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Testimony in Opposition to HB 2400
to the House Committee on Federal and State Affairs
by Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
January 30, 2020

Good morning Chairman Barker and members of the Committee. I am Kenneth Titus and I am the Chief Counsel for the Kansas Department of Agriculture (KDA). I appreciate the opportunity to provide testimony in opposition to House Bill 2400.

HB 2400 would require KDA to regulate the sale and production of kratom or kratom products. KDA cannot support this bill as written because it does not create a sufficient regulatory framework for protecting the public and funding such regulation. It is also difficult to discern what the ultimate goal of this bill is from a regulatory standpoint.

HB 2400 would require KDA to adopt rules and regulations to enforce the Kratom Consumer Protection Act under existing authority in the Kansas Food, Drug and Cosmetic Act (K.S.A. 65-619 *et seq.*) (Kansas FDCA). This is a problematic approach for several reasons. Kratom, as marketed, often is required to be properly classified as a drug. Other labeling claims render Kratom as a dietary supplement under the Federal Food, Drug and Cosmetic Act (Federal FDCA). The Kansas FDCA, based historically on the Federal FDCA, has not adopted the federal dietary supplement provisions. KDA has adopted KAR 4-28-2, which contains requirements for dietary supplements as a subcategory of food, but those requirements do not address the apparent intent of the bill.

Kratom is typically advertised to have medicinal benefits and is not approved by the United States Food and Drug Administration (FDA) and hence, in most cases is illegal as a food additive under both federal and state law. Further, if drug claims are made, the product becomes a drug, which, in Kansas, is typically regulated jointly with the Kansas Board of Pharmacy.

KDA is not equipped to handle the regulatory authority over a drug with the technical requirements specified in the bill. A state agency that directly deals with drugs and compounding dangerous materials should lead enforcement of this bill. HB 2400 has very specific composition requirements and requires considerable professional expertise, which KDA lacks, to determine if a "non-kratom substance…affects the quality or strength of a kratom product to such a degree as to render the kratom product harmful if consumed."

An additional problem with HB 2400 is that it does not explicitly provide for a licensing regime. Without licensing all kratom "dealers," it will be difficult to know where kratom is being sold or produced. Further, without the funding from licensing, state general funds may ultimately be necessary to enforce the provisions of this act. Enforcement of this bill would be further complicated because we are currently unaware of any kratom producers in the state, so the enforcement provisions of Section 2 could not be used. If a dealer selling out-of-state product is unaware that they are selling adulterated kratom, then there is no person to enforce the violations against. Since kratom is currently only imported in interstate commerce, regulation should be left to the FDA.

KDA respectfully requests that the committee oppose HB 2400 because, as written, it does not properly fit within KDA's authority under the Kansas FDCA and may result in a violation of federal law if kratom is changed from a drug to a food or food additive.