

REFERENCE TITLE: kratom products; enforcement; financial institutions

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1339

Introduced by
Senator Borrelli

AN ACT

AMENDING SECTIONS 36-795, 36-795.01, 36-795.02 AND 36-795.03, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-795.04; RELATING TO KRATOM PRODUCTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 36-795, Arizona Revised Statutes, is amended to
3 read:
4 36-795. Definitions
5 In this article, unless the context otherwise requires:
6 ~~2.~~ 1. "Food" means a food, food product, food ingredient, dietary
7 ingredient, dietary supplement or beverage for human consumption.
8 ~~3.~~ 2. "Kratom product" means a food product or dietary ingredient
9 containing any part of the leaf of the plant mitragyna speciosa.
10 ~~1.~~ 3. "~~Dealer~~ RETAILER":
11 (a) Means a person that sells, prepares or maintains kratom
12 products or that advertises, represents or holds itself out as selling,
13 preparing or maintaining kratom products.
14 (b) Includes a manufacturer, wholesaler, store, restaurant, hotel,
15 catering facility, camp, bakery, delicatessen, supermarket, grocery store,
16 convenience store, nursing home or food or drink company.
17 Sec. 2. Section 36-795.01, Arizona Revised Statutes, is amended to
18 read:
19 36-795.01. Kratom product disclosure; preparing,
20 distributing, selling or exposing for sale
21 without disclosure prohibited
22 A. A ~~dealer~~ RETAILER that prepares, distributes, sells or exposes
23 for sale a food that is represented to be a kratom product shall disclose
24 on the product label the factual basis on which that representation is
25 made.
26 B. A ~~dealer~~ RETAILER may not prepare, distribute, sell or expose
27 for sale a food represented to be a kratom product that does not conform
28 to the disclosure required by this section.
29 Sec. 3. Section 36-795.02, Arizona Revised Statutes, is amended to
30 read:
31 36-795.02. Kratom product; adulteration; contamination; sales
32 to minors prohibited
33 A. A ~~dealer~~ RETAILER may not prepare, distribute, sell or expose
34 for sale any of the following:
35 1. A kratom product that is adulterated with a dangerous nonkratom
36 substance. A kratom product is adulterated with a dangerous nonkratom
37 substance if the kratom product is mixed or packed with a nonkratom
38 substance and that substance affects the quality or strength of the kratom
39 product to such a degree as to render the kratom product injurious to a
40 consumer.
41 2. A kratom product that is contaminated with a dangerous nonkratom
42 substance. A kratom product is contaminated with a dangerous nonkratom
43 substance if the kratom product contains a poisonous or otherwise
44 deleterious nonkratom substance, including any controlled substance
45 prescribed by chapter 27 of this title.

1 3. A kratom product containing a level of 7-hydroxymitragynine in
2 the alkaloid fraction that is greater than two percent of the alkaloid
3 composition of the product.

4 4. A kratom product containing any synthetic alkaloid, including
5 synthetic mitragynine, synthetic 7-hydroxymitragynine or any other
6 synthetically derived compounds of the kratom plant.

7 5. Any kratom-containing product that does not include on its
8 package or label the amount of mitragynine and 7-hydroxymitragynine
9 contained in the product.

10 B. A ~~dealer~~ RETAILER may not distribute, sell or expose for sale a
11 kratom product to an individual under eighteen years of age.

12 Sec. 4. Section 36-795.03, Arizona Revised Statutes, is amended to
13 read:

14 36-795.03. Violations; classification; prohibition

15 A. A ~~dealer~~ RETAILER that violates section 36-795.01, subsection B
16 or section 36-795.02 is guilty of a class 2 misdemeanor.

17 B. In addition to and distinct from any other remedy at law or
18 equity, a person aggrieved by a violation of section 36-795.01, subsection
19 B or section 36-795.02, subsection A may bring a private cause of action
20 in a court of competent jurisdiction for damages resulting from that
21 violation, including economic, noneconomic or consequential damages.

22 C. A ~~dealer~~ RETAILER does not violate section 36-795.01, subsection
23 B or section 36-795.02, subsection A if the court finds by a preponderance
24 of the evidence that the ~~dealer~~ RETAILER relied in good faith on the
25 representation of a manufacturer, processor, packer or distributor that
26 the food was a kratom product.

27 D. A STATE AGENCY MAY NOT TAKE ANY ENFORCEMENT ACTION, INCLUDING
28 SEIZURE OF PRODUCT, AGAINST A PERSON THAT SELLS PRODUCTS CONTAINING KRATOM
29 OR ITS CONSTITUENT ALKALOIDS WHEN THE PRODUCTS ARE OFFERED FOR SALE AS A
30 FOOD OR DIETARY INGREDIENT, UNLESS THE UNITED STATES DRUG ENFORCEMENT
31 ADMINISTRATION CLASSIFIES KRATOM OR ITS CONSTITUENT ALKALOIDS AS A
32 SCHEDULE I SUBSTANCE.

33 Sec. 5. Title 36, chapter 6, article 10, Arizona Revised Statutes,
34 is amended by adding section 36-795.04, to read:

35 36-795.04. Financial institutions; service to retailers

36 A FINANCIAL INSTITUTION, SERVICE OR ENTITY, INCLUDING A BANK, CREDIT
37 UNION, CREDIT CARD NETWORK OR CREDIT CARD PROCESSING COMPANY, MAY NOT
38 REFUSE OR TERMINATE SERVICE TO A RETAILER BECAUSE THE RETAILER ENGAGES IN
39 PREPARING, DISTRIBUTING OR SELLING KRATOM PRODUCTS. IF A FINANCIAL
40 INSTITUTION, SERVICE OR ENTITY REFUSES OR TERMINATES SERVICE TO A RETAILER
41 BECAUSE THE RETAILER ENGAGES IN PREPARING, DISTRIBUTING OR SELLING KRATOM
42 PRODUCTS, THE FINANCIAL INSTITUTION, SERVICE OR ENTITY SHALL REESTABLISH
43 OR ACCEPT SERVICE WITH THE RETAILER ON REQUEST OF THE RETAILER, REGARDLESS
44 OF WHETHER THE RETAILER APPEARS ON ANY REPORT GENERATED BY A FINANCIAL
45 INSTITUTION DATA MATCH PROGRAM OR SYSTEM.