

CHAPTER 51-38

REGULATION OF KRATOM PRODUCTS

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.
5. "Pure leaf kratom" means the leaf of the mitragyna speciosa plant in fresh, dehydrated, ground, or dried form.
6. "Retailer" means a person that sells or advertises kratom products.

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

1. A processor or retailer may not prepare, distribute, or sell kratom unless the processor or retailer holds a license issued by the attorney general.
2. Qualifications for licensure established by the attorney general must include:
 - a. An applicant, if an individual, must be a legal resident of the United States;
 - b. An applicant, if a corporation, limited liability company, limited partnership, general partnership, or limited liability partnership, must be registered with the secretary of state;
 - c. An applicant or manager may not have been convicted of a felony offense by the federal government or any state, a violation of subdivision d of subsection 1 of section 19-03.1-23 or an equivalent offense by the federal government or another state, or, following any conviction of any offense, must be determined to be significantly rehabilitated under section 12.1-33-02.1;
 - d. An applicant's facility or principal place of business must meet local and state sanitation and safety requirements; and
 - e. An applicant for a retailer license may not have a financial interest in a processor business.
3. The attorney general may deny the application of an applicant that:
 - a. Engages in fraud or deceit;
 - b. Fails to meet the qualifications for licensure under this chapter or administrative rule; or
 - c. Fails to comply with the requirements under this chapter or administrative rule.
4. A separate license is required for each facility or place of business operated or maintained by a processor or retailer.
5. An initial application for a processor or retailer license must be accompanied by a fee of ten thousand dollars.
6. The attorney general is not required to review an application that is determined to be incomplete.
7. A license issued under this section expires one year after the date of issuance unless the license is sooner revoked by the attorney general. A license may be renewed annually upon payment of a renewal fee of five thousand dollars.
8. A license issued under this chapter is not transferable.
9. A processor or retailer shall prominently display the license at the facility or place of business for which the license was issued.
10. The attorney general may not issue a license to a processor or retailer that does not meet the requirements for renewal. If the processor's or retailer's license is not renewed, the processor or retailer shall dispose of all kratom.
11. An applicant or licensee may appeal a denial, suspension, or revocation of a license to the district court of Burleigh County within thirty days after notice has been given.

51-38-03. Criminal history record checks.

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

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

1. A licensee may not prepare, possess, manufacture, distribute, advertise, or sell a kratom product that:
 - a. Is mixed or packed with a nonkratom substance unless the nonkratom substance is an inert encapsulating agent that:
 - (1) Is composed of food-grade or pharmaceutical-grade materials with no pharmacological activity;
 - (2) Does not contain a psychoactive substance, stimulant, or adulterant; and
 - (3) Serves solely to contain or deliver pure leaf kratom.
 - b. Contains kratom extract.
 - c. Imitates the appearance of a candy or confection or is designed or marketed in a manner that appeals to a child.
 - d. Is packaged in a manner likely to deceive an individual of the safe or recommended serving.
2. A licensee may not distribute, advertise, or sell a kratom product to an individual under twenty-one years of age.
3. A licensee shall ensure each kratom product has a label that clearly and conspicuously provides:
 - a. The name and contact information of the manufacturer or distributor;
 - b. A complete list of ingredients;
 - c. The recommended serving size;
 - d. The amount of mitragynine and 7-hydroxymitragynine per serving and per package;
 - e. The number of servings per package;
 - f. The expiration date of the product;
 - g. Kratom may be habit forming and may interact with medication, drugs, and controlled substances;
 - h. The product is not intended for use by an individual who is pregnant, breastfeeding, or under twenty-one years of age;
 - i. A health care provider should be consulted before use; and
 - j. The product is not approved by the federal food and drug administration and is not intended to diagnose, treat, cure, or prevent disease.
4. A licensee shall store and lock all kratom products behind a sales counter in a manner that prevents consumer access without the assistance of an employee.

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

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