

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 679

FISCAL
NOTE

By Senators Stuart, Taylor, and Deeds

[Introduced February 6, 2024; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

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, §19-12F-5, §19-12F-6, §19-12F-7, §19-12F-8, §19-12F-9, and §19-12F-11
4 of said code; to amend said code by adding thereto a new section designated §19-12F-9a;
5 and to amend and reenact §60-7-13 of said code, all relating to regulation of select plant-
6 based derivatives, including hemp-derived cannabinoid products, and regulation of
7 kratom; amending the short title; clarifying findings; defining terms; requiring permits to
8 manufacture, process, distribute, offer to sell, and sell regulated products; specifying
9 regulatory authority of the Commissioner of Agriculture and the Alcohol Beverage Control
10 Administration Commissioner; specifying funding requirements for nonintoxicating beer
11 tax revenues; making technical corrections; specifying application of the Administrative
12 Procedures Act for certain contested cases; specifying application fees for certain permits;
13 specifying requirements for business registration certificate, nexus, jurisdiction, and
14 taxation relating to remote interstate sales and distribution; specifying maintenance of lists
15 by the Commissioner of Agriculture of permittees, approved products and entities, and
16 persons who cease to be permitted; specifying labeling requirements; requiring age
17 verification for certain sales; authorizing use of funds by the Commissioner of Agriculture
18 and Alcohol Beverage Control Administration Commissioner; specifying application of Tax
19 Commissioner's fee; authorizing memoranda of understanding and information sharing
20 between Tax Commissioner, Commissioner of Agriculture and Alcohol Beverage Control
21 Administration Commissioner; specifying administrative sanctions; authorizing the Alcohol
22 Beverage Control Administration Commissioner to enforce regulation of the product at the
23 retail level; authorizing enforcement actions involving agents of the Alcohol Beverage
24 Control Administration Commissioner and persons acting upon the request, direction, or
25 control of law-enforcement agencies; clarifying Alcohol Beverage Control Administration
26 Commissioner's authority over alcohol licensees selling kratom and hemp-derived

27 cannabinoid products; specifying transfer of excess Alcohol Beverage Control
28 Enforcement Fund money; and specifying criminal penalties related to crimes relating to
29 regulated products.

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 section eighteen of this article or of chapter sixty of this code; (ii) acted in such a way
3 as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated
4 by 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
14 Control Enforcement Fund" established by the provisions of §60-7-13 of this code. ~~which is hereby~~
15 ~~created. All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement~~
16 ~~Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of~~
17 ~~enforcement of the statutes and rules pertaining to nonintoxicating beer and shall not be treated by~~

18 ~~the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of~~
 19 ~~each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of twenty~~
 20 ~~thousand dollars 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 mandatory grounds for such sanctioning of a license. Conviction of the licensee of
 25 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 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: Industrial
 2 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 plant-based derivatives which are naturally occurring and as authorized by the
 10 provisions of this article for adults 21 years of age and older: *Provided*, That, the provisions of this
 11 section shall not apply to naturally occurring plant-based derivative products not containing
 12 tetrahydrocannabinol content. Businesses located within this State engaged in manufacturing,

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

24 (c) As used in this section:

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

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

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

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

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

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

36 ~~(6)~~ (7) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance
37 with a concentration level of not more than 0.3 percent on a dry weight basis as follows:

38 (A) Delta-9 tetrahydrocannabinol ~~with a concentration level consistent with 7 U.S.C.~~

39 ~~§5940;~~

40 (B) Delta-8 tetrahydrocannabinol;

41 (C) Delta-10 tetrahydrocannabinol;

42 (D) Hexahydrocannabinol (HHC₂);

43 (E) Tetrahydrocannabiphorol (THCp); and

44 (F) Tetrahydrocannabivarin (THCv).

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

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

53 ~~(14) (10)~~ "Retail sales" means the sale of hemp-derived products in a commercial setting
54 as determined and set forth in rules promulgated by the commissioner. ~~of Agriculture.~~

55 ~~(10) (11)~~ "Seller" or "distributor" means a person or entity that distributes, offers for sale, or
56 sells hemp-derived products to persons for personal consumption.

57 (d) Permitting and registration.

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

63 (2) The business activity subject to permitting under this section shall be treated as
64 separate and distinct from manufacturing, processing, distribution, or sale of kratom and kratom

65 products addressed and administered under §19-12F-1 et seq. of this code, or of hemp addressed
66 and administered under other sections of this article, or of medical cannabis addressed and
67 administered under §16A-9-1 et seq. of this code.

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

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

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

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

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

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

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

90 (2) Regular sampling and testing of hemp-derived cannabinoid products to determine

91 purity levels;

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

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

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

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

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

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

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

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

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

111 (f) Emergency rules; mandatory labeling.

112 (1) Emergency Rules. The commissioner and the Alcohol Beverage Control Administration
113 Commissioner may, pursuant to §29A-3-15 of this code, promulgate such separate or joint
114 emergency rules as are necessary to effectuate the purposes of this article.

115 (2) Labeling.

116 (A) The commissioner shall review labels to be used on hemp-derived cannabinoid

117 products to be sold in this State.

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

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

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

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

133 ~~(i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to~~
134 ~~11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the~~
135 ~~privilege of engaging in the business of selling hemp-derived cannabinoid products~~

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

141 ~~(2) (1) The rate of tax imposed by this subsection is 11 percent of the retail sales price of~~
142 ~~hemp-derived cannabinoid products sold during the reporting period, depending upon the~~

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

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

156 (4) (3) The West Virginia use tax shall be collected from sellers, marketplace facilitators, as
157 defined in §11-15A-1 of this code, and referrers engaged in making sales, facilitating sales,
158 marketing, or referring sellers or purchasers for the purpose of making or furthering retail sales of
159 hemp-derived cannabinoid products into this State. Such sellers, marketplace facilitators, and
160 referrers shall be subject to the taxation and other requirements of §11-15A-1 et seq., including
161 §11-15A-6a and §11-15A-6b of this code. Application of §11-15A-6a and §11-15A-6b of this code
162 shall not be limited to the thresholds specified in subsection §11-15A-6a(e), but in the interest of
163 protecting the safety, welfare, and well-being of West Virginia citizens and residents, West Virginia
164 nexus and jurisdiction shall attach with relation to any such activity for the purpose of making or
165 furthering retail sales of hemp-derived cannabinoid products into this State.

166 (5) (4) If any retailer does not renew its permit, relinquishes its permit, has said permit to
167 operate suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products
168 then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 et

169 *seq.* of this code, shall become due and the retailer shall make a final return or returns and pay any
170 tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit
171 to operate suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is
172 to be considered a lien.

173 ~~(6)~~ (5) All money received from the tax imposed under this subsection, including any
174 interest and additions to tax paid under §11-10-1 *et seq.* of this code, less the amount of any
175 refunds, and less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code,
176 shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

177 ~~(7)~~ (6) Persons or entities subject to the tax imposed by this ~~subsection~~ section shall
178 provide to the Tax Commissioner any information required by the Tax Commissioner to administer,
179 collect, and enforce the tax imposed by this ~~subsection~~ section.

180 ~~(8)~~ (7) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this ~~section~~
181 article to the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration
182 Commissioner, and the commissioner shall may enter into written agreements pursuant to which
183 the Tax Commissioner shall may disclose to designated employees of the ~~department~~ Alcohol
184 Beverage Control Administration Commissioner or the commissioner, or both, whether a particular
185 retailer or permittee, or applicant for a permit, is in good standing with the Tax Commissioner, and
186 the commissioner of ~~Agriculture~~ shall may disclose to designated employees of the Tax
187 Commissioner or the Alcohol Beverage Control Administration Commissioner, or both, information
188 a retailer or permittee, or applicant for a permit, provides to the commissioner pursuant to this
189 code and the Alcohol Beverage Control Administration Commissioner may disclose to designated
190 employees of the Tax Commissioner, or the commissioner, or both, information a retailer or
191 permittee, or applicant for a permit, provides to the Alcohol Beverage Control Administration
192 Commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement
193 shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1
194 *et seq.* of this code. To the extent feasible, this information should be shared or exchanged

195 electronically to ensure safe destruction, or as necessary, proper file retention practices.

196 ~~(9)~~ (8) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-
197 3-1 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax
198 Commissioner considers necessary for the efficient administration of taxes imposed by this
199 subsection.

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

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

205 (ii) ~~Five percent~~ 5% shall be transferred to the Fight Substance Abuse Fund created by
206 §60A-9-8 of this code;

207 (iii) ~~Thirty percent~~ 30% shall be deposited in the Alcohol Beverage Control Enforcement
208 Fund established by the provisions of §60-7-13 of this code.

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

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

220 (j) ~~All fees collected pursuant to the provisions of this subsection shall be deposited with~~

221 ~~the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-~~
222 ~~1-4c of this code for the use of the Commissioner of Agriculture for administering and enforcing the~~
223 ~~provisions of this article~~

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

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

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

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

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

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

244 (4) The provisions of amendments to this subsection enacted during the 2024 Regular
245 Legislative Session shall be effective from passage.

246 (m) Any person who manufactures, processes, distributes, sells, or offers for sale any

247 hemp-derived cannabinoid product in this State without a permit to do so is guilty of a crime.

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

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

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

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

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

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

271 (q) Any person who knowingly distributes or sells hemp-derived cannabinoid product to a
272 person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not

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

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

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

282 (s) Administrative sanctions.

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

294 (2) The commissioner may impose the aforementioned administrative sanctions upon any
295 person or entity under indictment for any of the criminal violations during, and during the
296 pendency, of a criminal trial therefor.

297 (t) Nothing in this article shall prohibit an authorized enforcement agent of the Alcohol
298 Beverage Control Administration Commissioner or a person who is at least 18 years of age from

299 purchasing or possessing hemp-derived cannabinoid products when he or she is acting upon the
 300 request of or under the direction and control of any member of a state, federal, or local law-
 301 enforcement agency or the Alcohol Beverage Control Administration Commissioner while the
 302 agency is conducting an investigation or other activity relating to the criminal or administrative
 303 enforcement of this section.

ARTICLE 12F. SELECT PLANT-BASED PRODUCT DERIVATIVES REGULATION

ACT: KRATOM.

§19-12F-1.	Short	title.	Findings.
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1 (a) This article shall be known as the Select Plant-Based ~~Product~~ Derivatives Regulation
 2 Act: Kratom.

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

§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) "~~Manufacture~~" "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,
4 processor, distributor, and retailer permits. The business activity subject to permitting under this
5 article shall be treated as separate and distinct from manufacturing, processing, distribution, or
6 sale of hemp-derived cannabinoid products addressed and administered under §19-12E-12 of this
7 code, or of hemp addressed and administered under §19-12E-1 et seq. of this code, or of medical
8 cannabis addressed and administered under §16A-9-1 et seq. of this code.

9 (b) Persons engaged in manufacturing, processing, distribution, or sale of kratom or

10 kratom products in this State must obtain a West Virginia business registration certificate as
11 specified in §11-12-1 et seq. of this code and shall be subject to other administrative and
12 regulatory requirements as set forth in this code.

13 (c) In the interest of protecting the safety, welfare, and well-being of West Virginia citizens
14 and residents, West Virginia nexus and jurisdiction attaches for purposes of business registration,
15 permitting, regulation and taxation with relation to the activity of distribution or sale of kratom or
16 kratom products across State lines into this State. Persons located outside of this State that are
17 engaged in distribution or sale of kratom or kratom products across state lines into this State must
18 obtain a West Virginia business registration certificate as specified in §11-12-1 et seq. of this code
19 and shall be subject to other administrative and regulatory requirements as set forth in this code.

20 (d) The Tax Commissioner may place a notation on the business registration certificate
21 showing the status of the certificate holder as a person or entity holding a permit from the
22 commissioner pursuant to this article.

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

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

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

§19-12F-5. Rule-making authority, procedure.

1 (a) The commissioner shall propose legislative rules for promulgation in accordance with

2 §29A-3-1 *et seq.* of this code that include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Any website owned, managed, or operated by a person who manufactures, processes,
2 distributes, offers for sale, or sells a product containing kratom or kratom products to persons in

3 this State shall employ a neutral age-screening mechanism that verifies that the user is at least 21
4 years old, including by using an age-gate, age-screen, or other age-verification mechanism
5 approved by the commissioner.

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

§19-12F-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 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 Such sellers, marketplace facilitators, and referrers shall be subject to the taxation and other
22 requirements of §11-15A-1 et seq., including §11-15A-6a and §11-15A-6b of this code. Application
23 of §11-15A-6a and §11-15A-6b of this code shall not be limited to the thresholds specified in
24 subsection §11-15A-6a(e), but in the interest of protecting the safety, welfare, and well-being of
25 West Virginia citizens and residents, West Virginia nexus and jurisdiction shall attach with relation
26 to any such activity for the purpose of making or furthering retail sales of kratom and kratom
27 products into this State.

28 (e) If any retailer does not renew its permit, relinquishes its permit, has said 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
32 is due within 90 days of not renewing its permit, relinquishing its permit, having its permit
33 suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be
34 considered a 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 necessary to the
61 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~~ 65% 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~~ 5% shall be transferred to the Fight Substance Abuse Fund created by
68 §60A-9-8 of this code; and

69 (4) ~~Thirty percent~~ 30% shall be deposited in the Alcohol Beverage Control Enforcement
70 Fund 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 ~~(l) 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, or retailer permits shall pay
 2 a non-refundable application fee of \$1,500 which shall be deposited with the State Treasurer to the
 3 credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the
 4 use of the commissioner for administering and enforcing the provisions of this article.

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

9 (c) The business activity subject to application, registration, and permitting under this
 10 article shall be treated as separate and distinct from manufacturing, processing, distribution, or
 11 sale of hemp-derived cannabinoid products, or of hemp addressed and administered under §19-

12 12E-1 et seq. of this code, or of medical cannabis addressed and administered under §16A-9-1 et
13 seq. of this code.

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

18 (e) In the interest of protecting the safety, welfare, and well-being of West Virginia citizens
19 and residents, West Virginia nexus and jurisdiction attaches for purposes of business registration,
20 permitting, regulation and taxation with relation to the activity of distribution or sale of kratom and
21 kratom products across state lines into this State. Persons located outside of this State that are
22 engaged in distribution or sale of kratom and kratom products across state lines into this State
23 must obtain a West Virginia business registration certificate as specified in §11-12-1 et seq. of this
24 code and shall be subject to other administrative and regulatory requirements as set forth in this
25 code.

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

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

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

36 (i) The commissioner shall keep a list of all kratom and kratom products that have been
37 approved for sale or distribution in this State. Such list shall be public information and shall be

38 published initially on or before June 30, 2024, by the commissioner on its website from time to time
39 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) In to the labeling required by the provisions of section five 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
12 more than \$10,000 or imprisoned in a state correctional facility for not less than two nor more than
13 10 years, or both fined and imprisoned.

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

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

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

26 (e) Any person who knowingly distributes or sells a kratom or 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 in
32 jail for not more than one year, or both fined and confined.

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

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 aforementioned administrative sanctions upon any
50 person or entity under indictment for any of the criminal violations during, and during the
51 pendency, of a criminal trial therefor.

52 (h) Nothing in this article shall prohibit 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 of and control of any member of a state, federal or local law-enforcement agency or
56 the 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 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, and kratom as set forth in §19-12F-1 et seq. of this code. ~~and The Alcohol Beverage~~
 18 Control Enforcement Fund shall not be treated by the State Treasurer or State Auditor as any part
 19 of the general revenue of the state State. At the end of each fiscal year all funds in the Alcohol

20 Beverage Control Enforcement Fund in excess of ~~\$20,000~~ \$200,000 shall be transferred to the
21 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 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,
33 revoke, 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.

NOTE: The purpose of this bill is to regulate select plant-based derivatives, including hemp-derived cannabinoid products and regulation of kratom. The bill amends the short title; clarifies findings; defines terms; requires permits to manufacture, process, distribute, offer to sell, and sell regulated products; specifies regulatory authority in the Commissioner of Agriculture and the Alcohol Beverage Control Administration Commissioner; specifies funding requirements for nonintoxicating beer tax revenues; makes technical corrections; specifies application of the Administrative Procedures Act for certain contested cases; specifies application fees for certain permits; specifies requirements for business registration certificate, nexus, jurisdiction, and taxation relating to remote interstate sales and distribution; specifies maintenance of lists by the Commissioner of Agriculture of permittees, approved products and entities and person that cease to be permitted; specifies labeling requirements; requires age verification for certain sales; authorizes use of funds by the Commissioner of Agriculture and Alcohol Beverage Control Administration Commissioner; specifies application of Tax Commissioner's fee; authorizes memoranda of understanding and information sharing between Tax Commissioner, Commissioner of Agriculture and Alcohol Beverage Control Administration Commissioner; specifies administrative sanctions; authorizes the Alcohol Beverage Control Administration Commissioner to enforce regulation of the product at the retail level; authorizes enforcement actions involving agents of the Alcohol Beverage Control Administration Commissioner and persons acting upon request direction or control of law-enforcement agencies; clarifies Alcohol Beverage Control Administration Commissioner's authority over alcohol licensees selling kratom and hemp-derived cannabinoid products; specifies transfer of excess Alcohol Beverage Control Enforcement Fund monies; and specifies criminal penalties related to crimes relating to regulated products.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.