

Law Office of
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Attorney & Counselor at Law

May 17, 2005

Dr. Wrye Sententia
Center for Cognitive Liberty & Ethics
231 G. Street, No. 7
Davis, CA 95616

Dear Dr. Sententia:

You have asked my Law Office for a brief analysis of HB 20, a bill currently before the Louisiana State Legislature. We have examined the bill and provide the following analysis.

In short, in addition to establishing a new criminal offense with a mandatory minimum sentence, the bill would likely have a negative impact on the development, sales, and medical use of botanical medications that contain any amount of the listed plants or fungi. Of most concern, however, is the bill's complete failure to protect Native American or other bona fide religious use of the listed plants or fungi. By broadly criminalizing these religious practices, the bill likely violates the Free Exercise Clause of the First Amendment.

A slightly more detailed analysis of the bill is attached. Please do not hesitate to contact me if you have any questions or if I can be of further assistance.

Sincerely,

Richard Glen Boire

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Attachment: Brief Analysis of HB 20

Brief Analysis of Louisiana HB 20

House Bill 20, introduced by Louisiana Representative Michael G. Strain (Republican – District 74) seeks to establish a new criminal offense in Louisiana, the short title of which is “Unlawful production, manufacture, distribution, or possession of hallucinogenic plants.”

Under the proposed bill, knowing or intentionally producing, manufacturing, distributing, or possessing any of the listed “hallucinogenic plants,” if intended for human consumption, would constitute a criminal offense.

Punishment for producing manufacturing, or distributing would consist of a **mandatory minimum of two-years in state prison**, and up to ten years, including possible hard labor. A fine of up to twenty thousand dollars may also be imposed.

Punishment for simple possession could consist of up to five years in state prison, including possible hard labor, as well as a fine of up to five thousand dollars.

There are only two exceptions. The criminal provisions would not apply to: 1) “the possession, planting, cultivation, growing, or harvesting of a hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes;” or 2) “to any dosage form which is legally obtainable from a retail establishment without a prescription and is recognized by the Federal Food and Drug Administration as a homeopathic drug.”

The proposed bill would likely be **unconstitutional as applied to Native Americans and other religious users** of the enumerated “hallucinogenic plants.” Indeed, a majority of the listed plants and fungi have a long and established history of bona fide religious use, which the bill makes absolutely no effort to accommodate.

Some of the listed plants also have medicinal herbal properties that function above the “homeopathic” dose level, and **these medicinal uses would be subjected to a blanket criminal prohibition.**

The bill was referred to the Judiciary Committee on May 17, 2005.

The full text of HB 20, as well as its history is available on the website of the Louisiana Legislature (<http://www.legis.state.la.us/>).