



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Alcohol Beverage Control Commission TITLE-SERIES: 175-11
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Retail Enforcement of Select Plant-Based
Derivatives and Derivative Products: Hemp and
Kratom

CITE STATUTORY AUTHORITY: W. Va. Code §11-16-23, §60-7-13; §19-12E-12; and §19-12F-1 et seq.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/30/2024 10:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Anoop Bhasin
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Charleston, WV 25302
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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

With the passage of SB 679 in 2024, the Legislature empowered the WVABCA to assist Agriculture in the retail enforcement of hemp and kratom. This rule addresses the WVABCA's role in the process of hemp and kratom retail enforcement.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

With the passage of SB 679 in 2024, the Legislature empowered the WVABCA to assist Agriculture in the retail enforcement of hemp and kratom. This rule addresses the WVABCA's role in the process of hemp and kratom retail enforcement. Agriculture is administratively responsible for the permitting and sanctioning of their permittees.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

SB 679 generates a 11% tax and greater enforcement should increase revenue to the state as permittees comply with the law. Agriculture may have numbers on permittees and potential revenue.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

SB 679 generates a 11% tax and greater enforcement should increase revenue to the state as permittees comply with the law. Agriculture may have numbers on permittees and potential revenue.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

SB 679 generates a 11% tax and greater enforcement should increase revenue to the state as permittees comply with the law. Agriculture may have numbers on permittees and potential revenue.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	162500	325000	325000
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	400000	400000	400000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Please explain increases and decreases in personal services, current expenses, repairs and alterations, assets, other costs and revenues, including assumptions and data sources and delineation between start-up and ongoing costs. Please also include a long-range schedule of costs and revenues if fiscal impact is expected to vary in future years.

SB 220 from 2023 passed and created a hemp cannabinoid product tax and a kratom tax at 11%. That bill created revenues from the tax. The changes in this bill do not create any revenue. SB 220's tax has generated a quarter of revenue and conservative yearly estimate would be \$400,000 to the WVABCA. Again, there is not a full year of data collected yet. With more enforcement, hemp and kratom tax revenue could be negatively impacted.

The changes in the bill that affect WVABCA would impact costs of the agency with respect to enforcement of administrative penalties on various Department of Agriculture hemp and kratom retail licensees.

License numbers provided Department of Agriculture indicate that there are 816 hemp retail licenses and 204 kratom retail licensees. It is unclear at this time if there is some overlap between the hemp and kratom licensees or if there are some stand alone licensees. Further it is not clear if there is overlap with WVABCA licensees as well.

Note, more kratom licensees are expected after January 1, 2025, when kratom law becomes effective.

Some assumptions being made, if there a 1000 separate licensees. The WVABCA will develop

goal of a percentage of licensees to visit (working with Agriculture and Tax), If that number is 50%, then the WVABCA would visit 500 retail licensees either during regular hours and some overtime hours. At a 50% goal the cost would likely be approximately \$325,000. Again, the cost factor could vary based on the salary of the agents used and whether during regular time or overtime hours worked by the agents and underage operatives. This is a rough estimate as the number of actual licensees is not well known at this time. At this time, it is unclear whether additional agent positions would need to be requested. This fiscal note does not account for Agriculture's or Tax's fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 175
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

SERIES 11

Retail Enforcement of Select Plant-Based Derivatives and Derivative Products: Hemp and Kratom

§175-11-1. General.

1.1. Scope. -- This legislative rule provides for the retail enforcement conducted by the WVABCA of Select Plant-Based Derivative Products: Hemp and Kratom sold at retail in the State of West Virginia.

1.2. Authority. -- W. Va. Code §11-16-23, §60-7-13, §19-12E-12; and §19-12F-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2030.

§175-11-2. Definitions.

2.1. "Alcohol Beverage Control Administration Commissioner" means the West Virginia Alcohol Beverage Control Administration Commissioner or his or her designees.

2.2. "Agriculture Commissioner" means the Commissioner of Agriculture or his or her designees.

2.3. "Contaminated" means as defined in W. Va. Code §19-12E-12 and W. Va. Code §19-12F-3.

2.4. "Department" or "Department of Agriculture" means the West Virginia Department of Agriculture.

2.5. "Final product" means as defined in W. Va. Code §19-12E-12 and W. Va. Code §19-12F-3.

2.6. "Grower" means as defined in W. Va. Code §19-12E-12 and W. Va. Code §19-12F-3.

2.7. "Hemp-derived cannabinoid" means as defined in W. Va. Code §19-12E-12.

2.8. "Hemp-derived cannabinoid product" or "hemp product" means as defined in W. Va. Code §19-12E-12.

2.8. "Kratom" means as defined in W. Va. Code §19-12F-3.

2.9. "Kratom product" means as defined in W. Va. Code §19-12F-3.

2.10. "Non-naturally occurring derivative" means as defined in W. Va. Code §19-12E-12.

2.11. "Processor" or "manufacturer" means a person or entity as defined in W. Va. Code §19-12E-12 and W. Va. Code §19-12F-3.

2.12. "Retailer" or "seller" means a person or entity who has obtained a permit from the Agriculture Commissioner that offers for sale or sells hemp-derived cannabinoids, hemp-derived cannabinoid products, kratom, or kratom products at retail or from a retail facility to persons for personal consumption.

2.13. "Retail sales" means as defined in W. Va. Code §19-12E-12, and the sale of kratom products in a commercial setting by a permitted retailer or seller as determined and set forth in rules promulgated by the Agriculture Commissioner.

2.14. "Tax Commissioner" means the Commissioner of the West Virginia State Tax Division or his or her designees.

2.15. "WVABCA" means West Virginia Alcohol Beverage Control Administration or its commissioner.

Additional definitions may be referenced in the Agriculture Commissioner's legislative rule 61 CSR 30 and the Tax Commissioner's legislative rule 110 CSR 99.

§175-11-3. Retail enforcement authority.

3.1. Pursuant to W. Va. Code §19-12E-12(d)(5), (i)(7), (j) and W. Va. Code §19-12F-4(g) and W. Va. Code §19-12F-8(i), the Agriculture Commissioner shall periodically provide the WVABCA an accurate updated list of registered hemp and kratom products that are legally registered for retail sale in West Virginia.

3.2. Pursuant to W. Va. Code §19-12E-12(d)(7), (i)(7), (j), and W. Va. Code §19-12F-4(e) and W. Va. Code §19-12F-8(g), the Agriculture Commissioner shall periodically provide the WVABCA an updated and accurate list of Agriculture Commissioner permitted hemp product retailers and kratom product retailers to the WVABCA.

3.2.1. The WVABCA will organize the provided list in section 3.2., by county and assign a permit number, if such information is not provided by the Agriculture Commissioner, and will provide the Agriculture Commissioner an editable copy of the revised list. The WVABCA requests that the Agriculture Commissioner provide all future lists in this same format but notating which hemp product retailers and kratom product retailers are newly added to the list and any retailers that were removed.

3.2.2. The permit number shall be used by WVABCA as reference to correlate the retail facility to a location, WVABCA license number, if applicable, and to complete administrative citations to be delivered to the Agriculture Commissioner.

3.3. Upon receiving periodic training from the Agriculture Commissioner, the WVABCA will work with the Agriculture Commissioner and the Tax Commissioner to conduct retail enforcement on the Agriculture Commissioner's permitted hemp product retailers' retail facilities and kratom product permitted retailers' retail facilities.

3.4. The WVABCA's retail enforcements shall include conducting underage hemp/kratom compliance checks in accordance with WVABCA Policy No. E-106 (and all Hemp/Kratom Compliance Check forms) and utilizing funds received W. Va. Code 19-12E-12(i)(8) and W. Va. Code §19-12F-7(i)(4) at the permitted retailer facilities.

3.5. The WVABCA will upon entering permitted retailer's retail facility check that it has its Agriculture Commissioner permit displayed, and if not displayed the WVABCA will note in its report.

3.6. The WVABCA may conduct buys of unregistered hemp products or unregistered kratom products utilizing funds received per W. Va. Code §19-12E-12(i)(8) and W. Va. Code §19-12F-7(i)(4) at a permitted retailer or an unpermitted retailer, but only with the assistance, supervision, and cooperation of state or local law enforcement.

3.7. Upon receiving training and assistance from the Agriculture Commissioner, the WVABCA will check for proper and approved labeling for hemp products and kratom products per W. Va. Code §19-12E-12(e) and (f), and W. Va. Code §19-12F-9.

§175-11-4. Retail enforcement citations and evidence.

4.1. The WVABCA will conduct retail enforcement as set forth in section three, W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq., at hemp product and kratom product retailers who will be cited if violations of 61 CSR 30, W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq., occur at their retail facilities.

4.2. The WVABCA will complete administrative citations and provide the citations along with any seized evidence to the Agriculture Commissioner in order for the Agriculture Commissioner to apply the administrative sanctions set forth in 61 CSR 30, W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq. Note, the administrative citations contain personal protected information regarding WVABCA agents and underage operatives, and this information should be redacted pursuant to any FOIA request per W. Va. Code §29B-1-4.

4.3. The WVABCA will transfer the evidence via an evidence chain of custody document, bag, or box to the Agriculture Commissioner upon delivering the administrative citations to the Agriculture Commissioner.

§175-11-5. Hearing and sanctions.

5.1. The Agriculture Commissioner is solely responsible for levying administrative sanctions and conducting administrative hearings regarding retail enforcement as set forth in 61 CSR 30, W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq.

5.2. As set forth in sub-section 4.2., the Agriculture Commissioner, if necessary, shall conduct administrative hearings for any permittee that objects to the administrative sanctions imposed by the Agriculture Commissioner as set forth in 61 CSR 30, W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq.

5.3. The WVABCA will make all reasonable attempts to have its agents available to testify for any hearings scheduled in advance and with proper notice of the hearing.

5.4. Upon completion of a sanction or a hearing, the Agriculture Commissioner will reasonably notify the WVABCA about the sanction or outcome of the hearing, so the WVABCA may maintain accurate records and determine any additional sanctions or penalties for a WVABCA licensee.

§175-11-6. Memorandum of Understanding, Cooperative Enforcement, and Reports.

6.1. If necessary, the Agriculture Commissioner, the Tax Commissioner, and the WVABCA may enter into a memorandum or memoranda of understanding to facilitate the enforcement of W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq. Topics of the Agriculture Commissioner, the Tax Commissioner, and the WVABCA's memorandum include the following:

6.1.1. To assist each other in enforcement of W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq.;

6.1.2. 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 W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 et seq.;

6.1.3. To confer among themselves and law enforcement about enforcement of W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 *et seq.*, on a monthly basis; and

6.1.4. 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 W. Va. Code §19-12E-12 and W. Va. Code §19-12F-1 *et seq.*, and the results.