Section 1 Header

2026 SESSION

26-2144.1
07/09

SENATE BILL ***[bill number]***

AN ACT prohibiting the sale of kratom products to anyone under 21 years of age and providing for the regulation of the sale of kratom products.

SPONSORS: [sponsors]

COMMITTEE: [committee]

ANALYSIS

This bill regulates kratom products and prohibits the sale of such products to anyone under 21 years of age.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Section 2 Header

26-2144.1
07/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT prohibiting the sale of kratom products to anyone under 21 years of age and providing for the regulation of the sale of kratom products.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Short Title. This act may be known and cited as the "Kratom Consumer Protection Act."

2 New Subparagraph; The State and Its Government; State Treasurer and State Accounts; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (410) the following new subparagraph:

(411) Moneys deposited in the kratom administration account fund under RSA 318-B:66.

3 New Subdivision; Kratom. Amend RSA 318-B by inserting after section 50 the following new subdivision:

Kratom

318-B:51 Short Title. This subdivision may be known and cited as the "New Hampshire Kratom Act."

318-B:52 Definitions. As used in this subdivision:

I. "Contraband kratom products" means any kratom product that is prohibited by RSA 318-B:53.

II. "Department" means the New Hampshire department of health and human services.

III. "Distributor" means any person:

(a) Whether located within or outside this state, other than a retailer, who sells or distributes kratom or kratom products within or into this state; and

(b) Engaged in this state in the business of manufacturing kratom products or any person engaged in the business of selling kratom or kratom products to dealers, or to other persons, for the purpose of resale only; provided that 75 percent of all kratom and kratom products sold by that person in this state are sold to retailers or other persons for resale and selling kratom and kratom products directly to at least 20 dealers or other persons for resale; or

(c) Maintaining one or more regular places of business in this state for that purpose; provided that 75 percent of the sold kratom and kratom products are purchased directly from the manufacturer and selling kratom and kratom products directly to at least 20 retailers or other persons for resale.

IV. "Kratom" means any part of the leaf of the plant mitragyna speciosa.

V. "Kratom product" means a product containing any part or extract of the leaf of the plant mitragyna speciosa or an extract thereof including concentrated forms of kratom and product composed of kratom and other ingredients.

VI. "Importer" means any person who imports into the United States, either directly or indirectly, kratom or a kratom product for sale or distribution.

VII. "Kratom extract" means a substance or compound obtained by extraction of the mitragyna speciosa leaf, intended for ingestion, containing only naturally occurring constituents of the kratom plant, generally recognized as safe (GRAS) substances, approved constituent articles, and does not contain any controlled substances.

VIII. "Synthesized material" means:

(a) An alkaloid or alkaloid derivative that has been created by chemical synthesis or biosynthetic means, including fermentation, recombinant techniques, yeast derived, and enzymatic techniques, rather than traditional food preparation techniques, such as heating or extracting that synthetically alters the composition of any kratom alkaloid or constituent; or

(b) An alkaloid or alkaloid derivative contained in kratom that has been exposed to chemicals or processes that would confer a structural change in the alkaloids, resulting in material that has been chemically altered.

IX. "Licensed," when used with reference to a manufacturer, importer, distributor, or retailer, means only those persons who hold a valid and current license issued under RSA 318-B:62 for the type of business being engaged in. When the term “licensed” is used before a list of entities, such as “licensed manufacturer, importer, wholesale retailer, or retailer” such term shall be deemed to apply to each entity in such list.

X. "Manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a kratom product.

XI. "Person" means any individual, including an employee or agent, firm, fiduciary, partnership, corporation, trust, or association, however formed.

XII. "Place of business" means any location where kratom or kratom products are sold, stored, or kept including: any storage room, attic, basement, garage or other facility immediately adjacent to the location. It also includes any receptacle, hide, vessel, vehicle, airplane, or train.

XIII. "Retailer" means any person, whether located within or outside of this state, who sells or distributes kratom or kratom products to a consumer in this state.

XIV. "Sale" or "sell" means gifts, exchanges, and/or barter of kratom products, and shall include the act of holding, storing, or keeping kratom products at a place of business or with a person for any purpose.

318-B:53 Kratom and Kratom Product Limitations.

I. A person shall not prepare, distribute, sell, possess, or advertise any of the following:

(a) A kratom product that is a conventional food or beverage or labeled as a conventional food or beverage product.

(b) A kratom product that contains any substance that is poisonous, harmful, or injurious to health.

(c) A kratom product that contains a substance other than a non-psychoactive substance necessary for the preparation, processing, or manufacturing of said product.

(d) A kratom extract that contains levels of residual solvents higher than is allowed in the U.S. Pharmacopeia 467.

(e) A kratom product containing any synthetic alkaloids including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant.

(f) A kratom product that contains a heavy metal that exceeds any of the following limits in parts per million:

(1) Arsenic less than 2.

(2) Cadmium less than 0.82.

(3) Lead less than 1.2.

(4) Mercury less than 0.4.

(g) A kratom product in any form that is combustible or intended to be used for vaporization, aerosolization, or injection.

(h) A kratom product in any form that mimics a candy product or is manufactured, packaged, or advertised in a way that can be reasonably considered to appeal to individuals under 21 years of age.

(i) A kratom product not contained in child-resistant packaging that meets the standards set forth in 16 C.F.R 1700.15(b) when tested in accordance with 16 C.F.R 1700.20. All persons holding valid licenses pursuant to this subdivision shall ensure that kratom and/or any kratom product sold by the licensee and intended for human consumption shall meet requirements related to child-resistant packaging.

(j) A kratom product that contains a concentration ratio that is:

(1) Greater than 150 milligrams of mitragynine per serving;

(2) Greater than 0.5 milligrams 7-hydroxymitragynine per gram; or

(3) Greater than 1 milligrams 7-hydroxymitragynine per serving.

(k) A kratom product that contains more than one percent of 7-hydroxymitragynine by percentage of total kratom alkaloids.

(l) A kratom or a kratom product that does not provide clearly visible labeling including, but not limited to:

(1) A recommendation to consult a health care professional prior to use;

(2) A statement that kratom may be habit forming;

(3) A statement that kratom is not safe for use while pregnant or breastfeeding;

(4) A warning that the product may result in dangerous medication interactions;

(5) The following statement: "These statements have not been evaluated by the United States Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.";

(6) The net quantity of contents declared in numerical count, such as the number of capsules, or in volume or weight in United States customary system terms;

(A) The amount of mitragynine and/or 7-hydroxymitragynine contained in a serving in said kratom product;

(B) A recommended amount of the kratom product per serving; and

(C) A recommended number of servings that can be safely consumed in a 24-hour period.

(7) The total amount of mitragynine and 7-hydroxymitragynine contained in the kratom product;

(8) A statement that this product should be stored safely and out of the reach of children;

(9) The name and physical non-post office box address of the manufacturer.

II. Kratom and kratom products sold at retail shall be sold by a licensed retailer and obtained from a licensed manufacturer, importer, or distributor.

III. All kratom and kratom products that do not comply with this section shall be deemed contraband.

318-B:54 Age Limits and Sales Restrictions.

I. No person or entity shall distribute, sell, transfer, or advertise kratom or a kratom product to a person under 21 years of age.

II. All kratom products shall be kept behind the sales counter only accessible to store employees.

III. Valid photo identification for proof of age shall be required for all kratom and kratom product purchases. Acceptable forms of government-issued identification shall include a recent photo of the individual to whom the identification has been issued showing the date of birth of the individual to verify the individual is 21 years of age or older. Acceptable forms of government-issued identification are: a valid motor vehicle operator's license issued by this state; a valid driver privilege card issued by this state; a valid identification card issued by the administrator of the division of motor vehicles; a valid armed services identification card; or a valid passport.

318-B:55 Violations.

I. A person or entity that violates RSA 318-B:53 or 318-B:54 may be subject to the suspension or revocation of its license pursuant to RSA 318-B:65 by the department and shall be subject to a fine by the department of not more than $1,000 for the first offense and not more than

$2,000 for a second offense. Upon a third violation, the license of the retailer shall be revoked by the department, and the retailer shall be prohibited from selling kratom or kratom products.

II. The department may require an independent third-party test of a kratom product by a laboratory of the department's choice to determine if the product is prohibited by RSA 318-B:53, and the retailer shall be required to submit payment for the test and administrative costs associated with said testing. If the retailer does not tender payment to the department within 30 days of receipt of the invoice, the retailer may be subject to the suspension or revocation of its license pursuant to this section.

III. The department and the department of revenue administration are authorized to share information to effectuate the purposes of this subdivision.

IV. A person or entity who violates the provisions of this subdivision by adulterating a kratom product with any substance listed in this subdivision shall be subject to penalties as set forth in this subdivision, or as the department may establish pursuant to RSA 541-A.

V. All funds received by the department pursuant to this section shall be deposited into a fund established under RSA 318-B:66.

318-B:56 Confiscation of Contraband Kratom Products and Other Property.

I. All kratom products that are held for sale or distribution within this state in violation of the requirements of this subdivision are declared to be contraband goods and may be seized by the department or the department's agents, or employees, or by any sheriff, or the sheriff's deputy, or any police officer when directed by the department to do so, without a warrant. All contraband goods seized by the state under this subdivision shall be destroyed.

II. All other property on the premises of any distributor or retailer who or that, with the intent to defraud this state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by this subdivision; or attempts in any manner to evade or defeat the requirements of this subdivision shall be subject to forfeiture pursuant to RSA 318-B:17-b.

318-B:57 Sale of Contraband Kratom Products Prohibited. No distributor shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell any contraband kratom products without the written record imposed by this subdivision.

318-B:58 Penalties for Violations as to Contraband Kratom Products.

I. Any person who violates any provision of RSA 318-B:57 shall be fined by the department as follows:

(a) For a first offense in a 24-month period, fined not more than 10 times the retail value of the contraband kratom products;

(b) For a second or subsequent offense in a 24-month period, fined not more than 25 times the retail value of the contraband kratom products.

II. When determining the amount of a fine sought or imposed under this section, evidence of mitigating factors, including history, severity, and intent shall be considered.

III. All funds received by the department pursuant to this subdivision shall be deposited into a receipt account established under RSA 318-B:66.

318-B:59 Hearings on Kratom Products.

I. When any kratom products are confiscated under the provisions of RSA 318-B:56, upon the request of a person claiming an interest in the kratom, the department shall conduct a hearing in accordance with the procedures as set forth in this subdivision, or as established by the department pursuant to RSA 541-A.

II. When a fine, or license suspension or revocation occurs under the provisions of this subdivision, upon the request of the aggrieved party, the department shall conduct a hearing in accordance with the procedures as set forth in this subdivision, or as established by the department pursuant to RSA 541-A.

III. When a person aggrieved by any action under this subdivision, upon the request of a person claiming an interest in the kratom, the department shall conduct a hearing in accordance with the procedures as set forth in this subdivision, or as established by the department pursuant to RSA 541-A.

318-B:60 Appeals to Superior Court. Any person aggrieved by any decision of the department under the provisions of this subdivision may appeal the decision within 30 days thereafter to the superior court.

318-B:61 Payment of Refunds. All moneys received by the department under the provisions of this subdivision, unless otherwise designated, shall be paid to the general fund. Whenever the department determines that any person is entitled to a refund of any moneys paid by that person under the provisions of this subdivision, or whenever a court of competent jurisdiction orders a refund of any paid moneys, the state treasurer shall, upon certification by the department and with the approval of the controller, pay the refunds from any moneys in the treasury not appropriated without any further act or resolution making appropriation for any moneys.

318-B:62 Manufacturer, Importer, Distributor, and Retailer Licenses Required.

I. Each person engaging in the business of selling kratom or kratom products in this state, including any manufacturer, importer, distributor, or retailer, shall secure a license from the department before engaging or continuing to engage in that business in accordance with this section. A separate application and license shall be required for each place of business operated by a distributor, manufacturer, importer, distributor, or retailer. If the applicant for a license does not have a place of business in this state, the license shall be issued for such applicant's principal place of business, wherever located. A licensee shall notify the department within 30 days that it changes its principal place of business. A separate license shall be required for each class of business if the applicant is engaged in more than one of the activities required to be licensed by this section. Each

license shall expire after one year at which time said license shall be renewed in accordance with this section.

II. Effective April 1, 2027 until December 31, 2029, each initial licensing application for a manufacturer's, importer's, or distributor's license shall be accompanied by a non-refundable initial application fee of $2,500. Effective April 1, 2027 until December 31, 2029, each initial licensing application for a retailer's license shall be accompanied by a non-refundable initial application fee of $1,500.

III. Each license, including any manufacturer, importer, distributor, or retailer license, shall be renewed annually. Effective April 1, 2027 until December 31, 2029, each license renewal of a manufacturer's, importer's, or distributor's license shall be accompanied by a non-refundable renewal fee of $2,500. Effective April 1, 2027 until December 31, 2029, each license renewal of a retailer's license shall be accompanied by a non-refundable renewal fee of $1,500.

IV. Effective January 1, 2029, the director of the department shall be authorized to establish by rule and regulation, pursuant to RSA 541-A, reasonable initial application fees and license renewal fees for kratom manufacturer's, importer's, distributor's, and retail licenses.

V. Each issued license shall be prominently displayed on the premises, if any, covered by the license.

VI. A manufacturer or importer may sell or distribute kratom and/or kratom products to a person located or doing business within the state only if such person is a licensed distributor. An importer may obtain kratom and/or kratom products only from a licensed manufacturer. A distributor may sell or distribute kratom and/or kratom products to a person located or doing business within this state only if such person is a licensed distributor or retailer. A distributor may obtain kratom and/or kratom products only from a licensed manufacturer, importer, or distributor. A retailer may obtain kratom and/or kratom products only from a licensed distributor.

VII.(a) No license under this subdivision may be granted, maintained, or renewed if the applicant, or any combination of persons owning directly or indirectly any interests in the applicant:

(1) Is delinquent in any tax filings for one month or more; or

(2) Had a license under this subdivision revoked within the past 2 years.

(b) No person shall apply for a new license, or renewal of a license and no license shall be issued or renewed for any person, unless all outstanding fines, fees, or other charges relating to any license held by that person have been paid.

(c) No license shall be issued relating to a business at any specific location until all prior licenses relating to that location have been officially terminated and all fines, fees, or charges relating to the prior licenses have been paid or otherwise resolved or if the department has found that the person applying for the new license is not acting as an agent for the prior licensee who is subject to any such related fines, fees, or charges that are still due. Evidence of such agency status

shall include a direct familial relationship and/or employment, contractual, or other formal financial or business relationship with the prior licensee.

(d) No person shall apply for a new license pertaining to a specific location to evade payment of any fines, fees, or other charges relating to a prior license for that location.

(e) No new license shall be issued for a business at a specific location for which a license has already issued unless there is a bona fide, good-faith change in ownership of the business at that location.

(f) No license or permit shall be issued, renewed, or maintained for any person, including the owners of the business being licensed, who has been convicted of violating any criminal law relating to tobacco products, electronic nicotine-delivery system products, kratom and/or kratom products, the payment of taxes, fraud, and/or has been ordered to pay civil fines of more than $25,000 for violations of any civil law relating to tobacco products, electronic nicotine-delivery system products, kratom and/or kratom products, the payment of taxes, or fraud.

VIII. All funds received by the department pursuant to this section shall be deposited into a fund established under RSA 318-B:66.

318-B:63 Penalties for Unlicensed Business. Any manufacturer, importer, distributor, or retailer who sells, offers for sale, or possesses with intent to sell, kratom or kratom products, without a license as provided in RSA 318-B:62, shall be fined in accordance with the provisions of, and the penalties contained in RSA 318-B:64.

318-B:64 Penalty for Operating Without a License. Any individual or business who violates this subdivision by selling or conveying kratom or a kratom product without a retail license or a license under this subdivision shall be cited for that violation and shall be fined $5,000 dollars by the department. All funds received by the department pursuant to this section shall be deposited into a fund established under RSA 318-B:66.

318-B:65 Suspension or Revocation of License. The department may suspend or revoke any license under this subdivision for failure of the licensee to comply with any provision of this subdivision or with any provision of any other law or ordinance relative to the sale or purchase of kratom or kratom products. The department may also suspend or revoke any license for failure of the licensee to comply with any provision of this subdivision, and, for the purpose of determining whether the licensee is complying with any provision of this subdivision, the department and its agents shall be empowered to examine the books, papers, and records of any licensee. The department shall revoke the license of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in this subdivision. Any person aggrieved by the suspension or revocation may apply to the department for a hearing as provided in this subdivision.

318-B:66 Fund Established. All funds received pursuant to this subdivision shall be payable to the department. There is to be established a fund to be known as the "Kratom Administration

Account Fund" which shall be a separate fund within the department. Penalties, fines, application fees, and license renewal fees shall be deposited into the fund. Moneys deposited into the fund shall be transferred to the department and shall be expended for the purpose of administering the provision of this subdivision.

318-B:67 Rules and Regulation. The department shall have the authority to adopt additional rules and regulations as necessary to fulfill the requirements of this subdivision, pursuant to RSA 541-A.

4 Effective Date. This act shall take effect January 1, 2027.