

2023 Regular Session

HOUSE BILL NO. 655 (Substitute for House Bill No. 572 by Representative Goudeau)

BY REPRESENTATIVE GOUDEAU

CONSUMERS/PROTECTION: Provides relative to kratom products

1 AN ACT

2 To enact Chapter 9 of Title 26 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 26:941 through 946, relative to kratom products; to provide for definitions;
4 to prohibit sale or distribution of kratom products to minors; to require a feasibility
5 report by the commissioner of the Louisiana Office of Alcohol and Tobacco Control;
6 to provide for enforcement; to provide for seizure of certain kratom products; to
7 provide for termination; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 9 of Title 26 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 26:941 through 946, is hereby enacted to read as follows:

11 CHAPTER 9. KRATOM CONSUMER PROTECTION ACT

12 §941. Short title

13 This Chapter shall be known and may be cited as the "Kratom Consumer
14 Protection Act".

15 §942. Definitions

16 As used in this Chapter, the following terms have the meaning ascribed to
17 them in this Section unless context clearly indicates otherwise:

18 (1) "Commissioner" means the commissioner of the office alcohol and
19 tobacco control.

1 (2) "Kratom product" means a food product or dietary ingredient containing
2 any part of the leaf of the plant Mitragyna speciosa or an extract of it, manufactured
3 as a powder, capsule, pill, beverage, extract, or other edible form. For purposes of
4 the provisions of this Chapter, all kratom products are considered food.

5 (3) "Processor" means a person or entity that sells to retailers, prepares,
6 manufactures, distributes, or maintains kratom products or advertises, represents, or
7 holds itself out as selling to retailers, preparing, or maintaining kratom products.

8 (4) "Retailer" means a person that sells, distributes, advertises, represents,
9 or holds itself out as selling products to consumers or maintaining kratom products.

10 §943. Kratom products criteria

11 A. Any kratom product that is manufactured, distributed, imported, or sold
12 for use in this state shall satisfy all of the following criteria:

13 (1)(a) Contain no dangerous nonkratom substance.

14 (b) For purposes of this Chapter, a kratom product is adulterated with a
15 dangerous nonkratom substance if the kratom product is mixed or packed with a
16 nonkratom substance that affects the quality or strength of the kratom product to
17 such a degree as to render the kratom product injurious to a consumer.

18 (2) Contain levels of residual solvents below the amount that is allowed by
19 the United States Pharmacopeia Monograph 467.

20 (3) Contain a concentration of 7-hydroxymitragynine not exceeding one
21 percent of the overall alkaloid composition of the kratom product.

22 (4) Contain no synthetic alkaloids including synthetic mitragynine, synthetic
23 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom
24 plant.

25 B. The package of a kratom product shall contain all of the following
26 information:

27 (1) A recommended serving size.

28 (2) A recommended number of daily servings.

29 (3) The number of servings in a package.

1 (4) A disclaimer stating that the product has not been evaluated by the
2 United States Food and Drug Administration and is not intended to diagnose, treat,
3 cure, or prevent any disease.

4 (5) The name, address, and phone number of the manufacturer or processor
5 of the kratom product.

6 C. A retailer shall display and store any kratom product in a location not
7 accessible by the public without assistance from the retailer.

8 §944. Prohibition of sale to minors

9 A. A retailer shall not distribute or sell a kratom product to an individual
10 under twenty-one years of age. It is unlawful for any person under twenty-one years
11 of age to possess any Kratom product. No person shall distribute a promotional
12 sample of any kratom product to a person under twenty-one years of age.

13 B.(1) Any retailer shall verify the age of any person attempting to purchase
14 or receive a kratom product prior to the sale or transfer of a kratom product,
15 including but not limited to a remote retailer who offers any kratom product for sale
16 at retail through a digital application, catalog, or the internet that can be purchased
17 and delivered to a consumer in Louisiana.

18 (2) A retailer shall require a purchaser to provide any one of the following
19 methods to verify the age and identify of the purchaser:

20 (a) A digitized identification card as defined by R.S. 51:3211.

21 (b) A valid government-issued identification card.

22 (c) A commercially reasonable method that relies on public or private
23 transactional data to verify the age of the purchaser.

24 §945. Kratom product feasibility report; adverse health event reporting

25 A.(1) On or before February 1, 2024, the commissioner shall submit to the
26 legislature a report analyzing the feasibility of regulating kratom products, kratom
27 processors, and kratom retailers. The report shall identify, consider, and recommend
28 legislative action addressing all of the following subjects:

1 (a) The appropriate state agency or agencies to regulate the manufacture,
2 sale, offering for sale, or use of kratom products.

3 (b) A testing program by Louisiana universities or other in-state laboratories
4 to independently verify product compliance when a kratom product is reported to be
5 in violation.

6 (c) Adverse health event reporting requirements.

7 (d) Kratom product registration requirements, fees, or taxes for products
8 introduced for sale in the state.

9 (e) Recommended fines, tiered fine penalties, or other enforcement
10 provisions.

11 (2) The commissioner shall engage relevant stakeholders, including kratom
12 processors, kratom consumer advocacy groups, kratom consumers, kratom retailers,
13 public health officials, legislative members, relevant state agencies with expertise in
14 similar regulatory fields, local governments, and other interested stakeholders in
15 order to inform the feasibility report.

16 B. Adverse events reports. Upon report of an adverse event related to a
17 kratom product, a processor shall submit an adverse event report via certified mail
18 to the Louisiana Department of Health and the United States Food and Drug
19 Administration in accordance with federal law.

20 §946. Enforcement

21 A. Any kratom product found in this state in violation of this Chapter shall
22 be considered contraband and any property interest in the kratom product is vested
23 in the state of Louisiana and is subject to seizure and destruction.

24 B. Any certified law enforcement officer in this state may enforce the
25 administrative provisions of this Chapter.

26 C. The provisions of this Act shall be null and void and have no effect if the
27 United States Drug Enforcement Administration places mitragynine on the
28 Controlled Substance Schedule.

1 Section 2. The provisions of this Act shall not apply to any local governmental
2 subdivision that enacts a prohibition or a more restrictive ordinance relative to kratom
3 products than required by this Act.

4 Section 3. This Act shall become effective upon signature by the governor or, if not
5 signed by the governor, upon expiration of the time for bills to become law without signature
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
8 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 655 Reengrossed

2023 Regular Session

Goudeau

Abstract: Establishes a regulatory process for sale of kratom containing products.

Proposed law creates the "Kratom Consumer Protection Act" to regulate the preparation, distribution, and sale of kratom.

Proposed law establishes the following criteria for kratom products sold in Louisiana:

- (1) Cannot be adulterated with a dangerous nonkratom substance that renders the product injurious to a consumer.
- (2) Must contain levels of residual solvents less than is allowed by the U.S. Pharmacopeia standards
- (3) Must not contain 7-hydroxymitragynine in excess of one percent of the overall alkaloid composition.
- (4) Must not contain any synthetic alkaloids.

Proposed law requires all of the following on the package of a kratom product:

- (1) A recommended a serving size.
- (2) A recommended number of servings.
- (3) A recommended daily serving amount.
- (4) The name, address, and phone number of the manufacturer or processor.
- (5) A disclaimer that the product has not been evaluated by the U.S. Food and Drug Administration, and that the drug has not been approved to treat, cure, diagnose, or prevent any disease.

Proposed law prohibits the sale of kratom products to anyone under the age of 21 and requires retailers to verify the age of the purchaser prior to completing a sale of a kratom product.

Proposed law tasks the commissioner of the La. office of alcohol and tobacco control with studying and reporting on the feasibility of regulating kratom products, processors, and retailers.

Proposed law provides that feasibility study will study the following:

- (1) The appropriate state agency or agencies to regulate the manufacture, sale, and use of kratom products.
- (2) The appropriate entity to test kratom products to verify compliance with proposed law.
- (3) The proper procedure for adverse health events reporting.
- (4) The appropriate fees, taxes, and registration requirements.
- (5) The proper fines and other enforcement penalties for noncompliance with proposed law.

Proposed law provides that the commissioner shall report on the feasibility of regulating kratom products, processors, and retailers by Feb. 1, 2024.

Proposed law requires a processor to report adverse health events to the La. Dept. of Health and the U.S. Food and Drug Administration.

Proposed law provides that kratom products that do not comply with proposed law may be seized and destroyed by law enforcement.

Proposed law establishes that proposed law shall be null and void if the U.S. Drug Enforcement Administration adds mitragynine to the federal Controlled Substance Schedule.

Proposed law provides proposed law shall not apply to any local governmental entity that passes stricter regulations than are provided by proposed law including the prohibition of kratom products.

Effective upon signature of governor or a lapse of time for gubernatorial action.

(Adds R.S. 26:941-946)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Change the placement of proposed law from Title 40 of the La. Revised Statutes of 1950 to Title 26 of the La. Revised Statutes of 1950.
2. Clarify the distinction between a retailer and a processor as defined by proposed law.
3. Remove all provisions related to the registration of kratom products with the commissioner of the office of alcohol and tobacco control.
4. Remove penalties and fines for violations resulting from noncompliance with proposed law.

5. Add a requirement that retailers must store and display kratom products in an area not accessible to the public without assistance from the retailer.
6. Add a procedure that retailers must follow to verify the age of a purchaser prior to completing a sale of a kratom products.
7. Add that the commissioner of the office of alcohol and tobacco control shall study the feasibility of regulating kratom products, processors, and retailers and report the results of the study no later than Feb. 1, 2024.
8. Clarify that local government entities may enact stricter regulations than provided by proposed law or prohibit the sale of kratom products.