

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 230

Introduced by Hallstrom, 1.

Read first time January 14, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to kratom; to adopt the Kratom Consumer
2 Protection Act; to provide an operative date; and to declare an
3 emergency.
4 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Sections 1 to 16 of this act shall be known and may be
2 cited as the Kratom Consumer Protection Act.

3 **Sec. 2.** For purposes of the Kratom Consumer Protection Act:

4 (1) Attractive to children means products:

5 (a) Manufactured in the shape of humans, cartoons, or animals; or

6 (b) Manufactured in a form that bears any reasonable resemblance to
7 an existing candy product that is familiar to the public as a widely
8 distributed or a branded food product such that a product could be
9 mistaken for the branded food product, especially by children;

10 (2) Department means the Department of Revenue;

11 (3) Kratom extract means the material obtained by extraction of
12 kratom leaves with a solvent consisting of water, ethanol, or food-grade
13 carbon dioxide, or any other solvent allowed by federal or state
14 regulation to be used in manufacturing a food ingredient;

15 (4) Kratom leaf means any part of the leaf of the mitragyna speciosa
16 plant in a fresh, dehydrated, or dried form that has been subjected to no
17 post-harvest processing other than drying or size reduction, including,
18 but not limited to, cutting, milling, or a similar procedure, and
19 cleaning or sterilization through the application of heat, steam,
20 pressurization, irradiation, or other standard treatments applied to food
21 ingredients;

22 (5) Kratom product means a food, ingredient, or dietary supplement
23 that:

24 (a) Consists of or contains kratom leaf or kratom leaf extract;

25 (b) Does not contain any synthesized kratom alkaloids, other
26 synthesized kratom constituents, or synthesized metabolites of any kratom
27 constituent; and

28 (c) Does not contain a level of 7-hydroxymitragynine in the alkaloid
29 fraction that is greater than two percent of the alkaloid composition of
30 the kratom product;

31 (6) Processor means a person that manufacturers, packages, labels,

1 or distributes kratom products or advertises, represents, or holds itself
2 out as manufacturing, preparing, packaging, labeling, or distributing
3 kratom products;

4 (7) Retailer has the same meaning as in section 77-2701.32; and

5 (8) Synthesized means an alkaloid or alkaloid derivative that has
6 been created by chemical synthesis or biosynthetic means, including, but
7 not limited to, fermentation, recombinant techniques, or yeast-derived
8 techniques, rather than traditional food preparation techniques, such as
9 heating or extracting.

10 **Sec. 3.** (1) No person shall sell, offer for sale, provide, or
11 distribute kratom leaf or a kratom product to a person under twenty-one
12 years of age.

13 (2) An online retailer or marketplace that sells or offers for sale
14 kratom leaf or a kratom product shall implement an age-verification
15 system to ensure compliance with this section.

16 **Sec. 4.** No person shall produce, manufacture, distribute, offer for
17 sale, sell, or introduce into commerce a kratom product in the State of
18 Nebraska if the product is manufactured in a manner that is attractive to
19 children.

20 **Sec. 5.** A kratom product sold, offered for sale, or introduced into
21 commerce in the State of Nebraska shall:

22 (1) Be manufactured, packaged, labeled, and held in compliance with
23 federal regulation for current good manufacturing practice in
24 manufacturing, packaging, labeling, or holding operations for dietary
25 supplements as codified in 21 C.F.R. Part 111, as such regulations
26 existed on January 1, 2025; and

27 (2) Be manufactured, processed, packed, or held by a processor who
28 has registered with the federal Food and Drug Administration as a food
29 facility.

30 **Sec. 6.** A kratom product sold, offered for sale, or introduced into
31 commerce in the State of Nebraska shall:

1 (1) Be labeled in compliance with all applicable federal food or
2 dietary supplement labeling regulations, including, but not limited to,
3 21 C.F.R. Part 101, as such regulations existed on January 1, 2025;

4 (2) Be labeled in compliance with all applicable federal retail
5 package labeling requirements for allergen labeling; and

6 (3) Have a label on each retail package that clearly and
7 conspicuously provides the following information:

8 (a) The product is not recommended for use by individuals who are
9 under twenty-one years of age, who are pregnant, or who are
10 breastfeeding;

11 (b) A health care practitioner should be consulted prior to using
12 the product;

13 (c) The product may be habit-forming;

14 (d) The following statements: "These statements have not been
15 evaluated by the federal Food and Drug Administration. This product is
16 not intended to diagnose, treat, cure, or prevent any disease.";

17 (e) The name and place of business of the processor;

18 (f) Directions for use that include a recommended amount of the
19 kratom product per serving that is:

20 (i) Clearly described on the label for product forms such as
21 capsules, gummies, prepackaged, single-serving units, and similar product
22 forms; or

23 (ii) A clear instruction or a mark on the package or container for
24 beverages or liquids;

25 (g) A recommended number of servings that can be safely consumed in
26 a twenty-four-hour period;

27 (h) A listing of the servings per container;

28 (i) A listing of kratom alkaloids mitragynine and 7-
29 hydroxymitragynine and other ingredients in the product, including
30 quantitative declarations of the amount per serving of mitragynine; and

31 (j) A declaration that any level of 7-hydroxymitragynine does not

1 exceed the alkaloid fraction that is greater than two percent of the
2 overall alkaloid composition of the product.

3 **Sec. 7. (1)** The department shall establish, operate, and administer
4 a program to register kratom products. The Tax Commissioner shall
5 designate an implementation date for such program which date is on or
6 before January 1, 2026.

7 (2) Beginning on the implementation date designated by the Tax
8 Commissioner pursuant to subsection (1) of this section:

9 (a) No processor may manufacture, package, label, or distribute a
10 kratom product to be offered for sale in the State of Nebraska unless the
11 product has been registered with the department.

12 (b) Applications for product registration shall be submitted on a
13 form prescribed by the department. Each application shall include:

14 (i) The name, address, and state of organization for the processor
15 of the product;

16 (ii) A principal point of contact for the processor and contact
17 information for the point of contact;

18 (iii) The name of the product;

19 (iv) The product label;

20 (v) A certificate of analysis for the kratom product that states the
21 kratom product's alkaloid content and certifies that the kratom product
22 has a level of 7-hydroxymitragynine that is less than two percent of the
23 alkaloid composition of the kratom product from an independent
24 laboratory. Such laboratory shall obtain and maintain an ISO/IEC 17025
25 accreditation for testing and calibration laboratories from an
26 accreditation body that is a signatory to the International Laboratory
27 Accreditation Cooperation Mutual Recognition Arrangement;

28 (vi) A valid good manufacturing practice certificate issued by an
29 accredited third-party certification body in compliance with 21 C.F.R.
30 Part 117; and

31 (vii) A current food facility registration certificate issued by the

1 federal Food and Drug Administration for all facilities where kratom
2 products are manufactured, prepared, packaged, or labeled.

3 (c) A certificate of registration shall be valid for one calendar
4 year after the date of issue and shall not be transferable.

5 (d) The department may charge a fee for product registration
6 applications and may adjust such fee annually. The fee shall be
7 reasonable and shall not exceed any reasonable or necessary costs to
8 administer the Kratom Consumer Protection Act.

9 (3) If an application is incomplete or deficient, the department
10 shall, in a timely manner, notify the applicant in writing describing the
11 reason or reasons and request additional information. If such application
12 is not corrected or supplemented within thirty days after the
13 department's request, the department shall deny the application.

14 (4) If any false statement is made in any part of an application
15 submitted under this section, the department shall deny the application.

16 (5) A person aggrieved by the denial of an application may request a
17 hearing pursuant to section 11 of this act.

18 (6) A processor or retailer is not prohibited from selling,
19 preparing, manufacturing, distributing, maintaining, advertising,
20 representing, or holding itself out as selling, preparing, or maintaining
21 kratom products in the State of Nebraska prior to the implementation date
22 designated by the Tax Commissioner pursuant to subsection (1) of this
23 section, or while the first product registration applications submitted
24 by processors operating in the State of Nebraska as of January 1, 2025,
25 are pending approval or denial by the department.

26 **Sec. 8.** Beginning on the implementation date designated by the Tax
27 Commissioner pursuant to subsection (1) of section 7 of this act, the
28 department shall make public a list of all registered kratom products on
29 its website.

30 **Sec. 9.** (1) No person shall sell, offer for sale, provide, or
31 distribute an adulterated kratom product in the State of Nebraska;

1 (2) A product shall be deemed adulterated if:

2 (a) It is held out as a kratom product and does not meet the
3 definition of a kratom product under the Kratom Consumer Protection Act;
4 or

5 (b) The kratom product is combined with a dangerous nonkratom
6 substance that contains a poisonous or otherwise deleterious nonkratom
7 ingredient, including, but not limited to, any substance listed as a
8 controlled substance under the laws of this state or federal law.

9 (3) Upon receipt of evidence that suggests a product may be an
10 adulterated kratom product, the department may require the person
11 selling, providing, or distributing the product to obtain an independent
12 third-party test of a registered kratom product by a laboratory of the
13 department's choosing.

14 **Sec. 10.** (1) Any processor or retailer that violates any section of
15 the Kratom Consumer Protection Act, including those related to the
16 application or registration, or any of the rules and regulations adopted
17 and promulgated by the department that apply to processors or kratom
18 products shall be subject to the penalties provided in this section.

19 (2) For the first violation, the penalty shall be a fine of up to
20 one thousand dollars. For the second violation, the penalty shall be a
21 fine of up to five thousand dollars. For a third violation and any
22 subsequent violations, the penalty shall be a fine of at least five
23 thousand dollars and no more than twenty thousand dollars and shall
24 include a three-year prohibition on the sale of kratom products from the
25 processor in the State of Nebraska.

26 (3) For any processor or retailer that has no violation for a period
27 of four years consecutively, any violation shall be treated as a new
28 first violation.

29 (4) No determination that a violation has occurred shall be made
30 until notice has been given and a hearing has been held by the Tax
31 Commissioner as provided in section 11 of this act if requested by the

1 processor or retailer.

2 (5) A retailer shall not be found to be in violation of the Kratom
3 Consumer Protection Act if it is shown by a preponderance of the evidence
4 that the retailer relied in good faith upon the representation of a
5 processor that a product is an unadulterated kratom product or otherwise
6 conformed to the act.

7 **Sec. 11.** (1) Any person aggrieved by a notice of denial of an
8 application issued under section 7 of this act or a notice of violation
9 issued under section 10 of this act may request a hearing on any such
10 notice issued by the Tax Commissioner.

11 (2) Such request shall be made within twenty days after the receipt
12 of any such notice.

13 (3) At such hearing the Tax Commissioner, or any officer or employee
14 of the Tax Commissioner designated in writing, may examine any books,
15 papers, memoranda, or other evidence bearing upon the matter at issue and
16 require the attendance of any officer or employee of the processor or
17 retailer or any person having knowledge pertinent to such hearing. The
18 Tax Commissioner or the Tax Commissioner's designee may administer oaths
19 to persons testifying at such hearing.

20 (4) During the hearing, the Tax Commissioner or the Tax
21 Commissioner's designee shall not be bound by the technical rules of
22 evidence, and no informality in any proceeding or in the manner of taking
23 testimony shall invalidate any order or decision made or approved by the
24 Tax Commissioner.

25 **Sec. 12.** (1) Within a reasonable time after the hearing pursuant to
26 section 11 of this act, the Tax Commissioner shall make a final decision
27 or final determination and notify the processor or retailer by mail of
28 such decision or determination.

29 (2) If it is determined that a processor intentionally and
30 materially falsified any information contained in an application under
31 the Kratom Consumer Protection Act, the processor shall be ineligible to

1 obtain a certification of registration for a period of twelve months
2 after the date of such determination.

3 (3) A processor or retailer may appeal the decision of the Tax
4 Commissioner, and the appeal shall be in accordance with the
5 Administrative Procedure Act.

6 **Sec. 13.** The Attorney General shall have authority to enforce the
7 Kratom Consumer Protection Act pursuant to the Consumer Protection Act
8 and the Uniform Deceptive Trade Practices Act. This section shall not be
9 construed to allow for a private right of action under the Kratom
10 Consumer Protection Act even though such action is authorized under the
11 Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

12 **Sec. 14.** (1) If a processor has been convicted by any court of a
13 violation of the Kratom Consumer Protection Act, the registered processor
14 may, in addition to the penalties for such offense, incur a forfeiture of
15 the certificate of registration for its kratom products and all money
16 that had been paid for such certificate of registration.

17 (2) If any false statement is made in any part of an application
18 submitted under section 7 of this act, the applicant or applicants shall
19 be subject to prosecution for perjury and if convicted may, in addition
20 to the penalties for such offense, incur a forfeiture of any certificate
21 of registration that was issued for its kratom products and all money
22 that had been paid for such certificate of registration.

23 **Sec. 15.** Except as otherwise provided in the Kratom Consumer
24 Protection Act, no political subdivision shall impose additional
25 restrictions on the manufacturing, packaging, labeling, distribution, or
26 sale of kratom leaves, kratom leaf extracts, or kratom products greater
27 than or in addition to those enumerated in the act.

28 **Sec. 16.** The department may adopt and promulgate rules and
29 regulations to carry out the Kratom Consumer Protection Act.

30 **Sec. 17.** This act becomes operative on July 1, 2025.

31 **Sec. 18.** Since an emergency exists, this act takes effect when

1 passed and approved according to law.