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Bill Analysis

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Primary Sponsor: Rep. Scherer

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SUMMARY

- Requires food processing establishments to register kratom products with the Director of Agriculture, and requires retail food establishments to register kratom products with the Director of Agriculture or Director of Health.
- Prohibits food processing and retail food establishments from processing, manufacturing, selling, or engaging in related activities involving a kratom product unless the product meets specified standards.
- Requires food processing and retail food establishments to disclose on a kratom product's label the basis on which it is representing a food as a kratom product.
- Prohibits food processing and retail food establishments from selling or distributing kratom products to individuals under 18.
- Requires the Director of Agriculture and Director of Health to adopt rules regarding kratom products.
- Creates a civil cause of action for someone adversely affected by a violation of the requirements concerning kratom products.
- Names the bill the "Kratom Consumer Protection Act."

DETAILED ANALYSIS

Registration of kratom products

The bill requires kratom products to be registered with the state as a condition of being processed, manufactured, or sold. For food processing establishments, the products must be registered with the Director of Agriculture. For retail food establishments, the products must be

registered with the Director of Agriculture or Director of Health. “Kratom product,” for purposes of the bill, is defined as food that contains any part of a leaf of the plant *Mitragyna speciosa*.¹

Kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia. Consumption of its leaves produces both stimulant effects (in low doses) and sedative effects (in high doses). Kratom is mostly used through oral ingestion in the form of a tablet, capsule, or extract. Kratom leaves may also be dried or powdered and ingested as tea, or they may be chewed.²

Activities requiring registration

Under the bill, a food processing establishment may not process, package, manufacture, hold or handle for distribution, distribute, or sell a kratom product without first registering the product.³ A retail food establishment license holder may not store, process, prepare, manufacture, hold or handle for retail sale, or sell a kratom without first registering the product.⁴

Standards for kratom products

The bill places several requirements on kratom products and on food processing and retail establishments that have registered their kratom products.

Product contents

A kratom product must satisfy all of the following standards regarding its content:

- The product cannot be mixed or packed with a nonkratom substance that affects the quality or strength of the kratom product and renders it injurious to a potential consumer;
- The product cannot contain a poisonous or otherwise deleterious nonkratom ingredient, including a controlled substance;
- The product cannot contain a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 2% of the alkaloid composition of the kratom product;
- The product cannot contain a synthetic alkaloid, including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of kratom;

¹ R.C. 3715.01(A)(22) and 3717.01(T).

² U.S. Drug Enforcement Administration, *Drugs of Abuse: A DEA Resource Guide* (2017 edition), Chapter XI. Drugs of Concern: Kratom, available at: https://www.dea.gov/sites/default/files/drug_of_abuse.pdf.

³ R.C. 3715.026(A).

⁴ R.C. 3717.34(A).

- The product must include a product label that states the amount of mitragynine and 7-hydroxymitragynine contained in the product.⁵

A food processing establishment or retail food establishment license holder that violates the requirements regarding the content of a kratom product is guilty of a second degree misdemeanor.⁶ The bill specifies, however, that a food processing or retail food establishment does not violate the content requirements if the establishment demonstrates by a preponderance of the evidence that it relied in good faith on the representation of another food processing or retail food establishment that the kratom product meets all of the requirements.⁷

Labeling requirements

The bill further provides that a food processing or retail food establishment may not distribute or sell a kratom product without disclosing on the product's label the factual basis on which the establishment represents the food as a kratom product.⁸

Age restrictions

A food processing or retail food establishment may not sell or distribute a kratom product to an individual under 18.⁹ Under the bill, any person who sells or distributes a kratom product to an individual under 18 is guilty of a second degree misdemeanor.¹⁰

Rulemaking

The bill requires the adoption of rules regarding kratom products. In the case of food processors, the rules are to be adopted by the Director of Agriculture. In the case of retail food establishments, the rules are to be adopted by the Director of Agriculture and Director of Health.

Specifically, the Directors must adopt rules that establish the following:

- A procedure for registering kratom products, including associated application fees;
- Civil penalties for violations of the requirements for kratom product registration and specified labeling;
- Standards and procedures for appealing a decision to impose civil penalties;

⁵ R.C. 3715.026(B)(1) and 3717.34(B)(1).

⁶ R.C. 3715.99(F) and 3717.99.

⁷ R.C. 3715.026(B)(2) and 3717.34(B)(2).

⁸ R.C. 3715.026(C) and 3717.34(C).

⁹ R.C. 3715.026(D) and 3717.34(D).

¹⁰ R.C. 3715.99(F) and 3717.99.

- Procedures for seizing and destroying kratom products that do not meet product standards established by the bill;
- Standards and procedures for testing kratom products;
- Standards for labeling kratom products;
- Any other standards or procedures considered necessary to implement the bill.¹¹

In adopting the rules, the Directors must comply with the Administrative Procedure Act (R.C. Chapter 119).

Civil action

The bill establishes a private cause of action for individuals who suffer damages as a result of a violation of the requirements regarding kratom products. An individual may bring a civil action if a food processing establishment or retail food establishment license holder (1) fails to register a kratom product, (2) processes, manufactures, sells, or engages in other specified activities involving a kratom product that does not meet the product requirements described above, (3) sells a kratom product without disclosing on the product's label the factual basis on which the food is represented as a kratom product, or (4) sells or distributes a kratom product to an individual under 18.¹²

Bill name

The bill is named the "Kratom Consumer Protection Act."¹³

HISTORY

Action	Date
Introduced	08-13-19

H0318-I-133/ec

¹¹ R.C. 3715.026(E) and 3717.34(E).

¹² R.C. 3715.026(E) and 3717.34(E).

¹³ Section 3.