

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 220

BY SENATORS WOODRUM, DEEDS, RUCKER, STUART,
HAMILTON, AND TRUMP

[Passed March 11, 2023; in effect 90 days from
passage (June 9, 2023)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 23 P 3: 34

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §19-12E-12; to amend said code by adding thereto a new article, designated
3 §19-12F-1, §19-12F-2, §19-12F-3, §19-12F-4, §19-12F-5, §19-12F-6, §19-12F-7, §19-
4 12F-8, §19-12F-9, §19-12F-10, and §19-12F-11; to amend and reenact §60-7-12 and §60-
5 7-13 of said code; and to amend said code by adding thereto a new article, designated
6 §60-10-1 and §60-10-2, all relating to further regulation of hemp-derived cannabinoid
7 products and regulation of kratom; creating the Select Plant-Based Derivatives Regulation
8 Act: Industrial Hemp; creating the Select Plant-Derived Regulation Act: Kratom; making
9 legislative findings and declaring the purpose of the acts; providing applicability; defining
10 terms; requiring permits to manufacture, process, distribute, offer to sell, and sell regulated
11 products; vesting regulatory authority in the Commissioner of Agriculture and the Alcohol
12 Beverage Control Commission; granting legislative and emergency rule-making authority
13 to the Commissioner of Agriculture and the Alcohol Beverage Control Commissioner;
14 establishing an internal effective date from passage for purposes of declaring illegal
15 products contraband and authorizing seizure, forfeiture, and destruction; limiting lawful
16 sale of certain regulated products to persons 21 years of age or older; requiring age
17 verification for internet sales and sales not made face-to-face; creating a eleven percent
18 tax on retail sales to be collected by the Tax Commissioner quarterly for certain hemp
19 products and kratom products; establishing distribution of tax revenue; authorizing the
20 Alcohol Beverage Control Commissioner to enforce regulation of the product at the retail
21 level; clarifying Alcohol Beverage Control Commissioners authority over alcohol licensees
22 selling kratom and hemp-derived cannabinoid products; and creating criminal offenses
23 related to regulated products and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-12. Regulation of Select Plant-Based Derivatives: 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 certain plant-based derivatives can be regulated so as not
4 to interfere with the strict regulation of controlled substances in this state. The purpose of the act
5 is to allow limited, regulated access to certain plant-based derivatives which are naturally
6 occurring and as authorized by the provisions of this article for adults 21 years of age and older:
7 *Provided, That, the provisions of this section shall not apply to naturally occurring plant-based*
8 *derivative products not containing tetrahydrocannabinol content.*

9 (c) As used in this section:

10 (1) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control
11 Commissioner or his or her designees.

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

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

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

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

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

21 (A) Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C.
22 §5940;

23 (B) Delta-8 tetrahydrocannabinol;

24 (C) Delta-10 tetrahydrocannabinol;

25 (D) Hexahydrocannabinol;

26 (E) Tetrahydrocannabiphorol (THCp); and

27 (F) Tetrahydrocannabivarin (THCv).

28 (7) "Manufacturer" means a person or entity which grows industrial hemp.

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

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

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

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

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

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

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

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

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

52 (4) Assessment of fees as commensurate with the need of the commissioner's activities
53 in issuing permits, laboratory testing, and in overseeing the regulation of hemp-derived products;

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

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

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

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

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

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

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

68 (f) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner
69 may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as
70 are necessary to effectuate the purposes of this article.

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

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

79 (i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to
80 11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the
81 privilege of engaging in the business of selling hemp-derived cannabinoid products.

82 (1) For the privilege of engaging or continuing within this state in the business of the retail
83 sale of hemp-derived cannabinoid products, as defined in subdivision (6), subsection (a) of this
84 section, there is hereby levied upon and collected from every person exercising the privilege a
85 privilege tax.

86 (2) The rate of tax imposed by this subsection is 11 percent of the retail sales price of
87 hemp-derived cannabinoid products sold during the reporting period, depending upon the
88 person's method of accounting for federal income tax purposes. The tax imposed by this
89 subsection shall not be added by the retailer as a separate charge or line item on any sales slip,
90 invoice, receipt, other statement, or memorandum of the price paid by a customer.

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

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

100 (5) If any retailer does not renew its permit, relinquishes its permit, has said permit to
101 operate suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products

102 then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et*
103 *seq.* of this code, shall become due and the retailer shall make a final return or returns and pay
104 any tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its
105 permit to operate suspended or revoked, or otherwise ceasing business. The unpaid amount of
106 any tax is to be considered a lien.

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

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

113 (8) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this section to the
114 contrary, the Tax Commissioner, and the commissioner shall enter into written agreements
115 pursuant to which the Tax Commissioner shall disclose to designated employees of the
116 department, whether a particular retailer is in good standing with the Tax Commissioner, and the
117 commissioner shall disclose to designated employees of the Tax Commissioner information a
118 retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant
119 to a written agreement shall remain confidential in the hands of the receiver and shall not be
120 disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be
121 shared or exchanged electronically to ensure safe destruction, or as necessary, proper file
122 retention practices.

123 (9) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-
124 1 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax
125 Commissioner considers necessary for the efficient administration of taxes imposed by this
126 subsection.

127 (A) Funds from the tax imposed by the provisions of subdivision (1) of this subsection and
128 deposited in the Agricultural Fees Fund, shall be divided and deposited as follows:

129 (i) Sixty-five percent shall remain in the Agriculture Fees Fund;

130 (ii) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-
131 9-8 of this code;

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

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

139 (C) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision
140 of this code to the contrary, each and every provision of the West Virginia Tax Procedure and
141 Administration Act as set forth in §11-10-1 *et seq.* of this code applies to the tax imposed by
142 §16A-9-1 *et seq.* with like effect as if the said West Virginia Tax Procedure and Administration Act
143 were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in
144 extenso in §16A-9-1 *et seq.* of this code.

145 (j) All fees collected pursuant to the provisions of this subsection shall be deposited with
146 the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of
147 §19-1-4c of this code for the use of the commissioner for administering and enforcing the
148 provisions of this article.

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

151 (2) The commissioner and the Alcohol Beverage Control Commissioner shall enter into a
152 memorandum or memoranda of understanding to facilitate the enforcement of this section.

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

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

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

162 (4) The provisions of this subsection are effective from passage.

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

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

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

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

176 (o)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for
177 sale any hemp-derived cannabinoid product which has not been approved by the commissioner

178 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor
179 more than \$5,000 or confined in jail for not more than one year, or both fined and confined.

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

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

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

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

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

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

§19-12F-1. Short title.

1 This article shall be known as the Select Plant-Based Product Regulation Act: Kratom.

§19-12F-2. Findings; purpose.

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

§19-12F-3. Definitions.

1 (1) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control
2 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" means the West Virginia Department of Agriculture.

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

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

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

14 (8) "Processor" means a person or entity that processes, distributes, sells, or offers for
15 sale, kratom or kratom products in this state on a wholesale basis to a retailer.

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

§19-12F-4. Processor and retailer permits; regulation.

1 Any person manufacturing, processing, distributing, offering for sale, or selling kratom or
2 kratom products in this state shall have a permit issued by the commissioner and be otherwise

3 authorized to do business in this state. The commissioner may issue permits for manufacturers,
4 processors, and retailers.

§19-12F-5. Rule-making authority.

1 (a) The commissioner shall propose legislative rules for promulgation in accordance with
2 §29A-3-1 *et seq.* of this code that include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Any website owned, managed, or operated by a person who manufactures, processes,
2 distributes, offers for sale, or sells a product containing kratom or kratom products to persons in
3 this state shall employ a neutral age-screening mechanism that verifies that the user is at least
4 21 years old, including by using an age-gate, age-screen, or other age-verification mechanism
5 approved by the commissioner.

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

§19-12-F-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.

4 (b) The rate of tax imposed by this subsection is 11 percent of the retail sales price of
5 kratom or kratom products sold during the reporting period.

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

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

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

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

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

28 (h) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this section to the
29 contrary, the Tax Commissioner, and the commissioner shall enter into written agreements
30 pursuant to which the Tax Commissioner shall disclose to designated employees of the
31 department, whether a particular retailer is in good standing with the Tax Commissioner, and the
32 commissioner shall disclose to designated employees of the Tax Commissioner information a
33 retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant
34 to a written agreement shall remain confidential in the hands of the receiver and shall not be
35 disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be
36 shared or exchanged electronically to ensure safe destruction, or as necessary, proper file
37 retention practices.

38 (i) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-
39 1 *et seq.* of this code, any necessary legislative rules as the Tax Commissioner necessary to the
40 efficient administration of taxes imposed by this subsection.

41 (1) Funds from the tax imposed by the provisions of this subsection and deposited into
42 the Agricultural Fees Fund shall be divided and deposited as follows:

43 (2) Sixty-five percent shall remain in the Agriculture Fees Fund;

44 (3) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-
45 9-8 of this code; and

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

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

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

59 (l) All fees collected pursuant to the provisions of subsection shall be deposited with the
60 State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-
61 1-4c of this code for the use of the commissioner in administering and enforcing the provisions of
62 this article.

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

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

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

§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 Commissioner.

3 (b) The commissioner and the Alcohol Beverage Control Commissioner shall enter into a
4 memorandum or memoranda of understanding to facilitate enforcement of this article.

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

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

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

§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 a kratom or 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 and imprisoned in a state correctional
36 facility for not less than one nor more than three years, or both fined and imprisoned.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 10. ENFORCEMENT AUTHORITY RELATING TO RETAIL SALE OF SELECT PLANT-BASED DERIVATIVES.

§60-10-1. Enforcement authority; jurisdiction.

1 The commissioner is hereby authorized to enforce the provisions of §19-12E-1 *et seq.* of
2 this code and §19-12F-1 *et seq.* of this code, as relating to retail sales.

§60-10-2. General provisions.

1 For the purposes of enforcing §19-12E-1 *et seq.* and §19-12F-1 *et seq.* of this code, the
2 Alcohol Beverage Control Commission and the Commissioner of Agriculture may request
3 information from any state agency, Constitutional officer, or local agency and, notwithstanding the
4 provisions of §11-10-5d of this code or any other provision of this code, may share information
5 with, and request information from, any federal agency and any agency or Constitutional officer
6 of this or of any other state or any local agency thereof.

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

Joe Lavin
Clerk of the Senate

Steve Korman
Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.

FILED
2023 MAR 23 P 3:35
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

G. P. Blevins
President of the Senate

Don Hancock
Speaker of the House of Delegates

The within is *approved* this the *23rd*
Day of *March*, 2023.

James Justice
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2023

Time 11:41 am