

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 679

BY SENATORS STUART, TAYLOR, AND DEEDS

[Passed March 9, 2024; in effect from passage]

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

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

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

8 (4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation
9 is 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 established by the
13 provisions of §60-7-13 of this code.

14 (c) In addition to the grounds for revocation, suspension, or other sanction of a license set
15 forth in subsection (a) of this section, conviction of the licensee of any offense constituting a
16 violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic

17 liquor are mandatory grounds for sanctioning of a license. Conviction of the licensee of any
18 violation of the laws of this State or of the United States relating to prostitution or the sale,
19 possession, or distribution of narcotics or controlled substances is mandatory grounds for
20 revocation of the licensee's license for a period of at least one year.

CHAPTER 19. AGRICULTURE.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-12. Regulation of select plant-based derivatives; findings; industrial hemp.

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

3 (b) The Legislature finds that select plant-based derivatives can be regulated so as not to
4 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 select 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 select plant-based derivative products not containing
12 tetrahydrocannabinol content. Businesses located within this state engaged in manufacturing,
13 processing, distributing, or sale of hemp-derived cannabinoid products and 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, are subject to the
16 permitting, labeling, and other control and administration provisions of this article. In the interest
17 of protecting the safety, welfare, and well-being of West Virginia citizens and residents, West
18 Virginia nexus and jurisdiction attaches for purposes of business registration, permitting,

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

25 (c) As used in this section:

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

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

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

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

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

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

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

39 (A) Delta-9 tetrahydrocannabinol with a total concentration of not more than 0.3 percent
40 on a dry weight basis; or

41 (B) Delta-8 tetrahydrocannabinol;

42 (C) Delta-10 tetrahydrocannabinol;

43 (D) Hexahydrocannabinol (HHC-);

44 (E) Tetrahydrocannabiphorol (THCp); and

45 (F) Tetrahydrocannabivarin (THCv).

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

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

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

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

58 (d) Permitting and registration.

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

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 shall obtain a West Virginia business registration certificate as

70 specified in §11-12-1 *et seq.* of this code and are subject to other administrative and regulatory
71 requirements 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
78 a current listing.

79 (6) The commissioner shall keep a list of any persons or entities that have been subject
80 to a permit revocation, withdrawal, suspension, non-renewal, or other process whereby the
81 person 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 shall propose legislative rules for promulgation in
87 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
95 in 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,
100 including, but not limited to, a statement which says "KEEP OUT OF REACH OF CHILDREN.
101 CONSULT YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY
102 MEDICATION" 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
108 products;

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

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

112 (f) Emergency rules; mandatory labeling.

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

116 (2) Labeling.

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

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

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

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

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

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

138 (1) The tax imposed by this subsection shall not be added by the retailer as a separate
139 charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the
140 price paid by a customer. The tax shall be due and payable on a quarterly basis as follows: on
141 the 20th day of January, April, July, and October for the preceding calendar quarter. When the
142 payment of tax is due, the person or entity permitted by the commissioner shall file a tax return in
143 a form prescribed by the Tax Commissioner. The Tax Commissioner may require such forms,

144 schedules, and returns and impose such filing and remittance requirements that are necessary
145 or convenient for the efficient administration of taxes imposed by this subsection.

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

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

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

168 (5) All money received from the privilege tax imposed under this section, including any
169 interest and additions to tax paid under §11-10-1 *et seq.* of this code, less the amount of any

170 refunds, and less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code,
171 shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

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

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

191 (8) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-
192 1 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax
193 Commissioner considers necessary for the efficient administration of taxes imposed by this
194 subsection.

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

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

200 (ii) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-
201 9-8 of this code; and

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

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

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

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

216 (1) The commissioner, the Tax Commissioner, and the Alcohol Beverage Control
217 Administration Commissioner may enter into a memorandum or memoranda of understanding to
218 facilitate the enforcement of this section. In addition to any other memoranda, the aforementioned
219 commissioners may enter into, they shall agree by memorandum to the following:

220 (A) To assist each other in enforcement of this section;

221 (B) To assist each other in training and cooperating with State and local law enforcement
222 to develop a state-wide plan for implementing the provisions of this section;

223 (C) To confer among themselves and law enforcement about enforcement of this section
224 on a monthly basis; and

225 (D) To jointly compile a report to be submitted to the Joint Committee on Government and
226 Finance on or before January 1, 2025, as to actions undertaken to enforce this section and the
227 results thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

280 (s) Administrative sanctions.

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

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

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

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

§19-12F-1. Short title. Findings.

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

3 (b) The Legislature finds that the manufacturing, processing, distributing, 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) "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 lowered tropical tree which contains the
10 alkaloids mitragynine and 7-hydroxymitragynine.

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

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

15 (8) "Processor" or "manufacturer" means a person or entity that processes, compounds,
16 or converts plant material from *mitragyna speciosa* into a kratom product. This also includes
17 further processing, compounding, converting, or repackaging of existing kratom products.

18 (9) "Retailer" or "seller" means a person or entity that distributes, offers for sale, or sells
19 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
7 this code, or of hemp addressed and administered under §19-12E-1 *et seq.* of this code, or of
8 medical 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
26 a current listing.

27 (f) The commissioner shall keep a list of any persons or entities that have been subject to
28 a permit, revocation, withdrawal, suspension, non-renewal, or other process whereby the person
29 or 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
33 time so as to reflect a current listing.

§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 11 percent of the retail sales price of kratom or
4 kratom products sold during the reporting period. Such tax is imposed in addition to all other
5 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 is due and payable on a quarterly basis as follows: On the 20th day of January,
10 April, July, and October for the preceding calendar quarter. When the payment of tax is due, the
11 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 necessary or convenient for the efficient administration of taxes imposed
14 by this subsection.

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

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

26 jurisdiction shall attach with relation to any such activity for the purpose of making or furthering
27 retail sales of kratom and kratom products into this state.

28 (e) If any retailer does not renew its permit, relinquishes its permit, has its permit
29 suspended or revoked, or otherwise ceases selling kratom and kratom products, then any tax,
30 additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq.* of this
31 code shall become due and the retailer shall make a final return or returns and pay any tax which
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 privilege tax imposed under this 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
40 Tax 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 article to the
43 contrary, the Tax Commissioner, the Alcohol Beverage Control Administration Commissioner,
44 and the commissioner may enter into written agreements pursuant to which the Tax
45 Commissioner may disclose to designated employees of the Alcohol Beverage Control
46 Administration Commissioner or commissioner, or both, whether a particular retailer or permittee,
47 or applicant for a permit, is in good standing with the Tax Commissioner, and the commissioner
48 may disclose to designated employees of the Tax Commissioner or the Alcohol Beverage Control
49 Administration Commissioner, or both, information a retailer or permittee, or applicant for a permit,
50 provides to the commissioner pursuant to this code and the Alcohol Beverage Control
51 Administration Commissioner may disclose to designated employees of the Tax Commissioner,

52 or the commissioner, or both, information a retailer or permittee, or applicant for a permit, provides
53 to the Alcohol Beverage Control Administration Commissioner pursuant to this code. Tax
54 information disclosed pursuant to a written agreement shall remain confidential in the hands of
55 the receiver and shall not be disclosable under §29B-1-1 *et seq.* of this code. To the extent
56 feasible, this information should be shared or exchanged electronically to ensure safe destruction,
57 or as necessary, proper file retention practices.

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

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

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

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

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

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

75 (k) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision
76 of this code to the contrary, the West Virginia Tax Procedure and Administration Act, as set forth
77 in §11-10-1 *et seq.* of this code, applies to the tax imposed by this article with like effect as if the

78 said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed
79 by this article and were set forth in extenso in this article.

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

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

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

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

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

19 (e) In the interest of protecting the safety, welfare, and well-being of West Virginia citizens
20 and residents, West Virginia nexus and jurisdiction attaches for purposes of business registration,
21 permitting, regulation, and taxation with relation to the activity of distribution or sale of kratom and
22 kratom products across state lines into this state. Persons located outside of this state that are
23 engaged in distribution or sale of kratom and kratom products across state lines into this state

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

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

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

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

37 (i) The commissioner shall keep a list of all kratom and kratom products that have been
38 approved for sale or distribution in this state. Such list shall be public information and shall be
39 published initially on or before June 30, 2024, by the commissioner on its website from time to
40 time 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) Pursuant to the labeling requirements under section 9a of this article, the commissioner
4 and the Alcohol Beverage Control Administration Commissioner shall enter into a memorandum
5 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.

11 (d) In addition to any other memoranda, the commissioner, Commissioner of the Alcohol
12 Beverage Control Administration, and the Tax Commissioner may enter into, they shall agree by
13 memorandum to the following:

14 (1) To assist each other in enforcement of this article;

15 (2) To assist each other in training and cooperating with State and local law enforcement
16 to develop a state-wide plan for implementing the provisions of this article;

17 (3) To confer among themselves and law enforcement about enforcement of this article
18 on a monthly basis; and

19 (4) To jointly compile a report to be submitted to the Joint Committee on Government and
20 Finance on or before January 1, 2025, as to actions undertaken to enforce this article and the
21 results thereof.

§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
13 than 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
16 a 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
21 more 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 kratom or a kratom product to a person
27 under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than

28 \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years,
29 or both fined and imprisoned.

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

33 (2) Notwithstanding the provisions of subdivision (1) of this subsection, second and
34 subsequent violations of subdivision (1) of this subsection constitute a felony and any person
35 convicted thereof shall be fined not more than \$5,000, imprisoned in a state correctional facility
36 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
42 of one or more permits held by the violator for a period of time to be determined by the
43 commissioner, suspension of any one or more permits held by the violator for a period of time to
44 be determined by the commissioner, fine or fines to any one or more permits held by the violator
45 not to exceed \$1,000 per each violation as determined by the commissioner, or non-issuance of
46 a permit upon application of a violator. For purposes of this subsection, administrative sanctions
47 may be imposed by the commissioner upon or against any alter ego, agent, representative, or
48 person or entity acting on behalf of, or in the interest of, a violator.

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

52 (h) Nothing in this article prohibits an authorized enforcement agent of the Alcohol
53 Beverage Control Administration Commissioner or a person who is at least 18 years of age from

54 purchasing or possessing kratom products when he or she is acting upon the request of, or under
55 the direction and control of any member of a state, federal, or local law-enforcement agency or
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
3 have 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
5 sanctions:

- 6 (1) Revoke the licensee's license;
- 7 (2) Suspend the licensee's license;
- 8 (3) Place the licensee on probationary status for a period not to exceed 12 months; and
- 9 (4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation
10 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 Alcohol Beverage Control Enforcement Fund, which is hereby
14 continued. All moneys collected, received, and deposited in the Alcohol Beverage Control
15 Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the
16 purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, nonintoxicating
17 beer as set forth in §11-16-1 *et seq.* of this code, hemp-derived cannabinoids as set forth in §19-

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

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

30 (d) A licensee shall notify, in a timely manner, emergency medical services or law
31 enforcement if a licensee knows, or has reason to know, of a life-threatening medical emergency
32 occurring on the licensed premises. In addition to the grounds for revocation, suspension, or other
33 sanction of a license set forth in this section, the commissioner may revoke, suspend, or otherwise
34 sanction a licensee for failing to comply with the provisions of this 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 revoke, suspend, or otherwise sanction a
39 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
- 44 of violence against the person occupying or emanating from the licensed premises.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

Originated in the Senate.

In effect from passage.

.....
President of the Senate

.....
Speaker of the House of Delegates

The within is this the.....
Day of, 2024.

.....
Governor