

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

Senate Bill 220

By Senators Woodrum, Deeds, Rucker, Stuart,
Hamilton, and Trump

[Originating in the Committee on the Judiciary;
reported on February 24, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §19-12E-12; to amend said code by adding thereto a new article, designated
3 §19-12F-1, §19-12F-2, §19-12F-3, §19-12F-4, §19-12F-5, §19-12F-6, §19-12F-7, §19-
4 12F-8, §19-12F-9, §19-12F-10, and §19-12F-11; and to amend said code by adding
5 thereto a new article, designated §60-10-1 and §60-10-2, all relating to further regulation of
6 hemp-derived cannabinoid products and regulation of kratom; creating the Hemp-Derived
7 Cannabinoid Regulation Act; creating the Select Plant-Derived Regulation Act; making
8 legislative findings and declaring the purpose of the acts; defining terms; requiring licenses
9 to process, distribute, and sell regulated products; vesting regulatory authority in the
10 Commissioner of Agriculture and the Alcohol Beverage Control Commission; granting
11 legislative and emergency rule-making authority to the Commissioner of Agriculture and
12 the Alcohol Beverage Control Commissioner; limiting lawful sale of regulated products to
13 persons 21 years of age or older; requiring age verification for internet sales and sales not
14 made face-to-face; creating a 15 percent tax on retail sales to be collected by the Tax
15 Commissioner quarterly; authorizing the Alcohol Beverage Control Commissioner to
16 enforce regulation of the product; and creating criminal offenses related to regulated
17 products and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-12. Hemp-derived Cannabinoid Regulation Act.

1 (a) This section shall be known as the Hemp-derived Cannabinoid Regulation Act.

2 (b) The Legislature finds that hemp-derived cannabinoid products can be regulated so as
3 not to interfere with the strict regulation of controlled substances in this state. The purpose of the
4 act is to allow limited, regulated access to naturally occurring hemp-derived cannabinoid products

5 for adults 21 years of age and older.

6 (c) As used in this section:

7 (1) "Adulterated" means modified, altered, weakened, lessened, strengthened, or adapted
8 as to purity by the addition of a foreign substance.

9 (2) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control
10 Commissioner or his or her designees.

11 (3) "Commissioner" means the Commissioner of Agriculture or his or her designees.

12 (4) "Contaminated" means made impure and unsafe by biological, chemical, or physical
13 additives.

14 (5) "Department" means the West Virginia Department of Agriculture.

15 (6) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic, and
16 unadulterated substance as follows:

17 (A) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of
18 three tenths of one percent (0.3 percent) or less on a dry weight basis;

19 (B) Delta-8 tetrahydrocannabinol;

20 (C) Delta-10 tetrahydrocannabinol;

21 (D) Hexahydrocannabinol;

22 (E) Tetrahydrocannabiphorol (THCp); and

23 (F) Tetrahydrocannabivarin (THCv).

24 (7) "Manufacturer" means a person or entity which grows industrial hemp.

25 (8) "Processor" means a person or entity that processes compounds or converts hemp-
26 derived cannabinoids into a hemp-derived cannabinoid product and distributes, sells, or offers for
27 sale, hemp-derived cannabinoid products in this state on a wholesale basis to a retailer.

28 (9) "Retailer" means a person or entity that distributes, offers for sale, or sells hemp-
29 derived products to persons for personal consumption.

30 (d) Any person manufacturing, processing, distributing, offering for sale, or selling hemp-
31 derived cannabinoid products in this state shall be permitted by the commissioner and otherwise
32 authorized to do business in this state. The commissioner may issue manufacturer, processor and
33 retailer permits.

34 (e) The Commissioner of Agriculture shall propose legislative rules for promulgation in
35 accordance with §29A-3-1 et seq. of this code that include, but are not limited to:

36 (1) Issuing permits to persons who wish to manufacture, handle, process, offer for sale, or
37 sell hemp-derived cannabinoid products;

38 (2) Regular sampling and testing of hemp-derived cannabinoid products to determine
39 purity levels;

40 (3) Supervision of the hemp-derived cannabinoid products during their manufacture,
41 processing, and sale;

42 (4) Assessment of fees that are commensurate with the costs of the Commissioner of
43 Agriculture's activities in permitting, testing, and overseeing the regulation of hemp-derived
44 products;

45 (5) Approving the manufacture, production, sale, processing, distributing, and transport of
46 hemp-derived cannabinoid products;

47 (6) Developing standards for the labeling of hemp-derived cannabinoid products, including
48 but not limited to, a statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT
49 YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION"
50 and "USE OF THIS PRODUCT MAY CAUSE DRUG TESTING TO BE POSITIVE FOR THC";

51 (7) Developing requirements that hemp-derived cannabinoid products for retail sale be
52 available only in a restricted access area and not accessible to the general public;

53 (8) Developing restrictions on advertising and marketing of hemp-derived cannabinoid
54 products, including, but not limited to, precluding advertising of unapproved, illegal products in
55 newspapers or on radio or television;

56 (9) Developing prohibitions on child targeted packaging and shapes and forms of products;

57 (10) Developing administrative rules, procedures, and sanctions for violations of this
58 section.

59 (11) Any other rules and procedures necessary to carry out the purposes of this article.

60 (f) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner may,
61 pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as are
62 necessary to effectuate the purposes of this article.

63 (g) Any website owned, managed, or operated by a person who manufactures, processes,
64 distributes, offers for sale, or sells hemp-derived cannabinoid products to persons in this state
65 shall employ a neutral age-screening mechanism that verifies that the user is at least 21 years old.
66 The mechanism may include an age-gate, age-screen, or other age-verification mechanism
67 approved by the commissioner.

68 (h) Any person offering to distribute or sell hemp-derived cannabinoid products to persons
69 in this state by means other than a direct in-person transaction shall employ an age verification
70 mechanism approved by the commissioner.

71 (i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to
72 15 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the
73 privilege of engaging in the business of selling hemp-derived cannabinoid products.

74 (1) For the privilege of engaging or continuing within this state in the business of the retail
75 sale of hemp-derived cannabinoid products, as defined in subdivision (6), subsection (a) of this
76 section, there is hereby levied upon and collected from every person exercising the privilege a
77 privilege tax.

78 (2) The rate of tax imposed by this subsection is 15 percent of the retail sales price of
79 hemp-derived cannabinoid products sold during the reporting period, depending upon the
80 person's method of accounting for federal income tax purposes. The tax imposed by this

81 subsection shall not be added by the retailer as a separate charge or line item on any sales slip,
82 invoice, receipt, other statement, or memorandum of the price paid by a customer.

83 (3) Every person subject to the tax imposed by this subsection shall make quarterly
84 payments under this section for each calendar quarter at the rate prescribed in this subsection on
85 the gross receipts received or accrued for the calendar quarter, depending upon the person's
86 method of accounting for federal income tax purposes. The tax shall be due and payable on the
87 20th day of January, April, July, and October for the preceding calendar quarter. When the
88 payment of tax is due, the person shall file a tax return in a form prescribed by the Tax
89 Commissioner. The Tax Commissioner may require such forms, schedules, and returns and
90 impose such filing and remittance requirements that are necessary or convenient for the efficient
91 administration of taxes imposed by this subsection.

92 (4) The taxes imposed by this subsection shall be paid to the Tax Commissioner by
93 electronic funds transfer, unless electronic payment is prohibited by state or federal law. Tax
94 returns required by this subsection shall be filed electronically with the Tax Commissioner.

95 (5) If any retailer does not renew its permit, relinquishes its permit, has its permit to operate
96 suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products then any
97 tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 et seq. of this
98 code, shall become due and payable immediately and the retailer shall make a final return or
99 returns and pay any tax which is due within 30 days of no longer selling the product or after not
100 renewing its permit, relinquishes its permit, has its permit to operate suspended or revoked, or
101 otherwise ceasing business. The unpaid amount of any tax is a lien upon the property of the
102 retailer and of its owners.

103 (6) All money received from the tax imposed under this subsection, including any interest
104 and additions to tax paid under §11-10-1 et seq. of this code, less the amount of any refunds, shall
105 be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

106 (7) Persons subject to the tax imposed by this subsection shall provide to the Tax
107 Commissioner any information required by the Tax Commissioner to administer, collect, and
108 enforce the tax imposed by this subsection.

109 (8) Notwithstanding any provision of §11-10-1 et seq. of this code or of this section to the
110 contrary, the Tax Commissioner, and the commissioner may enter into written agreements
111 pursuant to which the Tax Commissioner shall disclose to designated employees of the
112 department, whether a particular retailer is in good standing with the Tax Commissioner, and the
113 commissioner shall disclose to designated employees of the Tax Commissioner information a
114 retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant to
115 a written agreement shall remain confidential in the hands of the receiver and shall not be
116 disclosable under §29B-1-1 et seq. of this code. To the extent feasible, this information should be
117 shared or exchanged electronically.

118 (9) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1
119 et seq. of this code, any procedural, interpretive, or legislative rules, including emergency rules, as
120 the Tax Commissioner considers necessary or convenient for the efficient administration of taxes
121 imposed by this subsection.

122 (A) Funds from the tax imposed by the provisions of subdivision (1) of this subsection and
123 deposited in the Agricultural Fees Fund, shall be divided and deposited as follows:

124 (i) Twenty percent shall be transferred to the Fight Substance Abuse Fund created by
125 §60A-9-8 of this code;

126 (ii) Twenty-five percent shall be deposited in the General Revenue Fund;

127 (iii) Forty percent shall remain in the Agriculture Fees Fund; and

128 (iv) Fifteen percent shall be deposited in the Alcohol Beverage Control Enforcement Fund
129 established by the provisions of §60-7-13 of this code.

130 (B) Notwithstanding any provision in §11-9-1 et seq. of this code to the contrary, each and
131 every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 et seq. of

132 this code applies to the tax imposed by §16A-9-1 et seq. of this code with like effect as if said act
133 were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in
134 extenso in §16A-9-1 et seq. of this code.

135 (C) Notwithstanding any provision of §11-10-1 et seq. of this code, or any other provision
136 of this code to the contrary, each and every provision of the West Virginia Tax Procedure and
137 Administration Act set forth in §11-10-1 et seq. of this code applies to the tax imposed by §16A-9-
138 1 et seq. with like effect as if the said West Virginia Tax Procedure and Administration Act were
139 applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in extenso in
140 §16A-9-1 et seq. of this code.

141 (j) All fees collected pursuant to the provisions of this subsection shall be deposited with
142 the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-
143 1-4c of this code for the use of the commissioner for administering and enforcing the provisions of
144 this article.

145 (k)(1) The provisions of this section related to retail sales shall be enforced by the
146 commissioner with the assistance of the Alcohol Beverage Control Commissioner.

147 (2) The commissioner and the Alcohol Beverage Control Commissioner shall enter into a
148 memorandum or memoranda of understanding to facilitate their enforcement of this section.

149 (l)(1) Any hemp-derived product found in this state in violation of this article is hereby
150 declared contraband and any property interest in the hemp-derived product is vested in the State
151 of West Virginia and is subject to seizure, forfeiture, and destruction.

152 (2) Any certified law-enforcement officer in this state is authorized to enforce the criminal
153 provisions of this section, and enforcement agents of the Alcohol Beverage Control Commissioner
154 are authorized to enforce the administrative retailer provisions of this section.

155 (3) The commissioner shall provide the requisite training necessary to enforce the criminal
156 and administrative provisions of this section.

157 (4) The provisions of this subsection are effective from passage.

158 (m) Any person who manufactures, processes, distributes, sells, or offers for sale any
159 hemp-derived cannabinoid product in this state without a permit to do so is guilty of a crime.

160 (1) A first violation of this subsection is a misdemeanor, and upon conviction thereof, a
161 person shall be fined not more than \$1,000, confined in jail for not more than one year, or both
162 fined and confined.

163 (2) A second or subsequent violation of this subsection is a felony and, upon conviction
164 thereof, a person shall be fined not more than \$5,000 or imprisoned in a state correctional facility
165 for not less than one nor more than five years, or both fined and imprisoned.

166 (n)(1) Any person who processes, distributes, sells, or offers to sell any hemp-derived
167 product knowing or having reason to know that the product has been adulterated or contaminated
168 with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof, shall be fined not
169 more than \$10,000 or imprisoned in a state correctional facility for not less than two nor more than
170 10 years, or both fined and imprisoned.

171 (2) Each individually contaminated or adulterated packaged container of a hemp-derived
172 cannabinoid product processed, distributed, sold, or offered for sale in violation of this subsection
173 constitutes a separate and distinct violation.

174 (o)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for
175 sale any hemp-derived cannabinoid product which has not been approved by the commissioner is
176 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more
177 than \$5,000 or confined in jail for not more than one year, or both fined and confined.

178 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or
179 subsequent violation of subdivision (1) of this subsection constitutes a felony and any person
180 convicted thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility
181 for not less than one nor more than five years, or both fined and imprisoned.

182 (p) Any person who knowingly distributes, offers for sale, or sells a contaminated or
183 adulterated hemp-derived cannabinoid product is guilty of a felony and, upon conviction thereof,

184 shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned in a state correctional
185 facility for not less than one nor more than five years, or both fined and imprisoned.

186 (q) Any person who knowingly distributes or sells hemp-derived cannabinoid product to a
187 person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not
188 more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than
189 five years, or both fined and imprisoned.

190 (r) (1) Any person under the age of 21 who possesses hemp-derived cannabinoid product
191 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or
192 confined in jail for not more than one year, or both fined and confined.

193 (2) Notwithstanding the provisions of subdivision (1) of this subsection, second and
194 subsequent violations of subdivision (1) of this subsection, constitute a felony and any person
195 convicted thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional
196 facility for not less than one nor more than three years, or both fined and imprisoned.

ARTICLE 12F. SELECT PLANT-DERIVED PRODUCT REGULATION ACT.

§19-12F-1. Short title.

1 This article shall be known as the Select Plant-derived Product Regulation Act.

§19-12F-2. Findings; purpose.

1 The legislature finds that select plant-derived products, including kratom, can be regulated
2 so as not to interfere with the strict regulation of controlled substances in this state. The purpose of
3 this article is to allow limited regulated assess to kratom for adults 21 years of age and older.

§19-12F-3. Definitions.

1 (1) "Adulterated" means modified, altered, weakened, lessened, strengthened, or adapted
2 as to purity by the addition of a foreign substance.

3 (2) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control
4 Commissioner or his or her designee.

5 (3) "Commissioner" means the Commissioner of Agriculture or his or her designee.

6 (4) "Contaminated" means made impure and unsafe by biological, chemical, or physical
7 additives.

8 (5) "Department" means the West Virginia Department of Agriculture.

9 (6) "Kratom" means a psychoactive preparation that is composed of the crushed or
10 powdered dried leaves of the mitragyna speciosa, a yellow-flowered tropical tree which contains
11 the alkaloids mitragynine and 7-hydroxymitragynine.

12 (7) "Kratom product" means a food product, food ingredient, dietary agreement, dietary
13 supplement, or beverage intended or marketed for human consumption containing any part of the
14 leaf of the plant mitragyna speciosa.

15 (8) "Manufacture" means a person or entity which grows kratom for commercial purposes.

16 (9) "Processor" means a person or entity that processes, distributes, sells, or offers for
17 sale, kratom or kratom products in this state on a wholesale basis to a retailer.

18 (10) "Retailer" means a person or entity that distributes, offers for sale, or sells kratom or
19 kratom products to persons for personal consumption.

§19-12F-4. Processor and retailer permits; regulation.

1 Any person manufacturing, processing, distributing, offering for sale, or selling kratom or
2 kratom products in this state shall have a permit issued by the commissioner and otherwise
3 authorized to do business in this state. The commissioner may issue manufacturer, processor and
4 retailer permits.

§19-12F-5. Rule-making authority.

1 (a) The commissioner shall propose legislative rules for legislative approval in accordance
2 with §29A-3-1 et seq. of this code that include, but are not limited to:

3 (1) Issuance of permits to persons who wish to manufacture, process, distribute, offer for
4 sale, or sell kratom;

5 (2) Sampling and testing of kratom to determine purity levels;

6 (3) Supervision of the kratom during its manufacture, processing, and sale;

7 (4) Assessment of fees that are commensurate with the costs of the Commissioner of
8 Agriculture's activities in permitting, testing, and supervising kratom and the sale of kratom
9 products;

10 (5) The production, processing, sale, possession, distribution, or transport of kratom
11 products;

12 (6) Developing standards for the labeling of kratom products to include, at a minimum, a
13 statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT YOUR PHYSICIAN
14 BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION";

15 (7) Developing requirements that kratom and kratom products be available only in a
16 restricted access area not accessible to the general public;

17 (8) Developing restrictions on advertising and marketing to preclude advertising of kratom
18 and kratom products in newspapers or on radio and television;

19 (9) Developing prohibitions on child-targeted packaging and shapes and forms of
20 products;

21 (10) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
22 may propose legislative rules, in accordance with the provisions of §29A-3-1 *et seq.* of this code,
23 to effectuate the purposes of this article;

24 (11) Any other rules and procedures necessary to carry out the purposes of this article.

25 (b) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
26 may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as
27 are necessary to effectuate the purposes of this article.

§19-12F-6. Age verification requirements.

1 (a) Any website owned, managed, or operated by a person who manufactures, processes,
2 distributes, offers for sale, or sells a product containing kratom or kratom products to persons in
3 this state shall employ a neutral age-screening mechanism that verifies that the user is at least 21

4 years old, including by using an age-gate, age-screen, or other age-verification mechanism
5 approved by the commissioner.

6 (b) Any person offering to distribute or sell kratom or kratom products to persons in this
7 state by means other than a direct in-person transaction shall employ an age-verification
8 mechanism approved by the commissioner.

§19-12-F-7. Kratom specific taxes; disposition of funds.

1 (a) In addition to all other applicable taxes, there is hereby levied an additional tax equal to
2 15 percent of the retail sales price on each retail sale of kratom and kratom products.

3 (1) For the privilege of engaging or continuing within this state in the business of selling
4 kratom and kratom products, as defined in §19-12F-2 of this code there is hereby levied upon and
5 collected from every person exercising the privilege a privilege tax.

6 (2) The rate of tax imposed by this section is 15 percent of the retail sales price of kratom
7 and kratom products sold during the reporting period, depending upon its method of accounting for
8 federal income tax purposes. The tax imposed by this section shall not be added by the retailers as
9 a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum
10 of the price paid by a customer.

11 (b) Every person subject to the tax imposed by this subsection shall make quarterly
12 payments for each calendar quarter at the rate prescribed in subsection (a) of this section on the
13 gross receipts received or accrued for the calendar quarter, depending upon the person's method
14 of accounting for federal income tax purposes. The tax shall be due and payable on the 20th day of
15 January, April, July, and October for the preceding calendar quarter. When the payment of tax is
16 due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax
17 Commissioner may require such forms, schedules, and returns and impose such filing and
18 remittance requirements that are necessary or convenient for the efficient administration of taxes
19 imposed by this section.

20 (c) The taxes imposed by this section shall be paid to the Tax Commissioner by electronic
21 funds transfer, unless electronic payment is prohibited by state or federal law. Tax returns required
22 by this section shall be filed electronically with the Tax Commissioner.

23 (d) If any retailer does not renew its permit, relinquishes its permit, has its permit
24 suspended or revoked, or otherwise ceases selling kratom or kratom products then any tax,
25 additions to tax, penalties, and interest imposed by this article and by §11-10-1 et seq. of this code
26 shall become due and payable immediately and the retailer shall make a final return or returns and
27 pay any tax which is due within 30 days of no longer selling the product or after not renewing its
28 permit, relinquishing its permit, has its permit to sell suspended or revoked, or otherwise ceasing
29 business. The unpaid amount of any tax is a lien upon the property of the retailer and of its owners.

30 (e) All money received from the tax imposed under this section, including any interest and
31 additions to tax paid under §11-10-1 et seq. of this code, less the amount of any refunds, shall be
32 deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

33 (f) Persons subject to the tax imposed by this section shall provide to the Tax
34 Commissioner any information required by the Tax Commissioner to administer, collect, and
35 enforce the tax imposed by this section.

36 (g) Notwithstanding any provision of §11-10-1 et seq. of this code or of this article to the
37 contrary, the Tax Commissioner, and the commissioner may enter into written agreements
38 pursuant to which the Tax Commissioner will disclose to designated employees of the department,
39 whether a particular retailer is in good standing with the Tax Commissioner, and the commissioner
40 will disclose to designated employees of the Tax Commissioner information a retailer provides to
41 the commissioner pursuant to this code. Tax information disclosed pursuant to a written
42 agreement shall remain confidential in the hands of the receiver and shall not be disclosable under
43 §29B-1-1 et seq. of this code. To the extent feasible, this information should be shared or
44 exchanged electronically.

45 (h) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1
46 et seq. of this code, such procedural, interpretive, or legislative rules, including emergency rules,
47 as the Tax Commissioner considers necessary or convenient for the efficient administration of
48 taxes imposed by this section.

49 (i) Funds from the taxes imposed by this section and deposited in the Agricultural Fees
50 Fund and shall be divided as follows:

51 (1) Twenty percent shall be transferred to the Fight Substance Abuse Fund created by
52 §60A-9-8 of this code;

53 (2) Twenty-five percent shall be deposited in the General Revenue Fund; and

54 (3) Forty percent shall remain in the Agriculture Fees Fund.

55 (4) Fifteen percent to the Alcohol Beverage Control Enforcement Fund established by the
56 provisions of §60-7-13 of this code.

57 (j) Notwithstanding any provision in §11-9-1 et seq. of this code to the contrary, each and
58 every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 et seq. of
59 this code shall apply to the tax imposed by §16A-9-1 et seq. of this code with like effect as if said
60 act were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in
61 extenso in §16A-9-1 et seq. of this code.

62 (k) Notwithstanding any provision of §11-10-1 et seq. of this code or any other provision of
63 this code to the contrary, each and every provision of the West Virginia Tax Procedure and
64 Administration Act set forth in §11-10-1 et seq. of this code, shall apply to the tax imposed by
65 §16A-9-1 et seq. of this code with like effect as if the said West Virginia Tax Procedure and
66 Administration Act were applicable only to the tax imposed by §16A-9-1 et seq. of this code, and
67 were set forth in extenso in §16A-9-1 et seq. of this code.

§19-12F-8 Application and registration fees.

1 (a) Applicants for kratom and kratom manufacturer, product processor, and retailer permits
2 shall pay a non-refundable application fee of \$2,500 which shall be deposited with the State

3 Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of
4 this code for the use of the commissioner for administering and enforcing the provisions of this
5 article.

6 (b) Processors and retailers shall pay an annual registration fee of \$1,000 kratom and
7 hemp-derived cannabinoid products which shall be deposited with the State Treasurer to the credit
8 of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the use of
9 the commissioner for administering and enforcing the provisions of this article.

§19-12F-9. Cooperative enforcement agreements.

1 (a) The provisions of article related to retail sales shall be enforced by the commissioner
2 and with the assistance of the Alcohol Beverage Control Commissioner.

3 (b) The commissioner and the Alcohol Beverage Control Commissioner may enter into a
4 memorandum or memoranda of understanding to facilitate enforcement of this article.

§19-12F-10. Declaring unlawful products contraband; seizures; forfeitures; and
destruction.

1 (a) Any kratom or kratom product found in this state in violation of this article is hereby
2 declared contraband and any property interest in the kratom or kratom product is vested in the
3 State of West Virginia and is subject to seizure and forfeiture and destruction.

4 (b) Any certified law enforcement officer in this state may enforce the criminal provisions of
5 this article, and any enforcement agent of the Alcohol Beverage Control Commissioner is
6 authorized to enforce the administrative provisions of this article as it relates to retailers.

§19-12F-11. Criminal violations; penalties.

1 (a) Any person who manufactures, processes, distributes, sells, or offers for sale any
2 kratom or kratom product in this state without a permit is guilty of a crime.

3 (1) A first violation of this subsection is a misdemeanor, and, upon conviction thereof, a
4 person shall be fined not more than \$1,000, confined in jail for not more than one year, or both
5 fined and confined.

6 (2) A second or subsequent violation of this subsection is a felony and, upon conviction
7 thereof, a person shall be fined not more than \$5,000 or imprisoned in a state correctional facility
8 for not less than one nor more than five years, or both fined and imprisoned.

9 (b)(1) Any person who manufactures, processes, distributes, sells or offers to sell any
10 kratom or kratom product knowing or having reason to know that the product has been adulterated
11 or contaminated with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof,
12 shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not less than
13 two nor more than 10 years, or both fined and imprisoned.

14 (2) Each individually contaminated or adulterated packaged container of kratom or a
15 kratom product processed, distributed, sold, or offered for sale constitutes a separate and distinct
16 violation of this subsection.

17 (c)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for
18 sale any kratom or kratom product which has not been approved by the commissioner is guilty of a
19 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$
20 5,000 or confined in jail for not more than one year, or both fined and confined.

21 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or
22 subsequent violation of subdivision (1) of this subsection constitutes a felony and any person
23 convicted thereof, shall be fined not more than \$5,000 or imprisoned for not less than one nor more
24 than five years, or both fined and imprisoned.

25 (d) Any person who knowingly manufactures, distributes, offers for sale, or sells
26 contaminated or adulterated kratom or kratom product is guilty of a felony and, upon conviction
27 thereof, shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned for not less than
28 one nor more than five years, or both fined and imprisoned.

29 (e) Any person who knowingly distributes or sells a kratom or kratom product to a person
30 under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than

31 \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years,
32 or both fined and imprisoned.

33 (f) (1) Any person under the age of 21 who possesses kratom or a kratom product is guilty
34 of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000 or confined in
35 jail for not more than one year, or both fined and confined.

36 (2) Notwithstanding the provisions of subdivision (1) of this subsection, second and
37 subsequent violations of subdivision (1) of this subsection constitute a felony and any person
38 convicted thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional
39 facility for not less than one nor more than three years, or both fined and imprisoned.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

1 (a) It is unlawful for any licensee, or agent, employee, or member thereof, on such
2 licensee's premises to:

3 (1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured
4 from the original package or container, except as authorized in §60-6-8 of this code;

5 (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper
6 entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine, or device in the nature of a slot machine; any violation of the
8 provisions of §19-12E-12 and §19-12F-1 et seq. of this code and rules promulgated thereunder:
9 however, *Provided, That* various games, gaming, and wagering conducted by duly licensed
10 persons of the West Virginia State Lottery Commission, charitable bingo games conducted by a
11 duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 et
12 seq. of this code, and charitable raffle games conducted by a duly licensed charitable or public
13 service organization (or its auxiliaries), pursuant to §47-21-1 et seq. of this code, all of which are

14 permissible on a licensee's licensed premises when operated in accordance with this code and
15 rules promulgated thereunder. A private resort hotel holding a license issued pursuant to §60-7-1
16 *et seq.* of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in
17 or on the premises licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of
18 this code, during hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or
19 §29-25-1 *et seq.* of this code;

20 (3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating
21 beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or
22 alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

23 (4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating
24 beer, wine, or alcoholic liquors, for or to any person known to be considered legally incompetent,
25 or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
26 wine or alcoholic liquor or the use of drugs;

27 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any
28 licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m.
29 and 6:00 a.m. on weekdays, Saturdays, and Sundays, or, between the hours of 3:00 a.m. and
30 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday;
31 and

32 (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating
33 beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of
34 age;

35 (7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand
36 name of any alcoholic liquor;

37 (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or
38 approved dues-paying member in good standing of the private club or a guest of the member;

39 (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide,
40 cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as
41 authorized by the commissioner;

42 (10)(A) Employ any person who is less than 16 years of age in a position where the
43 primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating
44 beer, wine, or alcoholic liquors to any person;

45 (B) Employ any person who is between 16 years of age and younger than 21 years of age
46 who is not directly supervised by a person aged 21 or over in a position where the primary
47 responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer,
48 wine, or alcoholic liquors to any person; or

49 (11) Violate the provisions of §19-12E-12 or §19-12F-1 et seq. of this code.

50 ~~(14)~~ (12) Violate any reasonable rule of the commissioner.

51 (b) It is lawful for any licensee to advertise price and brand in any news media or other
52 means, outside of the licensee's premises.

53 (c) Any person who violates any of the provisions of this section is guilty of a misdemeanor
54 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or
55 imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

1 (a) Upon a determination by the commissioner that a licensee has: (i) Violated the
2 provisions of §11-16-1 et seq. of this code or of this chapter; (ii) acted in such a way as would have
3 precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the
4 commissioner, the commissioner may impose any one or a combination of the following sanctions:

5 (1) Revoke the licensee's license;

6 (2) Suspend the licensee's license;

7 (3) Place the licensee on probationary status for a period not to exceed 12 months; and

8 (4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation is
9 not imposed.

10 (b) Any monetary penalty assessed and collected by the commissioner shall be
11 transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special
12 revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby
13 continued. All moneys collected, received, and deposited in the Alcohol Beverage Control
14 Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the
15 purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, nonintoxicating
16 beer, and the provisions of §19-12E-12 of this code, and §19-12F-1 et seq. of this code, and shall
17 not be treated by the State Treasurer or State Auditor as any part of the general revenue of the
18 state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in
19 excess of ~~\$20,000~~ \$100,000 shall be transferred to the General Revenue Fund.

20 (c) In addition to the grounds for revocation, suspension, or other sanction of a license set
21 forth in §60-7-13(a) of this code, conviction of the licensee of any offense constituting a violation of
22 the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer, or
23 gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee
24 of any violation of the laws of this state or of the United States relating to prostitution, or the sale,
25 possession, or distribution of narcotics or controlled substances, shall be mandatory grounds for
26 revocation of the licensee's license for a period of at least one year.

27 (d) A licensee shall notify, in a timely manner, emergency medical services or law
28 enforcement if a licensee knows, or has reason to know, of a life-threatening medical emergency
29 occurring on the licensed premises. In addition to the grounds for revocation, suspension, or other
30 sanction of a license set forth in this section, the commissioner may, in his or her discretion,
31 revoke, suspend, or otherwise sanction a licensee for failing to comply with the provisions of this
32 subsection.

33 (e) If a life-threatening medical emergency occurs on a licensee's private premises
34 requiring notification of emergency medical services or law enforcement under §60-7-13(d) of this
35 code, the licensee shall notify the Alcohol Beverage Control Administration within 48 hours of the
36 emergency's occurrence. The commissioner may, in his or her discretion, revoke, suspend, or
37 otherwise sanction a licensee for failing to comply with the 48-hour notification requirement.

38 (f) As used in this section, a life-threatening medical emergency includes, but is not limited
39 to, respiratory distress or cessation of breathing, severe chest pains, shock, uncontrolled
40 bleeding, poisoning, prolonged unconsciousness, overdose, any complaint or observation which
41 indicates significant head or spinal injury, and life-threatening physical injury caused by a crime of
42 violence against the person occupying or emanating from the licensed premises.

**ARTICLE 10. ENFORCEMENT AUTHORITY TO RETAIL SALES OF KRATOM AND
HEMP-DERIVED CANNABINOIDS.**

§60-10-1. Additional criminal jurisdiction.

1 The commissioner is hereby authorized to enforce the provisions of §19-12E-12 and
2 §19-12F-1 et seq. of this code, as they relate to retail sales of kratom and hemp-derived
3 cannabinoids.

§60-10-2. General enforcement provisions.

1 a) For the purpose of enforcing §19-12E-12 and §19-12F-1 et seq. of this code, the Alcohol
2 Beverage Control Commission and the Commissioner of Agriculture may request information from
3 any state agency, Constitutional officer or local agency and, notwithstanding the provisions of §11-
4 10-5d of this code or any other provision of this code, may share information with, and request
5 information from, any federal agency and any agency or Constitutional officer of this or any other
6 state or any local agency thereof.

7 (b) In addition to any other remedy provided by law, any person may bring an action for
8 appropriate injunctive or other equitable relief for a violation of this article; actual damages, if any,

9 sustained by reason of the violation; and, as determined by the court, interest on the damages
10 from the date of complaint, taxable costs, and reasonable attorney's fees. If the trier of fact find
11 that the violation is flagrant, it may increase recovery to an amount not in excess of three times the
12 actual damages sustained by reason of the violation.