

HOUSE BILL No. 2188

By Committee on Federal and State Affairs

1-26

1 AN ACT concerning food products; relating to the Kansas food, drug and
2 cosmetic act; regulating the sale and distribution of kratom products;
3 amending K.S.A. 2022 Supp. 65-656 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. The provisions of sections 1 through 9, and
7 amendments thereto, shall be a part of and supplemental to the Kansas
8 food, drug and cosmetic act.

9 New Sec. 2. (a) The secretary shall adopt rules and regulations
10 establishing fees for the issuance of annual kratom dealer licenses and for
11 other necessary expenses to defray the cost of implementing and enforcing
12 the provisions of this act.

13 (b) All moneys received as fees pursuant to this section shall be
14 remitted to the state treasurer at least monthly. Upon receipt of each such
15 remittance, the state treasurer shall deposit the entire amount in the state
16 treasury to the credit of the food safety fee fund. All expenditures from the
17 food safety fee fund shall be made in accordance with appropriation acts
18 upon warrants of the director of accounts and reports issued pursuant to
19 vouchers approved by the secretary or the secretary's designee.

20 New Sec. 3. (a) Applications for kratom dealer licenses shall be made
21 in such form and manner as prescribed by the secretary and shall be
22 accompanied by the required application and license fees.

23 (b) Each kratom dealer license application that involves the retail sale
24 or wholesale distribution of kratom products, but that does not include the
25 production, manufacture, packaging or labeling of kratom products, shall
26 be approved upon submission of a complete application and timely
27 payment of the prescribed fees.

28 (c) Each kratom dealer application that involves the production,
29 manufacture, packaging or labeling of kratom products shall be approved
30 by the secretary upon submission of a complete application, timely
31 payment of the prescribed fees and completion of a successful inspection
32 of the premises described in the application.

33 (d) A kratom dealer license issued under this act shall apply only to
34 the premises described in the application and in the license issued thereon,
35 and only one location shall be described in each license. A kratom dealer
36 license shall be in addition to any other license, permit or registration

1 required under the Kansas food, drug and cosmetic act, or under any other
2 state or federal law.

3 (e) Every kratom dealer license shall be displayed conspicuously in
4 the licensed premises for which it is issued, and no such license shall be
5 transferable to any other person or location. Whenever any such license is
6 lost, destroyed or mutilated, a duplicate license shall be issued to any
7 otherwise qualified licensee upon application therefor and the payment of
8 a fee in the amount of \$5.

9 (f) Except as otherwise provided in this section, a kratom dealer
10 license shall expire on March 31 following the date of issuance. Licenses
11 may be renewed by applying to the secretary on or before the expiration
12 date. An application for renewal of a license shall be made in such form
13 and manner as prescribed by the secretary and shall be accompanied by the
14 required application and license fees.

15 (g) If the secretary denies the issuance or renewal of any license, the
16 secretary shall give written notice thereof to the licensee. Such written
17 notice shall specify the changes necessary for complete compliance with
18 the provisions of this act and all rules and regulations adopted thereunder,
19 and the secretary shall state that if compliance is achieved within the time
20 designated in such notice, then the license shall be issued or renewed. If
21 the licensee fails to achieve complete compliance within the prescribed
22 time period, the secretary, after notice and an opportunity for a hearing in
23 accordance with the Kansas administrative procedure act, shall deny the
24 application for such license, or the renewal thereof.

25 New Sec. 4. (a) The secretary shall inspect or cause to be inspected
26 the premises of every licensed kratom dealer. If upon inspection, the
27 secretary determines that such licensed premises does not comply with the
28 provisions of this act or the rules and regulations adopted thereunder, the
29 secretary shall give written or electronic notice to the owner, proprietor or
30 agent in charge of such licensed premises and may allow for correction
31 within 10 days or provide for any other civil remedy established by this act
32 and rules and regulations adopted thereunder.

33 (b) The secretary shall have access at all reasonable hours to any
34 location in which kratom products are manufactured, sold, prepared,
35 produced, distributed, maintained or advertised, and to enter any vehicle
36 being used to transport or hold kratom products in commerce for the
37 following purposes:

38 (1) To inspect any location, products or equipment subject to the
39 provisions of this act and rules and regulations adopted thereunder;

40 (2) to inspect or sample any kratom product reported to be
41 adulterated, misbranded or a threat to public health;

42 (3) to inspect or investigate complaints of violations of the provisions
43 of this act and rules and regulations adopted thereunder;

1 (4) to inspect the records concerning the place of origin or the sale of
2 any kratom product;

3 (5) to open any package containing or suspected of containing any
4 kratom product that is exposed or offered for sale; and

5 (6) to take samples of the contents of any kratom product for
6 examination.

7 (c) If the secretary is denied access to any location where such access
8 is sought for the purposes provided in subsections (a) and (b), the secretary
9 may apply to any court of competent jurisdiction for a search warrant
10 authorizing access to such location for such purpose. Upon such
11 application and a showing of cause therefor, the court shall issue such
12 search warrant.

13 New Sec. 5. (a) The secretary, or a duly authorized representative of
14 the secretary, shall inspect and sample kratom products at such time and in
15 such places and to such extent as the secretary or such authorized
16 representative of the secretary considers advisable. The secretary, or a duly
17 authorized representative of the secretary, may stop further sale or
18 movement of any kratom products found to be in violation of any of the
19 provisions of this act, any rules and regulations adopted thereunder or any
20 orders issued thereunder. It shall be the duty of the secretary, or a duly
21 authorized representative of the secretary, to:

22 (1) Enforce and administer the provisions of this act; and

23 (2) sample, inspect, make analysis of and test kratom products
24 transported, sold, offered for sale or exposed for sale within the state at
25 such time and place and to such extent as considered necessary by the
26 secretary to determine whether such kratom products are in compliance
27 with the provisions of this act and rules and regulations adopted
28 thereunder.

29 (b) (1) In addition to any action taken pursuant to K.S.A. 65-660, and
30 amendments thereto, the secretary may issue and enforce a written or
31 printed "stop sale" order to the owner or custodian of any kratom product
32 that the secretary, or a duly authorized representative of the secretary,
33 determines to be in violation of any of the provisions of this act or any
34 rules and regulations adopted thereunder.

35 (2) Except as otherwise approved by the secretary, any "stop sale"
36 order shall prohibit further sale, processing and movement of the kratom
37 product that is subject to such order until the secretary is provided
38 evidence of compliance with the provisions of this act or rules and
39 regulations adopted thereunder and a release from the "stop sale" order of
40 such kratom product is issued.

41 (c) (1) If the secretary finds that the public health or safety is
42 endangered by the continued operation of a kratom dealer, the secretary
43 may temporarily suspend the license of such kratom dealer or order the

1 temporary closure of such kratom dealer's licensed premises without notice
2 or hearing in accordance with the emergency provisions of the Kansas
3 administrative procedure act.

4 (2) A temporary suspension of a license or temporary closure order
5 issued under this section shall not be effective for more than 90 days.
6 Upon the expiration of any such suspension or order, the licensee shall be
7 reinstated to full licensure or allowed to reopen unless the secretary has
8 denied, suspended or revoked such licensee's kratom dealer license,
9 obtained an injunction against such licensee or the license has expired as
10 otherwise provided under section 5, and amendments thereto, or any rules
11 and regulations or orders issued thereunder.

12 (d) The secretary, after providing notice and opportunity for a hearing
13 in accordance with the provisions of the Kansas administrative procedure
14 act, may deny, suspend, modify, revoke or refuse to renew any license if
15 the secretary determines that such applicant or licensee has:

16 (1) Been convicted of or pleaded guilty to a criminal violation of any
17 provision of section 7, and amendments thereto, or any other provision of
18 the Kansas food, drug and cosmetic act;

19 (2) failed to comply with any provision or requirement of this act or
20 any rules and regulations or orders adopted or issued thereunder;

21 (3) interfered with the secretary's ability to carry out inspections or
22 the administration of this act or any rules and regulations adopted
23 thereunder; or

24 (4) denied the secretary access to any premises required to be
25 inspected under the provisions of this act or any rules and regulations
26 adopted thereunder.

27 New Sec. 6. (a) In addition to any other corrective actions ordered,
28 the secretary, after providing notice and an opportunity for a hearing in
29 accordance with provisions of the Kansas administrative procedure act,
30 may impose a civil penalty in an amount not to exceed \$1,000 per
31 violation of this act or any rules and regulations or orders adopted or
32 issued thereunder. In the case of a continuing violation, each day such
33 violation continues shall be deemed a separate violation. Such civil penalty
34 may be assessed in addition to any other penalty provided by law.

35 (b) Any person aggrieved by an order of the secretary as provided in
36 subsection (a) may appeal such order to the district court in the manner
37 provided by the Kansas judicial review act.

38 (c) Any penalty recovered pursuant to the provisions of subsection (a)
39 shall be remitted to the state treasurer in accordance with the provisions of
40 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
41 remittance, the state treasurer shall deposit the entire amount in the state
42 treasury to the credit of the compliance education fee fund of the
43 department of agriculture.

1 New Sec. 7. (a) It shall be unlawful for any person to manufacture,
2 sell, prepare, produce, distribute, maintain, advertise or represent that such
3 person manufactures, sells, prepares, produces, distributes, maintains or
4 advertises kratom products without a license issued pursuant to this act.

5 (b) It shall be unlawful for any kratom dealer to manufacture, sell,
6 prepare, produce, distribute, maintain or otherwise provide any kratom
7 product that is adulterated as described in K.S.A. 65-664, and amendments
8 thereto.

9 (c) In addition to any adulteration as described in K.S.A. 65-664, and
10 amendments thereto, kratom products shall also be considered adulterated
11 if such products contain:

12 (1) A level of 7-hydroxymitragynine in the alkaloid fraction that is
13 greater than 2% of the alkaloid composition of such product; or

14 (2) any synthetic alkaloids including synthetic mitragynine, synthetic
15 7-hydroxymitragynine or any other synthetically derived compounds of
16 the kratom plant.

17 (d) It shall be unlawful for any kratom dealer to manufacture, sell,
18 prepare, produce, distribute, maintain or otherwise provide any kratom
19 product that is misbranded as described in K.S.A. 65-665, and
20 amendments thereto. A kratom product shall be deemed misbranded if the
21 label does not state the amount of mitragynine and 7-hydroxymitragynine
22 contained in such product.

23 (e) It shall be unlawful for any kratom dealer to distribute, sell or
24 otherwise provide any kratom product to an individual under 18 years of
25 age.

26 (f) Violation of this section is a class C misdemeanor.

27 New Sec. 8. An advertisement for a kratom product shall be deemed
28 a false claim if the advertisement is false or misleading in any particular
29 aspect of such product, including, but not limited to, any claims not
30 authorized by the federal food and drug administration or the secretary.

31 New Sec. 9. The secretary shall adopt rules and regulations for the
32 administration and enforcement of sections 1 through 9, and amendments
33 thereto, including, but not limited to, the format, size and placement of
34 labels, and the information required to be included on such labels, all fees
35 necessary for carrying out the provisions of sections 1 through 9, and
36 amendments thereto, all safety and sanitary standards required and any
37 other provisions necessary to effectuate this act.

38 Sec. 10. K.S.A. 2022 Supp. 65-656 is hereby amended to read as
39 follows: 65-656. For the purpose of this act:

40 (a) "Secretary" means the secretary of agriculture or the secretary's
41 authorized representatives.

42 (b) "Person" means an individual, partnership, governmental entity,
43 corporation, or association of persons.

1 (c) "Food" means: (1) Articles used for food or drink for humans or
2 other animals; (2) chewing gum; and (3) articles used for components of
3 any such article.

4 (d) (1) "Drug" means:

5 ~~(1)~~—(A) Articles recognized in the official United States
6 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
7 or official national formulary, or any supplement to any of them;

8 ~~(2)~~—(B) articles intended for use in diagnosis, cure, mitigation,
9 treatment or prevention of disease in humans or other animals;

10 ~~(3)~~—(C) articles, other than food, intended to affect the structure or any
11 function of the body of humans or other animals; and

12 ~~(4)~~—(D) articles intended for use as a component of any article
13 specified in ~~paragraph (1)~~ *subparagraph (A)*, ~~(2)~~(B) or ~~(3)~~(C); but does not
14 include devices or their components, parts or accessories.

15 (2) The term "drug" does not include amygdalin (laetrile).

16 (e) "Device," except as used in K.S.A. 65-657(j), 65-665(f), 65-
17 669(c) and (o) and 65-671(c), and amendments thereto, means
18 instruments, apparatus and contrivances, including their components, parts
19 and accessories, intended for use in the diagnosis, cure, mitigation,
20 treatment or prevention of disease in humans or other animals or to affect
21 the structure or any function of the body of humans or other animals.

22 (f) "Cosmetic" means: (1) Articles intended to be rubbed, poured,
23 sprinkled, or sprayed on, introduced into, or otherwise applied to the
24 human body or any part thereof for cleaning, beautifying, promoting
25 attractiveness or altering appearance; and (2) articles intended for use as a
26 component of any such articles, except that such term does not include
27 soap.

28 (g) "Official compendium" means the official United States
29 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
30 official national formulary or any supplement to any of them.

31 (h) "Label" means a display of written, printed or graphic matter upon
32 the immediate container of any article; and a requirement made by or
33 under authority of this act that any word, statement, or other information
34 appearing on the label shall not be considered to be complied with unless
35 such word, statement, or other information also appears on the outside
36 container or wrapper, if any, of the retail package of such article, or is
37 easily legible through the outside container or wrapper.

38 (i) "Immediate container" does not include package liners.

39 (j) "Labeling" means all labels and other written, printed or graphic
40 matter upon an article or any of its containers or wrappers or
41 accompanying such article.

42 (k) "Advertisement" means all representations disseminated in any
43 manner or by any means other than by labeling, for the purpose of

1 inducing, or that are likely to induce, directly or indirectly, the purchase of
2 food, drugs, devices or cosmetics.

3 (l) "New drug" means: (1) Any drug the composition of which is such
4 that such drug is not generally recognized, among experts qualified by
5 scientific training and experience to evaluate the safety and effectiveness
6 of drugs, as safe and effective for use under the conditions prescribed,
7 recommended or suggested in the labeling thereof; or (2) any drug the
8 composition of which is such that such drug, as a result of investigations to
9 determine its safety and effectiveness for use under such conditions, has
10 become so recognized, but that has not, otherwise than in such
11 investigations, been used to a material extent or for a material time under
12 such conditions. The term "new drug" does not include amygdalin
13 (laetrile).

14 (m) "Contaminated with filth" applies to any food, drug, device or
15 cosmetic not securely protected from dust, dirt, and as far as may be
16 necessary by all reasonable means, from all foreign or injurious
17 contaminations.

18 (n) "Pesticide chemical" means any substance that, alone, in chemical
19 combination, or in formulation with one or more other substances is a
20 "pesticide" within the meaning of the agricultural chemicals act, K.S.A. 2-
21 2202, and amendments thereto, and that is used in the production, storage
22 or transportation of raw agricultural commodities.

23 (o) "Raw agricultural commodity" means any food in its raw or
24 natural state, including all fruits that are washed, colored or otherwise
25 treated in their unpeeled natural form prior to marketing.

26 (p) "Food additive" means any substance, the intended use of which
27 results or may be reasonably expected to result, directly or indirectly, in its
28 becoming a component or otherwise affecting the characteristics of any
29 food, including any substance intended for use in producing,
30 manufacturing, packing, processing, preparing, treating, packaging,
31 transporting or holding food. "Food additive" includes any source of
32 radiation intended for any such use, if such substance is not generally
33 recognized, among experts qualified by scientific training and experience
34 to evaluate its safety, as having been adequately shown through scientific
35 procedures, or, in the case of a substance used in a food prior to January 1,
36 1958, through either scientific procedures or experience based on common
37 use in food, to be safe under the conditions of its intended use. "Food
38 additive" does not include: (1) A pesticide chemical in or on a raw
39 agricultural commodity; (2) a pesticide chemical to the extent that it is
40 intended for use or is used in the production, storage or transportation of
41 any raw agricultural commodity; (3) a color additive; or (4) any substance
42 used in accordance with a sanction or approval granted prior to the
43 enactment of the food additive amendment of 1958, pursuant to the federal

1 act.

2 (q) (1) "Color additive" means a material that: (A) Is a dye, pigment
 3 or other substance made by a process of synthesis or similar artifice, or
 4 extracted, isolated or otherwise derived, with or without intermediate or
 5 final change of identity from a vegetable, animal, mineral or other source;
 6 or (B) when added or applied to a food, drug or cosmetic, or to the human
 7 body or any part thereof, is capable, alone or through reaction with another
 8 substance, of imparting color thereto; except that such term does not
 9 include any material which has been or hereafter is exempted under the
 10 federal act.

11 (2) The term "color" includes black, white and intermediate grays.

12 (3) Nothing in this subsection shall be construed to apply to any
 13 pesticide chemical, soil or plant nutrient, or other agricultural chemical
 14 solely because of its effect in aiding, retarding or otherwise affecting,
 15 directly or indirectly, the growth or other natural physiological process of
 16 produce of the soil and thereby affecting its color, whether before or after
 17 harvest.

18 (r) "Imitation" means, except for imitation food as provided in K.S.A.
 19 65-665, and amendments thereto, any article made in the semblance of
 20 another, consisting of similar or dissimilar ingredients and being capable
 21 of being substituted for the imitated article without the knowledge of the
 22 consumer.

23 (s) "Federal act" means the federal food, drug and cosmetic act, 21
 24 U.S.C. § 301 et seq.

25 (t) "Department" means the Kansas department of agriculture.

26 (u) "Distribution" means the provision of food, drug, cosmetic or
 27 device to another person and includes selling, offering for sale, giving,
 28 supplying, transporting, applying and dispensing.

29 (v) "Food establishment" means any place in which food is prepared,
 30 served or offered for sale or service on the premises or elsewhere. "Food
 31 establishment" does not include roadside markets that offer only whole
 32 fresh fruits, nuts and vegetables for sale. "Food establishment" includes,
 33 but is not limited to:

34 (1) Eating or drinking establishments, fixed or mobile restaurants,
 35 coffee shops, cafeterias, short-order cafes, luncheonettes, tea rooms, grills,
 36 sandwich shops, soda fountains, taverns, private clubs, roadside stands,
 37 industrial-feeding establishments, catering kitchens, commissaries and any
 38 other private, public or nonprofit organizations routinely serving food; and
 39 (2) grocery stores, convenience stores, bakeries and locations where
 40 food is provided for the public with or without charge.

41 (w) "Food processing plant" means a commercial operation that
 42 processes or stores food for human consumption and provides food for
 43 distribution to other business entities at other locations, including other

1 food processing plants and food establishments. "Food processing plant"
2 does not include any operation or individual beekeeper that produces and
3 distributes honey to other business entities if the producer does not process
4 the honey beyond extraction from the comb.

5 (x) "Food vending machine" means any self-service device that, upon
6 payment, dispenses unit servings of food, either in bulk or in packages.
7 Such device shall not necessitate replenishing between each vending
8 operation. "Food vending machine" does not include any vending machine
9 dispensing only canned or bottled soft drinks or prepackaged food that
10 does not require temperature control for safety.

11 (y) "Food vending machine company" means any person in the
12 business of operating and servicing food vending machines.

13 (z) "Location" means a physical address, or absent an address, the
14 geographical area within 300 feet of a food establishment or food
15 processing plant. In the case of a mobile food establishment housed in a
16 trailer, such trailer shall be considered a food establishment with its own
17 location. In the case of a mobile food establishment that is not housed in a
18 trailer, the equipment used for storage, preparation or offering of food shall
19 be considered a food establishment with its own location.

20 (aa) "Municipality" means any city or county of this state.

21 (bb) "Processing" means the handling of a food, drug, cosmetic or
22 device, including the production, manufacturing, packaging, packing and
23 labeling of such item.

24 (cc) "Sample" means a small quantity of food and does not include a
25 meal or entree.

26 (dd) "Storage" means holding for distribution or processing.

27 (ee) "Meat analog" means any food that approximates the aesthetic
28 qualities, primarily texture, flavor and appearance, or the chemical
29 characteristics of any specific type of meat, meat food product, poultry
30 product or poultry food product, but does not contain any meat, meat food
31 product, poultry product or poultry food product.

32 (ff) "Identifiable meat term" includes, but is not limited to, terms such
33 as meat, beef, pork, poultry, chicken, turkey, lamb, goat, jerky, steak,
34 hamburger, burger, ribs, roast, bacon, bratwurst, hot dog, ham, sausage,
35 tenderloin, wings, breast and other terms for food that contain any meat,
36 meat food product, poultry product or poultry food product.

37 (gg) "Meat" means the same as provided in 9 C.F.R. § 301.2, as in
38 effect on January 1, 2022.

39 (hh) "Meat food product" means the same as provided in 9 C.F.R. §
40 301.2, as in effect on January 1, 2022.

41 (ii) "Poultry product" means the same as provided in 9 C.F.R. §
42 381.1, as in effect on January 1, 2022.

43 (jj) "Poultry food product" means the same as provided in 9 C.F.R. §

1 381.1, as in effect on January 1, 2022.

2 *(kk) "Kratom dealer" means a person that manufactures, sells,*
3 *prepares, produces, distributes or maintains kratom products, or*
4 *advertises or represents that such person manufactures, sells, prepares,*
5 *produces, distributes or maintains kratom products, including, but not*
6 *limited to, a manufacturer, wholesaler, retail store, restaurant, hotel,*
7 *catering facility, camp, bakery, delicatessen, grocery store, convenience*
8 *store or nursing home.*

9 *(ll) "Kratom product" means a food containing any part of the plant*
10 *mitragyna speciosa.*

11 Sec. 11. K.S.A. 2022 Supp. 65-656 is hereby repealed.

12 Sec. 12. This act shall take effect and be in force from and after its
13 publication in the statute book.