

AMENDMENTS TO LB230

Introduced by Judiciary.

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

3 **Section 1.** Sections 1 to 16 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 extract means the material obtained by extraction of
14 kratom leaves with a solvent consisting of water, ethanol, or food-grade
15 carbon dioxide, or any other solvent allowed by federal or state
16 regulation to be used in manufacturing a food ingredient;

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

24 (5) Kratom product means a food, ingredient, or dietary supplement
25 that:

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

27 (b) Does not contain any synthesized kratom alkaloids, other

1 synthesized kratom constituents, or synthesized metabolites of any kratom
2 constituent; and

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

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

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

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

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

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

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

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

29 (1) Be manufactured, packaged, labeled, and held in compliance with
30 federal regulations for current good manufacturing practice in
31 manufacturing, packaging, labeling, or holding operations for dietary

1 supplements as codified in 21 C.F.R. Part 111, as such regulations
2 existed on January 1, 2025; and

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

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

8 (1) Be labeled in compliance with all applicable federal food or
9 dietary supplement labeling regulations, including, but not limited to,
10 21 C.F.R. Part 101, as such regulations existed on January 1, 2025;

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

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

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

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

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

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

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

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

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

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

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

3 (h) A listing of the servings per container; and

4 (i) A listing of kratom alkaloids mitragynine and 7-
5 hydroxymitragynine and other ingredients in the product, including
6 quantitative declarations of the amount per serving of mitragynine.

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

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

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

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

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

20 (ii) A principal point of contact for the processor and contact
21 information for the point of contact;

22 (iii) The name of the product;

23 (iv) The product label;

24 (v) A certificate of analysis for the kratom product that states the
25 kratom product's alkaloid content and certifies that the kratom product
26 has a level of 7-hydroxymitragynine that is less than two percent of the
27 alkaloid composition of the kratom product from an independent
28 laboratory. Such laboratory shall obtain and maintain an International
29 Organization for Standardization and International Electrotechnical
30 Commission (ISO/IEC) 17025 accreditation for testing and calibration
31 laboratories from an accreditation body that is a signatory to the

1 International Laboratory Accreditation Cooperation Mutual Recognition
2 Arrangement;

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

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

9 (c) A certificate of registration shall be valid for one calendar
10 year after the date of issue and shall not be transferable; and

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

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

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

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

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

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

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

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

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

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

15 (3) Upon receipt of evidence that suggests a product may be an
16 adulterated kratom product, the department may require the person
17 selling, providing, or distributing the product to obtain an independent
18 third-party test of the product by a laboratory of the department's
19 choosing.

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

25 (2) For the first violation, the department shall impose a civil
26 penalty of up to one thousand dollars. For the second violation, the
27 department shall impose a civil penalty of up to five thousand dollars.
28 For a third violation and any subsequent violations, the department shall
29 impose a civil penalty of at least five thousand dollars and no more than
30 twenty thousand dollars and, if the violator is a processor, the
31 department shall prohibit the sale of any kratom products of such

1 processor within the State of Nebraska for a period of three years.

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

5 (4) No determination that a violation has occurred shall be made
6 until notice has been given and a hearing has been held by the Tax
7 Commissioner as provided in section 11 of this act if requested by the
8 processor or retailer.

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

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

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

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

27 (4) During the hearing, the Tax Commissioner or the Tax
28 Commissioner's designee shall not be bound by the technical rules of
29 evidence, and no informality in any proceeding or in the manner of taking
30 testimony shall invalidate any order or decision made or approved by the
31 Tax Commissioner.

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

5 (2) If it is determined that a processor intentionally and
6 materially falsified any information contained in an application under
7 the Kratom Consumer Protection Act, the processor shall be ineligible to
8 obtain a certification of registration for a period of twelve months
9 after the date of such determination.

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

13 **Sec. 13.** The Attorney General shall have authority to enforce the
14 Kratom Consumer Protection Act pursuant to the Consumer Protection Act
15 and the Uniform Deceptive Trade Practices Act. This section shall not be
16 construed to allow for a private right of action under the Kratom
17 Consumer Protection Act even though such action is authorized under the
18 Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

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

24 (2) If any false statement is made in any part of an application
25 submitted under section 7 of this act, the applicant shall be subject to
26 prosecution for perjury and if convicted may, in addition to the
27 penalties for such offense, incur a forfeiture of any certificate of
28 registration that was issued for the applicant's kratom products and all
29 money that had been paid for such certificate of registration.

30 **Sec. 15.** Except as otherwise provided in the Kratom Consumer
31 Protection Act, no political subdivision shall impose additional

1 restrictions on the manufacturing, packaging, labeling, distribution, or
2 sale of kratom leaves, kratom leaf extracts, or kratom products greater
3 than or in addition to those enumerated in the act.

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

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

7 **Sec. 18.** Since an emergency exists, this act takes effect when
8 passed and approved according to law.