WEST VIRGINIA CODE CHAPTER 19 ARTICLE 12F

WV Legislature

§19-12F-1. Short title. Findings.

(a) This article shall be known as the Select Plant-Based 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.

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§19-12F-2. Findings; purpose.

The legislature finds that select plant-based derivatives, including kratom, can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of this article is to allow limited regulated assess to kratom for adults 21 years of age and older.

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§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) "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 lowered tropical tree which contains the alkaloids mitragynine and 7-hydroxymitragynine.

(6) "Kratom product" means the natural leaf of the plant mitragyna speciosa and any simple physical form of the leaf, including whole, crushed, or powdered. "Kratom product" does not include a product that has been synthetically manipulated or chemically concentrated beyond the leaf’s natural alkaloid profile.

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

(8) "Processor" or "manufacturer" means a person or entity that processes, 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.

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§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, processor, distributor, and retailer permits. The business activity subject to permitting under this article shall be treated as separate and distinct from manufacturing, processing, distribution, or sale of hemp-derived cannabinoid products addressed and administered under §19-12E-12 of this code, 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.

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

(c) 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 or kratom products across State lines into this State. Persons located outside of this State that are engaged in distribution or sale of kratom or 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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§19-12F-5. Rule-making authority.

(a) 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, process, distribute, offer for sale, or sell kratom;

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

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

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

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

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

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

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

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

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

(b) The Commissioner of Agriculture and the Alcohol Beverage Control 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.

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

(a) Any website owned, managed, or operated by a person who manufactures, processes, distributes, offers for sale, or sells a product containing kratom or kratom products to persons in this state, shall prove that an individual is 21 years of age or older by requiring an individual to:

(1) Provide digital identification; or

(2) Comply with a commercial or governmental age verification system that verifies age using:

(A) Government-issued identification which may be digital identification; or

(B) A commercially reasonable method that relies on public or private transactional data to verify the age of an individual.

(b) Any person or entity distributing, offering to distribute or sell, or selling kratom or kratom 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.

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§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 11 percent 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 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 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-6ba(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 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 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

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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 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 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.

(i) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 *et seq*. of this code, any necessary legislative rules 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 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 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 West Virginia

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

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§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 the 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.

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(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.

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§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) Pursuant to the labeling requirements under 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.

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

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

(2) 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 article;

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

(4) 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 article and the results thereof.

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§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.

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§19-12F-10. Contraband; seizures; forfeitures; and destruction.

(a) Any kratom or kratom product found in this state in violation of this article is hereby declared contraband and any property interest in the kratom or kratom product is vested in the State of West Virginia and is subject to seizure and forfeiture and destruction.

(b) Any certified law enforcement officer in this state may enforce the criminal provisions of this article, and any enforcement agent of the Alcohol Beverage Control Commissioner is authorized to enforce the administrative provisions of this article as it relates to retailers.

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§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 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, imprisoned in a state correctional

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facility for not less than one nor more than three years, or both fined and imprisoned.

(g) Administrative sanctions. —

(1) The commissioner shall impose the following sanctions on any licensee who commits any of the violations provided for in subsection (f) of this section:

(A) For a first offense of any violation described in subsection (f) of this section, suspension of the licensee's license for a period of 30 days and a fine of $2,000: *Provided*, That the commissioner shall inspect the licensee's premises no more than 180 days following the licensee's license reinstatement;

(B) For a second offense of any violation described in subsection (f) of this section, which need not be the same violation as the first violation, suspension of the licensee's license for a period of 60 days and a fine of $5,000: *Provided*, That the commissioner shall inspect the licensee's premises no more than 90 days following the licensee's license reinstatement; and

(C) For a third offense of any violation described in subsection (f) of this section, which need not be the same violation as the first or second violation, permanent revocation of the licensee's license and a fine of $10,000.

(2) In addition to such criminal penalties and administrative sanctions imposed, the commissioner may impose 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 administrative sanctions upon any person or entity under indictment for any of the criminal violations during, and during the pendency of, a criminal trial therefor.

(3) The commissioner shall notify the Tax Department of any violation enumerated in this section for revocation of the registered business license.

(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.

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§19-12F-12. Reporting.

The commissioner shall employ a software system to monitor the following items:

(1) Registration of kratom manufacturers, processors, distributors, and retailers;

(2) Registration of kratom products;

(3) Inspections conducted by the Department of Agriculture;

(4) Referrals to prosecutors; and

(5) Referrals to the Tax Department for any violation of §19-12F-11 of this code.

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