

## SB0058S01 compared with SB0058

~~{deleted text}~~ shows text that was in SB0058 but was deleted in SB0058S01.

Inserted text shows text that was not in SB0058 but was inserted into SB0058S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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#### 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;

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- ▶ 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:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

4-44-101, Utah Code Annotated 1953

4-44-102, Utah Code Annotated 1953

4-44-103, Utah Code Annotated 1953

4-44-104, Utah Code Annotated 1953

4-44-105, Utah Code Annotated 1953

4-44-106, Utah Code Annotated 1953

4-44-107, Utah Code Annotated 1953

4-44-108, Utah Code Annotated 1953

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

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

#### CHAPTER 44. KRATOM CONSUMER PROTECTION ACT

##### 4-44-101. Title.

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

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

##### 4-44-102. Definitions.

As used in this chapter:

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

(2) "~~Dealer~~Department" means the Department of Agriculture and Food created in

Section 4-2-102.

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(3) "Food" means:

(a) an article used for food or drink for human or animal consumption or the components of the article;

(b) chewing gum or chewing gum components; or

(c) a food supplement for special dietary use that is necessitated because of a physical, physiological, pathological, or other condition.

(4) "Kratom processor" means a person who:

(a) sells, prepares, or maintains a kratom product; or

(b) advertises, represents, or holds oneself out as selling, preparing, or maintaining a kratom product.

~~{ (3) "Department" means the Department of Agriculture and Food created in Section 4-2-102.~~

~~— (4) "Food" means:~~

~~— (a) an article used for food or drink for human or animal consumption or the components of the article;~~

~~— (b) chewing gum or chewing gum components; or~~

~~— (c) a food supplement for special dietary use that is necessitated because of a physical, physiological, pathological, or other condition.~~

~~‡ (5) "Kratom product" mean food containing any part of a leaf of the plant *Mitragyna speciosa*.~~

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

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

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

(2) For a violation of Subsection (1), a ~~{dealer}~~kratom processor is subject to an administrative fine of:

(a) up to \$500 for the first offense; and

(b) up to \$1,000 for a second or subsequent offense.

(3) Upon the request of a ~~{dealer}~~kratom processor fined under this section, the

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commissioner shall conduct a hearing in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

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

**4-44-104.** ~~{Dealer}~~ **Kratom processor** requirements -- Criminal penalty.

(1) A ~~{dealer}~~ **kratom processor** may not prepare, distribute, sell, or offer for sale a kratom product:

(a) that is mixed or packed with a nonkratom substance that affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer;

(b) that contains a poisonous or otherwise deleterious nonkratom ingredient, including a controlled substance as defined in Section 58-37-2;

(c) containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 2% of the alkaloid composition of the kratom product;

(d) containing a synthetic alkaloid, including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the kratom plant; or

(e) that does not include a product label on the kratom product packaging that states the amount of mitragynine and 7-hydroxymitragynine contained in the packaged kratom product.

(2) A ~~{dealer}~~ **kratom processor** who violates ~~{this section}~~ **Subsection (1)** is:

(a) guilty of a misdemeanor for each violation; and

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

(3) A ~~{dealer}~~ **kratom processor** does not violate ~~{this section}~~ **Subsection (1)** if the ~~{dealer}~~ **kratom processor** shows by a preponderance of the evidence that the ~~{dealer}~~ **kratom processor** relied in good faith upon the representation of a manufacturer, processor, packer, or distributor of food represented to be a kratom product.

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

**(5) A kratom processor shall register as a food establishment in accordance with Section 4-5-301.**

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

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

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

(2) A ~~dealer~~ kratom processor who violates this section is:

(a) guilty of a misdemeanor for each violation; and

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

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

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

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

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

### **4-44-107. Rulemaking.**

(1) In accordance with Title 63G, Chapter 3, ~~Utah~~ Administrative Rulemaking Act, the department shall make rules for the administration and enforcement of this chapter ~~;~~ including labeling requirements on.

(2) The rules described in Subsection (1) shall include standards for a registered kratom product, including standards for:

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

(b) accurate labeling; and

(c) any other issue the department considers necessary.

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

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

(1) The department shall set a fee to register a kratom product, in accordance with Section 4-2-103.

(2) The fee described in Subsection (1) may be paid by a producer, manufacturer, or distributor of a kratom product, but a kratom product may not be registered with the department until the fee is paid.

(3) The department shall:

(a) set an administrative fine, larger than the fee described in Subsection (1), for a person who sells a kratom product that is not registered with the department; and

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(b) assess the fine described in Subsection (3)(a) against any person who offers an unregistered kratom product for sale in this state.

(4) The department may seize and destroy any unregistered kratom product offered for sale in this state.