

SENATE, No. 3549

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 2, 2023

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Senator JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

SYNOPSIS

Creates “New Jersey Kratom Protection Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/2/2023)

1 AN ACT creating the “New Jersey Kratom Consumer Protection
2 Act;” and establishing chapter 6O of Title 24 of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Short Title.

9 This act shall be known and may be cited as the “New Jersey
10 Kratom Consumer Protection Act.”

11
12 2. Definitions relative to the regulation and use of Kratom.

13 As used in this act:

14 “Department” means the Department of Health.

15 “Food” means any food, food product, food ingredient, dietary
16 ingredient, dietary supplement, or beverage intended for human
17 consumption.

18 “Kratom” means the tropical evergreen known as the *Mitragyna*
19 *speciosa* that is native to Southeast Asia that contains the alkaloid
20 mitragynine, which has stimulant and opioid-like properties.

21 “Kratom extract” means a food product or dietary ingredient
22 containing any part of the leaf of the plant *Mitragyna Speciosa* that
23 has been extracted and concentrated in order to provide more
24 standardized dosing.

25 “Kratom retailer” means any individual, partnership, limited
26 liability company, corporation, joint venture, association, trust,
27 estate or any other legal entity, and any officer, member,
28 shareholder, director, employee, agent or representative of any such
29 entity who sells, maintains, distributes kratom products, or
30 advertises, represents, or holds itself out to be selling or
31 maintaining kratom products.

32 “Kratom product” means a food product or dietary ingredient
33 containing any part of the leaf of the plant *Mitragyna speciosa* or an
34 extract of it; or is manufactured as a powder, capsule, pill,
35 beverage, or other edible form; and all kratom products are foods.

36 “Manufacture” means the production, preparation, compounding,
37 or processing of kratom, either directly or indirectly or by
38 extraction from substances of natural origin, or independently by
39 means of chemical synthesis or by a combination of extraction and
40 chemical synthesis, and includes, but is not limited to, any
41 packaging or repackaging of such substance or labeling or
42 relabeling of its container.

43 “Transaction scan” means the process by which a person checks,
44 by means of a transaction scan device, the age and identity of the
45 identification holder.

46 “Transaction scan device” means any commercial device or
47 combination of devices used at a point of sale that is capable of
48 deciphering in an electronically readable format the information

1 enclosed on the magnetic strip or bar code of a driver's license or
2 other governmental identity card.

3
4 3. Product Labeling.

5 Any retailer who prepares, distributes, sells, or exposes for sale a
6 food that is represented to be kratom product shall disclose on the
7 label of such kratom product the factual basis upon which such
8 representation is made.

9
10 4. Product Limitations.

11 A retailer shall not prepare, distribute, sell, or expose for sale
12 any of the following:

13 a. any kratom product that is adulterated with a dangerous non-
14 kratom substance. A kratom product is adulterated with a dangerous
15 non-kratom substance if the kratom product is mixed or packed with
16 a non-kratom substance and that substance affects the quality or
17 strength of the kratom product to such a degree as to render the
18 kratom product injurious to a consumer.

19 b. any kratom product that is contaminated with a dangerous
20 non-kratom substance. A kratom product is contaminated with a
21 dangerous non-kratom substance if the kratom product contains a
22 poisonous or otherwise deleterious non-kratom ingredient,
23 including, but not limited to, any substance specifically listed in
24 N.J.S.2C:35-3, section 3 of P.L.1997, c.194 (C.2C:35-5.2), section
25 5 of P.L.1997, c.194 (C.2C:35-5.3), section 2 of P.L.2011, c.120
26 (C.2C:35-5.3a) or in section 2 of P.L. 2013, c.35 (C.2C:35-5.3b),
27 and any other drug or non-kratom substance which, when ingested,
28 is metabolized or otherwise becomes a controlled dangerous
29 substance in the human body.

30 c. any kratom product containing a level of 7-
31 hydroxymitragynine in the alkaloid fraction that is greater than 2%
32 of the overall alkaloid composition of the product.

33 d. any kratom extract that contains levels of residual solvents
34 higher than is allowed in USP-NF chapter 467.

35 e. any kratom product containing any synthetic alkaloids
36 including synthetic mitragynine, synthetic 7-hydroxymitragynine,
37 or any other synthetically derived compounds of the kratom plant.

38 f. any kratom product that does not include on its package or
39 label the amount of mitragynine and 7-hydroxymitragynine
40 contained in such product, and does not provide adequate labeling
41 directions necessary for safe and effective use by consumers,
42 including a recommended serving size.

43
44 5. Age Limits.

45 a. No retailer shall knowingly distribute or sell any kratom
46 product to any individual under 21 years of age.

47 b. Any person operating a place of business or kratom retailer
48 wherein kratom is sold or offered for sale is prohibited from selling

1 such kratom products to individuals under the age of 21, and shall
2 post in a conspicuous place a sign upon which there shall be
3 imprinted the following statement. "SALE OF KRATOM TO
4 PERSONS UNDER 21 YEARS OF AGE IS PROHIBITED BY
5 LAW."

6 c. Sales of kratom shall be made only to an individual who
7 demonstrates, through (i) a valid driver's license or non-driver's
8 identification card issued by the New Jersey Motor Vehicle
9 Commission, the federal government, any United States territory,
10 commonwealth, the District of Columbia, or (ii) a valid passport
11 issued by the United States government or any other country, or (iii)
12 an identification card issued by the armed forces of the United
13 States, or (iv) any other photographic identification card issued by a
14 governmental entity or educational institution indicating that the
15 individual is at least 21 years of age.

16 d. (1) Any person operating a place of business or retailer
17 where kratom is sold or offered for sale may perform a transaction
18 scan of the identification as a precondition for such purchases.

19 (2) In any instance where the information presented by the
20 transaction scan fails to match the information printed on the
21 identification provided, the attempted transaction shall be denied.

22 (3) It shall be an affirmative defense that such person produced
23 a valid form of identification, successfully completed a transaction
24 scan, and that the kratom was sold in reasonable reliance upon such
25 identification and transaction scan.

26 (4) a retailer or operator of a business where kratom is sold may
27 electronically record or maintain only the information from a
28 transaction scan necessary to effectuate this section. Such
29 information shall be limited to the (i) name, (ii) date of birth, (iii)
30 driver's license or non-driver identification number, and (iv) the
31 expiration date.

32
33 6. Penalties.

34 a. A retailer found to be in violation of section 3 or 4 of P.L. ,
35 c. (C.)(pending before the Legislature as this bill) shall be
36 subject to a civil penalty up to \$500 for the first offense and up to
37 \$1,000 for a second offense. All penalties shall be payable to the
38 State Treasurer and may be recovered by the Department of Health
39 in a proceeding under the "Penalty Enforcement Law of 1999,"
40 P.L.1999, c.274 (C.2A:58-10 et seq.).

41 b. For a third violation of section 3 or 4 of
42 P.L. , c (C.)(pending before the Legislature as this bill) the
43 retailer shall be prohibited from selling kratom products for three
44 years. If the department received a complaint that the owner or
45 manager of a vendor is selling kratom products during the period of
46 suspension, the Department shall forward the information to the
47 applicable county prosecutor of the county where the transaction
48 occurred.

1 c. For a third violation of section 3 or 4 of
2 P.L. , c. (C.)(pending before the Legislature as this bill) the
3 operator of a kratom retail establishment shall be guilty of a
4 disorderly persons offense.

5 d. Any person aggrieved by a violation of this article may, in
6 addition to and distinct from any other remedy at law or equity,
7 bring a private cause of action in a competent court of jurisdiction,
8 for any damages resulting from such violation, including, but not
9 limited to, economic, noneconomic, and consequential damages.

10 e. A retailer does not violate section 3 or section 4 of P.L. , c.
11 (C.)(pending before the legislature as this bill) if it is shown by a
12 preponderance of the evidence that the retailer relied in good faith
13 upon the representation of the manufacturer, processor, packer, or
14 distributor of food represented to be a kratom product.

15 f. A kratom retailer that violates section 5 of
16 P.L. , c. (C.)(pending before the legislature as this bill) is guilty
17 of a petty disorderly persons offense.

18
19 7. Rules and Regulations.

20 a. The department shall adopt rules for the administration and
21 enforcement of this act establishing:

22 (1) Standards for testing to ensure a kratom product is safe for
23 human consumption;

24 (2) Standards for accurate labeling, as required by section 3 of
25 P.L. , c. (C.)(pending before the Legislature as this bill), to
26 ensure safe and effective use of a kratom product by consumers,
27 including a recommended serving size;

28 (3) Any other rules necessary to effectuate the purposes of
29 P.L. , c. (C.)(pending before the Legislature as this bill),
30 including, but not limited to, determining product registration.

31 b. The department may set a fee to register a kratom product.
32 The fee may be paid by a producer, manufacturer, or distributor of a
33 kratom product.

34 (1) The department shall require the kratom product registrant to
35 sign, under penalty of perjury, an affidavit certifying compliance
36 with sections 3, 4, and 5 of P.L. , c. (C.)(pending before the
37 Legislature as this bill), and any rules adopted by the department
38 under this section;

39 (2) The department shall create a model form for the affidavit
40 certifying compliance.

41 c. The department may establish penalties for any person who
42 sells a kratom product that is not registered with the department and
43 may assess the penalty against any person who offers an
44 unregistered kratom product for sale in this state.

45 d. All penalties received pursuant to this section shall be
46 payable to the State Treasurer and shall be recovered by the
47 Department of Health in a proceeding under the "Penalty
48 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 kratom products for a period of 3 years. If a retailer sells kratom
2 products during this period, the person shall be guilty of a
3 disorderly persons offense. A disorderly persons offense is
4 punishable by up to 30 days in prison, a penalty up to \$1,000, or
5 both.

6 Any retailer shall have the right to request a hearing to challenge
7 a penalty. A retailer shall not be subject to penalty or imprisonment
8 if it is shown by a preponderance of the evidence that the retailer
9 relied in good faith upon the representation of the manufacturer,
10 processor, packer, or distributor that the product represented was a
11 kratom product.