



December 18, 2023

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 cannabis and certain psychedelic drugs (A.G. File No. 23-0032, Amendment #1).

Background

Cannabis. Cannabis refers to a variety of species and subspecies of flowering plants that produce chemical compounds known as cannabinoids responsible for the “high” reported by cannabis users. Researchers’ current understanding of the health effects of cannabis is incomplete. However, evidence indicates that cannabis provides health benefits to those with certain conditions, such as chronic pain or nausea from chemotherapy.

State and Local Cannabis Law and Regulation. Under current state law, people under 21 years of age can use cannabis for medicinal purposes, which requires a recommendation from a doctor. People who are 21 years of age and older can use cannabis for either medicinal or non-medicinal purposes (referred to as “adult use”). To participate in the medicinal and/or adult use cannabis market, businesses—including cultivators, manufacturers, distributors, testing labs, and retailers—must hold a state license and meet numerous other requirements, including ones related to security protocols, product testing, and product labeling. For example, state-licensed businesses must participate in the state’s “track-and-trace” system by attaching unique identifier tags (similar to bar codes) to each plant and product. These tags allow the state to track the movement of cannabis plants and products through the supply chain. State regulatory agencies impose fees to cover their costs for regulating cannabis businesses. Local governments impose additional requirements and fees on cannabis businesses. Cannabis regulatory fees generate over \$100 million in revenue annually.

Cannabis-Related Taxes. Adult use cannabis is subject to state and local sales taxes. Both adult use and medicinal cannabis are subject to a 15 percent state excise tax, which generated over half a billion dollars in revenue in 2022-23. This revenue is used for designated purposes, including: (1) cannabis

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regulatory and administrative costs; (2) cannabis-related research; (3) programs to discourage substance use by youth; (4) programs addressing environmental damage from unlicensed cannabis cultivation; and (5) public safety related activities. Local governments impose additional taxes on cannabis businesses.

Psychedelic Drugs. The term “psychedelic” generally refers to a category of drugs that can cause users to experience altered states of consciousness, such as hallucinations and/or changes in thought and emotions. Some psychedelic drugs are naturally occurring. For example, psilocybin is found in certain species of mushrooms (often referred to as magic mushrooms). Others—such as LSD (often referred to as acid) are synthesized in laboratories. Some psychedelic drugs are currently being studied to assess their potential therapeutic benefits for treating various conditions including depression, posttraumatic stress disorder, and addiction.

State Psychedelic Drug Laws. Under current state law, the production, possession, and sale of most psychedelic drugs is generally illegal. Penalties for adults for these activities vary depending on the offense. For example, possession is generally punishable as a misdemeanor and may result in up to a one-year sentence in county jail and/or a fine, while sale is a felony and may result in a jail or state prison sentence. Currently, there is very limited data on the number of people convicted of psychedelic drug-related offenses. However, we estimate that the number of people in state prison and county jail for such offenses is very small relative to the overall prison and jail population.

Federal Law Related to Cannabis and Psychedelic Drugs. Federal laws classify cannabis and most psychedelic drugs as illegal substances and provide criminal penalties for various activities relating to their 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. Currently, the federal government generally chooses not to prosecute cannabis users and businesses that follow state and local cannabis laws.

Proposal

This measure makes various changes to state law related to “entheogenic substances”, which the measure defines as including cannabis and specific psychedelic drugs. These changes to state law include legalizing entheogenic substances that are currently illegal for use by people 18 years of age and older. In addition, the measure includes various provisions regulating the distribution of entheogenic substances for medicinal and therapeutic use. However, federal restrictions on these drugs would still be in effect. We describe key provisions of the measure below.

Defines Entheogenic Substances to Include Cannabis and Certain Psychedelic Drugs. The measure defines entheogenic substances as “those controlled substances with the potential for medicinal, therapeutic or spiritual use” specified in subdivision (d) of Section 11054 of the Health and Safety Code as well as MDMA (a psychedelic drug also called molly or ecstasy). Subdivision (d) of Section 11054 of the Health and Safety Code includes cannabis and various psychedelic drugs such as psilocybin, LSD, and mescaline. The measure defines “entheogenic plants” to be any plant or fungus that contains an entheogenic substance. Under the measure, the California Department of Public Health would be required to maintain a list of all entheogenic plants and substances approved for medicinal and therapeutic use. The measure requires this list to include all entheogenic plants and substances that research has shown to have a potential for medicinal or therapeutic use.

Legalizes Certain Entheogenic Substance-Related Activities Under State Law. The measure eliminates existing penalties under state law for the following activities related to entheogenic substances:

- ***Use, Possession, and Cultivation by Adults.*** Under the measure, people 18 years of age and older could use and share entheogenic substances in their homes or on private property with the owner’s consent and possess up to a one-year personal supply of entheogenic substances. In addition, adults could grow entheogenic plants on private property, subject to certain limitations, such as requiring the plants to not be publicly visible. However, people could not sell entheogenic substances unless they are an entheogenic business, as discussed below.
- ***Use for Treatment Purposes by Health Care Practitioners.*** The measure authorizes health care practitioners (specifically, physicians, nurse practitioners, naturopathic doctors, and therapists licensed to practice in California) to use entheogenic substances for treatment purposes—including to treat people under the age of 18 for “severe and life threatening conditions”. However, the measure places certain limits on such uses. For example, health care practitioners would be required to obtain specialized training certifications before being able to deliver entheogenic plant or substance-assisted therapy. In addition, the measure requires the California Health and Human Services Agency to “review all qualification requirements and protocols for entheogenic plant or substance-assisted therapy created by professional certifying bodies and adopt and implement the best standards”.
- ***Production and Distribution for Medicinal or Therapeutic Use.*** The measure allows entheogenic businesses (including for-profit entities, nonprofit entities, and individual people) to produce, sell, gift, administer, and deliver entheogenic plants and substances for medicinal and therapeutic use to qualified patients or their primary caregivers. The measure defines qualified patients as people that have been recommended to use entheogenic substances by a qualified healthcare practitioner.

Allows for Resentencing and Changing of Criminal Records. The measure requires courts to resentence people serving sentences for crimes affected by the measure, unless the person seeking resentencing is found by the court to pose an unreasonable risk of danger to public safety. In addition, the measure allows people who have completed sentences for such crimes to apply to the courts to have their criminal records changed. For example, people who were convicted of crimes that would no longer exist under state law could apply to have their convictions dismissed and sealed.

Requires Regulation of Production and Distribution for Medicinal or Therapeutic Use. The measure requires that entheogenic plants, substances, and businesses be regulated as closely as practicable to “non-psychoactive agriculturally produced products,” except that it would impose specific requirements for product labeling, such as mandating a warning to keep the substance out of the reach children and animals. Under the measure, entheogenic businesses would be permitted to begin cultivation, manufacturing, and wholesale distribution of entheogenic plants or substances on January 1, 2025, provided they are operating on land that is zoned for commercial agricultural production and approved for food production by the California Department of Food and Agriculture. Beginning on April 19, 2025, businesses would be allowed to begin retail sales of entheogenic plants or substances. Regulatory agencies would generally be prohibited from imposing fines or fees in excess of the amount charged for “comparable non-entheogenic plant or substance related

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

Permits Limited Taxation of Entheogenic Businesses. The measure prohibits taxes on entheogenic businesses from exceeding the amount assessed for comparable non-entheogenic plant or substance related businesses. However, the measure permits local excise taxes of up to 10 percent to be applied to purchasers of entheogenic plants or substances sold for medicinal or therapeutic use if approved by voters in a local initiative appearing on the ballot of a local election consolidated with a statewide general election held in November of an even-numbered year.

Fiscal Effects

The fiscal effects on the state and local governments associated with this measure would depend on (1) how the measure is legally interpreted and the specific regulatory structure that the state ultimately implements pursuant to it; (2) the extent to which the federal government exercises its discretion to enforce federal prohibitions on entheogenic substance-related activities; (3) how people and businesses respond to these two factors; and (4) the number of people convicted of crimes affected by the measure, about which there is limited data. Accordingly, the fiscal effects below are subject to significant uncertainty.

Various Potential Effects on Regulatory Costs and Revenues. The state and local governments would likely experience increased costs associated with regulating entheogenic substances that are currently illegal. However, these increased costs could be roughly offset by increased revenues from regulatory fees related to these substances. Alternatively, if the measure is legally interpreted and implemented in a way that reduces the fees paid by existing cannabis businesses without there being a corresponding reduction in regulatory workload related to these businesses, the measure could cause state and local regulatory costs to exceed regulatory revenues by more than \$100 million annually. This could happen if a large number of existing cannabis businesses choose to become entheogenic businesses and the measure is legally interpreted and implemented in a way that continues to require the current level of regulation for these businesses while limiting the regulatory fees agencies can charge. To the extent that fee revenues are not sufficient to fully support such costs, some of the costs could require support from other funding sources (such as the state General Fund).

Uncertain Net Effect on State and Local Tax Revenues. Whether there would be a net increase or decrease in state and local tax revenues due to the measure is uncertain and would depend on how the measure is legally interpreted and implemented. For example, if the interpretation and implementation of the measure causes a large share of cannabis businesses and consumers to shift from the existing legal cannabis market to the new market created by the measure, it could result in a net reduction of hundreds of millions of dollars in cannabis-related tax revenue. If there is not such a shift, the measure could result in a net increase in tax revenue, as people selling currently illegal entheogenic plants or substances or providing related services could begin doing so legally under state law and therefore pay sales and personal income taxes. However, the potential revenue increase under this second scenario likely is significantly smaller than the potential revenue reduction under the first scenario.

Reduced Entheogenic Substance-Related Criminal Justice System Costs. The measure would reduce ongoing costs to the state and local governments by reducing the number of people convicted of entheogenic substance-related offenses incarcerated in state prison and county jail, as well as the

number placed under community supervision (such as county probation). The measure would also result in a reduction in state and local costs for the enforcement of entheogenic-related offenses and the handling of related criminal cases in the state court system. In the near term, these savings could be partially or more than offset by increased state and local government costs due to workload associated with resentencing and changing of criminal records for people previously convicted of crimes affected by the measure. In total, we estimate that the measure could eventually result in a net reduction in costs of around a few million dollars annually. In many cases, these resources would likely be redirected to other law enforcement, corrections, and court activities.

Other Fiscal Effects. There could be various other fiscal effects on the state and local governments due to the measure. For example, if the measure causes an increase in the use of psychedelic drugs, the state and local governments could experience increased costs associated with training first responders to address situations where someone is having an adverse experience associated with a use of psychedelic substances. The size of these effects and whether they would occur is unknown.

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

- Potential reduction in state and local regulatory revenues that could result in regulatory costs exceeding revenues by more than \$100 million annually. Alternatively, changes in regulatory costs could be roughly offset by changes in regulatory revenue. The actual effect would depend on the way the measure is legally interpreted and implemented.
- Uncertain net effect on state and local tax revenue that would depend on the way the measure is legally interpreted and implemented. The potential revenue decrease could reach the hundreds of millions of dollars annually. The potential revenue increase would likely be significantly smaller.
- Net reduction in state and local costs that could eventually reach around a few million dollars annually related to enforcing entheogenic substance-related offenses; handling the related criminal cases, resentencing, and sealing of records in the court system; and incarcerating and supervising people convicted of entheogenic substance-related offences.

Sincerely,

Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance