

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2408

Introduced by

Senator Axtman

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

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

- 10 III. Kratom alkaloids and kratom alkaloid derivatives. Unless specifically excepted or
11 listed in another schedule, any kratom alkaloid or kratom alkaloid derivative,
12 including a synthetic or semisynthetic kratom alkaloid derivative, its isomers,
13 esters, ethers, salts, and salts of isomers. Examples include:
- 14 (1) Methyl (E)-2-[(2S,3S,12bS)-3-ethyl-8-methoxy-1,2,3,4,6,7,12,12b-
15 octahydroindolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-enoate; also known
16 as mitragynine.
- 17 (2) Methyl (E)2-((2S,3S,7aS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12b-
18 octahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as 7-
19 hydroxymitragynine; also known as (alphaE,2S,3S,7aS,12bS)-3-ethyl-
20 1,2,3,4,6,7,7a,12b-octahydro-7a-hydroxy-8-methoxy-a-(methoxymethylene)-
21 indolo[2,3-a]quinolizine-2-acetic acid, methyl ester).

- 1 (3) Methyl (E)-2-((1'S,6'S,7'S)-6'-ethyl-4-methoxy-3-oxo-3',5',6',7',8',8a'-
2 hexahydro-2'H-spiro[indoline-2,1'-indolizine]-7'-yl)-3-methoxyacrylate (also
3 known as mitragynine pseudoindoxyl).
- 4 (4) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-7a-hydroxy-8-methoxy-
5 1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-
6 methoxyacrylate (also known as MGM-15; also known as dihydro-7-
7 hydroxymitragynine).
- 8 (5) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-9-fluoro-7a-hydroxy-8-
9 methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-
10 methoxyacrylate (also known as MGM-16; also known as fluoro-dihydro-7-
11 hydroxymitragynine; also known as 9-fluoro derivate of dihydro-7-
12 hydroxymitragynine; also known as the 10-fluoro derivate of dihydro-7-
13 hydroxymitragynine).
- 14 (6) Methyl (E)-2-[(2S,3S,7aS,12bS)-7a-acetyloxy-3-ethyl-8-methoxy-
15 2,3,4,6,7,12b-hexahydro-1H-indolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-
16 enoate (also known as 7-acetoxymitragynine).

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

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

- 20 1. Except as provided in ~~subsections~~subsections 2 and 3, a person who intentionally
21 ingests, inhales, injects, or otherwise takes into the body a controlled substance,
22 unless the substance was obtained directly from a practitioner or pursuant to a valid
23 prescription or order of a practitioner while acting in the course of the practitioner's
24 professional practice, is guilty of a class A misdemeanor. This subsection does not
25 apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or
26 tetrahydrocannabinol.
- 27 2. A person who is under twenty-one years of age and intentionally ingests, inhales,
28 injects, or otherwise takes into the body a controlled substance that is marijuana or
29 tetrahydrocannabinol, unless the substance was medical marijuana obtained in
30 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 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, a 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, a 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 kratom alkaloid or kratom alkaloid derivative is guilty of an infraction for a first offense, a class A misdemeanor for a second offense, or a class C felony for a third or subsequent offense.

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

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

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

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

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

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