

WEST VIRGINIA CODE: §19-12E-12

§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 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 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 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 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 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.

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

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

(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 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.

(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.

(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.

(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 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 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 means other than a direct in-person transaction shall employ an age verification mechanism approved by the commissioner.

(i) 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 this section, there is hereby levied upon and collected from every person exercising the privilege a privilege tax equal to 11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids. Such tax is imposed in addition to all other applicable taxes.

(1) 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. 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.

(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-6b(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.

(4) If any retailer does not renew its permit, relinquishes its permit, has 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.

(5) All money received from the privilege tax imposed under this 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.

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

(7) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this article to the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration Commissioner, and the commissioner may enter into written agreements pursuant to which the Tax Commissioner may disclose to designated employees of the 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 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.

(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 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 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 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 this section and were set forth in extenso in 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 this section with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by this section and were set forth in extenso in this section.

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

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

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

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

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

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

(2) Procedure for contested cases. Any person or entity seeking to contest an administrative action of the commissioner 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 may enforce the criminal provisions of this section, and enforcement agents of the Alcohol Beverage Control Administration Commissioner 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 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 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.