Sixty-ninth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Heinert

A BILL for an Act to create and enact chapter 51-38 of the North Dakota Century Code, relating to the regulation of kratom products; to amend and reenact section 12.1-31-03 of the North Dakota Century Code, relating to 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. 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 age, 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. As used in this subdivision, "sell" 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 it may be utilized for smoking or chewing, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom.

5. A city or county may adopt an ordinance or resolution regarding the sale of tobacco, electronic smoking devices, or alternative nicotine products to individuals under twenty-one years of age and use of tobacco, electronic smoking devices, ~~or~~ alternative nicotine products, or kratom by individuals under twenty-one years of age which includes prohibitions in addition to those in subsection 1, 2, or 4. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 4 a

noncriminal violation and must provide for a fee of not less than twenty-five dollars for an individual fourteen years of age or older who has been charged with an offense under subsection 2 or 4. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

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

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

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

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

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

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

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

10. As used in this section:

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

b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking 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" means kratom leaf or material extracted from kratom leaf using a food-grade solvent, which contains a level of 7-hydroxymitragynine in the alkaloid fraction which is less than two percent of the alkaloid composition of the product.

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 2. 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 kratom leaf or material extracted from kratom leaf using a food-grade solvent, which contains a level of 7-hydroxymitragynine in the alkaloid fraction which is less than two percent of the alkaloid composition of the product.
2. "Kratom leaf" means the leaf of the mitragyna speciosa plant in fresh, dehydrated, or dried form.
3. "Kratom product" means a food, beverage, or dietary substance containing kratom.
4. "Processor" means a person that sells, prepares, manufactures, distributes, wholesales, or stores kratom products.
5. "Retailer" means a person that sells, distributes, or advertises kratom products.

51-38-02. Processor and retailer - License required - 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. A separate license is required for each facility or place of business operated or maintained by a processor or retailer.

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

4. A license issued under this section expires on June thirtieth following 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 hundred dollars.

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

51-38-03. Processor and retailer - Requirements - Labeling standards.

1. A processor or retailer may not prepare, distribute, advertise, or sell a kratom product that:

   a. Is adulterated or contaminated with a substance that affects the quality, strength, or safety of the product.

   b. Contains a synthetic alkaloid.

   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 dose.

2. A processor or retailer may not distribute, advertise, or sell a kratom product to an individual under twenty-one years of age.

3. A processor or retailer 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;

   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 processor or retailer shall store and lock all kratom products behind a sales counter in a manner that prevents consumer access without the assistance of an employee.

5. A processor or retailer may not sell a kratom product in the form of a food or beverage unless the kratom leaf is extracted using a food-grade solvent approved by the federal food and drug administration.

51-38-04. Attorney general - Enforcement - Authority.

1. The attorney general may inspect a processor's or retailer's facility or place of business to determine compliance with this chapter.

2. A processor or retailer that violates this chapter is subject to seizure of any kratom product that does not comply with section 51-38-03 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. 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.

51-38-05. Kratom regulation operating fund - Attorney general - Allocations.

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 and monetary fines 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. Interest earned on the moneys in the fund must be credited to the fund.

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

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