

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 287 Controlled Substances
SPONSOR(S): Jacobs and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse” of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. Cannabis and heroin are examples of Schedule I drugs.

Chapter 893, F.S., also contains a variety of provisions criminalizing behavior related to controlled substances.

Mitragyna speciosa korth, also known as “Kratom,” is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia. The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States, but anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.

Kratom abuse is not currently monitored by any national drug abuse surveys and it is not scheduled under the Controlled Substances Act.

The bill amends s. 893.03(1)(c), F.S., adding mitragyna speciosa, the substance known as Kratom, to Schedule I of Florida’s controlled substances schedules. As a result, the criminal penalties of s. 893.13, F.S., relating to the possession, sale, manufacture, and delivery of Schedule I controlled substances, will apply to this substance.

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on prison beds (i.e. an increase of 10 or fewer prison beds).

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 893, F.S.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act (Controlled Substance Act) and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”¹ of the substance listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I drugs.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substance involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Prohibited Acts Relating to Schedule I Substances

Section 893.13, F.S., in part, prohibits a variety of acts relating to substances listed in Schedule I, category (c). For example, it is:

- A third degree felony⁶ for a person to:
 - Sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver such substances;⁷ or
 - Purchase, or possess with intent to purchase, such substances;⁸
 - Bring into Florida such substances unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency;⁹
- A second degree felony¹⁰ for a person to sell, manufacture, etc., such substances in, on, or within 1,000 feet of:
 - The real property comprising a child care facility or a public or private elementary, middle, or secondary school between specified hours;¹¹
 - The real property comprising a park, a community center, or a publicly owned recreational facility at any time;¹²
 - The real property comprising a public or private college, university, or other postsecondary educational institution;¹³

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

² See, s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁷ s. 893.13(1)(a)2., F.S.,

⁸ s. 893.13(2)(a)2., F.S.

⁹ s. 893.13(5)(b), F.S.

¹⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹¹ s. 893.13(1)(c)2., F.S.

¹² *Id.*

¹³ s. 893.13(1)(d)2., F.S.

- A physical place for worship at which a church or religious organization regularly conducts religious services;¹⁴
- A convenience business as defined in s. 812.171, F.S.;¹⁵
- The real property comprising a public housing facility at any time;¹⁶ or
- The real property comprising an assisted living facility;¹⁷ and
- A second degree felony for a person 18 years of age or older to deliver such a substance to a person younger than 18 years of age, use or hire a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or use such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.¹⁸

Kratom

In recent years, synthetic drugs have emerged in Florida. One of the newest substances that has emerged in Florida is known as “Kratom.”

Kratom, also known as *mitragyna speciosa korth*, is a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia.¹⁹ Kratom is primarily used orally as a tea or by chewing the leaves,²⁰ and has been used as an herbal drug in Southeast Asia for decades, most notably as a stimulant or a substitute for opium.²¹ It has also been used to manage opioid withdrawal symptoms by chronic opioid users.²² It has recently become very prevalent in the United States.

The Drug Enforcement Administration (DEA) states that there is no legitimate medical use for Kratom in the United States.²³ However, anecdotal reports claim that it provides general pain relief, alleviates the symptoms of PMS and depression, lowers blood pressure, decreases anxiety, provides diarrhea relief, and increases mental acuity.²⁴

Kratom has been described to have both sedative and stimulant effects.²⁵ At low doses, it is reported to increase alertness, physical energy, talkativeness, and social behavior.²⁶ At high doses, opiate, sedative, and euphoric effects, such as pain relief and relaxation, are produced.²⁷ The effects occur within five to ten minutes after ingestion and last for two to five hours.²⁸ The DEA states that acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination, and loss of appetite.²⁹

There are some reports of deaths associated with Kratom, but often the victims also had other psychiatric drugs in their system or the person was taking a mixture of the drug with a known opioid compound.³⁰

¹⁴ s. 893.13(1)(e)2., F.S.

¹⁵ *Id.*

¹⁶ s. 893.13(1)(f), F.S.

¹⁷ s. 893.13(1)(h)2., F.S.

¹⁸ s. 893.13(4)(b), F.S.

¹⁹ *Kratom*, Drug Enforcement Administration, Office of Divison Control, Drug and Chemical Evaluation section, p. 1 (on file with the Criminal Justice Subcommittee)(hereinafter cited as “DEA Report”).

²⁰ DEA Report, p. 1 and *What is Kratom and is it Dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Kratom under attack in Florida legislature and Palm Beach County*, <http://www.examiner.com/article/kratom-under-attack-florida-legislature-and-palm-beach-county> (last visited March 19, 2015).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *What is kratom and is it dangerous?*, <http://www.promises.com/articles/abused-drugs/what-is-kratom-and-is-it-dangerous/> (last visited March 19, 2015).

Kratom abuse is not currently monitored by any national drug abuse surveys and is not scheduled under the Controlled Substances Act.³¹

Recent Efforts to Ban Kratom

Several Florida counties have attempted to ban Kratom, including Broward, Palm Beach, and Sarasota counties. Sarasota County does currently regulate the distribution of Kratom.³² Both Palm Beach County and Broward County failed to pass ordinances that banning the substance during recent county commission meetings.³³ Many of the commissioners in both counties stated that there was a need for more research before moving forward on a ban of Kratom.³⁴

Kratom has been banned by the U.S. Army and Navy and has been placed on a watch list by DEA.³⁵

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., adding *mitragyna speciosa*, the substance known as Kratom, to Schedule I, category (c) of Florida's controlled substances schedules.

As a result, the above-described criminal penalties of s. 893.13, F.S., relating to the possession, sale, manufacture, and delivery of Schedule I, category (c) controlled substances will apply to this substance.

The bill reenacts ss. 893.12 and 921.0022, F.S., for purposes of incorporating the changes made by the act.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts s. 893.12, F.S., relating to contraband; seizure, forfeiture, sale.

Section 3. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on prison beds (i.e. an increase of 10 or fewer prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³¹ DEA Report, p. 1.

³² *Sarasota County bans sale of synthetic marijuana*, <http://www.heraldtribune.com/article/20140212/ARTICLE/140219895/0/search> (last visited March 19, 2015). The Sarasota County ordinance regulates the marketing and packaging of the substance

³³ *Broward opts not to ban kratom – for now*, <http://www.sun-sentinel.com/local/broward/fl-kratom-ban-broward-20141028-story.html> (last visited March 19, 2015).

³⁴ *Id.*

³⁵ *Id.*

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES