

Senator Curtis S. Bramble proposes the following substitute bill:

KRATOM CONSUMER PROTECTION ACT

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Brad M. Daw

LONG TITLE

General Description:

This bill creates the Kratom Consumer Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a person that prepares, distributes, sells, or offers to sell a kratom product to follow certain labeling requirements;
- ▶ prohibits a person from preparing, distributing, selling, or offering for sale certain kratom products;
- ▶ establishes penalties for violating the Kratom Consumer Protection Act;
- ▶ requires registration with the Department of Agriculture and Food of any kratom product offered for sale in this state;
- ▶ requires the Department of Agriculture and Food to set a fee and create standards for registering a kratom product;
- ▶ creates a civil cause of action; and
- ▶ requires the Department of Agriculture and Food to make rules to administer and enforce the Kratom Consumer Protection Act.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 [4-44-101](#), Utah Code Annotated 1953

32 [4-44-102](#), Utah Code Annotated 1953

33 [4-44-103](#), Utah Code Annotated 1953

34 [4-44-104](#), Utah Code Annotated 1953

35 [4-44-105](#), Utah Code Annotated 1953

36 [4-44-106](#), Utah Code Annotated 1953

37 [4-44-107](#), Utah Code Annotated 1953

38 [4-44-108](#), Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **4-44-101** is enacted to read:

42 **CHAPTER 44. KRATOM CONSUMER PROTECTION ACT**

43 **4-44-101. Title.**

44 This chapter is known as the "Kratom Consumer Protection Act."

45 Section 2. Section **4-44-102** is enacted to read:

46 **4-44-102. Definitions.**

47 As used in this chapter:

48 (1) "Commissioner" means the commissioner of the department.

49 (2) "Department" means the Department of Agriculture and Food created in Section

50 [4-2-102.](#)

51 (3) "Food" means:

52 (a) an article used for food or drink for human or animal consumption or the

53 components of the article;

54 (b) chewing gum or chewing gum components; or

55 (c) a food supplement for special dietary use that is necessitated because of a physical,

56 physiological, pathological, or other condition.

57 (4) "Kratom processor" means a person who:
 58 (a) sells, prepares, or maintains a kratom product; or
 59 (b) advertises, represents, or holds oneself out as selling, preparing, or maintaining a
 60 kratom product.

61 (5) "Kratom product" mean food containing any part of a leaf of the plant Mitragyna
 62 speciosa.

63 Section 3. Section **4-44-103** is enacted to read:

64 **4-44-103. Factual basis for claim as kratom product required -- Administrative**
 65 **penalty -- Request for hearing.**

66 (1) A kratom processor shall disclose on the product label of each kratom product that
 67 the kratom processor prepares, distributes, sells, or offers for sale the factual basis upon which
 68 the kratom processor represents the food as a kratom product.

69 (2) For a violation of Subsection (1), a kratom processor is subject to an administrative
 70 fine of:

- 71 (a) up to \$500 for the first offense; and
- 72 (b) up to \$1,000 for a second or subsequent offense.

73 (3) Upon the request of a kratom processor fined under this section, the commissioner
 74 shall conduct a hearing in accordance with Title 63G, Chapter 4, Utah Administrative
 75 Procedures Act.

76 Section 4. Section **4-44-104** is enacted to read:

77 **4-44-104. Kratom processor requirements -- Criminal penalty.**

78 (1) A kratom processor may not prepare, distribute, sell, or offer for sale a kratom
 79 product:

- 80 (a) that is mixed or packed with a nonkratom substance that affects the quality or
 81 strength of the kratom product to such a degree as to render the kratom product injurious to a
 82 consumer;
- 83 (b) that contains a poisonous or otherwise deleterious nonkratom ingredient, including
 84 a controlled substance as defined in Section [58-37-2](#);
- 85 (c) containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater
 86 than 2% of the alkaloid composition of the kratom product;
- 87 (d) containing a synthetic alkaloid, including synthetic mitragynine, synthetic

88 7-hydroxymitragynine, or any other synthetically derived compound of the kratom plant; or
 89 (e) that does not include a product label on the kratom product packaging that states the
 90 amount of mitragynine and 7-hydroxymitragynine contained in the packaged kratom product.

91 (2) A kratom processor who violates Subsection (1) is $\hat{S} \rightarrow$ [:

92 ——(a)] $\leftarrow \hat{S}$ guilty of a $\hat{S} \rightarrow$ class C $\leftarrow \hat{S}$ misdemeanor for each violation $\hat{S} \rightarrow$ [;and

93 ——(b) punishable by imprisonment for not more than 90 days, a fine not to exceed \$500,

94 or both] $\leftarrow \hat{S}$.

95 (3) A kratom processor does not violate Subsection (1) if the kratom processor shows
 96 by a preponderance of the evidence that the kratom processor relied in good faith upon the
 97 representation of a manufacturer, processor, packer, or distributor of food represented to be a
 98 kratom product.

99 (4) A kratom processor may not prepare, distribute, sell, or offer for sale a kratom
 100 product that is not registered with the department in accordance with this chapter.

101 (5) A kratom processor shall register as a food establishment in accordance with
 102 Section [4-5-301](#).

103 Section 5. Section **4-44-105** is enacted to read:

104 **4-44-105. Prohibition on sale to minors -- Criminal penalty.**

105 (1) A kratom processor may not distribute, sell, or offer for sale a kratom product to an
 106 individual under 18 years of age.

107 (2) A kratom processor who violates this section is $\hat{S} \rightarrow$ [:

108 ——(a)] $\leftarrow \hat{S}$ guilty of a $\hat{S} \rightarrow$ class C $\leftarrow \hat{S}$ misdemeanor for each violation $\hat{S} \rightarrow$ [;and

109 ——(b) punishable by imprisonment for not more than 90 days, a fine not to exceed \$500,

110 or both] $\leftarrow \hat{S}$.

111 Section 6. Section **4-44-106** is enacted to read:

112 **4-44-106. Civil action available.**

113 In addition to and distinct from any other remedy at law, an individual may bring a civil
 114 action, in a competent court of jurisdiction, for damages resulting from a violation of this
 115 chapter, including economic, noneconomic, or consequential damages.

116 Section 7. Section **4-44-107** is enacted to read:

117 **4-44-107. Rulemaking.**

118 (1) In accordance with Title 63G, Chapter 3, Administrative Rulemaking Act, the

119 department shall make rules for the administration and enforcement of this chapter.

120 (2) The rules described in Subsection (1) shall include standards for a registered

121 kratom product, including standards for:

122 (a) testing to ensure the product is safe for human consumption;

123 (b) accurate labeling; and

124 (c) any other issue the department considers necessary.

125 Section 8. Section **4-44-108** is enacted to read:

126 **4-44-108. Registration of kratom products -- Department duties.**

127 (1) The department shall set a fee to register a kratom product, in accordance with

128 Section [4-2-103](#).

129 (2) The fee described in Subsection (1) may be paid by a producer, manufacturer, or

130 distributor of a kratom product, but a kratom product may not be registered with the

131 department until the fee is paid.

132 (3) The department shall:

133 (a) set an administrative fine, larger than the fee described in Subsection (1), for a

134 person who sells a kratom product that is not registered with the department; and

135 (b) assess the fine described in Subsection (3)(a) against any person who offers an

136 unregistered kratom product for sale in this state.

137 (4) The department may seize and destroy any unregistered kratom product offered for

138 sale in this state.