

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1628

Introduced by

Representative Heinert

A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24, subdivision III of subsection 3 of section 19-03.1-05, and chapter 51-38 of the North Dakota Century Code, relating to criminal history record checks, the scheduling of kratom alkaloid derivatives as a schedule I controlled substance, and the regulation of kratom products; to amend and reenact ~~section~~sections 12.1-31-03, and 19-03.1-22.3, and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to penalties for the use and possession of kratom alkaloid derivatives and the sale of kratom to individuals under twenty-one years of age; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. a. It is an infraction for any person to sell or furnish to an individual under twenty-one years of age, or procure for an individual under twenty-one years of

1 age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which
2 it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~
3 alternative nicotine products, or kratom. As used in this subdivision, "sell"
4 includes dispensing from a vending machine under the control of the actor.

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

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

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

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

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

- 1 4. It is a noncriminal offense for an individual under twenty-one years of age to present or
2 offer to another individual a purported proof of age which is false, fraudulent, or not
3 actually that individual's own proof of age, for the purpose of attempting to purchase or
4 possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which
5 it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~ alternative
6 nicotine products, or kratom.
- 7 5. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
8 electronic smoking devices, or alternative nicotine products to individuals under
9 twenty-one years of age and use of tobacco, electronic smoking devices, ~~or~~ alternative
10 nicotine products, or kratom by individuals under twenty-one years of age which
11 includes prohibitions in addition to those in subsection 1, 2, or 4. Any ordinance or
12 resolution adopted must include provisions deeming a violation of subsection 2 or 4 a
13 noncriminal violation and must provide for a fee of not less than twenty-five dollars for
14 an individual fourteen years of age or older who has been charged with an offense
15 under subsection 2 or 4. The failure to post a required bond or pay an assessed fee by
16 an individual found to have violated the ordinance or resolution is punishable as a
17 contempt of court, except an individual under twenty-one years of age may not be
18 imprisoned for the contempt.
- 19 6. An individual fourteen years of age or older but under eighteen years of age found to
20 have violated subsection 2 or 4 has committed an infraction and must be sent to
21 juvenile court. An individual eighteen years of age or older but under twenty-one years
22 of age found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.
- 23 a. Any individual who has been cited for a violation of subsection 2 or 4 may appear
24 before a court of competent jurisdiction and pay the fee by the time scheduled for
25 a hearing, or if bond has been posted, may forfeit the bond by not appearing at
26 the scheduled time. An individual appearing at the time scheduled in the citation
27 may make a statement in explanation of that individual's action and the judge
28 may waive, reduce, or suspend the fee or bond, or both. If the individual cited
29 follows the procedures of this subdivision, that individual has admitted the
30 violation and has waived the right to a hearing on the issue of commission of the
31 violation. The bond required to secure appearance before the court must be

1 identical to the fee. This subdivision does not allow a citing officer to receive the
2 fee or bond.

3 b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow
4 the procedures provided under subdivision a, that individual may request a
5 hearing on the issue of the commission of the violation cited. The hearing must
6 be held at the time scheduled in the citation or at some future time, not to exceed
7 ninety days later, set at that first appearance. At the time of a request for a
8 hearing on the issue on commission of the violation, the individual cited shall
9 deposit with the court an appearance bond equal to the fee for the violation cited.

10 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
11 court, except an individual may not be imprisoned for the contempt.

12 7. The prosecution must prove the commission of a cited violation under subsection 2
13 or 4 by a preponderance of the evidence.

14 8. A law enforcement officer that cites a minor for violation of this section shall mail a
15 notice of the violation to the parent or legal guardian of the minor within ten days of the
16 citation.

17 9. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
18 by the court to a sanction or order designed to ensure compliance with the payment of
19 the fee or fine or to an alternative sentence or sanction including community service.

20 10. As used in this section:

21 a. "Alternative nicotine product" means any noncombustible product containing
22 nicotine that is intended for human consumption, whether chewed, absorbed,
23 dissolved, or ingested by any other means. The term does not include any
24 cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for
25 smoking or chewing, any electronic smoking device, or any product regulated as
26 a drug or device by the United States food and drug administration under
27 chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 501 et seq.].

28 b. "Electronic smoking device" means any electronic product that delivers nicotine
29 or other substances to the individual inhaling from the device, including, an
30 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking
31 device includes any component, part, or accessory of such a product, whether or

not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and 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. Subdivision III of subsection 3 of section 19-03.1-05 the North Dakota Century Code is created and enacted as follows:

III. Kratom alkaloid derivatives. Unless specifically excepted or listed in another schedule, any kratom alkaloid derivative, including a synthetic or semisynthetic kratom alkaloid derivative, its isomers, esters, ethers, salts, and salts of isomers.

Examples include:

- (1) Methyl (E)2-((2S,3S,7aS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12b-octahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as 7-

hydroxymitragynine; also known as (alphaE,2S,3S,7aS,12bS)-3-ethyl-1,2,3,4,6,7,7a,12b-octahydro-7a-hydroxy-8-methoxy-a-(methoxymethylene)-indolo[2,3-a]quinolizine-2-acetic acid, methyl ester) above a specified threshold described as:

(a) Any botanical material of the plant *mitragyna speciosa*, also known as kratom, and contains more than five one-hundredths percent of 7-hydroxymitragynine on a dry weight basis; or

(b) Any alternative article or material to that described in subparagraph a, that is:

[1] Resulting from synthetic methods and containing 7-hydroxymitragynine present in amounts greater than five one-hundredths percent weight/weight, weight/volume, or volume/volume or greater than one milligram of 7-hydroxymitragynine in the article; or

[2] Material derived from *mitragyna speciosa* and further processed to manufacture alternative dosage forms such as extracts, concentrates, processed edibles, or pressed pills, and which may have materials that have been exposed to chemical, thermal, or other methods leading to chemical transformations that result in 7-hydroxymitragynine present in amounts greater than five one-hundredths percent weight/weight, weight/volume, or volume/volume or greater than one milligram of 7-hydroxymitragynine in the article.

(2) Methyl (E)-2-((1'S,6'S,7'S)-6'-ethyl-4-methoxy-3-oxo-3',5',6',7',8',8a'-hexahydro-2'H-spiro[indoline-2,1'-indolizine]-7'-yl)-3-methoxyacrylate (also known as mitragynine pseudoindoxyl).

(3) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as MGM-15; also known as dihydro-7-hydroxymitragynine).

(4) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-9-fluoro-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as MGM-16; also known as fluoro-dihydro-7-hydroxymitragynine; also known as 9-fluoro derivate of dihydro-7-hydroxymitragynine; also known as the 10-fluoro derivate of dihydro-7-hydroxymitragynine).

(5) Methyl (E)-2-[(2S,3S,7aS,12bS)-7a-acetyloxy-3-ethyl-8-methoxy-2,3,4,6,7,12b-hexahydro-1H-indolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-enoate (also known as 7-acetoxymitragynine).

SECTION 4. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

1. Except as provided in ~~subsection~~subsections 2 and 3, a person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana or tetrahydrocannabinol, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.
3. A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is a kratom alkaloid derivative is guilty of an infraction for a first offense and a class A misdemeanor for a second or subsequent offense.
4. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 5. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota

Century Code is amended and reenacted as follows:

7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense. If a person is convicted of a second or subsequent offense not related to marijuana ~~or,~~ tetrahydrocannabinol, or a kratom alkaloid derivative under this section or chapter 19-03.2, 19-03.3, or 19-03.4, or an equivalent offense from another court in the United States, the violation is a class C felony.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana ~~or,~~ tetrahydrocannabinol, or a kratom alkaloid derivative.
- d. A person who violates this subsection by possessing:
- (1) Marijuana:
- (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
- (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
- (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- (2) Tetrahydrocannabinol:
- (a) In an amount less than two grams is guilty of an infraction.
- (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
- (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.

e. A person who violates this subsection by possessing a kratom alkaloid derivative is guilty of an infraction for a first offense, a class A misdemeanor for a second offense, or a class C felony for a third or subsequent offense.

f. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

f.g. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

g.h. Probation under this subsection may include placement in another facility, treatment program, treatment court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

h.i. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.

i.j. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor. If a person is convicted of a second or subsequent offense not related to marijuana or tetrahydrocannabinol under this section or chapter 19-03.2, 19-03.3, or 19-03.4, or an equivalent offense from another court in the United States, the violation is a class C felony.

SECTION 6. 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.
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

- 1 c. Fails to comply with the requirements under this chapter or administrative rule.
- 2 4. A separate license is required for each facility or place of business operated or
- 3 maintained by a processor or retailer.
- 4 5. An initial application for a processor or retailer license must be accompanied by a fee
- 5 of ten thousand dollars.
- 6 6. The attorney general is not required to review an application that is determined to be
- 7 incomplete.
- 8 7. A license issued under this section expires one year after the date of issuance unless
- 9 the license is sooner revoked by the attorney general. A license may be renewed
- 10 annually upon payment of a renewal fee of five thousand dollars.
- 11 8. A license issued under this chapter is not transferable.
- 12 9. A processor or retailer shall prominently display the license at the facility or place of
- 13 business for which the license was issued.
- 14 10. The attorney general may not issue a license to a processor or retailer that does not
- 15 meet the requirements for renewal. If the processor's or retailer's license is not
- 16 renewed, the processor or retailer shall dispose of all kratom.
- 17 11. An applicant or licensee may appeal a denial, suspension, or revocation of a license to
- 18 the district court of Burleigh County within thirty days after notice has been given.

19 **51-38-03. Criminal history record checks.**

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

25 **51-38-04. Processor and retailer - Requirements - Labeling standards.**

- 26 1. A licensee may not prepare, possess, manufacture, distribute, advertise, or sell a
- 27 kratom product that:
- 28 a. Is mixed or packed with a nonkratom substance unless the nonkratom substance
- 29 is an inert encapsulating agent that:
- 30 (1) Is composed of food-grade or pharmaceutical-grade materials with no
- 31 pharmacological activity;

- 1 (2) Does not contain a psychoactive substance, stimulant, or adulterant; and
- 2 (3) Serves solely to contain or deliver pure leaf kratom.
- 3 b. Contains kratom extract.
- 4 c. Imitates the appearance of a candy or confection or is designed or marketed in a
- 5 manner that appeals to a child.
- 6 d. Is packaged in a manner likely to deceive an individual of the safe or
- 7 recommended serving.
- 8 2. A licensee may not distribute, advertise, or sell a kratom product to an individual under
- 9 twenty-one years of age.
- 10 3. A licensee shall ensure each kratom product has a label that clearly and
- 11 conspicuously provides:
- 12 a. The name and contact information of the manufacturer or distributor;
- 13 b. A complete list of ingredients;
- 14 c. The recommended serving size;
- 15 d. The amount of mitragynine and 7-hydroxymitragynine per serving and per
- 16 package;
- 17 e. The number of servings per package;
- 18 f. The expiration date of the product;
- 19 g. Kratom may be habit forming and may interact with medication, drugs, and
- 20 controlled substances;
- 21 h. The product is not intended for use by an individual who is pregnant,
- 22 breastfeeding, or under twenty-one years of age;
- 23 i. A health care provider should be consulted before use; and
- 24 j. The product is not approved by the federal food and drug administration and is
- 25 not intended to diagnose, treat, cure, or prevent disease.

- 26 4. A licensee shall store and lock all kratom products behind a sales counter in a manner
- 27 that prevents consumer access without the assistance of an employee.

28 **51-38-05. Laboratory testing - Certificate of analysis.**

- 29 1. A licensee shall test a kratom product before sale to evaluate the composition of the
- 30 kratom product, including kratom alkaloids. A test result must indicate the amount of
- 31 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.

1 The attorney general may use moneys in the fund only for enforcement activities in accordance
2 with this chapter, subject to legislative appropriations.

3 **SECTION 7. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**

4 **KRATOM PUBLIC HEALTH CAMPAIGN.** There is appropriated out of any moneys in the
5 general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much
6 of the sum as may be necessary, to the department of health and human services for the
7 purpose of providing a kratom public health awareness campaign, including the maintenance of
8 kratom resources on the department's website, for the period beginning with the effective date
9 of this Act, and ending June 30, 2027.

10 **SECTION 8. EFFECTIVE DATE.** This Act becomes effective upon its filing with the
11 secretary of state.