"Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled dangerous substance or controlled substance analog by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of his professional practice, or (2) by a practitioner (or under his supervision) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant; but shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, and opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

"Opiate" means any dangerous substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled pursuant to the provisions of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer

of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

"Person" means any corporation, association, partnership, trust, other institution or entity, or one or more individuals.

"Plant" means an organism having leaves and a readily observable root formation, including, but not limited to, a cutting having roots, a rootball or root hairs.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance or controlled substance analog in the course of professional practice or research in this State.

(a) "Physician" means a physician authorized by law to practice medicine in this or any other state and any other person authorized by law to treat sick and injured human beings in this or any other state.

(b) "Veterinarian" means a veterinarian authorized by law to practice veterinary medicine in this State.

(c) "Dentist" means a dentist authorized by law to practice dentistry in this State.

(d) "Hospital" means any federal institution, or any institution for the care and treatment of the sick and injured, operated or approved by the appropriate State department as proper to be entrusted with the custody and professional use of controlled dangerous substances or controlled substance analogs.

(e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous substances or controlled substance analogs for scientific, experimental, and medical purposes and for purposes of instruction approved by the Department of Health.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or controlled substance analog.

"Immediate precursor" means a substance which the Division of Consumer Affairs in the Department of Law and Public Safety has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled substance analog, the control of which is necessary to prevent, curtail, or limit such manufacture.

"Residential treatment facility" means any facility licensed and approved by the Department of Human Services and which is

approved by any county probation department for the inpatient treatment and rehabilitation of drug or alcohol dependent persons.

"Schedules I, II, III, IV, and V" are the schedules set forth in sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any regulations issued by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to the director's authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

"State" means the State of New Jersey.

"Ultimate user" means a person who lawfully possesses a controlled dangerous substance or controlled substance analog for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

"Prescription legend drug" means any drug which under federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian, or dentist and is required to bear the statement "Rx only" or similar wording indicating that such drug may be sold or dispensed only upon the prescription of a licensed medical practitioner and is not a controlled dangerous substance or stramonium preparation.

"Stramonium preparation" means a substance prepared from any part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form with or without other ingredients.

"Stramonium plant" means the plant Datura Stramonium Linne, including Datura Tatula Linne.

(cf: P.L.2013, c.35, s.1)

2. (New section) a. It is a crime for any person knowingly or purposely to manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense substances containing kratom (mitragyna speciosa korth).

b. A person who violates subsection a. of this section where the quantity involved, including adulterants and dilutants, is one ounce or more is guilty of a crime of the second degree.

c. A person who violates subsection a. of this section where the quantity involved, including adulterants and dilutants, is less than one ounce is guilty of a crime of the third degree.

3. (New section) a. It is a crime for any person, knowingly or purposely, to obtain or to possess a substance containing kratom (mitragyna speciosa korth).

b. A person who violates subsection a. of this section where the quantity involved, including adulterants and dilutants, is one ounce or more is guilty of a crime of the third degree.

c. A person who violates subsection a. of this section where the quantity involved, including adulterants and dilutants, is less than one ounce is guilty of a crime of the fourth degree.

4. This act shall take effect immediately.

STATEMENT

This bill would criminalize the manufacture, possession and sale of products containing kratom (mitragyna speciosa korth), a botanical substance that grows naturally in Southeast Asia. Kratom is frequently marketed on the Internet for its psychoactive and opioid-like analgesic effects, and for use in the treatment of morphine and heroin addiction. However, kratom is not approved in the United States for any medical use.

The federal Food and Drug Administration advises kratom, also referred to as mitragynine extract, biak-biak, cratom, gratom, ithang, kakuam, katawn, kedemba, ketum, krathom, krton, mambog, madat, Maeng da leaf, nauclea, Nauclea Speciosa, or thang, poses a threat to public health and has the potential for abuse. According to the federal Food and Drug Administration, scientific literature has disclosed serious concerns regarding the toxicity of kratom in multiple organ systems, and its consumption can lead to a number of health problems including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, loss of libido, tremors, skin hyperpigmentation, nausea, vomiting, constipation and severe withdrawal signs and symptoms.

Possession and distribution of kratom is not barred by federal or New Jersey law. However the federal Food and Drug Administration issued Import Alert # 54-15 providing guidance for federal Food and Drug Administration field personnel regarding the detention without physical examination of dietary supplements and bulk dietary ingredients that are or contain kratom. Kratom is illegal in several countries including Australia, Malaysia and Thailand. Kratom is illegal in Tennessee, and several other states have introduced legislation that would ban this drug.

This bill would amend N.J.S.2C:35-2 to include kratom as a controlled dangerous substance and would supplement Title 2C of the New Jersey Statutes to set out gradations for crimes involving this substance. The bill would make it a crime of the second degree to manufacture, distribute or dispense, or possess or have under one’s control with intent to manufacture, distribute, or dispense, a substance containing kratom in an amount of one ounce or more, including adulterants and dilutants. A crime of the second degree is punishable by imprisonment for a term of five to 10 years, a fine of up to $150,000, or both. It would be a crime of the third degree to manufacture, distribute or dispense, or possess or have under one’s

control with intent to manufacture, distribute, or dispense a substance containing kratom in an amount of less than one ounce, including adulterants and dilutants. A crime of the third degree is punishable by imprisonment for a term of three to five years, a fine of up to $15,000, or both.

Under the bill, the possession of one ounce or more, including adulterants and dilutants, of a substance containing kratom would be a crime of the third degree, and possession of less than one ounce, including adulterants and dilutants, would be a crime of the fourth degree. A crime of the fourth degree is punishable by imprisonment for a term of up to 18 months, a fine of up to $10,000, or both. The bill would take effect immediately.