



ALAN WILSON  
ATTORNEY GENERAL

December 10, 2025

**VIA EMAIL**

William Britt, General Counsel  
South Carolina Department of Public Health  
[BrittWD@dph.sc.gov](mailto:BrittWD@dph.sc.gov)

Dear Mr. Britt:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion on what responsibilities and what authority, if any, the Department of Public Health (the "Department") has under the Kratom Consumer Protection Act (the "Act").

**Law/Analysis**

Kratom is a tropical tree (*mitragyna speciosa*) that is native to Southeast Asia. FDA and Kratom, <https://www.fda.gov/news-events/public-health-focus/fda-and-kratom>. Kratom is used "to self-treat conditions such as pain, coughing, diarrhea, anxiety and depression, opioid use disorder, and opioid withdrawal." *Id.* There are no prescription or over-the-counter drug products containing kratom or its known alkaloids that are legally on the market in the U.S. *Id.*

The Kratom Consumer Protection Act was codified in 2025 in Article 20 of Chapter 53 of Title 44 of the South Carolina Code of Laws. S.C. Code Ann. §§ 44-53-2010, *et seq.* (Supp. 2025); Act No. 35, 2025 SC Acts 174. The Act consists of a scant four sections. Kratom is defined in the Act as "any part of the tropical evergreen plant *mitragyna speciosa*." S.C. Code Ann. § 44-53-2010(3). Section 44-53-2010(1) defines "Department" as the "South Carolina Department of Public Health." S.C. Code Ann. § 44-53-2010(1). Notably, this definition is the only time the term Department is used in the Act. Section 44-53-2020 makes it unlawful for a kratom processor or retailer to distribute kratom to individuals under 21 years old, to manufacture or distribute kratom containing certain chemicals, or to display kratom products in such a way that they could be accessed by individuals under 21 years old. S.C. Code Ann. § 44-53-2020. Section 44-53-2030 provides labeling requirements for kratom products, S.C. Code Ann. § 44-53-2030, and Section 44-53-2040 provides that a retailer found to be in violation of Sections 44-53-2020 or 44-53-2030 is subject to a civil penalty, S.C. Code Ann. § 44-53-2040. The Act does not explicitly give any entity the authority to levy these civil penalties or to pursue these penalties in court. On its face, the Kratom Consumer Protection Act does not make the Department of Public Health responsible for anything, including the enforcement of the Act, nor does it give the Department of Public Health, or any entity, any authority.

Because the Act does not explicitly give the Department, or any entity, any responsibilities or authority, we will have to turn to the rules of statutory interpretation. The primary of statutory interpretation “is to ascertain and give effect to the intent of the legislature.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “[W]here a statute is ambiguous, [courts] must construe the terms of the statute.” Wade v. Berkeley Cnty., 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015).

The Act does not explicitly define what entity is responsible for enforcing the Act nor does it give the Department, or any entity, any tools for enforcing the Act. As stated above, the only time the term Department is used in the Act is when the term is defined in Section 44-53-2010(1). While it is possible that, because the only entity mentioned in the Act is the Department, a court could construe the mention of the Department in Section 44-53-2010(1) as a designation of enforcement responsibility in an effort to give the Act “a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers,” the Office does not believe this is likely. Moreover, even if a court does so, it is not clear what authority the Department would have under the Act.

In the absence of explicit statutory language regarding enforcement responsibility, we turn to the Act’s legislative history. The legislative history of the Act does not provide any clarity. At no point in the legislative process was the Act’s enforcement mentioned or debated. The Act was introduced as Senate Bill 221 of the 126<sup>th</sup> Session of the South Carolina General Assembly. The bill was read the first time by the Senate and referred to the Senate Committee on Medical Affairs on January 15, 2025. 126<sup>th</sup> Session, South Carolina General Assembly, Senate Journal Jan. 15, 2025, page 10. On April 24, 2025, the Senate received the Report of the Senate Committee on Medical Affairs. Id., Senate Journal April 24, 2025, page 21. The Senate, in line with the Committee’s Report, amended the bill and gave the bill a second reading. Id. The Senate Medical Affairs Committee’s amendment removed the original subsection 44-53-2020(A)(2)(c), which dealt with the amount of 7-hydroxymitragynine in the alkaloid fraction of kratom products, added the word fully to what was then subsection 44-53-2020(A)(2)(d) (now codified as subsection 44-53-2020(A)(2)(c)), and increased the civil penalties in Section 44-53-2040. Id., Senate Journal April 24, 2025, page 21. On April 25, pursuant to a unanimous consent request made on April 24, the bill was read a third time and sent to the House of Representative. Id., Senate Journal April 25, 2025, page 1.

On April 30, the bill was introduced in the House of Representatives, read the first time, and referred to the House Committee on Medical, Military, Public and Municipal Affairs. Id., House Journal April 30, 2025, page 108. On May 1, the House received the Report of the House Committee on Medical, Military, Public and Municipal Affairs. Id., House Journal May 1, 2025,

page 133. On May 6, the bill was taken up by the House. The bill was amended, in line with the Report of the House Committee on Medical, Military, Public and Municipal Affairs, to extend the bill's effective date from the date of the Governor's signature to sixty days after the Governor's signature. *Id.*, House Journal May 6, 2025, page 53. An amendment was then offered which would have amended Section 44-53-60 which regulates consumable hemp products. *Id.*, House Journal May 6, 2025, page 54. That amendment was ruled out of order and was not adopted. *Id.* The House of Representatives then gave the bill a second reading. *Id.*, House Journal May 6, 2025, page 55. On May 7, the House of Representatives read the bill a third time and returned it to the Senate with amendments. *Id.*, House Journal May 7, 2025, page 9. Also on May 7, the Senate concurred with the amendments made by the House of Representatives, and the bill was enrolled. *Id.*, Senate Journal May 7, 2025, page 18. The bill was then signed by Governor Henry McMaster on May 12, 2025. Act No. 35, 2025 SC Acts 174.

None of the amendments which were offered, or adopted, addressed what entity would enforce the Act. After reviewing videos of the consideration of the Act in subcommittee meetings, committee meetings, and on the floor of the House of Representatives and Senate, this Office found no discussion related to enforcement of the Act or the Department of Public Health. As a result, the legislative history does not provide any guidance on which entity the General Assembly intended to have enforcement responsibility for the Act.

Relatedly, the Act does not authorize any entity to do anything. Even if the Department is found to be responsible for enforcing the Act, the Act does grant authorization for the Department to carry out any actions typically associated with regulation and enforcement. For example, the Department is not authorized under the Act to conduct investigations; seize and examine potential contraband; issue subpoenas; issue licenses or permits; or to regulate the operations of kratom retailers.

Additionally, the Act does not authorize the Department, or any entity, to promulgate rules or regulations relating to kratom. In order to promulgate and enforce legislative or substantive regulations, an executive agency must possess specific delegated authority. Piedmont and Northern Railway Company v. Scott, 202 S.C. 207, 24 S.E.2d 353 (1943).

Section 44-53-2020(A)(2)(e) makes it unlawful to "prepare, manufacture, distribute, dispense, or sell any kratom product that . . . does not meet the labeling requirements established pursuant to Section 44-53-2030 and **a regulation promulgated to implement the provisions of that section.**" S.C. Code Ann. § 44-53-2020(A)(2)(e) (emphasis added). While this subsection contemplates the promulgation of a regulation, Section 44-53-2030 does not contain any language authorizing the promulgation of such a regulation. In the absence of explicit enabling language, it is unlikely that a court would find the simple mention of a possible regulation to constitute specific delegated authority to promulgate regulations pursuant to the Act.

Section 44-53-2040 allows for penalties when a retailer violates "Section 44-53-2020 or 44-53-2030, or a regulation promulgated pursuant to the provisions of this article," but the Act

does not provide explicit statutory authority to promulgate rules and regulations. It is unlikely that a court would find the mere mention of “a regulation promulgated pursuant to the provisions of this article” in a section regarding violations to constitute specific delegated authority to promulgate regulations pursuant to the Act.

As you point out in your letter, Section 44-53-10 states, “The Department shall adopt such measures as it may deem necessary to facilitate the enforcement of this chapter. It shall prepare rules and regulations with regard to the proper method of collecting and examining drugs.”<sup>1</sup> S.C. Code Ann. § 44-53-10 (2018). Section 44-53-10 authorizes the Department to adopt “measures . . . necessary to facilitate the enforcement” of Chapter 53, but the Department is only authorized to “prepare rules and regulations” which relate to “the proper method of collecting and examining drugs.” *Id.* Section 44-53-10 does not authorize the Department to promulgate rules and regulations regarding food. Section 44-53-20 defines the distinction between “food” and “drug.” S.C. Code Ann. § 44-53-20 (2018). A “Kratom product” is designated as a “food” by Section 44-53-20(5), so it does not appear that Section 44-53-10, standing alone, gives the Department authority to promulgate rules and regulations relating to kratom.

This Office is aware of no other statutory authority which could be construed as an enabling statute regarding regulations relating to the Act. Thus, it is the opinion of this Office that the Kratom Consumer Protection Act does not contain an enabling statute which would authorize the Department of Public Health, or any entity, to promulgate rules or regulations relating to the Act.

### **Conclusion**

The Kratom Consumer Protection Act mentions the Department of Public Health only once. It does not explicitly make the Department responsible for the enforcement of the Act nor does it give the Department explicit authority to promulgate regulations related to the Act. The Office believes it is unlikely that a court would interpret the mention of the Department in the definition as making the Department responsible for the enforcement of the Act. Additionally, the Office believes it is unlikely that a court would interpret the mention of violations of “a regulation promulgated pursuant to the provisions of this article” as the specific delegation of authority which would authorize the Department to promulgate rules or regulations relating to the Act.

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<sup>1</sup> Section 44-53-10 references the former Department of Health and Environmental Control. S.C. Code Ann. § 44-53-10 (2018). The Department of Health and Environmental Control was abolished and has been reorganized into the Department of Public Health and the Department of Environmental Services pursuant to Act No. 60, 2003 SC Acts 302. Section 14(C) of Act 60 states, “References to the names of agencies, departments, entities, or public officials changed by this act, to their duties or functions herein devolved upon other agencies, departments, entities, or officials, or to provisions of law consolidated with or transferred to other parts of the S.C. Code are considered to be and must be construed to mean appropriate references.” The Office believes that the reference to the Department of Health and Environmental Control in Section 44-53-10 should now be read as a reference to the Department of Public Health.

William Britt, General Counsel  
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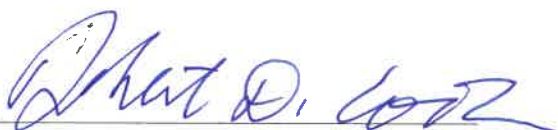
The General Assembly may need to amend the statute to provide clarity regarding which entity is responsible for enforcing the Act and what authority that entity has, including whether the enforcing entity may promulgate rules and regulations relating to the Act.

Sincerely,



David Leggett  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General Emeritus