WEST virginia legislature

2024 regular session

Committee Substitute

for

Senate Bill 679

By Senators Stuart and Taylor

[Originating in the Committee on the Judiciary; and then to the Committee on Finance;

reported February 9, 2024]

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

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

(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed ~~twelve~~ 12 months; and

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

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the ~~"Nonintoxicating Beer Enforcement Fund"~~ Alcohol Beverage Control Enforcement Fund established by the provisions of §60-7-13 of this code. ~~which is hereby created~~. ~~All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of twenty thousand dollars shall be transferred to the General Revenue Fund~~

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

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

(b) The Legislature finds that ~~certain~~ select plant-based derivatives can be regulated so as not to interfere with the strict regulation of controlled substances in this state, and that the manufacturing, processing, distribution, and retail sale, or other sale of hemp-derived cannabinoid products is an activity deserving of particular, careful, and strict attention to the administration and enforcement of West Virginia standards designed to protect and safeguard the welfare and well-being of West Virginia citizens and residents. The purpose of the act is to allow limited, regulated access to ~~certain~~ select plant-based derivatives which are naturally occurring and as authorized by the provisions of this article for adults 21 years of age and older: *Provided*, That the provisions of this section shall not apply to naturally occurring select plant-based derivative products not containing tetrahydrocannabinol content. Businesses located within this state engaged in manufacturing, processing, distributing, or sale of hemp-derived cannabinoid products and businesses located outside of this state that are engaged in the remote distribution or remote retail sale of hemp-derived cannabinoid products across state lines for delivery into this state, are subject to the permitting, labeling, and other control and administration provisions of this article. In the interest of protecting the safety, welfare, and well-being of West Virginia citizens and residents, West Virginia nexus and jurisdiction attaches for purposes of business registration, permitting, regulation, and taxation with relation to the activity of distribution or sale of hemp-derived cannabinoid products across state lines into this state. Persons located outside of this state that are engaged in distribution or sale of hemp-derived cannabinoid products across state lines into this state shallt obtain a West Virginia business registration certificate as specified in §11-12-1 *et seq.* of this code and are subject to other administrative and regulatory requirements as set forth in this code.

(c) As used in this section:

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

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

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

additives.

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

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

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

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

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

(B) Delta-8 tetrahydrocannabinol;

(C) Delta-10 tetrahydrocannabinol;

(D) Hexahydrocannabinol (HHC-);

(E) Tetrahydrocannabiphorol (THCp); and

(F) Tetrahydrocannabivarin (THCv).

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

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

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

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

(d) Permitting and registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Approving the manufacture, production, sale, processing, distributing, and transport of

hemp-derived cannabinoid products;

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

(7) Developing guidelines or standards related to the display or staging of hemp-derived

cannabinoid products to increase the safety of underage patrons in retail environments;

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

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

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

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

(f) Emergency rules; mandatory labeling.

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

(2) Labeling.

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

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

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

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

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

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

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

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

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

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

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

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

~~(8)~~ (7) Notwithstanding any provision of §11-10-1 et seq. of this code or of this ~~section~~ article to the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration Commissioner, and the commissioner ~~shall~~ may enter into written agreements pursuant to which the Tax Commissioner ~~shall~~ may disclose to designated employees of the ~~department~~ Alcohol Beverage Control Administration Commissioner or the commissioner, or both, whether a particular retailer or permittee, or applicant for a permit, is in good standing with the Tax Commissioner, and the commissioner ~~of Agriculture~~ ~~shall~~ may disclose to designated employees of the Tax Commissioner or the Alcohol Beverage Control Administration Commissioner, or both, information a retailer or permittee, or applicant for a permit, provides to the commissioner pursuant to this code and the Alcohol Beverage Control Administration Commissioner may disclose to designated employees of the Tax Commissioner, or the commissioner, or both, information a retailer or permittee, or applicant for a permit, provides to the Alcohol Beverage Control Administration Commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 *et seq*. of this code. To the extent feasible, this information should be shared or exchanged electronically to ensure safe destruction, or as necessary, proper file retention practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) Administrative sanctions.

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

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

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

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

§19-12F-1. Short title. Findings.

(a)This article shall be known as the Select Plant-Based ~~Product~~ Derivatives Regulation Act: Kratom.

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

§19-12F-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(a) For the privilege of engaging or continuing within this state in the business of the retail sale of kratom or kratom products, there is hereby levied upon and collected from every person exercising the privilege a privilege tax equal to ~~(b) The rate of tax imposed by this subsection is 11 percent~~ 11% of the retail sales price of kratom or kratom products sold during the reporting period. Such tax is imposed in addition to all other applicable taxes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§19-12F-9a. Mandatory labeling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Administrative sanctions.

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

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

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

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of §11-16-1 *et seq*. of this code or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed 12 months; and

(4) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby continued. All moneys collected, received, and deposited in the Alcohol Beverage Control Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, nonintoxicating beer as set forth in §11-16-1 *et seq.* of this code, hemp-derived cannabinoids as set forth in §19-12E-12 of this code, and kratom as set forth in §19-12F-1 *et seq*. of this code. ~~and~~ The Alcohol Beverage Control Enforcement Fund shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the ~~state~~ state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess of ~~$20,000~~ $200,000 shall be transferred to the General Revenue Fund.

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

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

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

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