

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 679

By Senators Stuart and Taylor

[Originating in the Committee on the Judiciary; and

then to the Committee on Finance;

reported February 9, 2024]

1 A BILL to amend and reenact §11-16-23 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §19-12E-12 of said code; to amend and reenact §19-12F-1, §19-12F-
3 3, §19-12F-4, 0§19-12F-7, §19-12F-8, §19-12F-9, and §19-12F-11 of said code; to amend
4 said code by adding thereto a new section, designated §19-12F-9a; and to amend and
5 reenact §60-7-13 of said code, all relating to regulation of select plant-based derivatives,
6 including hemp-derived cannabinoid products and regulation of kratom; clarifying findings;
7 defining terms; redirecting moneys from monetary penalties assessed by Commissioner of
8 Agriculture to another fund; by requiring permits to manufacture, process, distribute, offer
9 to sell, and sell regulated products; prohibiting retailer from adding imposed tax as
10 separate new charge; specifying regulatory authority of the Commissioner of Agriculture
11 and the Alcohol Beverage Control Administration Commissioner; specifying funding
12 requirements for nonintoxicating beer tax revenues; specifying application of the
13 Administrative Procedures Act for certain contested cases; specifying application fees for
14 certain permits; specifying requirements for business registration certificate, nexus,
15 jurisdiction, and taxation relating to remote interstate sales and distribution; imposition of
16 use tax; specifying maintenance of lists by the Commissioner of Agriculture of permittees,
17 approved products and entities, and persons who cease to be permitted; specifying
18 labeling requirements; authorizing use of funds by the Commissioner of Agriculture and
19 Alcohol Beverage Control Administration Commissioner; specifying application of Tax
20 Commissioner's fee; authorizing memoranda of understanding and information sharing
21 between Tax Commissioner, Commissioner of Agriculture and Alcohol Beverage Control
22 Administration Commissioner; specifying administrative sanctions; authorizing the Alcohol
23 Beverage Control Administration Commissioner to enforce regulation of the product at the
24 retail level; authorizing enforcement actions involving agents of the Alcohol Beverage
25 Control Administration Commissioner and persons acting upon the request, direction, or
26 control of law-enforcement agencies; clarifying Alcohol Beverage Control Administration

27 Commissioner's authority over alcohol licensees selling kratom and hemp-derived
28 cannabinoid products; and specifying transfer of excess Alcohol Beverage Control
29 Enforcement Fund money.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-23. 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 §11-16-18 of this code, or of §60-1-1 *et seq.* of this code; (ii) acted in such a way as
3 would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by
4 the commissioner, he or she may:

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 ~~twelve~~ 12 months;

8 and

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

11 (b) Any monetary penalty assessed and collected by the commissioner shall be
12 transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special
13 revenue fund designated the "~~Nonintoxicating Beer Enforcement Fund~~" Alcohol Beverage Control
14 Enforcement Fund established by the provisions of §60-7-13 of this code, which is hereby created.
15 ~~All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund"~~
16 ~~shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement~~
17 ~~of the statutes and rules pertaining to nonintoxicating beer and shall not be treated by the State~~

18 ~~Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal~~
19 ~~year all funds in the nonintoxicating beer enforcement fund in excess of twenty thousand dollars~~
20 ~~shall be transferred to the General Revenue Fund~~

21 (c) In addition to the grounds for revocation, suspension, or other sanction of a license set
22 forth in subsection (a) of this section, conviction of the licensee of any offense constituting a
23 violation of the laws of this State or of the United States relating to nonintoxicating beer or alcoholic
24 liquor ~~shall be~~ are mandatory grounds for such sanctioning of a license. Conviction of the licensee
25 of any violation of the laws of this State or of the United States relating to prostitution or the sale,
26 possession, or distribution of narcotics or controlled substances ~~shall be~~ is mandatory grounds for
27 revocation of the licensee's license for a period of at least one year.

CHAPTER 19. AGRICULTURE.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-12. Regulation of select plant-based derivatives; findings; 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~~ select plant-based derivatives can be regulated so as
4 not to interfere with the strict regulation of controlled substances in this state, and that the
5 manufacturing, processing, distribution, and retail sale, or other sale of hemp-derived cannabinoid
6 products is an activity deserving of particular, careful, and strict attention to the administration and
7 enforcement of West Virginia standards designed to protect and safeguard the welfare and well-
8 being of West Virginia citizens and residents. The purpose of the act is to allow limited, regulated
9 access to ~~certain~~ select plant-based derivatives which are naturally occurring and as authorized
10 by the provisions of this article for adults 21 years of age and older: *Provided*, That the provisions
11 of this section shall not apply to naturally occurring select plant-based derivative products not
12 containing tetrahydrocannabinol content. Businesses located within this state engaged in

13 manufacturing, processing, distributing, or sale of hemp-derived cannabinoid products and
14 businesses located outside of this state that are engaged in the remote distribution or remote retail
15 sale of hemp-derived cannabinoid products across state lines for delivery into this state, are
16 subject to the permitting, labeling, and other control and administration provisions of this article. In
17 the interest of protecting the safety, welfare, and well-being of West Virginia citizens and residents,
18 West Virginia nexus and jurisdiction attaches for purposes of business registration, permitting,
19 regulation, and taxation with relation to the activity of distribution or sale of hemp-derived
20 cannabinoid products across state lines into this state. Persons located outside of this state that
21 are engaged in distribution or sale of hemp-derived cannabinoid products across state lines into
22 this state shall obtain a West Virginia business registration certificate as specified in §11-12-1 et
23 seq. of this code and are subject to other administrative and regulatory requirements as set forth in
24 this code.

25 (c) As used in this section:

26 (1) "Alcohol Beverage Control Administration Commissioner" means the West Virginia
27 Alcohol Beverage Control Administration Commissioner or his or her designees.

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

29 (3) "Contaminated" means made impure ~~and~~ or unsafe by biological, chemical, or physical
30 additives.

31 (4) "Department" or "Department of Agriculture" means the West Virginia Department of
32 Agriculture.

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

36 (6) "Grower" means a person or entity which grows industrial hemp.

37 ~~(6)~~ (7) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance
38 as follows:

39 (A) ~~Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C. §5940~~
40 with a total concentration of not more than 0.3 percent on a dry weight basis or not more than the
41 concentration established by the provisions of 7 U.S.C.1639o;

42 (B) Delta-8 tetrahydrocannabinol;

43 (C) Delta-10 tetrahydrocannabinol;

44 (D) Hexahydrocannabinol (HHC₂);

45 (E) Tetrahydrocannabiphorol (THCp); and

46 (F) Tetrahydrocannabivarin (THCv).

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

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

55 ~~(11) (10) "Retail sales"~~ means the sale of hemp-derived products in a commercial setting
56 as determined and set forth in rules promulgated by the commissioner. ~~of Agriculture.~~

57 ~~(10) (11) "Seller" or "distributor"~~ means a person or entity that distributes, offers for sale, or
58 sells hemp-derived products to persons for personal consumption.

59 (d) Permitting and registration.

60 (1) The commissioner may issue manufacturer, processor, distributor, and retailer permits.

61 Any person manufacturing, processing, distributing, offering for sale, or selling any hemp-derived
62 cannabinoid products in this state shall have a permit issued by the commissioner and be
63 otherwise authorized to do business in this State. The commissioner may issue manufacturer,
64 processor, distributor, and retailer permits.

65 (2) The business activity subject to permitting under this section shall be treated as
66 separate and distinct from manufacturing, processing, distribution, or sale of kratom and kratom
67 products addressed and administered under §19-12F-1 et seq. of this code, or of hemp addressed
68 and administered under other sections of this article, or of medical cannabis addressed and
69 administered under §16A-9-1 et seq. of this code.

70 (3) Persons engaged in manufacturing, processing, distribution, or sale of hemp-derived
71 cannabinoid products in this state shall obtain a West Virginia business registration certificate as
72 specified in §11-12-1 et seq. of this code and are subject to other administrative and regulatory
73 requirements set forth in this code.

74 (4) The Tax Commissioner may place a notation on the business registration certificate
75 showing the status of the certificate holder as a person or entity holding a permit from the
76 commissioner pursuant to this section.

77 (5) The commissioner shall keep a list of all persons and entities that have been issued
78 permits pursuant to this section. Such list shall be public information and shall be published initially
79 on or before June 30, 2024, by the commissioner on its website from time to time so as to reflect a
80 current listing.

81 (6) The commissioner shall keep a list of any persons or entities that have been subject to
82 a permit revocation, withdrawal, suspension, non-renewal, or other process whereby the person
83 or entity has ceased to be a permit holder in good standing with the commissioner.

84 (7) The commissioner shall keep a list of all hemp-derived cannabinoid products that have
85 been approved for sale or distribution in this state. Such list shall be public information and shall be
86 published initially on or before June 30, 2024, by the commissioner on its website from time to time
87 so as to reflect a current listing.

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

90 (1) Issuance of permits to persons who wish to manufacture, handle, process, distribute,

91 offer for sale, or sell hemp-derived cannabinoid products;

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

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

96 (4) Assessment of fees as commensurate with the need of the commissioner's activities in
97 issuing permits, laboratory testing, and in overseeing the regulation of hemp-derived products.
98 Such fees shall be in addition to those fees specified in subsection (d) of this section;

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

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

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

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

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

111 (10) Developing administrative rules, procedures, and sanctions for violations of this
112 section; and

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

114 (f) Emergency rules; mandatory labeling.

115 (1) Emergency Rules. The commissioner and the Alcohol Beverage Control Administration
116 Commissioner may, pursuant to §29A-3-15 of this code, promulgate such separate or joint

117 emergency rules ~~as are~~ necessary to effectuate the purposes of this article.

118 (2) Labeling.

119 (A) The commissioner shall review labels to be used on hemp-derived cannabinoid
120 products to be sold in this state.

121 (B) In addition to the labeling required by the provisions of subdivision (6) of subsection (e)
122 of this section the commissioner may require and prescribe such labeling as he or she may
123 determine to be necessary and appropriate for hemp-derived cannabinoid products to be sold to
124 the final consumer in this state.

125 (C) Hemp-derived cannabinoid products may not be sold to the final consumer in this State
126 without an approved label.

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

132 (h) Any person or entity distributing, offering to distribute, or selling hemp-derived
133 cannabinoid products to persons in this state by other means other than a direct in-person
134 transaction may shall employ an age verification mechanism approved by the commissioner. ~~of~~
135 ~~Agriculture.~~

136 ~~(i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to~~
137 ~~11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the~~
138 ~~privilege of engaging in the business of selling hemp-derived cannabinoid products. For the~~
139 ~~privilege of engaging or continuing within this state in the business of the retail sale of hemp-~~
140 ~~derived cannabinoid products, as defined in subdivision (6), subsection (a) of this section, there is~~
141 ~~hereby levied upon and collected from every person exercising the privilege a privilege tax equal~~
142 ~~to 11% of the retail sales price on each retail sale of hemp-derived cannabinoids. Such tax is~~

143 imposed in addition to all other applicable taxes.

144 ~~(2)~~ (1) ~~The rate of tax imposed by this subsection is 11 percent of the retail sales price of~~
145 ~~hemp-derived cannabinoid products sold during the reporting period, depending upon the~~
146 ~~person's method of accounting for federal income tax purposes~~ The tax imposed by this
147 subsection shall not be added by the retailer as a separate charge or line item on any sales slip,
148 invoice, receipt, other statement, or memorandum of the price paid by a customer. ~~(3)~~ The tax shall
149 be due and payable on a quarterly basis as follows: on the 20th day of January, April, July, and
150 October for the preceding calendar quarter. When the payment of tax is due, the person or entity
151 permitted by the commissioner shall file a tax return in a form prescribed by the Tax Commissioner.
152 The Tax Commissioner may require such forms, schedules, and returns and impose such filing
153 and remittance requirements that are necessary or convenient for the efficient administration of
154 taxes imposed by this subsection.

155 (2) The taxes imposed by this subsection shall be paid by the person or entity permitted by
156 the commissioner to the Tax Commissioner by electronic funds transfer unless electronic payment
157 is prohibited by state or federal law. Tax returns required by this subsection shall be filed
158 electronically with the Tax Commissioner.

159 ~~(4)~~ (3) The West Virginia use tax shall be collected from sellers, and marketplace
160 facilitators as defined in §11-15A-1 of this code, and referrers engaged in making sales, facilitating
161 sales, marketing, or referring sellers or purchasers for the purpose of making or furthering retail
162 sales of hemp-derived cannabinoid products into this state. Such sellers, marketplace facilitators,
163 and referrers are subject to the taxation and other requirements of §11-15A-1 et seq. of this code,
164 including §11-15A-6a and §11-15A-6b of this code. Application of §11-15A-6a and §11-15A-6b of
165 this code, shall not be limited to the thresholds specified in subsection §11-15A-6a(e), of this code
166 but in the interest of protecting the safety, welfare, and well-being of West Virginia citizens and
167 residents, West Virginia nexus and jurisdiction shall attach with relation to any such activity for the
168 purpose of making or furthering retail sales of hemp-derived cannabinoid products, into this state.

169 ~~(5)~~ (4) If any retailer does not renew its permit, relinquishes its permit, has said its permit to
170 operate suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products
171 then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et*
172 *seq.* of this code shall become due and the retailer shall make a final return or returns and pay any
173 tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit
174 to operate suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is
175 to be considered a lien.

176 ~~(6)~~ (5) All money received from the tax imposed under this subsection, including any
177 interest and additions to tax paid under §11-10-1 *et seq.* of this code, less the amount of any
178 refunds, and less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code,
179 shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

180 ~~(7)~~ (6) Persons or entities subject to the tax imposed by this ~~subsection~~ section shall
181 provide to the Tax Commissioner any information required by the Tax Commissioner to administer,
182 collect, and enforce the tax imposed by this ~~subsection~~ section.

183 ~~(8)~~ (7) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this ~~section~~
184 article to the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration
185 Commissioner, and the commissioner shall may enter into written agreements pursuant to which
186 the Tax Commissioner shall may disclose to designated employees of the department Alcohol
187 Beverage Control Administration Commissioner or the commissioner, or both, whether a particular
188 retailer or permittee, or applicant for a permit, is in good standing with the Tax Commissioner, and
189 the commissioner of ~~Agriculture~~ shall may disclose to designated employees of the Tax
190 Commissioner or the Alcohol Beverage Control Administration Commissioner, or both, information
191 a retailer or permittee, or applicant for a permit, provides to the commissioner pursuant to this
192 code and the Alcohol Beverage Control Administration Commissioner may disclose to designated
193 employees of the Tax Commissioner, or the commissioner, or both, information a retailer or
194 permittee, or applicant for a permit, provides to the Alcohol Beverage Control Administration

195 Commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement
196 shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1
197 *et seq.* of this code. To the extent feasible, this information should be shared or exchanged
198 electronically to ensure safe destruction, or as necessary, proper file retention practices.

199 ~~(9)~~ (8) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-
200 3-1 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax
201 Commissioner considers necessary for the efficient administration of taxes imposed by this
202 subsection.

203 (A) Funds from the tax imposed by the provisions of subdivision (1) of this subsection, less
204 the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code, and deposited in the
205 Agricultural Fees Fund, shall be divided and deposited as follows:

206 (i) ~~Sixty-five percent~~ 65% shall remain in the Agriculture Fees Fund for the use of the
207 commissioner for administering and enforcing the provisions of this article;

208 (ii) ~~Five percent~~ 5% shall be transferred to the Fight Substance Abuse Fund created by
209 §60A-9-8 of this code; and

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

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

217 (C) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision of
218 this code to the contrary, each and every provision of the West Virginia Tax Procedure and
219 Administration Act as set forth in §11-10-1 *et seq.* of this code applies to the tax imposed by ~~§16A-~~
220 ~~9-1 et seq.~~ this section with like effect as if the said West Virginia Tax Procedure and

221 Administration Act were applicable only to the tax imposed by ~~§16A-9-1 et seq. of this code~~ this
222 section and were set forth in extenso in ~~§16A-9-1 et seq. of this code~~ this section.

223 (j) ~~All fees collected pursuant to the provisions of this subsection shall be deposited with~~
224 ~~the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-~~
225 ~~1-4c of this code for the use of the Commissioner of Agriculture for administering and enforcing the~~
226 ~~provisions of this article~~

227 (k)(1) The provisions of this section related to retail sales shall be enforced by the
228 commissioner of Agriculture with the assistance of the Alcohol Beverage Control Administration
229 Commissioner.

230 (2) (1) ~~The commissioner of Agriculture, the Tax Commissioner, and the Alcohol Beverage~~
231 ~~Control Administration Commissioner shall~~ may enter into a memorandum or memoranda of
232 understanding to facilitate the enforcement of this section.

233 (2) Procedure for contested cases. Any person or entity seeking to contest an
234 administrative action of the commissioner of under this article shall assert such contestation in
235 writing within 14 days under the provisions of the Administrative Procedures Act set forth in §29A-
236 5-1 et seq. of this code in administrative proceedings held by or before the commissioner or his or
237 her designee.

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

241 (2) Any certified law-enforcement officer in this state ~~is authorized to~~ may enforce the
242 criminal provisions of this section, and enforcement agents of the Alcohol Beverage Control
243 Administration Commissioner ~~are authorized to~~ may enforce the administrative retailer provisions
244 of this section as relating to retail sales.

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

247 (4) The ~~provisions of~~ amendments to this subsection enacted during the 2024 Regular
248 Legislative Session are effective from passage.

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

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

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

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

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

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

270 (p) Any person who knowingly distributes, offers for sale, or sells a contaminated hemp-
271 derived cannabinoid product is guilty of a felony and, upon conviction thereof, shall be fined not
272 less than \$10,000 nor more than \$25,000, or imprisoned in a state correctional facility for not less

273 than one nor more than five years, or both fined and imprisoned.

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

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

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

285 (s) Administrative sanctions.

286 (1) In the case of any person or entity holding a permit issued by the commissioner under
287 this article charged with of any criminal violation enumerated in this section, the commissioner, in
288 addition to such criminal penalties imposed, may impose administrative sanctions, including but
289 not limited to, permanent revocation of any one or more permits held by the violator, revocation of
290 one or more permits held by the violator for a period of time to be determined by the commissioner,
291 suspension of any one or more permits held by the violator for a period of time to be determined by
292 the commissioner, a fine or fines to any one or more permits held by the violator not to exceed
293 \$1,000 per each violation as determined by the commissioner, or non-issuance of a permit upon
294 application of a violator. For purposes of this subsection, administrative sanctions may be imposed
295 by the commissioner upon or against any alter ego, agent, representative, or person or entity
296 acting on behalf of, or in the interest of, a violator.

297 (2) The commissioner may impose the administrative sanctions in subdivision (1) of this
298 subsection upon any person or entity under indictment for any of the criminal violations during, and

299 during the pendency, of a criminal trial therefor.

300 (t) Nothing in this article shall prohibit an authorized enforcement agent of the Alcohol
301 Beverage Control Administration Commissioner or a person who is at least 18 years of age from
302 purchasing or possessing hemp-derived cannabinoid products when he or she is acting upon the
303 request of or under the direction and control of any member of a state, federal, or local law-
304 enforcement agency or the Alcohol Beverage Control Administration Commissioner while the
305 agency is conducting an investigation or other activity relating to the criminal or administrative
306 enforcement of this section.

ARTICLE 12F. SELECT PLANT-BASED PRODUCT DERIVATIVES REGULATION

ACT: KRATOM.

§19-12F-1.	Short	title.	Findings.
-------------------	--------------	---------------	------------------

1	<u>(a) This article shall be known as the Select Plant-Based Product Derivatives Regulation</u>		
2	<u>Act: Kratom.</u>		

3	<u>(b) The Legislature finds that the manufacturing, processing, distributing, and sale of</u>		
4	<u>kratom or kratom products is an activity deserving of particular, careful, and strict attention to the</u>		
5	<u>administration and enforcement of West Virginia standards designed to protect and safeguard the</u>		
6	<u>welfare and well-being of West Virginia citizens and residents. Therefore, the permitting, labeling,</u>		
7	<u>and other control and administration provisions of this article apply to businesses located within</u>		
8	<u>this state engaged in manufacturing, processing, distribution, or sale of kratom or kratom products</u>		
9	<u>and to businesses located outside of this state that are engaged in the remote distribution or</u>		
10	<u>remote retail sale of kratom or kratom products across state lines for delivery into this state.</u>		

§19-12F-3. Definitions.

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

3	(2) "The "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" or "Department of Agriculture" means the West Virginia Department of
7 Agriculture.

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

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

14 (7) ~~"Manufacturer"~~ "Grower" means a person or entity which grows kratom for commercial
15 purposes.

16 (8) "Processor" or "manufacturer" means a person or entity that processes, ~~distributes,~~
17 ~~sells, or offers for sale, kratom or kratom products in this State on a wholesale basis to a retailer~~
18 compounds, or converts plant material from mitragyna speciosa into a kratom product. This also
19 includes further processing, compounding, converting, or repackaging of existing kratom
20 products.

21 (9) "Retailer" or "seller" means a person or entity that distributes, offers for sale, or sells
22 kratom or kratom products to persons for personal consumption.

§19-12F-4. Processor and retailer permits; regulations; permitting; and registration.

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

§19-12F-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 equal to (b) The rate of tax imposed by this subsection is 11
4 percent 11% of the retail sales price of kratom or kratom products sold during the reporting period.
5 Such tax is imposed in addition to all other applicable taxes.

6 (b) The tax imposed by this article shall not be added by the retailer as a separate charge
7 or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid
8 by a customer.

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

15 (d)(1) The taxes imposed by this subsection shall be paid to the Tax Commissioner by
16 electronic funds transfer unless electronic payment is prohibited by state or federal law. Tax
17 returns required by this subsection shall be filed electronically with the Tax Commissioner.

18 (2) The West Virginia use tax shall be collected from sellers, marketplace facilitators, and
19 referrers engaged in making sales, facilitating sales, marketing, or referring sellers or purchasers
20 for the purpose of making or furthering retail sales of kratom and kratom products into this state.
21 The sellers, marketplace facilitators, and referrers are subject to the taxation and other
22 requirements of §11-15A-1 et seq. of this code including §11-15A-6a and §11-15A-6b of this code.
23 Application of §11-15A-6a and §11-15A-6b of this code shall not be limited to the thresholds
24 specified in subsection §11-15A-6a(e) of this code, but in the interest of protecting the safety,
25 welfare, and well-being of West Virginia citizens and residents, West Virginia nexus and
26 jurisdiction shall attach with relation to any such activity for the purpose of making or furthering
27 retail sales of kratom and kratom products into this state.

28 (e) If any retailer does not renew its permit, relinquishes its permit, has said its permit

29 suspended or revoked, or otherwise ceases selling kratom and kratom products, then any tax,
30 additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq.* of this
31 code shall become due and the retailer shall make a final return or returns and pay any tax which is
32 due within 90 days of not renewing its permit, relinquishing its permit, having its permit suspended
33 or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be considered a
34 lien.

35 (f) All money received from the tax imposed under this ~~subsection~~ section, including any
36 interest and additions to tax paid under §11-10-1 *et seq.* of this code, less the amount of any
37 refunds, and less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code,
38 shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

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

42 (h) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this ~~section~~ article to
43 the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration Commissioner,
44 and the commissioner of Agriculture shall may enter into written agreements pursuant to which the
45 Tax Commissioner shall may disclose to designated employees of the ~~department~~ Alcohol
46 Beverage Control Administration Commissioner or commissioner, or both, whether a particular
47 retailer or permittee, or applicant for a permit, is in good standing with the Tax Commissioner, and
48 the commissioner of Agriculture shall may disclose to designated employees of the Tax
49 Commissioner or the Alcohol Beverage Control Administration Commissioner, or both, information
50 a retailer or permittee, or applicant for a permit, provides to the commissioner of Agriculture
51 pursuant to this code and the Alcohol Beverage Control Administration Commissioner may
52 disclose to designated employees of the Tax Commissioner, or the commissioner, or both,
53 information a retailer or permittee, or applicant for a permit, provides to the Alcohol Beverage
54 Control Administration Commissioner pursuant to this code. Tax information disclosed pursuant to

55 a written agreement shall remain confidential in the hands of the receiver and shall not be
56 disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be
57 shared or exchanged electronically to ensure safe destruction, or as necessary, proper file
58 retention practices.

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

62 (1) Funds from the tax imposed by the provisions of this ~~subsection~~ article, less the fee
63 retained by the Tax Commissioner pursuant to §11-10-27 of this code, and deposited into the
64 Agricultural Fees Fund shall be divided and deposited as follows:

65 (2) Sixty-five percent shall remain in the Agriculture Fees Fund for the use of the
66 commissioner in administering and enforcing the provisions of this article;

67 (3) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-
68 9-8 of this code; and

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

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

76 (k) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision of
77 this code to the contrary, the West Virginia Tax Procedure and Administration Act, as set forth in
78 §11-10-1 *et seq.* of this code applies to the tax imposed by ~~§16A-9-1 et seq.~~ this article with like
79 effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the
80 tax imposed by ~~§16A-9-1 et seq. of this code~~ this article and were set forth in extenso in ~~§16A-9-1~~

81 ~~et seq. of this code~~ this article.

82 ~~(f) All fees collected pursuant to the provisions of subsection shall be deposited with the~~
83 ~~State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-~~
84 ~~4c of this code for the use of the Commissioner in administering and enforcing the provisions of~~
85 ~~this article.~~

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

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

6 (b) Processors manufacturers, distributors, and retailer permit holders shall pay an annual
7 fee of \$300 which shall be deposited with the State Treasurer to the credit of the Agricultural Fees
8 Fund established by the provisions of §19-1-4c of this code for the use of the commissioner in
9 administering and enforcing the provisions of this article.

10 (c) The business activity subject to application, registration, and permitting under this
11 article shall be treated as separate and distinct from manufacturing, processing, distribution, or
12 sale of hemp-derived cannabinoid products, or of hemp addressed and administered under §19-
13 12E-1 et seq. of this code, or of medical cannabis addressed and administered under §16A-9-1 et
14 seq. of this code.

15 (d) Persons engaged in manufacturing, processing, distribution, or sale of kratom and
16 kratom products in this state must obtain a West Virginia business registration certificate as
17 specified in §11-12-1 et seq. of this code and shall be subject to other administrative and
18 regulatory requirements as set forth in this code.

19 (e) In the interest of protecting the safety, welfare, and well-being of West Virginia citizens
20 and residents, West Virginia nexus and jurisdiction attaches for purposes of business registration,

21 permitting, regulation, and taxation with relation to the activity of distribution or sale of kratom and
22 kratom products across state lines into this state. Persons located outside of this state that are
23 engaged in distribution or sale of kratom and kratom products across state lines into this state
24 must obtain a West Virginia business registration certificate as specified in §11-12-1 et seq. of this
25 code and shall be subject to other administrative and regulatory requirements as set forth in this
26 code.

27 (f) The Tax Commissioner may place a notation on the business registration certificate
28 showing the status of the certificate holder as a person or entity holding a permit from the
29 commissioner pursuant to this article.

30 (g) The commissioner shall keep a list of all persons and entities that have been issued
31 permits pursuant to this article. Such list shall be public information and shall be published initially
32 on or before June 30, 2024, by the commissioner on its website from time to time so as to reflect a
33 current listing.

34 (h) The commissioner shall keep a list of any persons or entities that have been subject to
35 a permit revocation, withdrawal, suspension, non-renewal, or other process whereby the person
36 or entity has ceased to be a permit holder in good standing with the commissioner.

37 (i) The commissioner shall keep a list of all kratom and kratom products that have been
38 approved for sale or distribution in this state. Such list shall be public information and shall be
39 published initially on or before June 30, 2024, by the commissioner on its website from time to time
40 so as to reflect a current listing.

§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 Administration Commissioner.

3 (b) As to the labeling required by the provisions of section 9a of this article, the
4 commissioner and the Alcohol Beverage Control Administration Commissioner shall enter into a
5 memorandum or memoranda of understanding to facilitate enforcement of this article.

6 (c) Procedure for contested cases. Any person or entity seeking to contest an
7 administrative action of the commissioner under this article shall bring such contestation in writing
8 within 14 days under the provisions of the Administrative Procedures Act set forth in §29A-5-1 et
9 seq. of this code in administrative proceedings held by or before the commissioner, or his or her
10 designee.

§19-12F-9a. Mandatory labeling.

1 (a) The commissioner shall review labels to be used on kratom and kratom products to be
2 sold in this state.

3 (b) The commissioner may require and prescribe such labeling as the commissioner may
4 determine to be necessary and appropriate for kratom and kratom products to be sold to the final
5 consumer in this state.

6 (c) Kratom and kratom products may not be sold to the final consumer in this state without
7 an approved label.

§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 kratom
10 or kratom product knowing or having reason to know that the product has been contaminated with
11 a toxic or illegal substance is guilty of a felony and, upon conviction thereof, shall be fined not more
12 than \$10,000, or imprisoned in a state correctional facility for not less than two nor more than 10

13 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 a 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
32 in 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.

37 (g) Administrative sanctions.

38 (1) In the case of any person or entity holding a permit issued by the commissioner under

39 this article charged with any criminal violation enumerated in this section, in addition to such
40 criminal penalties imposed, the commissioner may impose administrative sanctions including, but
41 not limited to, permanent revocation of any one or more permits held by the violator, revocation of
42 one or more permits held by the violator for a period of time to be determined by the commissioner,
43 suspension of any one or more permits held by the violator for a period of time to be determined by
44 the commissioner, fine or fines to any one or more permits held by the violator not to exceed
45 \$1,000 per each violation as determined by the commissioner, or non-issuance of a permit upon
46 application of a violator. For purposes of this subsection, administrative sanctions may be imposed
47 by the commissioner upon or against any alter ego, agent, representative, or person or entity
48 acting on behalf of, or in the interest of, a violator.

49 (2) The commissioner may impose the administrative sanctions in subdivision (1) of this
50 subsection upon any person or entity under indictment for any of the criminal violations during, and
51 during the pendency of, a criminal trial therefor.

52 (h) Nothing in this article prohibits an authorized enforcement agent of the Alcohol
53 Beverage Control Administration Commissioner or a person who is at least 18 years of age from
54 purchasing or possessing kratom products when he or she is acting upon the request, of or under
55 the direction and control of any member of a state, federal, or local law-enforcement agency or the
56 Alcohol Beverage Control Administration Commissioner while the agency is conducting an
57 investigation or other activity relating to the criminal or administrative enforcement of this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§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 as set forth in §11-16-1 et seq. of this code, hemp-derived cannabinoids as set forth in §19-
17 12E-12 of this code, and kratom as set forth in §19-12F-1 et seq. of this code. ~~and The Alcohol~~
18 Beverage Control Enforcement Fund shall not be treated by the State Treasurer or State Auditor
19 as any part of the general revenue of the ~~state~~ state. At the end of each fiscal year all funds in the
20 Alcohol Beverage Control Enforcement Fund in excess of ~~\$20,000~~ \$200,000 shall be transferred
21 to the General Revenue Fund.

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

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

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

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