

Proposition ? : Access to Natural Psychedelic Substances

Placed on the ballot by citizen initiative • Passes with a majority vote

1 Proposition ? proposes amending Colorado statutes to:

- 2 • decriminalize the personal possession, growing, sharing, and use, but not the
3 sale, of five natural psychedelic substances by people aged 21 and over,
4 including two types of psychedelic mushrooms — psilocybin and psilocin —
5 and three plant-based psychedelic substances —dimethyltryptamine,
6 ibogaine, and mescaline;
- 7 • by late 2024, allow the supervised use of psychedelic mushrooms by people
8 aged 21 and over at licensed facilities and require the state to create a
9 regulatory structure for the operation of these licensed facilities;
- 10 • allow the state to expand the types of substances that may be used in
11 licensed facilities to include the use of additional plant-based psychedelic
12 substances — dimethyltryptamine (DMT), ibogaine, or mescaline — starting
13 in 2026;
- 14 • prohibit local governments from banning licensed facilities, services, and use
15 of natural psychedelic substances as permitted by the measure, while
16 allowing local governments to regulate the location and hours of operation of
17 these facilities; and
- 18 • establish penalties for people under the age of 21 for possessing, using, or
19 transporting natural psychedelic substances and for people aged 21 and over
20 who allow underage access to these substances.

21 What Your Vote Means

YES

22 A “yes” vote on
23 Proposition ?

24 decriminalizes the possession and use of
25 psychedelic mushrooms and certain
26 plant-based psychedelic substances in
27 Colorado law for people aged 21 and over,
28 and requires the state to establish a
29 regulated system for accessing
30 psychedelic mushrooms and, if approved
31 by the regulating state agency, additional
32 planted-based psychedelic substances.

NO

A “no” vote on Proposition ?

means that the possession and use of
psychedelic mushrooms and other
psychedelic substances will remain illegal
under state law.

1 **Summary and Analysis for Proposition ?**

2 **What does the measure do?**

3 This measure allows people aged 21 and older to use five specific types of
4 natural psychedelic substances. Specifically, the measure covers two chemicals
5 found in psychedelic mushrooms — psilocybin and psilocin — and three other
6 plant-based psychedelic substances — ibogaine, mescaline, and
7 dimethyltryptamine, also known as DMT. Psychedelic substances can alter a
8 person’s consciousness, mood, and awareness of their surroundings.

9 **Personal use.** Upon passage of the measure, psychedelic mushrooms and the
10 other plant-based psychedelic substances will be decriminalized in state law, and
11 people aged 21 and older will be able to grow, possess, share, and use them.
12 Personal use does not allow for the sale of psychedelic mushrooms and other
13 psychedelic substances.

14 **Licensed facilities.** The measure also requires the state to establish a
15 regulated system for licensed facilities to offer supervised use of psychedelic
16 mushrooms for people aged 21 and older, starting in 2024. Starting in 2026, the
17 state may choose to expand the type of substances that may be used at these
18 facilities to include additional plant-based psychedelic substances.

19 **How are these substances currently treated under state and federal law?**

20 All the substances listed in the measure are Schedule 1 controlled substances
21 under federal and state law. Schedule 1 controlled substances are defined as
22 drugs with no currently accepted medical use and a high potential for abuse. If
23 the measure is approved, the state will no longer treat these substances as
24 illegal drugs for the purposes of state criminal law. However, they will remain
25 illegal under federal law.

26 The measure does not decriminalize the possession or use of peyote, a type of
27 mescaline. Federal law already permits the use of peyote by certain Native
28 American tribes for ceremonial purposes.

29 **Do these substances have medical uses?**

30 Currently, research is being done on the potential medical uses of psychedelic
31 mushrooms and other psychedelic substances for treating depression,
32 post-traumatic stress, substance use disorders, and other mental health
33 disorders. The U.S. Food and Drug Administration (FDA) has designated
34 psychedelic mushrooms as a Breakthrough Therapy for treating depression.
35 Breakthrough Therapy designation is used to speed up the research,
36 development, and review of a drug when it may offer substantial improvements
37 over existing treatments. The other psychedelic substances permitted for
38 personal use under the measure have been the subject of research on their
39 potential benefits; however, the FDA has not approved them for any specific
40 medical use.

1 **How will these substances be regulated?**

2 The Department of Regulatory Agencies (DORA) is the state agency charged
3 with regulating activities involving psychedelic mushrooms and other psychedelic
4 substances for people aged 21 and older. Specifically, it will manage the
5 licensing and registration for facilities where supervised use will occur, as well as
6 people who are licensed to facilitate the use of them at licensed facilities. DORA
7 will also regulate other related businesses, such as cultivators and product
8 manufacturers. Additionally, DORA is tasked with protecting consumers,
9 developing public education campaigns, making recommendations to the state
10 legislature regarding the potential for off-site use of natural psychedelic
11 substances received at regulated facilities, and providing data on the
12 implementation and outcomes of the program. Licensed facilities and related
13 businesses will be required to pay a licensing fee to cover the cost of regulating
14 these businesses.

15 Under the measure, local governments can regulate the hours of operation and
16 location of licensed facilities. Local governments cannot ban or prohibit licensed
17 facilities, or ban or prohibit the personal use of psychedelic mushrooms or other
18 psychedelic substances in their communities.

19 The measure also establishes a 15-member public advisory board appointed by
20 the Governor. The board is charged with making regulatory recommendations to
21 the state legislature, DORA, and other relevant state agencies.

22 **What restrictions does the measure place on the use of substances?**

23 The measure states it is not intended to:

- 24 • allow the sale of psychedelic mushrooms or other psychedelic
25 substances for personal use;
- 26 • allow driving under the influence of these substances;
- 27 • permit use in a school, public building, or public place;
- 28 • permit underage access; or
- 29 • require an employer to permit the use of these substances in the
30 workplace.

31 **What are the criminal penalties and legal protections under the measure?**

32 The measure impacts criminal penalties in several ways. First, it establishes
33 specific penalties for people under the age of 21 who possess or use natural
34 psychedelic substances, as well as penalties for people who allow underage
35 access when cultivating these substances. Penalties range from requiring drug
36 counseling to a \$250 fine. In addition, the measure states that the removal and
37 reduction of criminal penalties apply retroactively to someone who has already
38 been convicted of an offense that would be decriminalized under the measure.
39 Individuals who have completed their sentence may file a petition to the courts to
40 have their criminal record sealed at no cost. Selling natural psychedelic
41 substances outside of the licensed supervised use facilities will remain illegal.

1 The measure also offers protections for people who use psychedelic mushrooms
2 and other psychedelic substances, including, but not limited to, protections from
3 professional discipline, loss of a professional license, or denial of eligibility for
4 public benefits unless required by federal law.

For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2022, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

5 **Arguments For Proposition ?**

- 6 1) The measure provides a valuable tool for meeting the mental health needs of
7 Coloradans. Studies have shown that psychedelic mushrooms and other
8 psychedelic substances, combined with counseling, can provide effective
9 treatment for severe depression and anxiety. The FDA has specifically found
10 psychedelic mushrooms may offer substantial improvement in treating
11 depression more successfully than existing therapies. Increasing access to
12 psychedelic mushrooms and other natural psychedelic substances may help
13 people who are struggling to find effective mental health treatment.
- 14 2) Putting people in the criminal justice system for using naturally occurring
15 substances that have potential mental health benefits does not benefit society
16 and costs taxpayers money. Possession and use of these substances are
17 nonviolent offenses that do not pose a public safety risk. Studies have shown
18 that psychedelic mushrooms are not addictive and that long-term adverse
19 health impacts are rare, unlike tobacco use, which is legal. People who are
20 aged 21 or older should be allowed to take these naturally occurring
21 substances without fear of criminal penalties.

22 **Arguments Against Proposition ?**

- 23 1) There are currently no approved therapies that use psychedelic mushrooms
24 or psychedelic substances, and the effects of them can vary widely from
25 person to person, depending on the dose, frequency of use, and type of
26 substance. Breakthrough therapy designation does not mean that the use of
27 psychedelic mushrooms is safe or recommended. Further, DMT, ibogaine,
28 and mescaline have not received a similar designation, and, specifically,
29 ibogaine may cause life-threatening heart conditions. Proposing a regulatory
30 framework for the use of these substances suggests that they offer legitimate
31 treatment before they have received federal approval, potentially putting
32 people's health and public safety at risk.
- 33 2) Proposition ? allows illicit drug use under the guise of health care. It legalizes
34 drugs that have been illegal for over 50 years and provides broad protections
35 for criminals by allowing convictions to be wiped from their records. By
36 decriminalizing personal use, the black market for these drugs may expand
37 and provide access to underage youth or expose people to psychedelic
38 substances that are tainted with other drugs.

1 **Fiscal Impact for Proposition ?**

2 Proposition ? will increase state revenue and spending, and potentially impacts
3 local government spending, as described below. The state’s budget year runs
4 from July 1 through June 30.

5 **State revenue.** Under Proposition ?, state revenue will increase by about
6 \$5.2 million per year in budget year 2024-25, \$5.6 million in 2025-26, and
7 \$4.5 million per year in future years. This revenue is from licensing fees charged
8 to licensed facilities and facilitators that dispense and provide services related to
9 psychedelic mushrooms and other psychedelic substances allowed under the
10 measure. It is expected that fees will be set at a level needed to cover the costs
11 of the program when fully implemented. In the first two years, additional fee
12 revenue will be necessary to pay back the anticipated loan of state funds used to
13 pay for initial start-up costs. The increase in revenue will depend on fee amounts
14 and the number of license applications submitted.

15 **State spending.** Proposition ? will increase costs in the Department of
16 Regulatory Agencies (DORA) by an estimated \$0.7 million in budget year
17 2022-23 and \$2.2 million in budget year 2023-24 to establish program rules,
18 support the advisory board, and issue initial licenses prior to the start of the new
19 regulatory program created by the measure. The measure requires a loan from
20 the state General Fund be used to cover these start-up costs for the program,
21 which will be paid back in subsequent years.

22 Once regulation begins, DORA will have costs of approximately \$5.2 million in
23 budget year 2024-25 and \$5.6 million in budget year 2025-26 to regulate the
24 manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, use,
25 and purchase of psychedelic mushrooms by licensed facilities. Actual
26 expenditures will depend on the number of regulated entities participating in this
27 industry. Estimated spending in budget years 2024-25 and 2025-26 also
28 includes the repayment of state money used to cover costs in the first two years.

29 Lastly, to the extent that Proposition ? reduces the number of people convicted of
30 crimes related to controlled substances that become regulated under the
31 measure, costs in the criminal justice system will be reduced.

32 **Local government impact.** Local government workload and spending will
33 increase to the extent local governments issue additional regulations on the
34 operation of licensed facilities in their jurisdiction. County jail costs may be
35 reduced to the extent fewer people are held in jails for offenses relating to
36 controlled substances that become decriminalized and regulated under the
37 measure.