

CHAPTER 251

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 22-120

BY SENATOR(S) Ginal and Coram, Buckner, Gonzales, Lee, Priola, Winter;
also REPRESENTATIVE(S) Sullivan, Hooton, Lindsay, Ricks, Woodrow, Garnett, Esgar, Kennedy.

AN ACT**CONCERNING THE REGULATION OF KRATOM PROCESSORS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly finds and declares that the prohibitions set forth in sections 44-1-105 (3) and 18-13-132 are not intended to limit the feasibility report conducted pursuant to section 44-1-105 (2).

SECTION 2. In Colorado Revised Statutes, **add** 44-1-105 as follows:

44-1-105. Feasibility report - regulation of kratom - prohibited acts - definition - rules - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "KRATOM PRODUCT" MEANS ANY PRODUCT OR INGREDIENT CONTAINING:

(a) ANY PART OF THE LEAF OF THE MITRAGYNA SPECIOSA PLANT IF THE PLANT CONTAINS THE ALKALOID MITRAGYNINE OR 7-HYDROXYMITRAGYNINE; OR

(b) A SYNTHETIC MATERIAL THAT CONTAINS THE ALKALOID MITRAGYNINE OR 7-HYDROXYMITRAGYNINE.

(2)(a) ON OR BEFORE JANUARY 4, 2023, THE EXECUTIVE DIRECTOR SHALL SUBMIT TO THE GENERAL ASSEMBLY A REPORT ANALYZING THE FEASIBILITY OF REGULATING KRATOM PRODUCTS, KRATOM PROCESSORS, AND KRATOM RETAILERS. THE REPORT MUST IDENTIFY, CONSIDER, AND RECOMMEND LEGISLATIVE ACTION ADDRESSING THE FOLLOWING SUBJECTS:

(I) THE APPROPRIATE STATE AGENCY OR AGENCIES TO REGULATE THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

MANUFACTURE, SALE, OFFERING FOR SALE, POSSESSION, OR USE OF KRATOM PRODUCTS;

(II) APPROPRIATE DEFINITIONS OF TERMS INCLUDING "PROCESSING", "SELLING", "ADVERTISING", "KRATOM", AND "KRATOM PRODUCTS";

(III) APPROPRIATE AGE RESTRICTIONS FOR KRATOM PURCHASING AND CONSUMPTION;

(IV) FEASIBILITY AND ENFORCEMENT OF UNDERAGE COMPLIANCE CHECKS;

(V) A TESTING PROGRAM FOR IDENTIFYING KRATOM PRODUCTS;

(VI) AN EVALUATION OF THE COMPETENCIES AND CAPABILITIES OF EXISTING PRIVATE THIRD-PARTY LABORATORIES TO MANAGE KRATOM TESTING;

(VII) THE APPROPRIATE STANDARDS FOR LABORATORY ACCREDITATION AND PERFORMANCE;

(VIII) TESTING REQUIREMENTS FOR IDENTIFYING KRATOM THAT IS OFFERED FOR SALE TO A COLORADO CONSUMER;

(IX) CONSIDERATION OF TYPES OF KRATOM PRODUCTS THAT ARE AVAILABLE AS FOOD, INCLUDING TEA POWDERS, GUMMIES, BEVERAGES, PILLS, CAPSULES, AND EXTRACTS;

(X) THE TYPES OF KRATOM PRODUCTS THAT SHOULD NOT BE PERMITTED TO BE SOLD OR OFFERED FOR SALE;

(XI) SERVING SIZES AND RELATED RESTRICTIONS;

(XII) LABELING REQUIREMENTS INCLUDING A PROHIBITION ON UNPROVEN HEALTH OR MEDICAL BENEFIT CLAIMS;

(XIII) MANUFACTURING PROCESSES AND REQUIREMENTS FOR PROCESSORS;

(XIV) CURRENT GOOD MANUFACTURING PROCESS REQUIREMENTS UNDER REGULATIONS PROMULGATED BY THE FEDERAL DRUG ADMINISTRATION FOR ANY VENDOR PROCESSING KRATOM;

(XV) ADVERSE HEALTH-EVENT REPORTING REQUIREMENTS AND PRODUCT RECALLS;

(XVI) ADVERTISING REQUIREMENTS, LIMITATIONS, AND PROHIBITIONS;

(XVII) TAX AND FEE CONSIDERATIONS;

(XVIII) RECORDKEEPING;

(XIX) TRACEABILITY;

(XX) CRIMINAL AND ADMINISTRATIVE PENALTIES FOR VIOLATIONS;

(XXI) RECOMMENDATIONS REGARDING AN OPERABLE TIMELINE FOR IMPLEMENTATION OF A REGULATORY FRAMEWORK FOR KRATOM;

(XXII) FISCAL IMPACTS AND RESOURCE REQUIREMENTS FOR IMPLEMENTATION AND ONGOING ADMINISTRATION OF A REGULATORY PROGRAM FOR KRATOM; AND

(XXIII) ALTERNATIVES, INCLUDING CONSUMER PROTECTION REQUIREMENTS SUCH AS LIABILITY INSURANCE REQUIREMENTS, PROHIBITIONS, AND CRIMINAL PENALTIES, TO STATE REGULATION OF KRATOM.

(b) THE DEPARTMENT SHALL ENGAGE RELEVANT STAKEHOLDERS, INCLUDING KRATOM PROCESSORS, KRATOM CONSUMERS, KRATOM RETAILERS, PUBLIC HEALTH OFFICIALS, LEGISLATIVE MEMBERS, RELEVANT STATE AGENCIES WITH EXPERTISE IN SIMILAR REGULATORY FIELDS, LOCAL GOVERNMENTS, AND OTHER INTERESTED STAKEHOLDERS, IN ORDER TO INFORM THE FEASIBILITY REPORT DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION.

(c) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2023.

(3) EFFECTIVE JULY 1, 2024, A PERSON SHALL NOT:

(a) KNOWINGLY PREPARE, DISTRIBUTE, ADVERTISE, SELL, OR OFFER TO SELL A KRATOM PRODUCT THAT IS ADULTERATED WITH FENTANYL OR ANY OTHER CONTROLLED SUBSTANCE LISTED IN PART 2 OF ARTICLE 18 OF TITLE 18;

(b) SELL A KRATOM PRODUCT THAT DOES NOT HAVE A LABEL THAT CLEARLY SETS FORTH:

(I) THE IDENTITY AND ADDRESS OF THE MANUFACTURER; AND

(II) THE FULL LIST OF INGREDIENTS IN THE KRATOM PRODUCT;

(c) KNOWINGLY PREPARE, DISTRIBUTE, ADVERTISE, SELL, OR OFFER TO SELL A KRATOM PRODUCT TO A PERSON UNDER TWENTY-ONE YEARS OF AGE; OR

(d) DISPLAY OR STORE KRATOM PRODUCTS IN A RETAIL LOCATION IN A MANNER THAT WILL ALLOW THE PRODUCTS TO BE ACCESSED BY INDIVIDUALS UNDER TWENTY-ONE YEARS OF AGE.

(4) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES THAT ARE NECESSARY FOR THE ENFORCEMENT OF SUBSECTION (3) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, **add** 18-13-132 as follows:

18-13-132. Furnishing kratom products to persons under twenty-one years of age. (1) (a) A PERSON SHALL NOT GIVE, SELL, DISTRIBUTE, DISPENSE, OR OFFER FOR SALE A KRATOM PRODUCT TO ANY PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE.

(b) BEFORE GIVING, SELLING, DISTRIBUTING, DISPENSING, OR OFFERING TO SELL TO AN INDIVIDUAL ANY KRATOM PRODUCT, A PERSON SHALL REQUEST FROM THE INDIVIDUAL AND EXAMINE A GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION THAT ESTABLISHES THAT THE INDIVIDUAL IS TWENTY-ONE YEARS OF AGE OR OLDER.

(c) A PERSON WHO VIOLATES SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION COMMITS A CIVIL INFRACTION AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF TWO HUNDRED DOLLARS, NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-503.

(d) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER SUBSECTION (1)(a) OF THIS SECTION THAT THE PERSON FURNISHING THE KRATOM PRODUCT WAS PRESENTED WITH AND REASONABLY RELIED UPON A GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION THAT IDENTIFIED THE INDIVIDUAL RECEIVING THE KRATOM PRODUCT AS BEING TWENTY-ONE YEARS OF AGE OR OLDER.

(2) (a) NOTHING IN THIS SECTION PROHIBITS A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY FROM ENACTING AN ORDINANCE OR RESOLUTION THAT PROHIBITS THE SALE OF ANY KRATOM PRODUCTS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE OR IMPOSES REQUIREMENTS MORE STRINGENT THAN PROVIDED IN THIS SECTION.

(b) A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY SHALL NOT ENACT AN ORDINANCE OR RESOLUTION THAT ESTABLISHES A MINIMUM AGE TO PURCHASE KRATOM PRODUCTS THAT IS UNDER TWENTY-ONE YEARS OF AGE.

(3) AS USED IN THIS SECTION, "KRATOM PRODUCT" HAS THE MEANING SET FORTH IN SECTION 44-1-105 (1).

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 26, 2022