**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: “AN ACT CREATING THE KRATOM CONSUMER PROTECTION ACT; PROVIDING KRATOM PRODUCT RESTRICTIONS; PROVIDING LABELING REQUIREMENTS; PROVIDING CIVIL PENALTIES; PROVIDING FOR MISDEMEANOR AND FELONY CONVICTIONS; AND PROVIDING DEFINITIONS.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Kratom Consumer Protection Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Alkaloid" means a compound found in the Mitragyna speciosa leaf including but not limited to mitragynine, paynantheine, speciociliatine, or speciogynine.

(2) "Attractive to children" means a kratom product manufactured in the shape of cartoons or animals or manufactured or packaged in a form that bears any reasonable resemblance to an existing candy product such that a kratom product could be mistaken for an existing candy product, especially by children.

(3) "Kratom" means the plant Mitragyna speciosa or any part of that plant.

(4) "Kratom extract" means a substance or compound obtained by extraction of the Mitragyna speciosa leaf that is intended for ingestion and contains no more than trace amounts of Mitragyna speciosa and contains other alkaloids of the kratom plant, and which does not contain any controlled substances or levels of residual solvents higher than is allowed in the United States Pharmacopeia 467.

(5) "Kratom processor" means a person who:

(a) manufactures, distributes, or warehouses a kratom product; or

(b) advertises, represents, or holds oneself out as manufacturing, distributing, or warehousing a kratom product.

(6) "Kratom product" means a finished article containing:

(a) any part of a leaf of the Mitragyna speciosa in fresh, dehydrated, or dried form; or

(b) a kratom extract.

(7) "Retailer" means a person that sells or advertises itself as selling kratom products directly to consumers. The term does not include a facility that:

(a) prepares a kratom product onsite;

(b) offers onsite sale of that kratom product;

(c) has a restaurant license in the jurisdiction where they operate; and

(d) is exempt from labeling provisions provided by [section 4], including as a kratom processor or retailer.

(8) "Semi-synthetic alkaloid" means a substance derived from an alkaloid naturally occurring in kratom that has been chemically altered through chemical reactions, such as but not limited to oxidation, reduction, acetylation, or other processes to change the structure or pharmacological activity of the naturally occurring kratom alkaloid. This includes but is not limited to the synthesis of 7-hydroxymitragynine when produced by chemical alteration of mitragynine.

(9) "Synthesized material" means an alkaloid, metabolite of an alkaloid, or alkaloid derivative that has been created by chemical synthesis or biosynthetic means, including but not limited to fermentation, recombinant techniques, yeast derived, enzymatic techniques, or oxidation, rather than traditional food preparation techniques, such as heating or extracting.

(10) "Synthetic kratom-like compound" means a substance that is not found naturally in the Mitragyna speciosa plant and is created entirely through laboratory synthesis to mimic the pharmacological effects of kratom alkaloids.

NEW SECTION. **Section 3. Kratom product restrictions.** A processor or a retailer may not prepare, distribute, sell, or offer for sale a kratom product that:

(1) contains a synthesized material, semi-synthetic alkaloid, or synthetic kratom-like compound;

(2) contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 2% of total alkaloids in a container;

(3) contains or is adulterated with a dangerous, poisonous, or otherwise deleterious non-kratom ingredient, including but not limited to a substance listed as a controlled substance under state or federal law;

(4) is combustible or intended to be used for vaporization or as an injectable;

(5) is manufactured in a manner that is attractive to children; or

(6) contains levels of residual solvents higher than is allowed in the United States Pharmacopeia 467.

NEW SECTION. **Section 4. Labeling requirements.** A kratom product produced, manufactured, distributed, offered, or sold must have a label that clearly and conspicuously provides all the following information on each retail package:

(1) a statement against the use by individuals who are under 18 years or age, who are pregnant, or who are breastfeeding;

(2) a recommendation to consult a health care professional prior to use;

(3) a statement that kratom may be habit forming;

(4) the following statement: "These statements have not been evaluated by the U.S. Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.";

(5) the name and the address of the place of business of the manufacturer or distributor; and

(6) directions for use that include the following:

(a) a recommended amount of kratom product per serving that is:

(i) clearly described on the label of product forms such as capsules, gummies, prepackaged single serving units, and similar product forms; or

(ii) a clear instruction or a mark on the package or container that clearly informs the consumer regarding the recommended serving size for beverages, liquids, or loose powders;

(b) a recommended maximum number of servings that should be consumed in a 24-hour period;

(c) a listing of the servings per container;

(d) a listing of all ingredients in the kratom product; and

(e) the amount per serving of each of the following kratom compounds quantified as a milligram amount or a not to exceed amount:

(i) Mitragynine; and

(ii) 7-hydroxymitragynine.

NEW SECTION. **Section 5. Enforcement -- civil liability.** (1) A retailer is prohibited from knowingly selling, distributing, advertising, representing, or holding any kratom product that is noncompliant with the requirements of [sections 1 through 5]. A retailer knowingly selling any kratom product in this state is subject to the following penalties:

(a) a fine of $5,000 for each noncompliant product;

(b) a fine of $10,000 for a second violation of the same noncompliant product;

(c) for a third violation for the sale of a noncompliant product, a fine of $40,000, and the retailer shall be prohibited from the sale of any kratom product in this state for a period of 2 years.

(2) A kratom processor is prohibited from knowingly selling, distributing, advertising, representing, or holding any kratom product in this state that is noncompliant with the requirements of [sections 1 through 5]. A processor knowingly selling any kratom product that is noncompliant with the provisions of [sections 1 through 5] is subject to the following penalties:

(a) a fine of $20,000 for each noncompliant product offered for sale;

(b) for a second violation, a fine of $30,000 or each noncompliant product offered for sale, and the processor shall be prohibited from selling any kratom product in this state for 2 years;

(c) for a third violation, the processor shall be prohibited from selling any kratom product in this state for 10 years.

(3) Kratom products may not be sold in this state to a person who is under 18 years of age.

(4) A person who purposely or knowingly violates [sections 1 through 5] commits a misdemeanor, punishable as provided in Title 45.

(5) A person who purposely or knowingly commits a second or subsequent violation of [sections 1 through 5] within 2 years after the initial violation commits a misdemeanor, punishable as provided in Title 45.

(6) A retailer or kratom processor who purposely or knowingly manufactures, delivers, holds, offers

for sale, distributes, or sells a kratom product that contains any controlled substance listed in this state or in federal law is guilty of a felony as provided in Title 45.

(7) A person who purposely or knowingly manufactures, delivers, holds, offers for sale, distributes, or sells a kratom product that contains a synthesized material, semi-synthetic alkaloid, or synthetic kratom-like compound commits a misdemeanor, punishable as provided in Title 45.

(8) A person injured by a violation of [sections 1 through 5] may bring a civil action in a court of competent jurisdiction to obtain injunctive relief, damages, or any other appropriate remedy for a violation of [sections 1 through 5]. In the case of any successful action to enforce any liability under this section, the filing party is automatically entitled to an award of $10,000 and reasonable attorney fees.

(9) A retailer does not violate this section if it is shown by a preponderance of the evidence that the retailer relied in good faith upon the representations of a processor of food represented to be a kratom product.

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as a new chapter in Title 16, and the provisions of Title 16 apply to [sections 1 through 5].

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