

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1628

Introduced by

Representative Heinert

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24 and
2 chapter 51-38 of the North Dakota Century Code, relating to criminal history record checks and
3 the regulation of kratom products; to amend and reenact section 12.1-31-03 of the North Dakota
4 Century Code, relating to the sale of kratom to individuals under twenty-one years of age; to
5 provide a penalty; to provide an appropriation; and to provide an effective date.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota
8 Century Code is created and enacted as follows:

9 The attorney general for an applicant for licensure as a processor or retailer, and
10 all owners or agents of an applicant for licensure under chapter 51-38.

11 **SECTION 2. AMENDMENT.** Section 12.1-31-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-31-03. Sale of tobacco, electronic smoking devices, ~~or~~ alternative nicotine**
14 **products, or kratom to an individual under twenty-one years of age and use by an**
15 **individual under twenty-one years of age prohibited.**

16 1. a. It is an infraction for any person to sell or furnish to an individual under
17 twenty-one years of age, or procure for an individual under twenty-one years of
18 age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which
19 it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~
20 alternative nicotine products, or kratom. As used in this subdivision, "sell"
21 includes dispensing from a vending machine under the control of the actor.

b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom through a self-service display. This subdivision does not apply to a:

(1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or

(2) Self-service display that is located in a tobacco specialty store.

2. It is a noncriminal offense for an individual eighteen years of age or older but under twenty-one years of age, and an infraction for an individual fourteen years of age or older but under eighteen years of age, to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom. However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom retailers may also may conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

3. Subsections 1 and 2 do not apply to an individual under twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom when required in the performance of the individual's duties as an employee.

4. It is a noncriminal offense for an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which

1 it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~ alternative
2 nicotine products, or kratom.

3 5. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
4 electronic smoking devices, or alternative nicotine products to individuals under
5 twenty-one years of age and use of tobacco, electronic smoking devices, ~~or~~ alternative
6 nicotine products, or kratom by individuals under twenty-one years of age which
7 includes prohibitions in addition to those in subsection 1, 2, or 4. Any ordinance or
8 resolution adopted must include provisions deeming a violation of subsection 2 or 4 a
9 noncriminal violation and must provide for a fee of not less than twenty-five dollars for
10 an individual fourteen years of age or older who has been charged with an offense
11 under subsection 2 or 4. The failure to post a required bond or pay an assessed fee by
12 an individual found to have violated the ordinance or resolution is punishable as a
13 contempt of court, except an individual under twenty-one years of age may not be
14 imprisoned for the contempt.

15 6. An individual fourteen years of age or older but under eighteen years of age found to
16 have violated subsection 2 or 4 has committed an infraction and must be sent to
17 juvenile court. An individual eighteen years of age or older but under twenty-one years
18 of age found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.

19 a. Any individual who has been cited for a violation of subsection 2 or 4 may appear
20 before a court of competent jurisdiction and pay the fee by the time scheduled for
21 a hearing, or if bond has been posted, may forfeit the bond by not appearing at
22 the scheduled time. An individual appearing at the time scheduled in the citation
23 may make a statement in explanation of that individual's action and the judge
24 may waive, reduce, or suspend the fee or bond, or both. If the individual cited
25 follows the procedures of this subdivision, that individual has admitted the
26 violation and has waived the right to a hearing on the issue of commission of the
27 violation. The bond required to secure appearance before the court must be
28 identical to the fee. This subdivision does not allow a citing officer to receive the
29 fee or bond.

30 b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow
31 the procedures provided under subdivision a, that individual may request a

- 1 hearing on the issue of the commission of the violation cited. The hearing must
2 be held at the time scheduled in the citation or at some future time, not to exceed
3 ninety days later, set at that first appearance. At the time of a request for a
4 hearing on the issue on commission of the violation, the individual cited shall
5 deposit with the court an appearance bond equal to the fee for the violation cited.
- 6 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
7 court, except an individual may not be imprisoned for the contempt.
- 8 7. The prosecution must prove the commission of a cited violation under subsection 2
9 or 4 by a preponderance of the evidence.
- 10 8. A law enforcement officer that cites a minor for violation of this section shall mail a
11 notice of the violation to the parent or legal guardian of the minor within ten days of the
12 citation.
- 13 9. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
14 by the court to a sanction or order designed to ensure compliance with the payment of
15 the fee or fine or to an alternative sentence or sanction including community service.
- 16 10. As used in this section:
- 17 a. "Alternative nicotine product" means any noncombustible product containing
18 nicotine that is intended for human consumption, whether chewed, absorbed,
19 dissolved, or ingested by any other means. The term does not include any
20 cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for
21 smoking or chewing, any electronic smoking device, or any product regulated as
22 a drug or device by the United States food and drug administration under
23 chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- 24 b. "Electronic smoking device" means any electronic product that delivers nicotine
25 or other substances to the individual inhaling from the device, including, an
26 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking
27 device includes any component, part, or accessory of such a product, whether or
28 not sold separately. Electronic smoking device does not include drugs, devices,
29 or combination products approved for sale by the United States food and drug
30 administration, as those terms are defined in the Federal Food, Drug and
31 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c. "Kratom" has the same meaning as in section 51-38-01.

d. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

~~d.e.~~ "Tobacco specialty store" means a retail store that:

(1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and

(2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

e.f. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

SECTION 3. Chapter 51-38 of the North Dakota Century Code is created and enacted as follows:

51-38-01. Definitions.

As used in this chapter:

1. "Kratom" means pure leaf kratom that contains five one-hundredths percent of 7-hydroxymitragynine or less on a dry weight basis.

2. "Kratom extract" means a preparation containing any part of the mitragyna speciosa plant in a concentrated form.

3. "Kratom product" means a consumable product containing kratom.

4. "Processor" means a person that prepares, manufactures, distributes, wholesales, or stores kratom products.

1 5. "Pure leaf kratom" means the leaf of the mitragyna speciosa plant in fresh,
2 dehydrated, ground, or dried form.

3 6. "Retailer" means a person that sells or advertises kratom products.

4 **51-38-02. Processor and retailer - License required - Qualifications - Fees.**

5 1. A processor or retailer may not prepare, distribute, or sell kratom unless the processor
6 or retailer holds a license issued by the attorney general.

7 2. Qualifications for licensure established by the attorney general must include:

8 a. An applicant, if an individual, must be a legal resident of the United States;

9 b. An applicant, if a corporation, limited liability company, limited partnership,
10 general partnership, or limited liability partnership, must be registered with the
11 secretary of state;

12 c. An applicant or manager may not have been convicted of a felony offense by the
13 federal government or any state, a violation of subdivision d of subsection 1 of
14 section 19-03.1-23 or an equivalent offense by the federal government or another
15 state, or, following any conviction of any offense, must be determined to be
16 significantly rehabilitated under section 12.1-33-02.1;

17 d. An applicant's facility or principal place of business must meet local and state
18 sanitation and safety requirements; and

19 e. An applicant for a retailer license may not have a financial interest in a processor
20 business.

21 3. The attorney general may deny the application of an applicant that:

22 a. Engages in fraud or deceit;

23 b. Fails to meet the qualifications for licensure under this chapter or administrative
24 rule; or

25 c. Fails to comply with the requirements under this chapter or administrative rule.

26 4. A separate license is required for each facility or place of business operated or
27 maintained by a processor or retailer.

28 5. An initial application for a processor or retailer license must be accompanied by a fee
29 of ten thousand dollars.

30 6. The attorney general is not required to review an application that is determined to be
31 incomplete.

1 7. A license issued under this section expires one year after the date of issuance unless
2 the license is sooner revoked by the attorney general. A license may be renewed
3 annually upon payment of a renewal fee of five thousand dollars.

4 8. A license issued under this chapter is not transferable.

5 9. A processor or retailer shall prominently display the license at the facility or place of
6 business for which the license was issued.

7 10. The attorney general may not issue a license to a processor or retailer that does not
8 meet the requirements for renewal. If the processor's or retailer's license is not
9 renewed, the processor or retailer shall dispose of all kratom.

10 11. An applicant or licensee may appeal a denial, suspension, or revocation of a license to
11 the district court of Burleigh County within thirty days after notice has been given.

12 **51-38-03. Criminal history record checks.**

13 The attorney general may require an applicant, licensee, or agent of an applicant or
14 licensee to submit to a statewide and nationwide criminal history record check. A nationwide
15 criminal history record check must be conducted in accordance with section 12-60-24. All costs
16 associated with obtaining a criminal history record check are the responsibility of the applicant
17 or licensee.

18 **51-38-04. Processor and retailer - Requirements - Labeling standards.**

19 1. A licensee may not prepare, possess, manufacture, distribute, advertise, or sell a
20 kratom product that:

21 a. Is mixed or packed with a nonkratom substance unless the nonkratom substance
22 is an inert encapsulating agent that:

23 (1) Is composed of food-grade or pharmaceutical-grade materials with no
24 pharmacological activity;

25 (2) Does not contain a psychoactive substance, stimulant, or adulterant; and

26 (3) Serves solely to contain or deliver pure leaf kratom.

27 b. Contains kratom extract.

28 c. Imitates the appearance of a candy or confection or is designed or marketed in a
29 manner that appeals to a child.

30 d. Is packaged in a manner likely to deceive an individual of the safe or
31 recommended serving.

- 1 2. A licensee may not distribute, advertise, or sell a kratom product to an individual under
2 twenty-one years of age.
- 3 3. A licensee shall ensure each kratom product has a label that clearly and
4 conspicuously provides:
 - 5 a. The name and contact information of the manufacturer or distributor;
 - 6 b. A complete list of ingredients;
 - 7 c. The recommended serving size;
 - 8 d. The amount of mitragynine and 7-hydroxymitragynine per serving and per
9 package;
 - 10 e. The number of servings per package;
 - 11 f. The expiration date of the product;
 - 12 g. Kratom may be habit forming and may interact with medication, drugs, and
13 controlled substances;
 - 14 h. The product is not intended for use by an individual who is pregnant,
15 breastfeeding, or under twenty-one years of age;
 - 16 i. A health care provider should be consulted before use; and
 - 17 j. The product is not approved by the federal food and drug administration and is
18 not intended to diagnose, treat, cure, or prevent disease.
- 19 4. A licensee shall store and lock all kratom products behind a sales counter in a manner
20 that prevents consumer access without the assistance of an employee.

21 **51-38-05. Laboratory testing - Certificate of analysis.**

- 22 1. A licensee shall test a kratom product before sale to evaluate the composition of the
23 kratom product, including kratom alkaloids. A test result must indicate the amount of
24 mitragynine and 7-hydroxymitragynine in the kratom product.
- 25 2. Testing must be conducted by an accredited laboratory approved by the attorney
26 general and documented by the testing laboratory in a certificate of analysis.
- 27 3. A licensee shall retain the certificate of analysis for each kratom product tested and
28 shall produce the certificate of analysis upon request by the attorney general.
- 29 4. The licensee shall pay all testing costs.

51-38-06. Attorney general - Enforcement - Authority.

1. The attorney general or the attorney general's designee may inspect a licensee's facility or place of business to determine compliance with this chapter.
2. A licensee that violates this chapter is subject to seizure of any kratom product that does not comply with this chapter or administrative rule and:
 - a. For a first violation, a fine of ten thousand dollars and suspension of the processor's or retailer's license for three days;
 - b. For a second violation, a fine of fifteen thousand dollars and suspension of the processor's or retailer's license for thirty days; and
 - c. For a third violation, a fine of twenty-five thousand dollars and permanent revocation of the processor's or retailer's license.
3. A licensee may continue to possess kratom while the processor's or retailer's license is suspended, but may not produce, purchase, sell, or transfer kratom.
4. The attorney general shall adopt rules to administer and enforce this chapter. The attorney general may not issue a license under section 51-38-02 until the rules are adopted.

51-38-07. Penalties.

1. It is a class B misdemeanor for any person to prepare, manufacture, distribute, advertise, or sell kratom without a license.
2. A licensee that sells a product in violation of chapter 19-03.1 may be subject to criminal prosecution and automatic permanent revocation of the processor's or retailer's license.

51-38-08. Kratom regulation operating fund - Attorney general.

The kratom regulation operating fund is a special fund in the state treasury administered by the attorney general. The fund consists of all kratom licensing fees collected under this chapter. The attorney general may use moneys in the fund only for enforcement activities in accordance with this chapter, subject to legislative appropriations.

SECTION 4. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - KRATOM PUBLIC HEALTH CAMPAIGN. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the department of health and human services for the

1 purpose of providing a kratom public health awareness campaign, including the maintenance of
2 kratom resources on the department's website, for the period beginning with the effective date
3 of this Act, and ending June 30, 2027.

4 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective upon its filing with the
5 secretary of state.