

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 220**

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

[Passed March 11, 2023; in effect 90 days from  
passage]

1 AN ACT 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; to amend and reenact §60-7-12 and §60-  
5 7-13 of said code; and to amend said code by adding thereto a new article, designated  
6 §60-10-1 and §60-10-2, all relating to further regulation of hemp-derived cannabinoid  
7 products and regulation of kratom; creating the Select Plant-Based Derivatives Regulation  
8 Act: Industrial Hemp; creating the Select Plant-Derived Regulation Act: Kratom; making  
9 legislative findings and declaring the purpose of the acts; providing applicability; defining  
10 terms; requiring permits to manufacture, process, distribute, offer to sell, and sell regulated  
11 products; vesting regulatory authority in the Commissioner of Agriculture and the Alcohol  
12 Beverage Control Commission; granting legislative and emergency rule-making authority  
13 to the Commissioner of Agriculture and the Alcohol Beverage Control Commissioner;  
14 establishing an internal effective date from passage for purposes of declaring illegal  
15 products contraband and authorizing seizure, forfeiture, and destruction; limiting lawful  
16 sale of certain regulated products to persons 21 years of age or older; requiring age  
17 verification for internet sales and sales not made face-to-face; creating a eleven percent  
18 tax on retail sales to be collected by the Tax Commissioner quarterly for certain hemp  
19 products and kratom products; establishing distribution of tax revenue; authorizing the  
20 Alcohol Beverage Control Commissioner to enforce regulation of the product at the retail  
21 level; clarifying Alcohol Beverage Control Commissioners authority over alcohol licensees  
22 selling kratom and hemp-derived cannabinoid products; and creating criminal offenses  
23 related to regulated 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. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

1 (a) This section shall be known as the Select Plant-Based Derivatives Regulation Act:  
2 Industrial Hemp.

3 (b) The Legislature finds that certain plant-based derivatives can be regulated so as not to  
4 interfere with the strict regulation of controlled substances in this state. The purpose of the act is to  
5 allow limited, regulated access to certain plant-based derivatives which are naturally occurring  
6 and as authorized by the provisions of this article for adults 21 years of age and older: *Provided,*  
7 That, the provisions of this section shall not apply to naturally occurring plant-based derivative  
8 products not containing tetrahydrocannabinol content.

9 (c) As used in this section:

10 (1) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control  
11 Commissioner or his or her designees.

12 (2) "Commissioner" means the Commissioner of Agriculture or his or her designees.

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

15 (4) "Department" means the West Virginia Department of Agriculture.

16 (5) "Final product" means a product approved by the Department in accordance with the  
17 provisions of this article, and any other applicable rules and requirements set forth by the  
18 Department, as specified for the product.

19 (6) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance as  
20 follows:

21 (A) Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C.  
22 §5940;

23 (B) Delta-8 tetrahydrocannabinol;

24 (C) Delta-10 tetrahydrocannabinol;

25 (D) Hexahydrocannabinol;

26 (E) Tetrahydrocannabiphorol (THCp); and

27 (F) Tetrahydrocannabivarin (THCv).

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

29 (8) "Non-naturally occurring derivative" means a product that is contaminated as defined  
30 by this article, or a product that, upon result of Department laboratory testing, is found to be in  
31 violation of this article or rules promulgated therewith, or a product that is unlawful pursuant to 7  
32 U.S.C. §5940 or otherwise violates applicable federal regulations.

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

36 (10) "Seller" means a person or entity that distributes, offers for sale, or sells hemp-derived  
37 products to persons for personal consumption.

38 (11) "Retail sales" means the sale of hemp-derived products in a commercial setting as  
39 determined and set forth in rules promulgated by the commissioner.

40 (d) Any person manufacturing, processing, distributing, offering for sale, or selling any  
41 hemp-derived cannabinoid products in this state shall have a permit issued by the commissioner  
42 and be otherwise authorized to do business in this state. The commissioner may issue  
43 manufacturer, processor and retailer permits.

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

46 (1) Issuance of permits to persons who wish to manufacture, handle, process, distribute,  
47 offer for sale, or sell hemp-derived cannabinoid products;

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

50 (3) Supervision of the hemp-derived cannabinoid products during their cultivation,  
51 processing, and sale;

52 (4) Assessment of fees as commensurate with the need of the commissioner's activities in  
53 issuing permits, laboratory testing, and in overseeing the regulation of hemp-derived products;

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

56 (6) Developing guidelines for the labeling of hemp-derived cannabinoid products, including  
57 but not limited to, a statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT  
58 YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION"  
59 and "USE OF THIS PRODUCT MAY IMPACT DRUG TESTING RESULTS";

60 (7) Developing guidelines or standards related to the display or staging of hemp-derived  
61 cannabinoid products to increase the safety of underage patrons in retail environments;

62 (8) Developing guidelines or standards to restrict the advertising or marketing of  
63 unapproved or unlawful products;

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

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

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

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

71 (g) Any website owned, managed, or operated by a person who manufactures, processes,  
72 distributes, offers for sale, or sells hemp-derived cannabinoid products to persons in this state  
73 shall employ a neutral age-screening mechanism to verify legal age. The mechanism may include  
74 an age-gate, age-screen, or any other age-verification mechanism approved by the commissioner.

75 (h) Any person or entity distributing, offering to distribute, or selling hemp-derived  
76 cannabinoid products to persons in this state by means other than a direct in-person transaction  
77 may employ an age verification mechanism approved by the commissioner.

78 (i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to  
79 11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the  
80 privilege of engaging in the business of selling hemp-derived cannabinoid products.

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

85 (2) The rate of tax imposed by this subsection is 11 percent of the retail sales price of  
86 hemp-derived cannabinoid products sold during the reporting period, depending upon the  
87 person's method of accounting for federal income tax purposes. The tax imposed by this  
88 subsection shall not be added by the retailer as a separate charge or line item on any sales slip,  
89 invoice, receipt, other statement, or memorandum of the price paid by a customer.

90 (3) The tax shall be due and payable on a quarterly basis as follows: On the 20th day of  
91 January, April, July, and October for the preceding calendar quarter. When the payment of tax is  
92 due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax  
93 Commissioner may require such forms, schedules, and returns and impose such filing and  
94 remittance requirements that are necessary or convenient for the efficient administration of taxes  
95 imposed by this subsection.

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

99 (5) If any retailer does not renew its permit, relinquishes its permit, has said permit to  
100 operate suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products

101 then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et*  
102 *seq.* of this code, shall become due and the retailer shall make a final return or returns and pay any  
103 tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit  
104 to operate suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is  
105 to be considered a lien.

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

109 (7) Persons or entities subject to the tax imposed by this subsection shall provide to the Tax  
110 Commissioner any information required by the Tax Commissioner to administer, collect, and  
111 enforce the tax imposed by this subsection.

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

122 (9) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1  
123 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax  
124 Commissioner considers necessary for the efficient administration of taxes imposed by this  
125 subsection.

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

128 (i) Sixty-five percent shall remain in the Agriculture Fees Fund;

129 (ii) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-  
130 9-8 of this code;

131 (iii) Thirty percent shall be deposited in the Alcohol Beverage Control Enforcement Fund  
132 established by the provisions of §60-7-13 of this code.

133 (B) Notwithstanding any provision in §11-9-1 *et seq.* of this code to the contrary, and as  
134 relevant to the tax imposed by §16A-9-1 of this code, the West Virginia Tax Crimes and Penalties  
135 Act set forth in §11-9-1 *et seq.* of this code shall apply with like effect as if the said West Virginia  
136 Tax Crimes and Penalties Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this  
137 code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

138 (C) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision  
139 of this code to the contrary, each and every provision of the West Virginia Tax Procedure and  
140 Administration Act as set forth in §11-10-1 *et seq.* of this code applies to the tax imposed by §16A-  
141 9-1 *et seq.* with like effect as if the said West Virginia Tax Procedure and Administration Act were  
142 applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in  
143 §16A-9-1 *et seq.* of this code.

144 (j) All fees collected pursuant to the provisions of this subsection shall be deposited with  
145 the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-  
146 1-4c of this code for the use of the commissioner for administering and enforcing the provisions of  
147 this article.

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

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



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

155 (2) Any certified law-enforcement officer in this state is authorized to enforce the criminal  
156 provisions of this section, and enforcement agents of the Alcohol Beverage Control Commissioner  
157 are authorized to enforce the administrative retailer provisions of this section as relating to retail  
158 sales.

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

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

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

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

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

170 (n) Any person who processes, distributes, manufactures, sells, or offers to sell any  
171 hemp-derived product knowing or having reason to know that the product has been contaminated  
172 with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof, shall be fined not  
173 more than \$10,000 or imprisoned in a state correctional facility for not less than two nor more than  
174 10 years, or both fined and imprisoned.

175 (o)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for  
176 sale any hemp-derived cannabinoid product which has not been approved by the commissioner is

177 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more  
178 than \$5,000 or confined in jail for not more than one year, or both fined and confined.

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

183 (p) Any person who knowingly distributes, offers for sale, or sells a contaminated hemp-  
184 derived cannabinoid product is guilty of a felony and, upon conviction thereof, shall be fined not  
185 less than \$10,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less  
186 than one nor more than five years, or both fined and imprisoned.

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

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

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

**ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

**§19-12F-1. Short title.**

1 This article shall be known as the Select Plant-Based Product Regulation Act: Kratom.

**§19-12F-2. Findings; purpose.**

1 The legislature finds that select plant-based derivatives, including kratom, can be

2 regulated so as not to interfere with the strict regulation of controlled substances in this state. The  
3 purpose of this article is to allow limited regulated assess to kratom for adults 21 years of age and  
4 older.

**§19-12F-3.**

**Definitions.**

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

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

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

6 (4) "Department" means the West Virginia Department of Agriculture.

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

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

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

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

16 (9) "Retailer" means a person or entity that distributes, offers for sale, or sells kratom or  
17 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 be otherwise  
3 authorized to do business in this state. The commissioner may issue permits for manufacturers,  
4 processors, and retailers.

**§19-12F-5. Rule-making authority.**

1 (a) The commissioner shall propose legislative rules for promulgation in accordance with  
2 §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 the regulation of kratom and the sale  
9 of kratom 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 guidelines or standards related to the display or staging of kratom products  
16 to increase the safety of underage patrons in retail environments;

17 (8) Developing prohibitive standards as to child targeted packaging and shapes and forms  
18 of products;

19 (9) Developing administrative rules, procedures, and sanctions for violations of this  
20 section;

21 (10) Any other rules and procedures necessary to carry out the provisions of this article.

22 (b) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner  
23 may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as  
24 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 or entity distributing, offering to distribute or sell, or selling kratom or kratom  
7 products to persons in this state by means other than a direct in-person transaction shall employ  
8 an age-verification mechanism approved by the commissioner.

**§19-12-F-7. Taxation; disposition of funds.**

1 (a) For the privilege of engaging or continuing within this state in the business of the retail  
2 sale of kratom or kratom products, there is hereby levied upon and collected from every person  
3 exercising the privilege a privilege tax.

4 (b) The rate of tax imposed by this subsection is 11 percent of the retail sales price of  
5 kratom or kratom products sold during the reporting period.

6 (c) The tax shall be due and payable on a quarterly basis as follows: on the 20th day of  
7 January, April, July, and October for the preceding calendar quarter. When the payment of tax is  
8 due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax  
9 Commissioner may require such forms, schedules, and returns and impose such filing and  
10 remittance requirements that are necessary or convenient for the efficient administration of taxes  
11 imposed by this subsection.

12 (d) The taxes imposed by this subsection shall be paid to the Tax Commissioner by  
13 electronic funds transfer unless electronic payment is prohibited by state or federal law. Tax  
14 returns required by this subsection shall be filed electronically with the Tax Commissioner.

15 (e) If any retailer does not renew its permit, relinquishes its permit, has said permit  
16 suspended or revoked, or otherwise ceases selling kratom and kratom products then any tax,  
17 additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq.* of this

18 code, shall become due and the retailer shall make a final return or returns and pay any tax which  
19 is due within 90 days of not renewing its permit, relinquishing its permit, having its permit  
20 suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be  
21 considered a lien.

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

25 (g) Persons or entities subject to the tax imposed by this subsection shall provide to the Tax  
26 Commissioner any information required by the Tax Commissioner to administer, collect, and  
27 enforce the tax imposed by this subsection.

28 (h) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this section to the  
29 contrary, the Tax Commissioner, and the commissioner shall enter into written agreements  
30 pursuant to which the Tax Commissioner shall disclose to designated employees of the  
31 department, whether a particular retailer is in good standing with the Tax Commissioner, and the  
32 commissioner shall disclose to designated employees of the Tax Commissioner information a  
33 retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant to  
34 a written agreement shall remain confidential in the hands of the receiver and shall not be  
35 disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be  
36 shared or exchanged electronically to ensure safe destruction, or as necessary, proper file  
37 retention practices.

38 (i) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1  
39 *et seq.* of this code, any necessary legislative rules as the Tax Commissioner necessary to the  
40 efficient administration of taxes imposed by this subsection.

41 (1) Funds from the tax imposed by the provisions of this subsection and deposited into the  
42 Agricultural Fees Fund shall be divided and deposited as follows:

43 (2) Sixty-five percent shall remain in the Agriculture Fees Fund;

44 (3) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-  
45 9-8 of this code; and

46 (4) Thirty percent shall be deposited in the Alcohol Beverage Control Enforcement Fund  
47 established by the provisions of §60-7-13 of this code.

48 (j) Notwithstanding any provision in §11-9-1 *et seq.* of this code to the contrary, and as  
49 relevant to the tax imposed by §16A-9-1, the West Virginia Tax Crimes and Penalties Act set forth  
50 in §11-9-1 *et seq.* of this code shall apply with like effect as if the said the West Virginia Tax Crimes  
51 and Penalties Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and  
52 were set forth in extenso in §16A-9-1 *et seq.* of this code.

53 (k) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision of  
54 this code to the contrary, the West Virginia Tax Procedure and Administration Act, as set forth in  
55 §11-10-1 *et seq.* of this code applies to the tax imposed by §16A-9-1 *et seq.* with like effect as if the  
56 said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed  
57 by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

58 (l) All fees collected pursuant to the provisions of subsection shall be deposited with the  
59 State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-  
60 4c of this code for the use of the commissioner in administering and enforcing the provisions of this  
61 article.

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

1 (a) Applicants for kratom and kratom manufacturer, processor, or retailer permits shall pay  
2 a non-refundable application fee of \$1,500 which shall be deposited with the State Treasurer to the  
3 credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the  
4 use of the commissioner for administering and enforcing the provisions of this article.

5 (b) Processor and retailer permit holders shall pay an annual fee of \$300 which shall be  
6 deposited with the State Treasurer to the credit of the Agricultural Fees Fund established by the

7 provisions of §19-1-4c of this code for the use of the commissioner in administering and enforcing  
8 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 with the assistance of the Alcohol Beverage Control Commissioner.

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

**§19-12F-10. 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) 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  
11 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 (c)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for  
15 sale any kratom or kratom product which has not been approved by the commissioner is guilty of a  
16 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$  
17 5,000 or confined in jail for not more than one year, or both fined and confined.

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

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

26 (e) Any person who knowingly distributes or sells a kratom or kratom product to a person  
27 under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than  
28 \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years,  
29 or both fined and imprisoned.

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

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

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

**ARTICLE 10. ENFORCEMENT AUTHORITY RELATING TO RETAIL SALE OF  
SELECT PLANT-BASED DERIVATIVES.**

**§60-10-1. Enforcement authority; jurisdiction.**

1           The commissioner is hereby authorized to enforce the provisions of §19-12E-1 *et seq.* of  
2 this code and §19-12F-1 *et seq.* of this code, as relating to retail sales.

**§60-10-2. General provisions.**

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

