

ASSEMBLY, No. 4431

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MAY 11, 2015

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.



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

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:35-2 is amended to read as follows:
9 2C:35-2. As used in this chapter:

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

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

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

42 "Controlled substance analog" means a substance that has a
43 chemical structure substantially similar to that of a controlled
44 dangerous substance and that was specifically designed to produce
45 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.

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

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

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

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

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

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

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

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

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

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

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

- 33 (a) Opium, coca leaves, and opiates;
34 (b) A compound, manufacture, salt, derivative, or preparation of
35 opium, coca leaves, or opiates;
36 (c) A substance (and any compound, manufacture, salt,
37 derivative, or preparation thereof) which is chemically identical
38 with any of the substances referred to in subsections (a) and (b),
39 except that the words "narcotic drug" as used in this act shall not
40 include decocainized coca leaves or extracts of coca leaves, which
41 extracts do not contain cocaine or ecogine.

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

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- 1 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
2 It does include its racemic and levorotatory forms.
- 3 "Opium poppy" means the plant of the species *Papaver*
4 *somniferum* L., except the seeds thereof.
- 5 "Person" means any corporation, association, partnership, trust,
6 other institution or entity, or one or more individuals.
- 7 "Plant" means an organism having leaves and a readily
8 observable root formation, including, but not limited to, a cutting
9 having roots, a rootball or root hairs.
- 10 "Poppy straw" means all parts, except the seeds, of the opium
11 poppy, after mowing.
- 12 "Practitioner" means a physician, dentist, veterinarian, scientific
13 investigator, laboratory, pharmacy, hospital, or other person
14 licensed, registered, or otherwise permitted to distribute, dispense,
15 conduct research with respect to, or administer a controlled
16 dangerous substance or controlled substance analog in the course of
17 professional practice or research in this State.
- 18 (a) "Physician" means a physician authorized by law to practice
19 medicine in this or any other state and any other person authorized
20 by law to treat sick and injured human beings in this or any other
21 state.
- 22 (b) "Veterinarian" means a veterinarian authorized by law to
23 practice veterinary medicine in this State.
- 24 (c) "Dentist" means a dentist authorized by law to practice
25 dentistry in this State.
- 26 (d) "Hospital" means any federal institution, or any institution
27 for the care and treatment of the sick and injured, operated or
28 approved by the appropriate State department as proper to be
29 entrusted with the custody and professional use of controlled
30 dangerous substances or controlled substance analogs.
- 31 (e) "Laboratory" means a laboratory to be entrusted with the
32 custody of narcotic drugs and the use of controlled dangerous
33 substances or controlled substance analogs for scientific,
34 experimental, and medical purposes and for purposes of instruction
35 approved by the Department of Health.
- 36 "Production" includes the manufacture, planting, cultivation,
37 growing, or harvesting of a controlled dangerous substance or
38 controlled substance analog.
- 39 "Immediate precursor" means a substance which the Division of
40 Consumer Affairs in the Department of Law and Public Safety has
41 found to be and by regulation designates as being the principal
42 compound commonly used or produced primarily for use, and
43 which is an immediate chemical intermediary used or likely to be
44 used in the manufacture of a controlled dangerous substance or
45 controlled substance analog, the control of which is necessary to
46 prevent, curtail, or limit such manufacture.
- 47 "Residential treatment facility" means any facility licensed and
48 approved by the Department of Human Services and which is

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

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

10 "State" means the State of New Jersey.

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

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

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

26 "Stramonium plant" means the plant *Datura Stramonium* Linne,
27 including *Datura Tatula* Linne.

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

29

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

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

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

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

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

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

4
5 4. This act shall take effect immediately.
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8 STATEMENT
9

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

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

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

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

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

6 Under the bill, the possession of one ounce or more, including
7 adulterants and dilutants, of a substance containing kratom would
8 be a crime of the third degree, and possession of less than one
9 ounce, including adulterants and dilutants, would be a crime of the
10 fourth degree. A crime of the fourth degree is punishable by
11 imprisonment for a term of up to 18 months, a fine of up to
12 \$10,000, or both. The bill would take effect immediately.