

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 220

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

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

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

Be it enacted by the Legislature of West Virginia:

12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

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

1 (a) This section shall be known as the Hemp-derived Cannabinoid Regulation Act.
2 (b) The Legislature finds that hemp-derived cannabinoid products can be regulated so as
3 not to interfere with the strict regulation of controlled substances in this state. The purpose of the
4 act is to allow limited, regulated access to naturally occurring, non-psychoactive hemp-derived
5 cannabinoid products for adults 21 years of age and older while the uses and properties of the
6 substances remain subject to investigation and analysis.

7 (c) As used in this section:

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

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

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

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

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

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

18 (A) A cannabinoid other than total tetrahydrocannabinol, or an isomer derived from such
19 cannabinoid, that is derived from hemp in a concentration of more than one tenth of one percent
20 (0.1%);

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

23 (C) Delta-8 tetrahydrocannabinol;

24 (D) Delta-10 tetrahydrocannabinol;

25 (E) Hexahydrocannabinol;

26 (F) Tetrahydrocannabiphorol (THCp); and

27 (G) Tetrahydrocannabivarin (THCv).

28 (7) "Non-intoxicating, non-psychoactive" means a product which contains no more than
29 0.3 percent tetrahydrocannabinol or the THC concentration for hemp set forth in 7 U.S.C. §5940,
30 whichever is higher.

31 (8) "Processor" means a person or entity that distributes, sells, or offers for sale, hemp-
32 derived cannabinoid products in this state on a wholesale basis to a retailer.

33 (9) “Retailer” means a person or entity that distributes, offers for sale, or sells hemp-
34 derived products to persons for personal consumption.

35 (d) Any person processing, distributing, offering for sale or selling hemp-derived
36 cannabinoid products in this state shall be licensed by the commissioner and otherwise authorized
37 to do business in this state. The commissioner may issue processor and retailer licenses.

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

40 (1) Licensing persons who wish to handle, process, offer for sale, or sell hemp-derived
41 cannabinoid products;

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

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

46 (4) Assessment of fees that are commensurate with the costs of the Commissioner of
47 Agriculture’s activities in licensing, testing, and supervising hemp-derived products;

48 (5) Approving the production, sale, possession, handling, and transport of hemp-derived
49 cannabinoid products;

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

54 (7) Developing requirements that hemp-derived cannabinoid products be available only in
55 a restricted access area not accessible to the general public;

56 (8) Developing restrictions on advertising and marketing of hemp-derived cannabinoid
57 products including, but not limited to, precluding advertising of products in newspapers or on radio
58 or television;

59 (9) Developing prohibitions on child-attracting packaging and shapes and forms of
60 products;

61 (10) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
62 are authorized to promulgate emergency rules, in accordance with the provisions of §29A-3-15 of
63 this code, to effectuate the purposes of this section.

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

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

68 (f) Any website owned, managed, or operated by a person who processes, distributes,
69 offers for sale, or sells hemp-derived cannabinoid products to persons in this state shall employ a
70 neutral age-screening mechanism that verifies that the user is at least 21 years old. The
71 mechanism may include an age-gate, age-screen, or age-verification mechanism approved by the
72 commissioner.

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

76 (h) In addition to all other applicable taxes, there is hereby levied an additional tax equal to
77 15 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the
78 privilege of engaging in the business of selling hemp-derived cannabinoid products.

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

83 (2) The rate of tax imposed by this section is 15 percent of the retail sales price of hemp-
84 derived cannabinoid products sold during the reporting period, depending upon the person's

85 method of accounting for federal income tax purposes. The tax imposed by this subsection shall
86 not be added by the dispensary as a separate charge or line item on any sales slip, invoice,
87 receipt, other statement, or memorandum of the price paid by a customer.

88 (3) Every person subject to the tax imposed by this subsection shall make quarterly
89 payments under this section for each calendar quarter at the rate prescribed in this subsection on
90 the gross receipts received or accrued for the calendar quarter, depending upon the person's
91 method of accounting for federal income tax purposes. The tax shall be due and payable on the
92 20th day of January, April, July, and October for the preceding calendar quarter. When the
93 payment of tax is due, the person shall file a tax return in a form prescribed by the Tax
94 Commissioner. The Tax Commissioner may require such forms, schedules, and returns and
95 impose such filing and remittance requirements that are necessary or convenient for the efficient
96 administration of taxes imposed by this section.

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

100 (5) If any retailer does not renew its license, gives up its license, loses its license to
101 operate, or otherwise ceases selling hemp-derived cannabinoid products then any tax, additions
102 to tax, penalties, and interest imposed by this article and by §11-10-1 et seq. of this code, shall
103 become due and payable immediately and the retailer shall make a final return or returns and pay
104 any tax which is due within 30 days of no longer selling the product or after not renewing its
105 license, giving up its license, losing its license to sell, or otherwise ceasing business. The unpaid
106 amount of any tax is a lien upon the property of the retailer and of its owners.

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

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

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

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

126 (A) Funds from the tax imposed by this subsection shall be divided and deposited as
127 follows:

128 (i) Twenty-five percent shall be transferred to the Fight Substance Abuse Fund created by
129 §60A-9-8 of this code;

130 (ii) Thirty percent shall be deposited in the General Revenue Fund;

131 (iii) Thirty percent shall remain in the Agriculture Fees Fund; and

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

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

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

139 (C) Notwithstanding any provision of §11-10-1 et seq. of this code, or any other provision
140 of this code to the contrary, each and every provision of the West Virginia Tax Procedure and
141 Administration Act set forth in §11-10-1 et seq. of this code applies to the tax imposed by §16A-9-
142 1 et seq. with like effect as if the said West Virginia Tax Procedure and Administration Act were
143 applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in extenso in
144 §16A-9-1 et seq. of this code.

145 (i) (1) Applicants for hemp-derived product processor and retailer licenses shall pay a one-
146 time, non-refundable application fee of \$2,500 which shall be deposited with the State Treasurer to
147 the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for
148 the use of the commissioner for administering and enforcing the provisions of this article.

149 (2) Processors and retailers of hemp-derived products shall pay an annual registration fee
150 of \$1,000.

151 (3) All fees collected pursuant to the provisions of this subsection shall be deposited with
152 the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-
153 1-4c of this code for the use of the commissioner for administering and enforcing the provisions of
154 this article.

155 (j)(1) The provisions of this section shall be enforced by the commissioner and the Alcohol
156 Beverage Control Commissioner.

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

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

162 (2) Any certified law-enforcement officer in this state and any enforcement officer of the
163 Alcohol Beverage Control Commission may enforce the provisions of this section.

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

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

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

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

173 (m)(1) Any person who processes, distributes, sells, or offers to sell any hemp-derived
174 product knowing or having reason to know that the product has been adulterated or contaminated
175 with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof, shall be fined not
176 more than \$10,000 or imprisoned in a state correctional facility for not less than two nor more than
177 10 years, or both fined and imprisoned.

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

181 (n)(1) Any person who knowingly processes, distributes, sells, or offers for sale any hemp-
182 derived cannabinoid product which has not been approved by the commissioner is guilty of a
183 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
184 \$5,000 or confined in jail for not more than one year, or both fined and confined.

185 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or
186 subsequent violation of subdivision (1) of this subsection constitutes a felony and any person

187 convicted thereof shall be fined not more than \$5,000 or imprisoned in a state correctional facility
188 for not less than one nor more than five years, or both fined and imprisoned.

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

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

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

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

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

§19-12F-1. Short title.

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

§19-12F-2. Findings; purpose.

1 The Legislature finds that kratom can be regulated so as not to interfere with the strict
2 regulation of controlled substances in this state. The purpose of the act is to allow limited,
3 regulated access to kratom for adults 21 years of age and older while the uses and properties of
4 the substances remain subject to investigation and analysis.

§19-12F-3. Definitions.

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

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

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

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

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

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

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

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

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

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

1 Any person processing, distributing, offering for sale, or selling kratom or kratom products
2 in this state shall be licensed by the commissioner and otherwise authorized to do business in this
3 state. The commissioner may issue processor and retailer licenses.

§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) Licensing persons who wish to handle, process, offer for sale, or sell kratom;

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

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

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

9 (5) The production, sale, possession, handling, or transport of kratom products;

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

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

15 (9) Developing restrictions on advertising and marketing to preclude advertising of kratom
16 and kratom products in newspapers or on radio and television;

17 (10) Developing prohibitions on child-attracting packaging and shapes and forms of
18 products;

19 (11) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
20 may promulgate emergency rules, in accordance with the provisions of §29A-3-15 of this code, to
21 effectuate the purposes of this article;

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

23 (b) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
24 may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as
25 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 processes, distributes,
2 offers for sale, or sells a product containing kratom or kratom products to persons in this state shall
3 employ a neutral age-screening mechanism that verifies that the user is at least 21 years old,

4 including by using an age-gate, age-screen, or age-verification mechanism approved by the
5 Commissioner of Agriculture.

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

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

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

3 (1) For the privilege of engaging or continuing within this state in the business of selling
4 kratom and kratom products, as defined in subdivision (6), subsection (a) of this section, there is
5 hereby levied upon and collected from every person exercising the privilege a privilege tax.

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

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

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

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

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

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

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

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

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

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

53 (2) Thirty-three percent shall be deposited in the general revenue fund; and

54 (3) Thirty-four percent shall remain in the Agriculture Fees Fund.

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

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

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

1 (a) Applicants for kratom and kratom product processor and retailer licenses shall pay a
2 non-refundable application fee of \$2,500 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) Processors and retailers shall pay an annual registration fee of \$1000 kratom and
6 hemp-derived cannabinoid products which shall be deposited with the State Treasurer to the credit
7 of the "Agricultural Fees Fund" established by the provisions of §19-1-4c of this code for the use of
8 the commissioner for administering and enforcing the provisions of this article.

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

1 (a) This article shall be enforced by the commissioner and the Alcohol Beverage Control
2 Commissioner.

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

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

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 the kratom or kratom product is vested in the State
3 of West Virginia and is subject to seizure and forfeiture.

4 (b) Any certified law enforcement officer in this state and any enforcement officer of the
5 Alcohol Beverage Control Commission is authorized to enforce the provisions of this section.

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

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

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

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

9 (b)(1) Any person who processes, distributes, sells or offers to sell any kratom or kratom
10 product knowing or having reason to know that the product has been adulterated or contaminated
11 with a toxic or illegal substance is guilty of a felony, and, upon conviction 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 (2) Each individually contaminated or adulterated packaged container of kratom or a
15 kratom product processed, distributed, sold, or offered for sale constitutes a separate and distinct
16 violation of this subsection.

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

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

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

29 (e) Any person who knowingly distributes or sells a kratom or kratom product to a person
30 under the age of 21 is guilty of a felony and upon conviction thereof shall be fined not more than
31 \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years,
32 or both fined and imprisoned.

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

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

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

§60-10-1. Additional criminal jurisdiction.

1 The Commissioner is hereby granted authority to enforce the provisions of §19-12E-12
2 and §19-12F-1, et seq., as said relate to retail sales of kratom and hemp-derived cannabinoids.

§60-10-2. General enforcement provisions.

1 (a) This article shall be enforced by the Agriculture Commissioner and the Alcohol
2 Beverage Control Commissioner for the purpose of enforcing §19-12E-12 and §19-12F-1, et seq.,
3 of this code, the commissioners may request information from any state agency, Constitutional
4 officer or local agency and, notwithstanding the provisions of section five-d, article ten, chapter
5 eleven of this code or any other provision of this code, may share information with, and request
6 information from, any federal agency and any agency or Constitutional officer of this or any other
7 state or any local agency thereof.

8 (b) In addition to any other remedy provided by law, any person may bring an action for
9 appropriate injunctive or other equitable relief for a violation of this article; actual damages, if any,
10 sustained by reason of the violation; and, as determined by the court, interest on the damages
11 from the date of complaint, taxable costs, and reasonable attorney's fees. If the trier of fact find

- 12 that the violation is flagrant, it may increase recovery to an amount not in excess of three times the
13 actual damages sustained by reason of the violation.