North Dakota Legislative Council
Prepared for the Kratom Working Group
LC# 27.9259.01000
August 2026

KRATOM REGULATION

This memorandum provides an overview of federal and state regulation related to kratom, a derivative of the mitragyna speciosa tree containing psychoactive compounds. Kratom is currently marketed as an herbal supplement for pain relief, opioid withdrawal, depression, anxiety, concentration, and recreational purposes. The potential side effects, abuse, dependency, and risk of fatality associated with kratom prompted federal action to schedule kratom derivates, the establishment of regulatory frameworks in 31 states, and executive action in North Dakota.

BACKGROUND

Kratom contains over 40 psychoactive alkaloids, the most common of which are mitragynine and 7-hydroxymitragynine, known as 7-OH. Kratom produces a stimulant effect in low doses and a depressant, opioid-like effect in higher doses.[1,2] A 2022 survey conducted by the Substance Abuse and Mental Health Services Administration within the United States Department of Health and Human Services found 1.9 million individuals used kratom in 2021, with the highest use reported among individuals ages 18 to 25.[3]

Products containing synthetically concentrated or chemically modified 7-OH and other kratom alkaloids are pervasive in unregulated retail markets. The level of synthetic kratom found in products on the market often exceeds the amount found naturally in the plant, prompting concern from health officials, regulators, and lawmakers. Kratom has several side effects, including liver damage, high blood pressure, weight loss, constipation, olfactory hallucinations, delusions, difficulty breathing, tremors, seizures, and confusion.[4] The kratom synthetic 7-OH binds to opioid receptors and may produce physical dependence, difficulty breathing, and withdrawal symptoms consistent with those of other opioids.[5] A baby born to an individual who used kratom during pregnancy is at risk of experiencing withdrawal and requiring medical treatment. Twenty-four kratom, 7-OH, or kratom derivative associated deaths have occurred in this state since 2019, 23 of which the North Dakota Department of Health and Human Services has indicated were primarily caused by kratom. The toxicology reports of 26 additional individuals indicated kratom was present in their system at the time of nonnatural death.

FEDERAL ACTION

The Controlled Substances Act (CSA), passed in 1970, creates the federal framework for regulating drugs and substances deemed to pose a risk of abuse and dependence.[6] The CSA classifies controlled substances into five schedules: Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V. The Drug Enforcement Administration (DEA) is authorized to schedule, reschedule, and deschedule substances under the CSA. Under federal law, a Schedule I drug is defined as a drug or other substance

---

[1] *Kratom: What Is It and Is It Safe?*, Yale Medicine (June 17, 2026).
[2] *Drug Fact Sheet: Kratom*, United States Drug Enforcement Administration.
[3] *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, Substance Abuse and Mental Health Services Administration (November 2023).
[4] *Kratom: Unsafe and Ineffective*, Mayo Clinic (June 18, 2024).
[5] *7-Hydrozymitagynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat*, United States Food and Drug Administration (2025).
[6] Controlled Substances Act, Pub. L. 91-513, tit. II, 84 Stat. 1242 (1970) (codified as amended at 21 U.S.C. §§ 801-904).

that has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks acceptable safety standards for use under medical supervision.

In 2016, the DEA announced its intention to classify active materials found in the kratom plant as Schedule I controlled substances, citing concern of imminent hazard to public safety.[7] The DEA subsequently withdrew its intent to schedule kratom, citing numerous comments from members of the public challenging the scheduling action.[8] Following withdrawal of intention to schedule, the DEA listed kratom as a "drug of concern."

On July 29, 2025, the Food and Drug Administration (FDA) issued a press release recommending scheduling action to control certain 7-OH products under the CSA.[9] The FDA cited 7-OH's opioid-like nature and availability at gas stations, corner stores, vape shops, and online as a major concern.

On July 1, 2026, the DEA filed two notices of intent to temporarily classify 7-OH and 7-OH-related substances mitragynine, pseudoindoxyl, MGM-15, and MGM-16 as Schedule I controlled substances under the CSA on or after August 5, 2026.[10] The temporary scheduling of 7-OH will impose regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I controlled substances on persons who handle or propose to handle 7-OH-related substances. The scheduling will apply to products with more than .05 percent 7-OH and does not place a federal ban on all kratom products. A temporary scheduling order may be effective for up to 2 years, unless the DEA extends the temporary scheduling for up to 1 year while permanent scheduling proceedings are pending.

STATE ACTION

Prohibition

Alabama, Arkansas, Connecticut, Indiana, Kansas, Louisiana, Vermont, and Wisconsin schedule kratom and all components as Schedule I substances, subject to strict criminal penalties. Tennessee also banned kratom through passage of House Bill 1649 (2026), making possession a misdemeanor and distribution a felony offense.

Regulation[11]

States have taken various approaches to regulating kratom, including the creation of a consumer protection framework or a regulatory distinction between natural kratom and synthetic or concentrated 7-OH products. Labeling requirements for kratom products are enacted in 19 states and the distribution or sale of a kratom product that does not meet those requirements is illegal. Information generally required on a kratom label includes the product manufacturer, safety risks, product disclaimers, and an ingredient list. Age requirements also are a common restriction, with 7 states requiring an individual to be 18 years of age or older and 15 states requiring an individual to be 21 years of age or older.

Arizona[12]

Arizona began regulating the sale and distribution of kratom in 2019 through House Bill 2550, the Kratom Consumer Protection Act. The Act provides a dealer may not prepare, sell, or distribute a kratom product containing more than 2 percent 7-OH, any synthetic alkaloid, or any other synthetically derived compound of the kratom plant. A kratom product may not be adulterated or contaminated with a nonkratom substance and may not be sold to an individual under 18 years of age. A violation of Arizona's Kratom Consumer Protection Act is a Class 2 misdemeanor.

---

[7] *DEA Announces Intent to Schedule Kratom*, United States Drug Enforcement Administration (August 30, 2016).
[8] *Withdrawal of Notice of Intent to Temporarily Place Mitragynine and 7-Hydroxymitragynine Into Schedule I*, 81 Fed. Reg. 70652 (October 13, 2016).
[9] *FDA Takes Steps to Restrict 7-OH Opioid Products Threatening American Consumers*, United States Food and Drug Administration (July 29, 2025).
[10] *DEA to Temporarily Schedule 7-OH and Related Substances to Protect Public Safety*, United States Drug Enforcement Agency (July 1, 2026).
[11] *Lawmakers Weigh Guardrails, Bans on Kratom and 7-OH*, National Conference of State Legislatures (June 30, 2026).
[12] Ariz. Rev. Stat. Ann. §§ 36-795 to 36-795.03.

Colorado[13]

The Colorado General Assembly passed Senate Bill 25-072 (2025), regulating the preparation, labeling, distribution, advertisement, and sale of kratom. The bill prohibits the manufacture or distribution of a kratom product containing synthesized alkaloids of more than 2 percent 7-OH. Sellers and distributors of kratom may not knowingly sell a product that has been adulterated or that contains synthesized alkaloids and must follow strict labeling requirements. A person may not package kratom as a candy product, vapor product, or in manner appealing to children. The sale of kratom to an individual under age 21 is prohibited. A violation of kratom consumer protection law is a deceptive trade practice subject to penalties under the Colorado Consumer Protection Act.

NORTH DAKOTA ACTION

On August 3, 2026, in Executive Order 2026-04, Governor Kelly Armstrong announced the following executive action to restrict access to kratom within the state:

- Issuance by the North Dakota Board of Pharmacy of an emergency rule classifying 7-OH as a Schedule I controlled substance;
- The declaration of a public health emergency and prohibition of the sale, use, and possession of all kratom and kratom products effective August 5, 2026, at 5:00 p.m.; and
- The convening of a special session on September 2, 2026, for the Legislative Assembly to consider and enact a statutory framework to regulate or prohibit the creation, manufacture, delivery, distribution, sale, purchase, possession, and mislabeling of kratom and kratom products and the codification of appropriate criminal penalties.

[13] *See* Colo. Rev. Stat. Ann. §§ 6-1-740, 18-13-132, 44-1-105.