

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2084

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2084, as amended, would enact the Kratom Consumer Protection Act (KCPA), which would permit the Secretary of Agriculture to implement a fine on processors and retailers that sell, prepare, manufacture, distribute, or advertise kratom products that are adulterated with dangerous non-kratom substances.

Definitions

The bill would define various terms to be used in the KCPA. Among the definitions in the bill:

- “Food” would mean a food product, food ingredient, dietary ingredient, dietary supplement, or beverage for human consumption;
- “Kratom extract” would mean a food product or dietary ingredient containing any part of the leaf of the plant *Mitragyna speciosa* that has been extracted or concentrated in order to provide more standardized product content;
- “Kratom product” would mean a food product or dietary ingredient containing any part of the leaf of the plant *Mitragyna speciosa* or an extract of the plant that is manufactured as a powder, capsule, tablet, beverage, or other edible form;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Processor” would mean a person who sells, prepares, manufactures, distributes, or maintains kratom products, or advertises, represents or holds itself out as selling, preparing, or maintaining kratom products;
- “Retailer” would mean any person who sells, distributes, advertises, represents, or holds itself out as selling or maintaining kratom products; and
- “Secretary” would mean the Secretary of Agriculture.

Prohibited Actions

The bill would prohibit a processor from preparing, distributing, selling, or exposing for sale a kratom product if such product:

- Was mixed or packed with a non-kratom substance and that substance affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer;
- Contains a poisonous or otherwise deleterious non-kratom ingredient, including, but not limited to, the substances and analogs of such listed in the Kansas Controlled Substances Act;
- Contains levels of residual solvents higher than is allowed in U.S. Pharmacopeia Chapter 467;
- Contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 1.0 percent of the overall alkaloid composition of such product; or
- Contains any synthetic alkaloids, including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant.

The bill would require kratom products be labeled with the following information:

- Direction necessary for safe use by consumers, including a recommended serving size;
- The name and address of the manufacturer; and
- The following text:
 - **WARNING:** The U.S. Food and Drug Administration has not approved kratom for medical use. If you are pregnant and nursing a baby, seek the advice of a health care professional before using this product.

The bill would also prohibit the sale of such products to a consumer less than 21 years of age.

Penalties

The bill would authorize the Secretary to impose a fine for first offense in an amount not to exceed \$1,000 for violating the KCPA, and a fine up to \$2,000 for second or subsequent violations. The bill would require a hearing be conducted upon the request of a person to whom an administrative fine is issued, in accordance with the Kansas Administrative Procedure Act.

The bill would specify a retailer would not be in violation of the KCPA if it were shown by a preponderance of the evidence that the retailer relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of food represented to be a kratom product.

Rules and Regulations

The bill would require the Secretary to adopt rules and regulations to administer the KCPA.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative W. Carpenter.

House Committee on Federal and State Affairs

In the House Committee hearing on February 1, 2023, **proponent** testimony was provided by a representative of the American Kratom Association. The proponent indicated the bill would protect Kansas kratom users from adulterated kratom products.

Written-only neutral testimony was provided by a representative of the Kansas Department of Agriculture (KDA), requesting the committee use caution in passing HB 2084, as kratom is not currently FDA-approved for human consumption.

On February 14, 2023, the House Committee amended the bill to:

- Raise the minimum age of consumption from 18 years of age to 21; and
- Require each kratom product include a warning label.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDA indicates that the bill would generate \$105,000 of revenue in FY 2024 and \$82,500 of revenue in all subsequent fiscal years, noting the FY 2024 figure includes licensing fees. The KDA estimates that the cost of implementing the bill would cost \$160,000 per year, including \$140,000 per year for product testing and \$20,000 per year for administration and overhead.

The Kansas Bureau of Investigation (KBI) indicates enactment of the bill would not have a fiscal effect on the agency.

Any fiscal effect associated with HB 2084 is not reflected in *The FY 2024 Governor's Budget Report*.

Kratom; kratom consumer protection act; fines