AMERICAN KRATOM ASSOCIATION

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TESTIMONY BEFORE THE NORTH DAKOTA LEGISLATIVE ASSEMBLY
SPECIAL AD HOC POLICY COMMITTEE
Regarding SB 2408 and HB 1628
September 1, 2026

Chairman Klein, Chairman Ruby, and members of the Special Ad Hoc Policy Committee: Thank you for the opportunity to testify regarding Senate Bill 2408, introduced by Senator Axtman, and House Bill 1628, introduced by Representative Heinert.

The American Kratom Association (AKA) strongly supports protecting North Dakota consumers from adulterated products, synthetic alkaloids, chemically manipulated 7-hydroxymitragynine products, deceptive labeling, inappropriate marketing to children, and manufacturers who refuse to comply with meaningful product standards.

We believe, however, that North Dakota can accomplish those objectives without unnecessarily restricting responsible adult access to properly formulated natural kratom products.

Our position on these bills is therefore straightforward:

1. Schedule the dangerous synthetic and chemically manipulated opioid compounds, commonly referred to as 7-OH, mitragynine pseudoindoxyl, and MGM-15 & MGM-16 products.
2. Regulate legitimate botanical kratom product formulations aggressively, including the limits on extracts to only those using FDA approved food grade solvents.
3. Protect children.
4. Require accurate labeling and appropriate testing.
5. Fund effective enforcement.
6. Importantly, also preserve the ability of adults to make informed choices about responsibly manufactured botanical products they use for their health and well-being.

That approach is consistent with the distinction being drawn by FDA, HHS, DEA, and the Department of Justice at the federal level on natural kratom leaf products.

PRESERVING CONSUMER ACCESS WHILE REMOVING DANGEROUS SYNTHETIC AND CHEMICALLY MANIPULATED PRODUCTS

The most important development in this debate is that the federal government has now expressly distinguished traditional botanical kratom from the new generation of concentrated and manufactured opioid compounds being sold under the kratom name.

That distinction should be the foundation of North Dakota policy.

FDA, HHS and DEA are no longer treating these products as interchangeable
In July 2025, FDA announced an initiative specifically targeting concentrated 7-OH products. FDA expressly said its action was “not focused on natural kratom leaf products.” FDA subsequently warned health professionals that concentrated 7-OH products present substantially different risks from traditional leaf.[i]

That distinction became even clearer on July 1, 2026.[ii]

HHS and FDA announced DEA's proposed temporary scheduling actions involving enhanced 7-OH and three compounds: mitragynine pseudoindoxyl, or MGPI; MGM-15; and MGM-16.

HHS expressly stated that these actions “are not intended to regulate natural leaf kratom” that does not contain enhanced levels of 7-OH. HHS further stated that MGPI, MGM-15, and MGM-16 do not naturally occur in the kratom plant, describing MGPI as a chemical rearrangement product and MGM-15 and MGM-16 as synthetic derivatives.

Then, on August 25, the Department of Justice announced DEA's emergency Schedule placement of MGPI, MGM-15, and MGM-16.[iii]

DOJ again made the distinction unmistakable:

The federal action is directed at deliberately manufactured and concentrated opioid products, not traditional botanical kratom.

That distinction matters greatly to SB 2408.

SB 2408 is directionally correct -- but should reflect the latest federal science
We support Senator Axtman's objective of putting truly dangerous synthetic derivatives under appropriate controlled-substance restrictions.

SB 2408 expressly identifies MGPI, MGM-15, and MGM-16, and that portion of the bill is now closely aligned with the federal emergency scheduling action.

But there are two areas where we respectfully recommend additional refinement.

First, North Dakota should not inadvertently make botanical kratom a controlled substance because a highly sensitive laboratory detects an incidental trace quantity of MGPI.

DOJ itself recognized this analytical problem on August 25. The Department stated that unresolved scientific questions exist concerning incidental trace MGPI that might be reported in botanical products because of processing, storage, or analytical conditions. DOJ therefore announced enforcement discretion when only incidental trace MGPI is confirmed in a product otherwise consistent with botanical kratom.[iv]

That is not a federal statutory exemption, and North Dakota should not represent it as one. But it demonstrates the precise problem state legislation needs to address.

North Dakota should not impose state criminal sanctions on a legitimate botanical product merely because modern analytical equipment detects an incidental trace constituent that was not intentionally manufactured, concentrated, fortified, or added.

SB 2408 should contain a carefully drafted botanical-product provision reflecting that distinction.

The second issue is even more immediate.

SB 2408 appropriately incorporates the proposed federal threshold for 7-OH: more than 0.050 percent by dry weight for botanical material, and comparable concentration or a quantity greater than 1 milligram for specified processed articles.

HB 1628 provides what AKA believes is the better framework for botanical kratom

The proposed amendments to HB 1628 properly move the policy discussion toward product regulation rather than botanical prohibition.

The current draft defines kratom in terms of kratom leaf or material extracted from leaf using a food-grade solvent and establishes a less-than-two-percent 7-OH standard within the alkaloid fraction. We would recommend Senator Axton's additional provision for not more than 1 mg of 7-OH in a serving.

It also prohibits products containing synthetic alkaloids, prohibits child-appealing products, requires sales only to adults 21 and older, and establishes extensive labeling requirements. The labeling provisions require ingredients, serving size, mitragynine and 7-OH per serving, servings per package, warnings, and manufacturer or distributor information.

Those are legitimate consumer protections.

We would strengthen them further by requiring appropriate independent quantitative laboratory testing capable of identifying not merely mitragynine, but also 7-OH, MGPI and other relevant high-potency or synthetic alkaloids.

The goal should be simple:

A North Dakota consumer should know what is in the product, how much is in it, who made it, whether it complies with state standards, and whether it contains a chemically manipulated opioid masquerading as natural kratom.

Many adults report using botanical kratom as part of their personal health and wellness choices. Preserving their freedom to make those decisions should not be confused with

making a therapeutic claim or suggesting FDA has approved kratom as a medicine. FDA has not done so.

MEDICAL EXAMINER AND CORONER CONCLUSIONS MUST BE BASED ON MODERN, COMPREHENSIVE TOXICOLOGY

We want to address another difficult issue that has understandably influenced this debate: reports of deaths attributed to kratom.

This must be discussed with both compassion and scientific rigor.

When a family is told by a medical examiner or coroner that kratom caused the death of their son, daughter, spouse, parent, or sibling, they have every reason to believe the medical professional who gave them that conclusion.

Their grief is real. Their loss is real. Their sincerity should never be questioned.

But respecting a grieving family does not require a legislature to assume that every underlying forensic conclusion is scientifically complete.

Those are two very different questions.

Medicine recognizes that diagnostic conclusions can be wrong

Medical professionals make critical diagnostic judgments every day, and the overwhelming majority work conscientiously and professionally.

But medicine itself recognizes that diagnostic error occurs.

A major Johns Hopkins-led study published in *BMJ Quality & Safety* estimated approximately 795,000 cases of permanent disability or death annually in the United States associated with diagnostic error, with a plausible range of roughly 598,000 to 1.023 million.[v]

That study concerns clinical diagnosis, not forensic pathology, and I do not cite it to suggest that the same error rate applies to medical examiners.

It illustrates a more fundamental point:

A conclusion reached by a qualified medical professional is important evidence, but professional credentials do not make a diagnostic conclusion infallible.

The same principle applies to postmortem toxicology.

CDC has already documented limitations in kratom death data

In its 2019 analysis of overdose deaths in which kratom was detected, CDC specifically reported that postmortem toxicology testing protocols were not documented and varied among and within states.[vi]

CDC identified 152 kratom-positive deaths. Multiple substances were detected for almost all of the decedents, and even among seven cases in which kratom was the only substance testing positive, CDC cautioned that the presence of additional substances could not be ruled out.

That is a substantial limitation when these cases are later presented to legislators simply as “kratom deaths.”

NMS Labs says mitragynine alone no longer tells the story

The new analysis from NMS Labs, one of the country's leading forensic toxicology laboratories, makes this issue even more important.[vii]

NMS explains that the kratom marketplace has evolved from relatively conventional botanical products into a marketplace that can also include concentrated extracts, enhanced 7-OH formulations, MGPI, MGM-15 and other highly active compounds.

Its conclusion is critical:

A positive finding for mitragynine alone may no longer adequately characterize the exposure.

NMS explains that older or limited analytical methods can miss important contributors to toxicity or mischaracterize the exposure, particularly because structurally related alkaloids require sophisticated chromatographic separation and mass-spectrometric confirmation.

NMS further emphasizes that polysubstance use complicates cause-of-death interpretation and concludes that comprehensive testing of multiple kratom alkaloids along with other drugs provides a substantially better analytical picture.

That has a profound implication for this Legislature.

A test showing mitragynine tells us that mitragynine was present.

It does not necessarily tell us whether the person consumed:

- natural leaf;
- a conventional botanical extract;
- an enhanced 7-OH product;
- a product containing MGPI;
- a product containing MGM-15;
- a chemically manipulated formulation;

- a mislabeled product;
- or some combination of those substances with prescription medications, fentanyl, alcohol, benzodiazepines, stimulants, or other drugs.

Those distinctions are now scientifically and legally critical.

NMS puts the issue succinctly: today's question cannot simply be whether kratom was present; the important issue is what was actually in the product and how much it contributed to the death.

The families deserve accurate answers just as much as the Legislature does.

A positive toxicology result should be treated as one piece of evidence. It should not automatically become proof of causation without a comprehensive examination of the product, the toxicology, the circumstances of death, other substances present, and the pharmacology involved.

That is precisely the more sophisticated approach NMS Labs is now urging the forensic community to adopt.

FUND ENFORCEMENT THROUGH A PROPORTIONAL EXCISE TAX — NOT BARRIERS TO MARKET ENTRY

The third issue is enforcement.

A Kratom Consumer Protection Act is only as effective as its enforcement.

North Dakota should provide the Attorney General with the resources needed to test products, inspect facilities, investigate complaints, issue stop-sale orders, seize noncompliant products, and penalize manufacturers who knowingly violate the law.

But how that enforcement is funded matters.

The August 31 proposed amendments to HB 1628 require:

- a $10,000 initial processor license fee;
- a $1,000 initial retailer license fee; and
- a separate license for each facility or place of business.

The AKA strongly recommends changing that structure.

A $10,000 processor fee has no relationship to the amount of kratom a company actually sells in North Dakota.

A company selling $50,000 of product into North Dakota would pay the same processor fee as a company selling $5 million.

And consider the national implications.

If every state imposed a $10,000 processor licensing fee, a manufacturer would face $500,000 simply for the privilege of registering in all 50 states -- before selling a single product, conducting a laboratory test, paying ordinary taxes, meeting manufacturing costs, or complying with any other regulatory obligation.

That fee structure inevitably favors the very largest manufacturers.

A smaller manufacturer that operates an FDA-compliant facility, follows good manufacturing practices, conducts appropriate testing, honestly labels its products, and sells comparatively modest quantities should not be driven from the North Dakota market merely because it lacks the financial scale of its largest competitors.

Regulation should screen out bad products—not good small businesses.

Ultimately, excessive fixed licensing fees do not merely affect manufacturers.

They reduce consumer choice.

The $1,000 retailer fee creates a similar problem

The same concern applies to the proposed $1,000 fee for every retail location.

A convenience store, grocery store, health-food retailer, or other mainstream business may have relatively modest annual kratom sales.

For those businesses, a $1,000 per-location fee may make carrying a regulated kratom product economically irrational.

High-volume smoke and tobacco specialty stores, on the other hand, are much more likely to generate enough sales in this general product category to absorb the fee.

The result could therefore be exactly the opposite of what North Dakota should want: legislation intended to regulate kratom could unintentionally push legitimate botanical kratom out of mainstream retail outlets and concentrate sales disproportionately in smoke and tobacco shops.

That does not improve the image of the marketplace.

It does not expand consumer choice.

And it does not make a safely formulated product safer.

Use a proportional excise tax instead because North Dakota already understands the principle of product-based taxation.

But the policy principle remains the same: fund regulatory burdens proportionately to commercial activity.

HB 1628 already creates a Kratom Regulation Operating Fund and directs the Attorney General to use that money for enforcement activities. Under the current language, however, that fund consists of licensing fees.

I recommend keeping the fund but changing its principal funding mechanism. Instead of a $10,000 processor fee and a $1,000 per-location retailer fee, North Dakota should impose: a modest administrative registration fee reflecting the actual cost of issuing and maintaining the license, combined with a reasonable percentage-based excise tax on kratom sales dedicated to enforcement.

The Legislature can determine the appropriate percentage based on the expected market and anticipated enforcement budget. A rate in the range of a few percentage points could be evaluated through the fiscal process rather than selecting a punitive amount without sales data.

That system has significant advantages.

- A company selling more kratom contributes more toward regulating the marketplace.
- A company selling less contributes less.
- A small retailer is not driven from the market by a fixed fee unrelated to sales.
- The state receives a sustainable stream of enforcement revenue as the market grows.
- And manufacturers and retailers have a direct financial stake in funding enforcement against competitors selling illegal products.

That is a much fairer model.

SPECIFIC RECOMMENDATIONS ON THE TWO BILLS

For SB 2408, we respectfully recommend that the Legislature retain strong Schedule I controls on MGPI, MGM-15 and MGM-16; ensure that the state does not criminalize incidental trace MGPI in otherwise compliant botanical products absent evidence of intentional manufacture, concentration, fortification or addition; and conform the 7-OH controlled-substance threshold to the federal threshold after the September 10 scientific comment process is completed.

For HB 1628, we strongly support the bill's overall consumer-protection approach: age 21, restrictions on synthetic alkaloids, prohibitions on child-appealing products, clear serving information, alkaloid disclosure, and meaningful enforcement authority.

We recommend strengthening HB 1628 further by requiring independent quantitative testing capable of distinguishing botanical mitragynine from enhanced 7-OH and relevant synthetic or chemically manipulated alkaloids, and by replacing the $10,000 processor and $1,000 retailer license fees with modest administrative fees plus a dedicated, proportional excise tax.

CONCLUSION

Chairman Klein, Chairman Ruby, and members of the Committee, North Dakota does not have to choose between consumer protection and consumer access.

You can accomplish both.

The federal government has now provided a clear roadmap.

FDA has distinguished concentrated 7-OH products from natural kratom leaf.
HHS has expressly stated that its scheduling recommendation is not intended to capture natural botanical kratom.

DEA and DOJ have acted against MGPI, MGM-15 and MGM-16 while making clear that the target is manufactured and concentrated opioid products—not traditional botanical kratom.

North Dakota should follow that distinction.

- Remove synthetic and chemically manipulated opioids from the marketplace.
- Require proper formulation, testing and labeling of botanical kratom.
- Keep these products away from anyone under 21.
- Give the Attorney General meaningful enforcement authority.
- Fund that enforcement proportionately through sales rather than imposing flat fees that eliminate small businesses and consumer choices.

And when deaths are attributed to kratom, insist on the modern comprehensive toxicology that NMS Labs says is now necessary to determine what the person actually consumed.

The death of a loved one deserves more than an assumption based on the detection of a single alkaloid.

It deserves the best science available.

And North Dakota consumers deserve a regulatory system based on that same principle.

We respectfully urge the Committee to recommend SB 2408 and HB 1628 with these amendments and to establish a regulatory framework that protects North Dakotans

from dangerous products while preserving responsible adult access to properly manufactured botanical kratom.

Thank you for your consideration.

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[i] https://www.fda.gov/news-events/press-announcements/fda-takes-steps-restrict-7-oh-opioid-products-threatening-american-consumers

[ii] https://www.dea.gov/press-releases/2026/07/01/dea-temporarily-schedule-7-oh-and-related-substances-protect-public

[iii] https://www.justice.gov/opa/pr/justice-department-announces-emergency-scheduling-three-potent-opioid-compounds

[iv] https://www.justice.gov/opa/pr/justice-department-announces-emergency-scheduling-three-potent-opioid-compounds

[v] https://www.hopkinsmedicine.org/news/newsroom/news-releases/2023/07/report-highlights-public-health-impact-of-serious-harms-from-diagnostic-error-in-us

[vi] https://www.cdc.gov/mmwr/volumes/68/wr/mm6814a2.htm

[vii] https://nmslabs.com/resources/educational-resources/blogs-0/mitragynine-alone-no-longer-tells-story-rethinking-kratom-testing