

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2408

Introduced by

Senator Axtman

A BILL for an Act to create and enact subdivision III of subsection 3 of section 19-03.1-05 of the North Dakota Century Code, relating to the scheduling of ~~mitragynine-synthetic~~kratom alkaloids and kratom alkaloid derivatives as a schedule I controlled substance; to amend and reenact section 19-03.1-22.3 and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to penalties for the use and possession of ~~mitragynine-synthetic~~kratom alkaloids and kratom alkaloid derivatives; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subdivision III of subsection 3 of section 19-03.1-05 the North Dakota Century Code is created and enacted as follows:

III. ~~Mitragynine-synthetic~~Kratom alkaloids and kratom alkaloid derivatives. Unless specifically excepted or listed in another schedule, any ~~of the following-~~mitragynine-synthetic derivativeskratom alkaloid or kratom alkaloid derivative,including a synthetic or semisynthetic kratom alkaloid derivative, its isomers,esters, ethers, salts, and salts of isomers. Examples include:

- (1) Methyl (E)-2-[(2S,3S,12bS)-3-ethyl-8-methoxy-1,2,3,4,6,7,12,12b-octahydroindolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-enoate; also known as mitragynine.
- (2) Methyl (E)2-((2S,3S,7aS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12b-octahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as 7-hydroxymitragynine; also known as (alphaE,2S,3S,7aS,12bS)-3-ethyl-

1 1,2,3,4,6,7,7a,12b-octahydro-7a-hydroxy-8-methoxy-a-(methoxymethylene)-
2 indolo[2,3-a]quinolizine-2-acetic acid, methyl ester) ~~above a specified~~
3 ~~threshold described as:~~

4 ~~(a) Any botanical material of the plant mitragyna speciosa, also known as~~
5 ~~kratom, and contains more than 0.05 percentage of 7-~~
6 ~~hydroxymitragynine on a dry weight basis; or~~

7 ~~(b) Any alternative article or material to that described in subparagraph a,~~
8 ~~that is:~~

9 ~~[1] Resulting from synthetic methods and containing 7-~~
10 ~~hydroxymitragynine present in amounts greater than 0.05-~~
11 ~~percentage weight/weight, weight/volume, or volume/volume or~~
12 ~~greater than 1 milligram of 7-hydroxymitragynine in the article; or~~

13 ~~[2] Material derived from mitragyna speciosa and further processed~~
14 ~~to manufacture alternative dosage forms such as extracts,~~
15 ~~concentrates, processed edibles, or pressed pills, and which may~~
16 ~~have materials that have been exposed to chemical, thermal, or~~
17 ~~other methods leading to chemical transformations that result in~~
18 ~~7-hydroxymitragynine present in amounts greater than 0.05-~~
19 ~~percentage weight/weight, weight/volume, or volume/volume or~~
20 ~~greater than 1 milligram of 7-hydroxymitragynine in the article.~~

21 ~~(2)(3)~~ Methyl (E)-2-((1'S,6'S,7'S)-6'-ethyl-4-methoxy-3-oxo-3',5',6',7',8',8a'-
22 hexahydro-2'H-spiro[indoline-2,1'-indolizine]-7'-yl)-3-methoxyacrylate (also
23 known as mitragynine pseudoindoxyl).

24 ~~(3)(4)~~ Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-7a-hydroxy-8-methoxy-
25 1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-
26 methoxyacrylate (also known as MGM-15; also known as dihydro-7-
27 hydroxymitragynine).

28 ~~(4)(5)~~ Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-9-fluoro-7a-hydroxy-8-
29 methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-
30 methoxyacrylate (also known as MGM-16; also known as fluoro-dihydro-7-
31 hydroxymitragynine; also known as 9-fluoro derivate of dihydro-7-

hydroxymitragynine; also known as the 10-fluoro derivate of dihydro-7-hydroxymitragynine).

(5)(6) Methyl (E)-2-[(2S,3S,7aS,12bS)-7a-acetyloxy-3-ethyl-8-methoxy-2,3,4,6,7,12b-hexahydro-1H-indolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-enoate (also known as 7-acetoxymitragynine).

SECTION 2. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

1. Except as provided in ~~subsections~~ subsections 2 and 3, a person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana or tetrahydrocannabinol, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.
3. A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is a ~~mitragynine-synthetic~~ kratom alkaloid or kratom alkaloid derivative is guilty of an infraction for a first offense and a class A misdemeanor for a second or subsequent offense.
4. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 3. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance

was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense. If a person is convicted of a second or subsequent offense not related to marijuana or, ~~tetrahydrocannabinol, or a mitragynine synthetic~~ kratom alkaloid, or a kratom alkaloid derivative under this section or chapter 19-03.2, 19-03.3, or 19-03.4, or an equivalent offense from another court in the United States, the violation is a class C felony.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or, ~~tetrahydrocannabinol, or a mitragynine synthetic~~ kratom alkaloid, or a kratom alkaloid derivative.
- d. A person who violates this subsection by possessing:
- (1) Marijuana:
- (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
- (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
- (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- (2) Tetrahydrocannabinol:
- (a) In an amount less than two grams is guilty of an infraction.
- (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
- (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. ~~A person who violates this subsection by possessing a mitragynine-~~ synthetic kratom alkaloid or kratom alkaloid derivative is guilty of an infraction for

1 a first offense, a class A misdemeanor for a second offense, or a class C felony
2 for a third or subsequent offense.

3 f. If an individual is sentenced to the legal and physical custody of the department
4 of corrections and rehabilitation under this subsection, the department may place
5 the individual in a drug and alcohol treatment program designated by the
6 department. Upon the successful completion of the drug and alcohol treatment
7 program, the department shall release the individual from imprisonment to begin
8 any court-ordered period of probation.

9 f.g. If the individual is not subject to any court-ordered probation, the court shall order
10 the individual to serve the remainder of the sentence of imprisonment on
11 supervised probation subject to the terms and conditions imposed by the court.

12 g.h. Probation under this subsection may include placement in another facility,
13 treatment program, treatment court, mental health court, or veterans treatment
14 docket. If an individual is placed in another facility or treatment program upon
15 release from imprisonment, the remainder of the sentence must be considered as
16 time spent in custody.

17 h.i. An individual incarcerated under this subsection as a result of a second probation
18 revocation is not eligible for release from imprisonment upon the successful
19 completion of treatment.

20 i.j. A person who violates this subsection regarding possession of five or fewer
21 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
22 controlled substance analog is guilty of a class A misdemeanor. If a person is
23 convicted of a second or subsequent offense not related to marijuana or
24 tetrahydrocannabinol under this section or chapter 19-03.2, 19-03.3, or 19-03.4,
25 or an equivalent offense from another court in the United States, the violation is a
26 class C felony.

27 **SECTION 4. EFFECTIVE DATE.** This Act becomes effective upon its filing with the
28 secretary of state.