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Fiscal Note

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Prime Sponsors: Sen. Ginal; Coram Bill Status: Senate Finance
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Bill Topic: REGULATION OF KRATOM PROCESSORS

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [ ] Local Government
[ ] State Transfer [ ] Statutory Public Entity

The bill requires the Department of Revenue to regulate kratom processors. It increases state revenue and expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$375,127 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 22-120

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund).

## **Summary of Legislation**

The bill creates a program in the Department of Revenue (DOR) to regulate kratom processors, which are people who sell, prepare, or maintain products made from the plant *mitragyna speciosa*. Beginning January 1, 2023, each kratom processor must register with DOR and pay an annual registration fee. The bill specifies additional requirements and restrictions by which kratom processors must abide in order to prepare or sell kratom products. Any kratom processor who violates these restrictions is subject to a fine of \$500 for the first offense, \$2,500 for a second offense, and \$5,000 for each subsequent offense, and the department may revoke their registration.

Kratom processors are prohibited from distributing, selling, or offering to sell kratom products to anyone under 18 years of age. They are also required to notify DOR of any adverse event for one of their products, and must comply with any subsequent investigation. DOR must promulgate rules as necessary for the administration of the registration program.

## **Assumptions**

Kratom processors are largely unregulated in Colorado, and the number of total businesses that qualify as kratom processors under the bill is unknown. Utah has a similar program, and registered 80 kratom processors in the program's first year. Adjusting this number upwards to account for state population differences, the fiscal note assumes that 200 businesses will apply for registration as a kratom processor, with 160 applying in FY 2022-23 and 40 applying in FY 2023-24. To the extent that the number of registrations differs from this assumption, state revenue and expenditures will differ from the estimate below.

The fiscal note also assumes this program will be cash-funded. See Technical Note.

## **State Revenue**

The bill increases state revenue by \$561,672 in FY 2022-23 and \$589,756 in FY 2023-24 from kratom processor registration fees, as described below.

**Fee impact on kratom processors.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, and the fiscal note assumes that fees will be set at a level that recoups the bill's implementation costs. Actual fees will be set administratively by DOR based on estimated program costs and the estimated number of registrations subject to the fee. Table 2 below identifies the bill's fee impact.

**Fine revenue.** To the extent that kratom processors incur fines for violations, state revenue will increase. The fiscal note assumes that kratom processors will generally abide by the law and that any fine revenue will be minimal.

**Table 2  
Fee Impact on Kratom Processors**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
<b>FY 2022-23</b>	Initial Registration	\$3,510	160	\$561,672
	<b>FY 2022-23 Total</b>			<b>\$561,672</b>
<b>FY 2023-24</b>	Initial Registration	\$3,510	40	\$140,418
	Registration Renewal	\$2,808	160	\$449,338
	<b>FY 2023-24 Total</b>			<b>\$589,756</b>

### State Expenditures

The bill increases state expenditures in DOR by \$439,303 in FY 2022-23 and \$561,672 in FY 2023-24 from the General Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3  
Expenditures Under SB 22-120**

	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Department of Revenue</b>		
Personal Services	\$235,422	\$313,896
Operating Expenses	\$6,075	\$7,425
Capital Outlay Costs	\$37,200	-
Fleet Vehicle Leases	\$7,717	\$9,260
Legal Services	\$88,713	\$147,855
Centrally Appropriated Costs <sup>1</sup>	\$64,176	\$83,236
FTE – Personal Services	4.3 FTE	5.5 FTE
FTE – Legal Services	0.5 FTE	0.8 FTE
<b>Total Cost</b>	<b>\$439,303</b>	<b>\$561,672</b>
<b>Total FTE</b>	<b>4.8 FTE</b>	<b>6.3 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Revenue.** The bill will increase expenditures for the department to process applications, promulgate rules, establish a new testing program for kratom, investigate registrations and complaints, perform compliance checks, and enforce standards established by the bill or by rule. Based on the assumed size of the regulated population, this requires 5.5 FTE for registration administration, registration investigations, field enforcement, and data analysis. Standard operating and capital outlay costs are included, and costs in FY 2022-23 account for the bill's effective date and the General Fund pay date shift.

- **Fleet vehicle leases.** The department will lease two field enforcement investigator vehicles from the state fleet, which is managed by the Department of Personnel and Administration. Each vehicle is estimated at \$4,630 annually.
- **Legal services.** DOR requires 900 hours of legal services in FY 2022-23 and 1,500 hours in subsequent years to conduct extensive rulemaking for the program, to handle administrative cases that arise, and general counsel. Legal services are provided by the Department of Law at a rate of \$98.57 per hour. The additional hours equate to 0.5 FTE in FY 2022-23 and 0.8 FTE in FY 2023-24.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

### **Other Budget Impacts**

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

### **Technical Note**

While the bill does not create a cash fund for the program, the fiscal note assumes the program will be cash funded as is customary with state regulatory programs that assess a registration fee.

### **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to conduct occurring on or after the bill's effective date.

### **State Appropriations**

For FY 2022-23, the bill requires an appropriation of \$375,127 to the Department of Revenue from the General Fund, and 4.3 FTE. Of this, \$88,713 is reappropriated to the Department of Law with 0.5 FTE, and \$7,717 is reappropriated to the Department of Personnel and Administration.

### **Departmental Difference**

The Department of Revenue estimates the regulatory program to require \$1.1 million and 11.6 FTE in FY 2022-23 and \$1.4 million and 15.0 FTE in FY 2023-24, in order to develop expertise in a new office focused on unique subject matter. The fiscal note differs from these estimates based on assumptions of a smaller regulated population and a simpler registration-based regulatory structure where enforcement is complaint-based.

**State and Local Government Contacts**

Information Technology  
Personnel and Administration

Law  
Revenue