STATE OF NEW YORK

114

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. L. ROSENTHAL, SIMON, REYES -- read once and referred to the Committee on Health

AN ACT to amend the penal law, the public health law, the labor law, and the vehicle and traffic law, in relation to legalizing adult possession and use of certain natural plant or fungus-based hallucinogens

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding a new article 223 to read as follows:

ARTICLE 223

NATURAL PLANT OR FUNGUS-BASED HALLUCINOGENS

Section 223.00 Definitions.
223.05 Authorized use of natural plant or fungus-based hallucinogens.
223.10 Protections.
223.15 Local authorization.

§ 223.00 Definitions.

For the purposes of this article, the following terms shall have the following meanings:

1. "Natural plant or fungus-based hallucinogen" means a plant, fungus, material, compound, mixture, or preparation, which contains any quantity of any of the following substances, or which contains any of the following substances salts, isomers, or salts of isomers whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position and geometric isomers):

(a) Dimethyltryptamine (some trade or other names: DMT);

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(b) Ibogaine (some trade and other names: 7-ethyl-6, 6&, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5h-pyrido {1',2':1,2} azepino {5,4-b} indole: tabernanthe iboga);

(c) Mescaline;

(d) Psilocybin; or

(e) Psilocyn.

2. "Paraphernalia" means any of the following objects used for the following purposes:

(a) Kits, used or designed for the purpose of planting, propagating, cultivating, growing or harvesting of any species of plant or fungus which is a natural plant or fungus-based hallucinogen or from which a natural plant or fungus-based hallucinogen can be derived;

(b) Kits, used or designed for the purpose of manufacturing, compounding, converting, producing, or preparing natural plant or fungus-based hallucinogens;

(c) Isomerization devices, used or designed for the purpose of increasing the potency of any species of plant or fungus which is a natural plant or fungus-based hallucinogen;

(d) Scales and balances, used or designed for the purpose of weighing or measuring natural plant or fungus-based hallucinogens;

(e) Diluents and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or designed for the purpose of cutting natural plant or fungus-based hallucinogens; and/or

(f) Objects, used or designed for the purpose of ingesting, inhaling, or otherwise introducing natural plant or fungus-based hallucinogens into the human body.

§ 223.05 Authorized use of natural plant or fungus-based hallucinogens.

1. Notwithstanding any other provision of law, rule or regulation to the contrary, the following conduct shall not be prohibited under this chapter, the laws of this state, or the laws of any locality or municipality within this state:

(a) The possession, use, cultivation, production, creation, analysis, gifting, exchange, or sharing by or between natural persons of twenty-one years of age or older of a natural plant or fungus-based hallucinogen;

(b) The provision of supervision, guidance, peers engaging in risk mitigation, religious, spiritual, or related supportive services with or without remuneration, by natural persons of twenty-one years of age or older to natural persons of twenty-one years of age or older who are engaging in the intentional and consenting use of natural plant or fungus-based hallucinogens;

(c) The manufacture, possession, and/or distribution of paraphernalia, designed for use in the cultivation, production, storage, or use of natural plant or fungus-based hallucinogens by a natural person of twenty-one years of age or older; or

(d) The possession, use, cultivation, production, creation, analysis, administration, gifting, exchange and/or sharing of natural plant or fungus-based hallucinogens to natural persons of twenty-one years of age or older by a religious organization for religious and ceremonial use or other non-commercial organizations.

2. The manufacture, possession, and/or distribution of paraphernalia shall be authorized within the meaning of 21 USC 863(f).

3. Natural plant or fungus-based hallucinogens or paraphernalia involved in any way with conduct deemed lawful by this section shall not be contraband nor subject to seizure or forfeiture of assets under arti-

cle four hundred eighty of this chapter, section thirteen hundred eleven of the civil practice law and rules, or other applicable law, and no conduct deemed lawful by this section shall constitute an element of a state or local crime or offense or be the basis for search, investigation, detention, arrest or other legal penalty or sanction.

4. A person under parole, probation or other state or local supervision, or released on bail awaiting trial as of the effective date of this section shall not be punished or otherwise penalized for conduct that is no longer considered criminal under this section.

5. State or local law enforcement agencies shall not cooperate with or provide assistance to the government of the United States or any agency thereof in enforcing the federal controlled substances act solely for actions permitted under this section, except as pursuant to a valid court order.

§ 223.10 Protections.

Notwithstanding any other provision of law to the contrary:

1. An otherwise enforceable contract shall not be unenforceable on the basis that natural plant or fungus-based hallucinogens, as allowed under this article, are prohibited by federal law.

2. A holder of a professional or occupational license, certification, or registration shall not be subject to professional discipline or loss of a professional license or certification for personal use of natural plant or fungus-based hallucinogens authorized under this article. This subdivision shall not permit a person to engage in malpractice.

3. Mental health, substance use disorder, or behavioral health services shall not be denied on the basis that they are covered in conjunction with natural plant or fungus-based hallucinogen services or that natural plant or fungus-based hallucinogens are prohibited by federal law. No insurance or insurance provider shall be required to cover the cost of natural plant or fungus-based hallucinogens.

4. Conduct permitted by this article shall not, by itself:

(a) constitute child abuse or neglect without a finding of actual threat to the health or welfare of a child based on all relevant factors; or

(b) be the basis to restrict parenting time with a child without a finding that the parenting time would endanger such child's physical health or significantly impair such child's emotional development.

5. For the purposes of medical care, including organ transplants, a patient's use of natural plant or fungus-based hallucinogens authorized under this article shall not constitute the use of an illicit substance or otherwise disqualify an otherwise qualifying patient from medical care or medical insurance.

6. Conduct permitted by this article shall not, by itself, be the basis to deny eligibility for any public assistance program, unless required by federal law.

7. An employer shall adhere to policies regarding natural plant or fungus-based hallucinogen use in accordance with section two hundred one-d of the labor law.

§ 223.15 Local authorization.

A local municipality may adopt and implement legislation and policies which bear directly on or are related to natural plant or fungus-based hallucinogens in furtherance of this article.

§ 2. Subdivisions 5, 9 and 10 of section 220.00 of the penal law, subdivisions 5 and 9 as amended by chapter 92 of the laws of 2021 and subdivision 10 as amended by chapter 664 of the laws of 1985, are amended and a new subdivision 21 is added to read as follows:

5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law. **Notwithstanding any other provision of law, as used in section 220.31 of this article, the term "controlled substance" shall include natural plant or fungus-based hallucinogens; provided, however, that the term "controlled substance" shall not include natural plant or fungus-based hallucinogens as such term is used in any provision of law other than section 220.31 of this article.**

9. "Hallucinogen" means any controlled substance listed in paragraphs (5), [~~(17)~~] **(14)**, [~~(18), (19), (20)~~] **(15)** and [~~(21)~~] **(16)** of subdivision (d) of schedule I of section thirty-three hundred six of the public health law. **"Hallucinogen" shall not include natural plant or fungus-based hallucinogens.**

10. "Hallucinogenic substance" means any controlled substance listed in **subdivision (d) of** schedule [~~I(d)~~] **I of section thirty-three hundred six of the public health law** other than concentrated cannabis, lysergic acid diethylamide, or an hallucinogen. **"Hallucinogenic substance" shall not include natural plant or fungus-based hallucinogens.**

21. "Natural plant or fungus-based hallucinogen" shall have the same meaning as defined by section 223.00 of this title.

§ 3. Subdivision (d) of schedule I of section 3306 of the public health law, as added by chapter 664 of the laws of 1985, paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 as amended by chapter 92 of the laws of 2021, paragraphs 33, 34 and 35 as added by chapter 370 of the laws of 2015, and paragraphs 36, 37 and 38 as added by section 5 of part BB of chapter 57 of the laws of 2018, is amended to read as follows:

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(EXPLANATION--Within the following chemical designations, character symbol substitutions were made from the original text: "@" = Greek alpha, "&" = Greek beta, "'" = prime mark and "/\" = triangle.)

(1) 4-bromo-2, 5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2, 5-dimethoxy-@-methylphenethylamine; 4-bromo-2, 5-DMA.

(2) 2, 5-dimethoxyamphetamine Some trade or other names: 2, 5-dimethoxy-@-methylphenethylamine; 2, 5-DMA.

(3) 4-methoxyamphetamine Some trade or other names: 4-methoxy-@-methylphenethylamine; paramethoxyamphetamine, PMA.

(4) 5-methoxy-3, 4-methylenedioxy - amphetamine.

(5) 4-methyl-2, 5-dimethoxy-amphetamine Some trade and other names: 4-methyl-2, 5-dimethoxy-@-methylphenethylamine; "DOM"; and "STP".

(6) 3, 4-methylenedioxy amphetamine.

(7) 3, 4, 5-trimethoxy amphetamine.

(8) Bufotenine Some trade and other names: 3-(&-dimethylaminoethyl)-5 hydroxindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; -5-hydroxy-N, N-dimethyltryptamine; mappine.

(9) Diethyltryptamine Some trade and other names: N, N-diethyltryptamine; DET.

(10) [~~Dimethyltryptamine Some trade or other names: DMT.~~

~~(11) Ibogane Some trade and other names: 7-ethyl-6, 6&, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5h-pyrido {1',2':1,2} azepino {5,4-b} indole: tabernanthe iboga.~~

~~(12)~~] Lysergic acid diethylamide.

[~~(13) Mescaline.~~

~~(14)~~] (11) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetra hydro-6,6,9-trimethyl-6H-dibenfo{b,d} pyran.

[~~(15)~~] (12) Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

[~~(16)~~] (13) N-ethyl-3-piperidyl benzilate.

[~~(17)~~] (14) N-methyl-3-piperidyl benzilate.

[~~(18) Psilocybin.~~

~~(19) Psilocyn.~~

~~(20)~~] (15) Tetrahydrocannabinols. Synthetic tetrahydrocannabinols not derived from the cannabis plant that are equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta 1 cis or trans tetrahydrocannabinol, and their optical isomers

delta 6 cis or trans tetrahydrocannabinol, and their optical isomers

delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered). Any Federal Food and Drug Administration approved product containing tetrahydrocannabinol shall not be considered a synthetic tetrahydrocannabinol.

[~~(21)~~] (16) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

[~~(22)~~] (17) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

[~~(23)~~] (18) Thiophene analog of phencyclidine. Some trade or other names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

[~~(24)~~] (19) 3,4-methylenedioxymethamphetamine (MDMA).

[~~(25)~~] (20) 3,4-methylendioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA.

[~~(26)~~] (21) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA.

[~~(27)~~] (22) 1-{1- (2-thienyl) cyclohexyl} pyrrolidine. Some other names: TCPY.

[~~(28)~~] (23) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine; 3- (2-aminobutyl) indole; Alpha-ET or AET.

[~~(29)~~] (24) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.

[~~(30)~~] (25) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

[~~(31)~~] (26) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers.

[~~(33)~~] (27) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine also known as 25I-NBOMe; 2C-I-NBOMe; 25I; or Cimbi-5.

[~~(34)~~] (28) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine, also known as 25 CNBOMe; 2C-C-NBOMe; 25C; or Cimbi-82.

[~~(35)~~] (29) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine, also known as, 25 BNBOMe; 2C-B-NBOMe; Cimbi-36.

[~~(36)~~] (30) 5-methoxy-N,N-dimethyltryptamine.

[~~(37)~~] (31) Alpha-methyltryptamine. Some trade or other names: AMT.

[~~(38)~~] (32) 5-methoxy-N,N-diisopropyltryptamine. Some trade or other names: 5-MeO-DIPT.

§ 4. Paragraphs c and d of subdivision 2 of section 201-d of the labor law, paragraph c as amended by chapter 92 of the laws of 2021 and paragraph d as added by chapter 776 of the laws of 1992, are amended and a new paragraph e is added to read as follows:

c. an individual's legal recreational activities, including cannabis in accordance with state law, outside work hours, off of the employer's premises and without use of the employer's equipment or other property; [~~or~~]

d. an individual's membership in a union or any exercise of rights granted under Title 29, USCA, Chapter 7 or under article fourteen of the civil service law[~~.~~]; or

e. an individual's legal recreational activities, including natural plant or fungus-based hallucinogens, as such term is defined by section 223.00 of the penal law, in accordance with state law, outside work hours, off of the employer's premises and without use of the employer's equipment or other property.

§ 5. Section 114-a of the vehicle and traffic law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

§ 114-a. Drug. The term "drug" when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law [~~and~~], cannabis and concentrated cannabis as defined in section 222.00 of the penal law**, and natural plant or fungus-based hallucinogens as defined in section 223.00 of the penal law**.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.