



2025 South Dakota Legislature

House Bill 1056

Introduced by: **Representative Mulder**

1 **An Act to prohibit the preparation, sale, and distribution of certain kratom products**
 2 **and to provide a penalty therefor.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 34-20B-1 be AMENDED:**

5 **34-20B-1.** Terms as used in this chapter mean:

- 6 (1) "Administer," to deliver a controlled drug or substance to the ultimate user or
 7 human research subject by injection, inhalation, or ingestion, or by any other
 8 means;
- 9 (2) "Agent," an authorized person who acts on behalf of or at the direction of a
 10 manufacturer, distributor, or dispenser and includes a common or contract carrier,
 11 public warehouseman, or employee thereof;
- 12 (3) "Chemically derived cannabinoid," a chemical substance created by a chemical
 13 reaction that changes the molecular structure of any chemical substance derived
 14 from the cannabis plant. The term does not include:
- 15 (a) Cannabinoids produced by decarboxylation from a naturally occurring
 16 cannabinoid acid without the use of a chemical catalyst;
- 17 (b) Non-psychoactive cannabinoids; or
- 18 (c) Cannabinoids in a topical cream product;
- 19 (4) "Control," to add, remove, or change the placement of a drug, substance, or
 20 immediate precursor under §§ 34-20B-27 and 34-20B-28;
- 21 (5) "Controlled substance analogue," any of the following:
- 22 (a) A substance that differs in its chemical structure from a controlled substance
 23 listed in or added to Schedule I or II only by substituting one or more
 24 hydrogens with halogens, or by substituting one halogen with a different
 25 halogen;

- 1 (b) A substance that is an alkyl homolog of a controlled substance listed in or
 2 added to Schedule I or II; or
- 3 (c) A substance intended for human consumption:
- 4 (i) The chemical structure of which is substantially similar to the
 5 chemical structure of a controlled substance in Schedule I or II; or
- 6 (ii) That has a stimulant, depressant, or hallucinogenic effect on the
 7 central nervous system that is substantially similar to, or greater
 8 than, the stimulant, depressant, or hallucinogenic effect on the
 9 central nervous system of a controlled substance in Schedule I or II;
- 10 The term, controlled substance analogue, does not include a controlled substance
 11 or any substance for which there is an approved new drug application;
- 12 (6) "Counterfeit substance," a controlled drug or substance ~~which that~~, or the container
 13 or labeling of ~~which a controlled drug or substance that~~, without authorization,
 14 bears the trademark, trade name, or other identifying mark, imprint, number, or
 15 device, or any likeness thereof, of a manufacturer, distributor, or dispenser other
 16 than the person or persons who manufactured, distributed, or dispensed ~~such the~~
 17 substance, and ~~which~~ thereby falsely purports or is represented to be the product
 18 of, or to have been distributed by, ~~such the~~ other manufacturer, distributor, or
 19 dispenser;
- 20 (7) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a
 21 controlled drug, substance, or marijuana, whether or not there exists an agency
 22 relationship;
- 23 (8) "Department," the Department of Health created by chapter 1-43;
- 24 (9) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
 25 research subject by or pursuant to the lawful order of a practitioner, including the
 26 prescribing, administering, packaging, labeling, or compounding necessary to
 27 prepare the substance for such delivery, ~~and a dispenser is one who dispenses;~~
- 28 (10) "Distribute," to deliver a controlled drug, substance, or marijuana. ~~A distributor is~~
 29 ~~a person who delivers a controlled drug, substance, or marijuana;~~
- 30 (11) "Hashish," the resin extracted from any part of any plant of the genus cannabis
 31 that contains a delta-9 tetrahydrocannabinol concentration of more than three-
 32 tenths of one percent on a dry weight basis;
- 33 (12) "Imprisonment," imprisonment in a state correctional facility unless the penalty
 34 specifically provides for imprisonment in the county jail;
- 35 (13) "Kratom," any part of the leaf of the plant Mitragyna speciosa;

1 (14) "Kratom product," a food as defined in § 39-4-1, or dietary ingredient, containing
2 kratom;

3 (15) "Manufacture," the production, preparation, propagation, compounding, or
4 processing of a controlled drug or substance, either directly or indirectly by
5 extraction from substances of natural origin, or independently by means of
6 chemical synthesis or by a combination of extraction and chemical synthesis. A
7 manufacturer ~~includes any person who packages, repackages, or labels any~~
8 ~~container of any controlled drug or substance, except practitioners who dispense~~
9 or compound does not include a practitioner who dispenses or compounds
10 prescription orders for delivery to the ultimate consumer;

11 ~~(14)~~(16) "Marijuana," all parts of any plant of the genus cannabis, whether growing or
12 not; the seeds thereof; and every compound, manufacture, salt, derivative,
13 mixture, or preparation of such plant or its seeds. The term does not include fiber
14 produced from the mature stalks of the plant, or oil or cake made from the seeds
15 of the plant, or the resin when extracted from any part of the plant, or a drug
16 product approved by the United States Food and Drug Administration. The term
17 does not include the plant Cannabis sativa L. and any part of that plant, including
18 the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts,
19 and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol
20 concentration of not more than three-tenths of one percent on a dry weight basis;

21 ~~(15)~~(17) "Narcotic drug," any of the following, whether produced directly or indirectly by
22 extraction from substances of vegetable origin or independently by means of
23 chemical synthesis, or by a combination of extraction and chemical synthesis:

24 (a) Opium, coca leaves, or opiates;

25 (b) A compound, manufacture, salt, derivative, or preparation of opium, coca
26 leaves, or opiates;

27 (c) A substance, and any compound, manufacture, salt, derivative, or
28 preparation thereof, that is chemically identical to any of the substances
29 referred to in subsections (a) and (b) of this subdivision;

30 The term, narcotic drug, does not include decocainized coca leaves or extracts of
31 coca leaves, which extracts do not contain cocaine or ecgonine;

32 ~~(16)~~(18) "Opiate" or ~~"Opioid,"~~ "opioid," any controlled drug or substance having an
33 addiction-sustaining liability similar to morphine or being capable of conversion
34 into a drug having such addiction-forming or addiction-sustaining liability;

- 1 ~~(17)~~(19) "Opium poppy," the plant of the species papaver somniferum L., except the
 2 seeds thereof;
- 3 ~~(18)~~(20) "Person," any corporation, association, limited liability company, partnership,
 4 or one or more individuals;
- 5 ~~(19)~~(21) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;
- 6 ~~(20)~~(22) "Practitioner,":
- 7 (a) A physician licensed pursuant to chapter 36-4, a physician assistant licensed
 8 pursuant to chapter 36-4A, a dentist licensed pursuant to chapter 36-6A,
 9 an optometrist licensed pursuant to chapter 36-7, a podiatrist licensed
 10 pursuant to chapter 36-8, a certified registered nurse anesthetist licensed
 11 pursuant to chapter 36-9, a certified nurse practitioner or certified nurse
 12 midwife licensed pursuant to chapter 36-9A, a pharmacist licensed pursuant
 13 to chapter 36-11, or a veterinarian licensed pursuant to chapter 36-12;
- 14 (b) A government employee acting within the scope of employment; and
- 15 (c) A person permitted by a certificate issued by the department to distribute,
 16 dispense, conduct research with respect to, or administer a substance
 17 controlled by this chapter;
- 18 ~~(21)~~—"Prescribe," ~~(23)~~ "Prescription," an order of a practitioner for a controlled drug or
 19 substance;
- 20 ~~(22)~~(24) "Production," the manufacture, planting, cultivation, growing, or harvesting of
 21 a controlled drug or substance;
- 22 ~~(23)~~(25) "Ultimate user," a person who lawfully possesses a controlled drug or substance
 23 for personal use or for the use of a member of the person's household, or for
 24 administration to an animal owned by the person or by a member of the person's
 25 household.

26 **Section 2. That § 34-20B-115 be AMENDED:**

27 **34-20B-115.** ~~The~~ Any of the following actions are unlawful:

- 28 (1) To knowingly sell or distribute a kratom product to a person under the age of
 29 twenty-one;
- 30 (2) The purchase or attempt to purchase, the receipt or attempt to receive, the
 31 possession, or the consumption of a kratom product by a person under the age of
 32 twenty-one; ~~and or~~

1 (3) To purchase a kratom product on behalf of, or to give a kratom product to, any
2 person under the age of twenty-one, unless the purchaser is a parent or guardian
3 of the person under the age of twenty-one.

4 ~~Kratom, for the purposes of this section, is a substance that contains 7-~~
5 ~~hydroxymitragynine, Mitragynine, or Mitragynine pseudoindoxyl.~~ A violation of this section
6 is a Class 2 misdemeanor.

7 **Section 3. That a NEW SECTION be added to chapter 34-20B:**

8 No person may prepare, sell, or distribute a kratom product that:

9 (1) Contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater
10 than two percent of the alkaloid composition of the product;

11 (2) Contains synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other
12 synthetic alkaloid or synthetically derived compound from the Mitragyna speciosa
13 plant;

14 (3) Contains a poisonous or otherwise deleterious non-kratom substance, including
15 any substance designated as a controlled substance by this chapter;

16 (4) Is mixed or packed with a non-kratom substance that affects the quality or strength
17 of the kratom product, rendering the product injurious to a customer;

18 (5) Does not include on its package or label the amount of mitragynine and 7-
19 hydroxymitragynine contained in the kratom product; or

20 (6) Does not include on its package or label the following warning statement: "Consult
21 a licensed, qualified healthcare professional before consuming this product. Not for
22 use by women who are pregnant, nursing, or trying to become pregnant."

23 A violation of this section is a Class 2 misdemeanor.