

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 1229

(Delegate A. Jones, *et al.*)

Health and Government Operations

Finance

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**Public Health - Kratom Consumer Protection Act**

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This bill generally requires a “retailer” that prepares, distributes, sells, or exposes for sale a “kratom product” to disclose on the product label the factual basis on which the representation is made. A violator is subject to a civil penalty. A retailer is prohibited from (1) preparing, distributing, selling, or exposing for sale a kratom product that does not comply with the specified disclosure, has not been recognized by the U.S. Food and Drug Administration (FDA) as a dietary ingredient or approved drug, or that is adulterated with, contaminated with, or contains other substances, as specified, and (2) distributing, selling, or exposing for sale a kratom product to an individual younger than 21. A violator is guilty of a misdemeanor and subject to a criminal penalty. A retailer may not advertise or market a kratom product to minors, directly or indirectly, as specified and may not advertise a therapeutic benefit of kratom, directly or indirectly. The Maryland Department of Health (MDH) must adopt regulations to implement the bill and collaborate with the Maryland Hospital Association (MHA) to report to the General Assembly by December 31, 2025, on the number of adverse health events observed in individuals after the use of opioid-like substances (including kratom and tianeptine).

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State finances and operations. MDH can adopt regulations and collaborate with MHA to issue the report with existing budgeted resources. The civil and criminal penalty provisions of the bill are not anticipated to have a material impact on State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect local finances and operations. Local health departments can handle enforcement with existing budgeted resources. The civil and criminal penalty provisions of the bill are not anticipated to have a material impact on local finances or operations.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** “Kratom product” means a product marketed for human consumption containing any part of the leaf of the plant *mitragyna speciosa*.

“Retailer” means a person that (1) sells, prepares, or maintains kratom products or (2) advertises, represents, or holds itself out as selling, preparing, or maintaining kratom products (including a manufacturer, wholesaler, store, restaurant, hotel, catering facility, camp, bakery, delicatessen, supermarket, grocery store, convenience store, gas station, or food/drink company).

### *Labeling Requirement*

A retailer that prepares, distributes, sells, or exposes for sale a kratom product must disclose on the product label the factual basis on which that representation is made. A violator is subject to a maximum civil penalty of \$1,000 for a first violation and \$2,000 for each subsequent offense.

### *Prohibitions*

A retailer may not prepare, distribute, sell, or expose for sale a kratom product that (1) does not comply with the specified disclosure requirement or (2) has not been recognized by the FDA as a dietary ingredient or approved drug. A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000 and/or imprisonment for up to 90 days.

A retailer is also prohibited from preparing, distributing, selling, or exposing for sale a kratom product:

- that is adulterated with a dangerous substance other than kratom (including a kratom product that is mixed or packed with another substance that affects the quality or strength of the kratom product to a degree as to render the kratom product injurious to a consumer);
- that is contaminated with a dangerous substance – meaning a poisonous or otherwise deleterious ingredient, including a controlled dangerous substance;
- containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 2% of the alkaloid composition of the product; or
- containing a synthetic alkaloid – including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the kratom plant; or
- that does not include on its package or label the amount of mitragynine and 7-hydroxymitragynine contained in the product.

A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000 and/or imprisonment for up to 90 days.

A retailer may not distribute, sell, or expose for sale a kratom product to an individual younger than age 21. A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000 and/or imprisonment for up to 90 days.

In addition to any penalty under the bill, a retailer is also liable for any civil damages sustained by an individual resulting from the violation.

In a prosecution for a violation under the bill, it is a defense that the retailer relied in good faith on the representations of a manufacturer, processor, packer, or distributor of a kratom product.

### *Advertising Restrictions*

A retailer may not advertise (directly or indirectly) a therapeutic benefit of kratom.

A retailer may not advertise or market (directly or indirectly) kratom products to minors. It is a violation of this prohibition for a retailer to use specified imagery or references in the advertising, promotion, packaging, or labeling of a kratom product, including (1) a cartoon; (2) a superhero; (3) a video game reference; (4) an image of a food product primarily intended for minors; (5) a trademark that imitates or mimics the trademark of a product that has been advertised or marketed primarily to minors; (6) a symbol or celebrity that is primarily associated with minors or media primarily directed to minors; and (7) an image of an individual who appears to be younger than age 27.

It is also a violation of this prohibition for a retailer to advertise or promote a kratom product on an outdoor billboard or signboard that is within 500 feet of a school or at specified locations or in certain media if individuals younger than age 21 constitute 15% or more of the total audience as measured by competent and reliable survey evidence, including (1) a newspaper, magazine, periodical, or other publication or (2) a concert, stadium, sporting event, or other public event.

**Current Law:** The State does not currently regulate kratom.

FDA considers kratom an unapproved new dietary ingredient. As such, kratom may not be marketed under federal law as either a nutritional supplement or food additive.

As of November 2023, 16 states have imposed various regulations on kratom, including age restrictions, bans on marketing to children, bans on adulteration or contamination of kratom products, restrictions on the strength of kratom products, labeling requirements,

testing and sampling requirements, bans on synthetic versions of kratom, authorization for civil actions, registration and permitting for kratom sellers, or a tax on the sale of kratom. Another six states ban the sale of kratom products.

**Small Business Effect:** Small business retailers that prepare, distribute, sell, or expose for sale a kratom product must comply with the bill's requirements. Violators are subject to civil and criminal penalty provisions.

**Additional Comments:** Kratom is an herbal extract that comes from the leaves of an evergreen tree (*mitragyna speciosa*) grown in Southeast Asia. Kratom leaves can be chewed, and dry kratom can be swallowed or brewed. Kratom extract can be used to make a liquid product. Liquid kratom is marketed as a muscle pain reliever, appetite suppressor, and as a treatment for cramps and diarrhea.

Mitragynine, a chemical contained in kratom, works like opioid drugs, such as codeine and morphine. Some practitioners of Asian traditional medicine consider kratom to be a substitute for opium. The effects of kratom vary by dosage. At low doses, kratom acts as a stimulant, making users feel more energetic. At higher doses, it reduces pain and may bring on euphoria. At very high doses, kratom acts as a sedative.

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### Additional Information

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Congressional Research Service; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2024  
rh/jc Third Reader - March 14, 2024  
Revised - Amendment(s) - March 14, 2024

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