



September 1, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to psilocybin (A.G. File No. 21-0005).

Background

Psilocybin. Psilocybin is a naturally occurring hallucinogen found in certain species of mushrooms that are often referred to as psychedelic or “magic” mushrooms. When a person uses psilocybin—typically by ingesting mushrooms containing it—the user temporarily experiences hallucinations as well as changes in thoughts and emotions. Psilocybin is currently being studied to assess its potential therapeutic benefits for treating various conditions including depression and addiction.

State Law. Under current state law, the cultivation, possession, distribution, transportation, and sale of psilocybin outside of an approved research setting is generally illegal in California. Penalties for adults for psilocybin-related activities vary depending on the offense. For example, possession of psilocybin is generally punishable as a misdemeanor and may result in up to a one-year sentence in county jail and/or a fine, while selling psilocybin is a felony and may result in a jail or state prison sentence. Currently, there are very limited data specifically for psilocybin-related offenses. However, we estimate that the number of such offenders currently in state prison and county jail is very minor relative to the overall prison and jail population. There is also limited data on penalties received by juveniles for psilocybin-related offenses, which can differ depending on the circumstances of the offense. However, available data indicate that custodial placements are very rare. This suggests that juveniles are instead generally placed in diversion programs or on informal probation for these offenses.

Federal Law. Federal laws classify psilocybin as an illegal substance and provide criminal penalties for various activities relating to its use outside of an approved research setting. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

Proposal

This measure makes various changes to state law related to psilocybin, including removing certain criminal penalties and requiring regulation of its cultivation and sale. However, federal restrictions on psilocybin would still be in effect. We describe key provisions of the measure below.

Legalizes Psilocybin-Related Activities Under State Law. The measure eliminates existing penalties under state law for people 21 years of age and over who engage in psilocybin-related activities including, possession, distribution, transportation, and sale of psilocybin. The measure also allows people 21 years of age and over to cultivate psilocybin mushrooms subject to certain limitations, such as requiring the mushrooms to not be publicly visible. These activities would generally remain illegal for people under the age of 21 who engage in them without parental consent. However, the measure limits the maximum punishment for such people to a mandatory drug education program. Activities related to the use of psilocybin would continue to be prohibited under federal law.

Requires Regulation of Psilocybin Cultivation and Sales. The measure requires that psilocybin mushrooms and psilocybin mushroom businesses be regulated by the California Department of Food and Agriculture (CDFA) as closely as practicable to “non-psychoactive agriculturally produced mushrooms,” except that it would impose specific requirements for labeling of psilocybin mushroom products. Under the measure, psilocybin mushroom businesses would be permitted to begin cultivation, manufacturing, and wholesale distribution of psilocybin mushrooms on January 1, 2023 provided they are operating on land that is zoned for commercial agricultural production and approved by CDFA for food production. Beginning on April 19, 2023, businesses would be allowed to begin retail sales of psilocybin. Regulatory agencies would be prohibited from imposing fines or fees in excess of the amount charged for comparable non-psilocybin mushroom-related businesses.

Under the measure, a city or county could ban or limit the number of psilocybin mushroom businesses within its boundaries if approved by the voters within that jurisdiction at a statewide election held in November.

Specifies Use of Psilocybin for Treatment Purposes. The measure specifies that health care practitioners may use psilocybin for treatment purposes—including to treat people under the age of 21—subject to certain limits, such as requiring practitioners to obtain specialized certifications. In addition, the measure requires the California Department of Consumer Affairs and the California Health and Human Services Agency to adopt and implement the qualification requirements and protocols for psilocybin mushroom-assisted therapy created by an “independent professional certifying body.”

Limits Taxation of Psilocybin. The measure exempts psilocybin grown or sold for medical, therapeutic, religious, or spiritual purposes from sales taxes. Psilocybin products labeled and sold as dietary supplements would be subject to sales tax.

Fiscal Effects

Reduced Psilocybin Enforcement Costs. The measure would reduce ongoing costs to the state and local governments by reducing the number of people convicted of psilocybin offenses incarcerated in state prison and county jail, as well as the number placed under community supervision (such as county probation). In addition, the measure would result in a reduction in state and local costs for the enforcement of psilocybin-related offenses and the handling of related criminal cases in the state court system. In total, the reduction in costs would likely not exceed a few million dollars annually. In many cases, however, these resources would likely be redirected to other law enforcement, corrections, and court activities.

Increased Regulatory Costs. State costs to regulate psilocybin mushroom businesses and psilocybin treatment providers would depend on (1) the specific regulatory structure that the state ultimately implements pursuant to the measure, (2) the extent to which the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities, and (3) how people and businesses respond to these two factors. Accordingly, costs could range from minimal to tens of millions of dollars annually. These regulatory costs could eventually be partially or fully offset by fee revenue. To the extent that fee revenues are not sufficient to fully support such costs, some of the costs could require support from other fund sources (such as the state General Fund).

Increased State and Local Tax Revenues. To the extent people who are currently purchasing psilocybin illegally begin purchasing it from entities that collect sales taxes, state and local governments would receive additional revenues related to the sale of psilocybin. The amount of sales tax revenue collected would depend on the portion of sales that are not for medical, therapeutic, religious, or spiritual purposes, which would be exempt from sales tax under the measure. In addition, the measure could result in an increase in other taxable economic activity in the state, as people currently engaged in psilocybin-related activities (such as selling psilocybin) illegally could begin doing so legally under state law and pay personal income taxes. We estimate that these potential increases in tax revenues likely would not exceed a few million dollars annually. However, this revenue could be greatly reduced to the extent that the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities.

Summary of Fiscal Impacts. We estimate that this measure would have the following fiscal effects:

- Reduced costs, not likely to exceed a few million dollars annually, to state and local governments related to enforcing psilocybin-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising psilocybin offenders.
- Annual state costs to regulate psilocybin businesses and treatment providers, ranging from minimal to the tens of millions of dollars. These costs could eventually be partially or fully offset by fee revenue.
- Potential increase in state and local tax revenues, not likely to exceed a few million dollars annually.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance