

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1862-01
Bill No.: HB 1115
Subject: Food; Health and Senior Services Department
Type: Original
Date: April 29, 2019

Bill Summary: This proposal creates new provisions relating to the sale of kratom products.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	\$0 to (\$28,604)	\$0 to (\$19,666)	\$0 to (\$19,894)
Total Estimated Net Effect on General Revenue	\$0 to (\$28,604)	\$0 to (\$19,666)	\$0 to (\$19,894)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	0 to 0.26	0 to 0.25	0 to 0.25
Total Estimated Net Effect on FTE	0 to 0.26	0 to 0.25	0 to 0.25

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§196.1170 - Sale of kratom products

Officials from the **Department of Health and Senior Services (DHSS)** state §196.1170.6. (3) a person aggrieved by a violation of subdivision (2) of subsection 3 of this section or subsection 4 of this section may, in addition to and distinct from any other remedy at law or in equity, bring a private cause of action in a court of competent jurisdiction for damages resulting from that violation including, but not limited to, economic, noneconomic, and consequential damages.

The DHSS estimates there would be 10 referrals the first year, then three referrals on average each year moving forward under this subsection. The Department of Health and Senior Services (DHSS), Office of General Counsel will need an additional .25 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary for preparation going to court to defend the DHSS against any private cause of action in a court of competent jurisdiction.

§196.1170.7 provides the department shall promulgate rules to implement the provisions of this section including, but not limited to, the requirements for the format, size, and placement of the disclosure label required under subdivision (1) of subsection 3 of this section and for the information to be included in the disclosure label.

The proposed legislation requires the promulgation of rules and regulations, which include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. DHSS, Office of General Counsel will need an additional .1 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

Oversight assumes 0.1 FTE and 0.25 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for these partial FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Oversight assumes since DHSS states their responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs.

ASSUMPTION (continued)

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a fiscal impact on their organization. However, the creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

Oversight notes that the **Office of State Courts Administrator** and the **Office of State Public Defender** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

Oversight notes the provisions of §196.1170.6 provides that if a dealer violates subdivision (1) of subsection 3, the director may, after notice and hearing, impose a fine on the dealer of not more than five hundred dollars for the first offense and not more than one thousand dollars for the second or subsequent offense. Fine revenue is distributed to school districts. It is unknown whether there will be any fines or the amount of fine revenue that may be collected. Therefore, for fiscal note purposes, Oversight will range fine revenue received by school districts from \$0 to Unknown.

FISCAL DESCRIPTION

This bill establishes the "Kratom Consumer Protection Act," which requires dealers who prepare, distribute, sell, or expose for sale a food that is represented to be a kratom product to disclose on the product label the basis on which this representation is made.

A dealer is prohibited from preparing, distributing, selling, or exposing for sale a kratom product that does not conform to these labeling requirements. A dealer may not prepare, distribute, sell or expose for sale a kratom product that is adulterated or contaminated with a dangerous non-kratom substance, contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 2% composition of the product, containing any synthetic alkaloids, or does not include on its package or label the amount of mitragynine, 7- hydroxymitragynine, or other synthetically derived compounds of the plant *Mitragyna speciosa*.

A dealer may not distribute, sell or expose for sale a kratom product to anyone under 18 years of age. The bill specifies penalties for a violation of the labeling requirements and allows for a person who is aggrieved by a violation of the labeling requirements to bring a cause of action for damages resulting from the violation.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Health and Senior Services
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



Kyle Rieman
Director
April 29, 2019

Ross Strope
Assistant Director
April 29, 2019