

**Chapter 138**  
**(House Bill 1056)**

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

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

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

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

- (1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;
- (2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;
- (3) "Chemically derived cannabinoid," a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant. The term does not include:
  - (a) Cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst;
  - (b) Non-psychoactive cannabinoids; or
  - (c) Cannabinoids in a topical cream product;
- (4) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;
- (5) "Controlled substance analogue," any of the following:
  - (a) A substance that differs in its chemical structure from a controlled substance listed in or added to Schedule I or II only by substituting one or more hydrogens with halogens, or by substituting one halogen with a different halogen;
  - (b) A substance that is an alkyl homolog of a controlled substance listed in or added to Schedule I or II; or
  - (c) A substance intended for human consumption:
    - (i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; or
    - (ii) That has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II;

The term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application;

- (6) "Counterfeit substance," a controlled drug or substance ~~which~~ that, or the container or labeling of ~~which a controlled drug or substance that~~, without authorization, bears the trademark, trade name, or other identifying mark,

imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed ~~such the~~ substance, ~~and which~~ thereby falsely purports or is represented to be the product of, or to have been distributed by, ~~such the~~ other manufacturer, distributor, or dispenser;

- (7) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled drug, substance, or marijuana, whether or not there exists an agency relationship;
- (8) "Department," the Department of Health created by chapter 1-43;
- (9) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, ~~and a dispenser is one who dispenses;~~
- (10) "Distribute," to deliver a controlled drug, substance, or marijuana. ~~A distributor is a person who delivers a controlled drug, substance, or marijuana;~~
- (11) "Hashish," the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis;
- (12) "Imprisonment," imprisonment in a state correctional facility unless the penalty specifically provides for imprisonment in the county jail;
- (13) "Kratom," any part of the leaf of the plant *Mitragyna speciosa*;
- (14) "Kratom product," a food as defined in § 39-4-1, or dietary ingredient, containing kratom;
- (15) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound does not include a practitioner who dispenses or compounds prescription orders for delivery to the ultimate consumer;
- ~~(14)~~(16) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant, or a drug product approved by the United States Food and Drug Administration. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;
- ~~(15)~~(17) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - (a) Opium, coca leaves, or opiates;
  - (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

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

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

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

~~(17)~~(19) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds thereof;

~~(18)~~(20) "Person," any corporation, association, limited liability company, partnership, or one or more individuals;

~~(19)~~(21) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;

~~(20)~~(22) "Practitioner,":

- (a) A physician licensed pursuant to chapter 36-4, a physician assistant licensed pursuant to chapter 36-4A, a dentist licensed pursuant to chapter 36-6A, an optometrist licensed pursuant to chapter 36-7, a podiatrist licensed pursuant to chapter 36-8, a certified registered nurse anesthetist licensed pursuant to chapter 36-9, a certified nurse practitioner or certified nurse midwife licensed pursuant to chapter 36-9A, a pharmacist licensed pursuant to chapter 36-11, or a veterinarian licensed pursuant to chapter 36-12;
- (b) A government employee acting within the scope of employment; and
- (c) A person permitted by a certificate issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;

~~(21)~~ ~~"Prescribe,"~~ ~~(23)~~ "Prescription," an order of a practitioner for a controlled drug or substance;

~~(22)~~(24) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;

~~(23)~~(25) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household, or for administration to an animal owned by the person or by a member of the person's household.

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

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

- (1) To knowingly sell or distribute a kratom product to a person under the age of twenty-one;
- (2) The purchase or attempt to purchase, the receipt or attempt to receive, the possession, or the consumption of a kratom product by a person under the age of twenty-one; ~~and or~~
- (3) To purchase a kratom product on behalf of, or to give a kratom product to, any person under the age of twenty-one, unless the purchaser is a parent or guardian of the person under the age of twenty-one.

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

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

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

- (1) Contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the alkaloid composition of the product;
- (2) Contains synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetic alkaloid or synthetically derived compound from the Mitragyna speciosa plant;
- (3) Contains a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by this chapter;
- (4) Is mixed or packed with a non-kratom substance that affects the quality or strength of the kratom product, rendering the product injurious to a customer;
- (5) Does not include on its package or label the recommended serving size of the kratom product, a recommended number of servings that can be safely consumed in a twenty-four-hour period, and a list of servings per container;
- (6) Does not include on its package or label the amount of mitragynine and 7-hydroxymitragynine contained in the kratom product; or
- (7) Does not include on its package or label the following warning statement: "Consult a licensed, qualified healthcare professional before consuming this product. Not for use by women who are pregnant, nursing, or trying to become pregnant."

A violation of this section is a Class 2 misdemeanor.

**Signed February 25, 2025**

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