

AMENDMENTS TO LB230

(Amendments to Standing Committee amendments, AM55)

Introduced by Hallstrom, 1.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 **Section 1.** Sections 1 to 15 of this act shall be known and may be
4 cited as the Kratom Consumer Protection Act.

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

6 (1) Attractive to children means products:

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

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

12 (2) Department means the Department of Revenue;

13 (3) Kratom means the plant mitragyna speciosa or any part of that
14 plant, including, but not limited to, all components present in the
15 natural plant;

16 (4) Kratom extract means the material obtained by extraction of
17 kratom leaves with a solvent consisting of water, ethanol, or food-grade
18 carbon dioxide, or any other solvent allowed by federal or state
19 regulation to be used in manufacturing a food ingredient;

20 (5) Kratom product means a food, ingredient, or dietary supplement
21 that:

22 (a) Consists of or contains kratom or kratom extract;

23 (b) Does not contain any synthesized kratom alkaloids, other
24 synthesized kratom constituents, or synthesized metabolites of any kratom
25 constituent;

26 (c) Does not contain a level of 7-hydroxymitragynine in the alkaloid

1 fraction that is greater than two percent of the alkaloid composition of
2 the kratom product; and

3 (d) Does not include any kratom product in any form that is
4 combustible, intended to be used for vaporization, or is injectable;

5 (6) Processor means a person that manufacturers, packages, labels,
6 or distributes kratom products or advertises, represents, or holds itself
7 out as manufacturing, preparing, packaging, labeling, or distributing
8 kratom products;

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

10 (8) Synthesized means an alkaloid or alkaloid derivative that has
11 been created, in full or in part, by directed chemical, physical, or
12 biosynthetic conversion, including, but not limited to, fermentation,
13 recombinant techniques, yeast-derived, or enzymatic techniques, rather
14 than traditional food preparation techniques, such as heating or
15 extracting.

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

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

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

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

27 (1) Be manufactured, packaged, labeled, or held in a facility that
28 meets the requirements of 21 C.F.R. Part 111, as such regulations existed
29 on January 1, 2025; and

30 (2) Be manufactured, processed, packed, or held by a processor who
31 has registered with the federal Food and Drug Administration as a food

1 facility.

2 **Sec. 6.** A kratom product sold, offered for sale, or introduced into
3 commerce in the State of Nebraska shall have a label on each retail
4 package that clearly and conspicuously provides the following
5 information:

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

9 (2) A health care practitioner should be consulted prior to using
10 the product;

11 (3) The product may be habit-forming;

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

15 (5) The name and place of business of the processor;

16 (6) Directions for use that include a recommended amount of the
17 kratom product per serving that is:

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

21 (b) A clear instruction or a mark on the package or container for
22 beverages or liquids;

23 (7) A recommended number of servings that can be safely consumed in
24 a twenty-four-hour period;

25 (8) A listing of the servings per container; and

26 (9) A listing of kratom alkaloids mitragynine and 7-
27 hydroxymitragynine and other ingredients in the product, including
28 quantitative declarations of the amount per serving of mitragynine.

29 **Sec. 7.** (1) The department shall establish, operate, and administer
30 a program to register kratom products. The Tax Commissioner shall
31 designate an implementation date for such program which date is on or

1 before January 1, 2026.

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

4 (a) No processor may manufacture, package, label, or distribute a
5 kratom product to be offered for sale in the State of Nebraska unless the
6 product has been registered with the department;

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

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

11 (ii) A principal point of contact for the processor and contact
12 information for the point of contact;

13 (iii) The name of the product;

14 (iv) The product label;

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

25 (vi) A valid good manufacturing practice certificate issued by an
26 accredited third-party certification body in compliance with 21 C.F.R.
27 Part 111; and

28 (vii) A current food facility registration certificate issued by the
29 federal Food and Drug Administration for all facilities where kratom
30 products are manufactured, prepared, packaged, or labeled;

31 (c) A certificate of registration shall be valid for one calendar

1 year after the date of issue and shall not be transferable; and

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

6 (e) A product that contains the same kratom ingredients in the same
7 kratom delivery form, but is packaged, sold, or offered for sale in a
8 different container, package, or volume shall be included in a single
9 registration.

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

15 (4) If any false statement is made in any part of an application,
16 the department shall deny the application.

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

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

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

31 **Sec. 9.** (1) No person shall sell, offer for sale, provide, or

1 distribute an adulterated kratom product in the State of Nebraska.

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

3 (a) It contains any kratom alkaloid or metabolite, including 7-
4 hydroxymitragynine, and does not meet the definition of a kratom product
5 under section 2 of this act; or

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

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

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

20 (2) For the first violation, the department shall impose a civil
21 penalty of up to one thousand dollars. For the second violation, the
22 department shall impose a civil penalty of up to five thousand dollars.
23 For a third violation and any subsequent violations, the department shall
24 impose a civil penalty of at least five thousand dollars and no more than
25 twenty thousand dollars and, if the violator is a processor, the
26 department shall prohibit the sale of any kratom products of such
27 processor within the State of Nebraska for a period of three years.

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

31 (4) No determination that a violation has occurred shall be made

1 until notice has been given and a hearing has been held by the Tax
2 Commissioner as provided in section 11 of this act if requested by the
3 processor or retailer.

4 (5) A retailer shall not be found to be in violation of the Kratom
5 Consumer Protection Act if it is shown by a preponderance of the evidence
6 that the retailer relied in good faith upon the representation of a
7 processor that a product is not an adulterated kratom product as defined
8 in section 9 of this act or otherwise conformed to the act.

9 **Sec. 11.** (1) A processor or retailer aggrieved by a notice of
10 denial of an application issued under section 7 of this act or a notice
11 of violation issued under section 10 of this act may request a hearing.

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

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

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

26 (5) Within a reasonable time after the hearing the Tax Commissioner
27 shall make a final decision or final determination and notify the
28 processor or retailer by mail of such decision or determination.

29 (6) 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 (7) 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. 12.** 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. 13.** (1) If a registered processor has been convicted by any
13 court of a violation of the Kratom Consumer Protection Act, the 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 materially false statement is made in any part of an
18 application submitted under section 7 of this act, the applicant shall be
19 subject to prosecution for perjury and if convicted may, in addition to
20 the penalties for such offense, incur a forfeiture of any certificate of
21 registration that was issued for the applicant's kratom products and all
22 money that had been paid for such certificate of registration.

23 **Sec. 14.** 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 products greater than or in addition to those enumerated
27 in the act.

28 **Sec. 15.** The department may adopt and promulgate rules and
29 regulations to carry out the Kratom Consumer Protection Act.

30 **Sec. 16.** This act becomes operative on July 1, 2025.

31 **Sec. 17.** Since an emergency exists, this act takes effect when

1 passed and approved according to law.