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]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-12E-12; to amend said code by adding thereto a new article, designated §19-12F-1, §19-12F-2, §19-12F-3, §19-12F-4, §19-12F-5, §19-12F-6, §19-12F-7, §19-12F-8, §19-12F-9, §19-12F-10, and §19-12F-11; to amend and reenact §60-7-12 and §60-7-13 of said code; and to amend said code by adding thereto a new article, designated §60-10-1 and §60-10-2, all relating to further regulation of hemp-derived cannabinoid products and regulation of kratom; creating the Select Plant-Based Derivatives Regulation Act: Industrial Hemp; creating the Select Plant-Derived Regulation Act: Kratom; making legislative findings and declaring the purpose of the acts; providing applicability; defining terms; requiring permits to manufacture, process, distribute, offer to sell, and sell regulated products; vesting regulatory authority in the Commissioner of Agriculture and the Alcohol Beverage Control Commission; granting legislative and emergency rule-making authority to the Commissioner of Agriculture and the Alcohol Beverage Control Commissioner; establishing an internal effective date from passage for purposes of declaring illegal products contraband and authorizing seizure, forfeiture, and destruction; limiting lawful sale of certain regulated products to persons 21 years of age or older; requiring age verification for internet sales and sales not made face-to-face; creating a eleven percent tax on retail sales to be collected by the Tax Commissioner quarterly for certain hemp products and kratom products; establishing distribution of tax revenue; authorizing the Alcohol Beverage Control Commissioner to enforce regulation of the product at the retail level; clarifying Alcohol Beverage Control Commissioners authority over alcohol licensees selling kratom and hemp-derived cannabinoid products; and creating criminal offenses 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.**

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

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

(c) As used in this section:

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

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

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

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

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

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

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

(B) Delta-8 tetrahydrocannabinol;

(C) Delta-10 tetrahydrocannabinol;

(D) Hexahydrocannabinol;

(E) Tetrahydrocannabiphorol (THCp); and

(F) Tetrahydrocannabivarin (THCv).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection, constitute a felony and any person convicted thereof, shall be fined not more than $5,000 and imprisoned in a state correctional 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.**

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

**§19-12F-2. Findings; purpose.**

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

**§19-12F-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

Any person manufacturing, processing, distributing, offering for sale, or selling kratom or kratom products in this state shall have a permit issued by the commissioner and be otherwise authorized to do business in this state. The commissioner may issue permits for manufacturers, processors, and retailers.

**§19-12F-5. Rule-making authority.**

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

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

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

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

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

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

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

(7) Developing guidelines or standards related to the display or staging of kratom products to increase the safety of underage patrons in retail environments;

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

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

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

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

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

(a) Any website owned, managed, or operated by a person who manufactures, processes, distributes, offers for sale, or sells a product containing kratom or kratom products to persons in this state shall employ a neutral age-screening mechanism that verifies that the user is at least 21 years old, including by using an age-gate, age-screen, or other age-verification mechanism approved by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§19-12F-10. Contraband; seizures; forfeitures; and destruction.**

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection constitute a felony and any person convicted thereof, shall be fined not more than $5,000 and imprisoned in a state correctional 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.**

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

**§60-10-2. General provisions.**

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