

By: Representative Bain

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 838

1 AN ACT TO CREATE THE "MISSISSIPPI TIANEPTINE CONSUMER
2 PROTECTION ACT"; TO DEFINE CERTAIN TERMS RELATING TO THE ACT; TO
3 PROHIBIT A PROCESSOR OR RETAILER FROM PREPARING, DISTRIBUTING,
4 SELLING, OR EXPOSING FOR SALE EITHER A TIANEPTINE EXTRACT THAT
5 CONTAINS CERTAIN LEVELS OF RESIDUAL, OR A TIANEPTINE PRODUCT THAT
6 DOES NOT HAVE ADEQUATE LABELING DIRECTIONS NECESSARY FOR SAFE AND
7 EFFECTIVE USE BY CONSUMERS; TO PROVIDE THAT IT IS UNLAWFUL FOR ANY
8 MINOR TO PURCHASE, USE, POSSESS, OR TRANSPORT A PRODUCT CONTAINING
9 TIANEPTINE WITHIN THE STATE; TO REQUIRE ANY PERSON WHO DISTRIBUTES
10 TIANEPTINE PRODUCTS WITHIN THIS STATE TO POST CONSPICUOUSLY AT
11 EACH LOCATION OF DISTRIBUTION A SIGN THAT IS PLACED IN SUCH A
12 MANNER THAT IT IS LIKELY TO BE READ BY THOSE SEEKING TO PURCHASE
13 OR OBTAIN TIANEPTINE PRODUCTS; TO PROVIDE CIVIL PENALTIES FOR
14 VIOLATIONS OF THIS ACT; TO REQUIRE THE DIVISION TO ADOPT RULES AND
15 REGULATIONS FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT; TO
16 BRING FORWARD SECTION 67-1-37, MISSISSIPPI CODE OF 1972, WHICH
17 RELATES TO THE POWERS AND DUTIES OF THE DIVISION, FOR PURPOSES OF
18 POSSIBLE AMENDMENT; TO ENACT THE "MISSISSIPPI KRATOM CONSUMER
19 PROTECTION ACT" TO REGULATE THE PREPARATION, DISTRIBUTION, AND
20 SALE OF KRATOM PRODUCTS; TO DEFINE TERMS; TO PROHIBIT THE
21 PREPARATION, DISTRIBUTION AND SALE OF ADULTERATED OR CONTAMINATED
22 KRATOM PRODUCTS; TO PRESCRIBE FINES AND PENALTIES FOR VIOLATIONS
23 OF THIS ACT; TO AUTHORIZE THE DEPARTMENT OF HEALTH TO ADMINISTER
24 THE ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT DO NOT LIMIT
25 THE AUTHORITY OF A COUNTY OR MUNICIPALITY TO REGULATE TIANEPTINE
26 OR KRATOM; AND FOR RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 **SECTION 1.** This act shall be known and may be cited as the
29 "Mississippi Tianeptine Consumer Protection Act".



30 **SECTION 2.** For the purposes of this act, the following words
31 shall have the meanings as defined in this section, unless the
32 context clearly indicates otherwise:

33 (a) "Division" means the Alcoholic Beverage Control
34 Division of the Department of Revenue.

35 (b) "Food" means a food, food product, food ingredient,
36 dietary ingredient, dietary supplement, or beverage for human
37 consumption.

38 (c) "Minor" means a person under the age of twenty-one
39 (21) years.

40 (d) "Processor" means a person who sells, prepares,
41 manufactures, distributes, or maintains tianeptine products or
42 advertises, represents, or holds him or herself out as selling,
43 preparing, or maintaining tianeptine products.

44 (e) "Retailer" means any person who sells, distributes,
45 advertises, represents, or holds him or herself out as selling or
46 maintaining tianeptine products.

47 (f) "Tianeptine product" means a food product or
48 dietary ingredient containing tianeptine, and is manufactured as a
49 powder, capsule, pill, beverage, or other edible form.

50 **SECTION 3.** (1) A processor or retailer may not prepare,
51 distribute, sell, or expose for sale either of the following:

52 (a) A tianeptine extract that contains levels of
53 residual solvents higher than is allowed in United States
54 Pharmacopeia's USP 467.



55 (b) A tianeptine product that does not have adequate
56 labeling directions necessary for safe and effective use by
57 consumers, including a recommended serving size.

58 (2) A processor or retailer does not violate this section if
59 it is shown by a preponderance of the evidence that the processor
60 or retailer relied in good faith upon the representations of a
61 manufacturer, processor, packer, or distributor of food
62 represented to be a tianeptine product.

63 **SECTION 4.** (1) It is unlawful for any minor to purchase,
64 use, possess, or transport a product containing tianeptine within
65 this state. It is not unlawful for a minor employee of a retailer
66 to handle, transport, or sell a tianeptine product if the minor
67 employee is acting within the line and scope of employment and the
68 retailer, or an employee of the permit holder who is twenty-one
69 (21) years of age or older, is present.

70 (2) A tianeptine product shall not be distributed at retail
71 through a self-service display.

72 (3) A retailer shall keep or store a tianeptine product by
73 placing such product behind the counter in an area within the
74 store where the public is not permitted.

75 **SECTION 5.** Any person who distributes tianeptine products
76 within this state shall post conspicuously and keep so posted at
77 each location of distribution a sign that is placed in such a
78 manner that it is likely to be read by those seeking to purchase



79 or obtain tianeptine products. Each such sign shall state both of
80 the following:

81 (a) Mississippi law strictly prohibits the purchase of
82 tianeptine products by persons under the age of twenty-one (21).

83 (b) Proof of age is required for the purchase of
84 tianeptine products.

85 **SECTION 6.** The division may assess a civil penalty against a
86 processor or retailer that violates the provisions of this act as
87 follows:

88 (a) Not more than One Thousand Dollars (\$1,000.00) for
89 a first violation.

90 (b) Not more than Two Thousand Five Hundred Dollars
91 (\$2,500.00) for a second or subsequent violation.

92 **SECTION 7.** The division shall adopt rules and regulations
93 for the administration and enforcement of this act, including, but
94 not limited, to the following:

95 (a) A procedure for a tianeptine processor to register
96 and pay an annual registration fee to the division in order to
97 sell tianeptine products. The registration procedure shall
98 require the tianeptine processor to provide information relating
99 to the facility where the tianeptine products were manufactured,
100 the United States Food and Drug Administration registration for
101 the facility, and the registration with the applicable department
102 regulating agriculture, if applicable, for the manufacturing



103 facility where it is originally processed. The information
104 required for registration may also include the following:

105 (i) The name and address of the tianeptine
106 processor, and the name and address of the person whose name will
107 appear on the label, if other than the tianeptine processor;

108 (ii) The names of each tianeptine product included
109 in the registration;

110 (iii) The tianeptine type and recommended usage,
111 including directions for use or serving size for each tianeptine
112 product;

113 (iv) The approved tianeptine delivery form;

114 (v) The weights or volumes, as appropriate, of the
115 package of tianeptine product offered for sale, for the
116 recommended usage for an individual serving size, and for the
117 entire package;

118 (vi) A label may not contain claims that the
119 tianeptine product is intended to diagnose, treat, cure, or
120 prevent any medical condition or disease;

121 (vii) A complete copy of the label that will
122 appear on the tianeptine product or the document that can be
123 reached via scannable bar code, QR Code, or web address;

124 (viii) A written certification that raw materials
125 used in manufacturing tianeptine products made available for sale
126 fully comply with the applicable product limitations in this act;
127 and



128 (ix) A certificate of analysis for the tianeptine
129 product from an independent third-party laboratory holding a
130 current International Organization for Standardization 17025:2017
131 accreditation.

132 (b) Upon demand, a tianeptine processor shall provide
133 to the division its current certificate of analysis for any
134 tianeptine product for which an adverse event is filed, if the
135 division elects to open an investigation.

136 **SECTION 8.** Section 67-1-37, Mississippi Code of 1972, is
137 brought forward as follows:

138 67-1-37. The Department of Revenue, under its duties and
139 powers with respect to the Alcoholic Beverage Control Division
140 therein, shall have the following powers, functions and duties:

141 (a) To issue or refuse to issue any permit provided for
142 by this article, or to extend the permit or remit in whole or any
143 part of the permit monies when the permit cannot be used due to a
144 natural disaster or act of God.

145 (b) To revoke, suspend or cancel, for violation of or
146 noncompliance with the provisions of this article, or the law
147 governing the production and sale of native wines or native
148 spirits, or any lawful rules and regulations of the department
149 issued hereunder, or for other sufficient cause, any permit issued
150 by it under the provisions of this article. The department shall
151 also be authorized to suspend the permit of any permit holder for
152 being out of compliance with an order for support, as defined in



153 Section 93-11-153. The procedure for suspension of a permit for
154 being out of compliance with an order for support, and the
155 procedure for the reissuance or reinstatement of a permit
156 suspended for that purpose, and the payment of any fees for the
157 reissuance or reinstatement of a permit suspended for that
158 purpose, shall be governed by Section 93-11-157 or Section
159 93-11-163, as the case may be. If there is any conflict between
160 any provision of Section 93-11-157 or Section 93-11-163 and any
161 provision of this article, the provisions of Section 93-11-157 or
162 Section 93-11-163, as the case may be, shall control.

163 (c) To prescribe forms of permits and applications for
164 permits and of all reports which it deems necessary in
165 administering this article.

166 (d) To fix standards, not in conflict with those
167 prescribed by any law of this state or of the United States, to
168 secure the use of proper ingredients and methods of manufacture of
169 alcoholic beverages.

170 (e) To issue rules regulating the advertising of
171 alcoholic beverages in the state in any class of media and
172 permitting advertising of the retail price of alcoholic beverages.

173 (f) To issue reasonable rules and regulations, not
174 inconsistent with the federal laws or regulations, requiring
175 informative labeling of all alcoholic beverages offered for sale
176 within this state and providing for the standards of fill and
177 shapes of retail containers of alcoholic beverages; however, such



178 containers shall not contain less than fifty (50) milliliters by
179 liquid measure.

180 (g) Subject to the provisions of subsection (3) of
181 Section 67-1-51, to issue rules and regulations governing the
182 issuance of retail permits for premises located near or around
183 schools, colleges, universities, churches and other public
184 institutions, and specifying the distances therefrom within which
185 no such permit shall be issued. The Alcoholic Beverage Control
186 Division shall not issue a package retailer's or on-premises
187 retailer's permit for the sale or consumption of alcoholic
188 beverages in or on the campus of any public school, community or
189 junior college, college or university.

190 (h) To adopt and promulgate, repeal and amend, such
191 rules, regulations, standards, requirements and orders, not
192 inconsistent with this article or any law of this state or of the
193 United States, as it deems necessary to control the manufacture,
194 importation, transportation, distribution, delivery and sale of
195 alcoholic liquor, whether intended for beverage or nonbeverage use
196 in a manner not inconsistent with the provisions of this article
197 or any other statute, including the native wine and native spirit
198 laws.

199 (i) To call upon other administrative departments of
200 the state, county and municipal governments, county and city
201 police departments and upon prosecuting officers for such



202 information and assistance as it may deem necessary in the
203 performance of its duties.

204 (j) To prepare and submit to the Governor during the
205 month of January of each year a detailed report of its official
206 acts during the preceding fiscal year ending June 30, including
207 such recommendations as it may see fit to make, and to transmit a
208 like report to each member of the Legislature of this state upon
209 the convening thereof at its next regular session.

210 (k) To inspect, or cause to be inspected, any premises
211 where alcoholic liquors intended for sale are manufactured,
212 stored, distributed or sold, and to examine or cause to be
213 examined all books and records pertaining to the business
214 conducted therein.

215 (l) To investigate the administration of laws in
216 relation to alcoholic liquors in this and other states and any
217 foreign countries, and to recommend from time to time to the
218 Governor and through him to the Legislature of this state such
219 amendments to this article, if any, as it may think desirable.

220 (m) To designate hours and days when alcoholic
221 beverages may be sold in different localities in the state which
222 permit such sale.

223 (n) To assign employees to posts of duty at locations
224 where they will be most beneficial for the control of alcoholic
225 beverages and to take any other action concerning persons employed
226 under this article as authorized by law and taken in accordance



227 with the rules, regulations and procedures of the State Personnel
228 Board.

229 (o) To enforce the provisions made unlawful by Chapter
230 3, Title 67 and Section 97-5-49.

231 (p) To delegate its authority under this article to the
232 Alcoholic Beverage Control Division, its director or any other
233 officer or employee of the department that it deems appropriate.

234 (q) To prescribe and charge a fee to defray the costs
235 of shipping alcoholic beverages, provided that such fee is
236 determined in a manner provided by the department by rules and/or
237 regulations adopted in accordance with the Mississippi
238 Administrative Procedures Law.

239 **SECTION 9.** (1) This section shall be known and may be cited
240 as the "Mississippi Kratom Consumer Protection Act."

241 (2) For purposes of this act, the following words shall have
242 the meanings ascribed herein unless the context otherwise
243 requires:

244 (a) "Department" means the Department of Revenue.

245 (b) "Processor" means a person that sells, prepares,
246 manufactures, distributes or maintains kratom products, or
247 advertises, represents or holds itself out as selling, preparing,
248 or maintaining kratom products.

249 (c) "Food" means food, food product, food ingredient,
250 dietary ingredient, dietary supplement or beverage for human
251 consumption.



252 (d) "Kratom product" means a food product or dietary
253 ingredient:

254 (i) Containing any part of the leaf of the plant
255 Mitragyna species or an extract of it; and

256 (ii) Manufactured as a powder, capsule, pill,
257 beverage or other consumable form.

258 (e) "Retailer" means any person that sells,
259 distributes, advertises, represents or holds itself out as selling
260 or maintaining kratom products.

261 (3) A processor or retailer shall not prepare, distribute,
262 sell or offer for sale any of the following:

263 (a) A kratom product that is adulterated with a
264 dangerous nonkratom substance. A kratom product is adulterated
265 with a dangerous nonkratom substance if the kratom product is
266 mixed or packed with a nonkratom substance and that substance
267 affects the quality or strength of the kratom product to such a
268 degree as to render the kratom product injurious to a consumer.

269 (b) A kratom product that is contaminated with a
270 dangerous nonkratom substance. A kratom product is contaminated
271 with a dangerous nonkratom substance if the kratom product
272 contains a poisonous or otherwise deleterious nonkratom
273 ingredient, including, but not limited to, the substances listed
274 in Sections 41-29-113, 41-29-115, 41-29-117, 41-29-119 and
275 41-29-121.



276 (c) A kratom product containing a level of
277 7-hydroxymitragynine in the alkaloid fraction that is greater than
278 two percent (2%) of the overall alkaloid composition of the
279 product.

280 (d) A kratom product containing any synthetic
281 alkaloids, including synthetic mitragynine, synthetic
282 7-hydroxymitragynine, or any other synthetically derived compounds
283 of the kratom plant.

284 (e) A kratom product that does not provide adequate
285 labeling necessary for safe and effective use by consumers,
286 including a recommended serving size.

287 (4) A processor or retailer shall not distribute, sell or
288 expose for sale a kratom product to an individual under twenty-one
289 (21) years of age.

290 (5) (a) A processor or retailer that violates Section 3 of
291 this act is subject to an administrative fine of not more than One
292 Thousand Dollars (\$1,000.00) for the first offense and not more
293 than Five Thousand Dollars (\$5,000.00) for any second or
294 subsequent offense. Any person or entity fined under this
295 subsection (1) shall have all of the administrative and judicial
296 remedies available under law.

297 (b) A retailer does not violate subsection (3) of this
298 section if it is shown by a preponderance of the evidence that the
299 retailer relied in good faith upon the representations of a



300 manufacturer, processor, packer or distributor of food represented
301 to be a kratom product.

302 (6) The department shall administer the provisions of this
303 section. The department shall have authority to promulgate, from
304 time to time, such rules and regulations as are necessary for the
305 enforcement of the provisions of this section.

306 **SECTION 10.** (1) The provisions of this act shall not be
307 construed on or after the effective date of this act to prohibit
308 any county or municipality from banning, prohibiting or otherwise
309 regulating the distribution, sell or exposure of tianeptine or
310 kratom.

311 (2) The provisions of this act shall not be construed to
312 revise, void or in any way limit any rule, ordinance or regulation
313 that was enacted before the effective date of this act by a county
314 or municipality to ban, prohibit or otherwise regulate the
315 distribution, sell or exposure of tianeptine or kratom.

316 **SECTION 11.** This act shall take effect and be in force from
317 and after July 1, 2023.

