

HOUSE BILL 1261

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9lr1720
CF SB 317

By: **Delegates Mathias, Cane, Conway, and Rudolph**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Salvinorin A and Salvia Divinorum - Controlled Dangerous**
3 **Substances**

4 FOR the purpose of establishing that a material, compound, mixture, or preparation
5 that contains Salvinorin A or Salvia divinorum, with a certain exception, is a
6 Schedule I controlled dangerous substance; authorizing a certain provider to
7 conduct research in the State with a controlled dangerous substance listed in
8 Schedule I under certain circumstances; providing penalties for a violation of
9 the prohibition against possessing a controlled dangerous substance involving
10 the use or possession of Salvinorin A or Salvia divinorum; providing certain
11 penalties for a person who violates the prohibition against manufacturing,
12 distributing, possessing with intent to distribute, or dispensing a certain volume
13 of Salvinorin A or Salvia divinorum; and generally relating to Salvinorin A and
14 Salvia divinorum.

15 BY repealing and reenacting, with amendments,
16 Article - Criminal Law
17 Section 5-304, 5-402(d), 5-601, and 5-612
18 Annotated Code of Maryland
19 (2002 Volume and 2008 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article - Criminal Law
22 Section 5-402(a)
23 Annotated Code of Maryland
24 (2002 Volume and 2008 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article - Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-304.

2 (a) If an authorized provider is authorized to dispense or conduct research
3 under State law, the Department shall register the authorized provider to dispense a
4 controlled dangerous substance or to conduct research with a controlled dangerous
5 substance listed in Schedule II through Schedule V.

6 (b) The Department need not require separate registration under this section
7 for an authorized provider who is:

8 (1) engaged in research with a nonnarcotic controlled dangerous
9 substance in Schedule II through Schedule V; and

10 (2) already registered under this subtitle in another capacity.

11 (c) An authorized provider may conduct research in the State with a
12 controlled dangerous substance listed in Schedule I if the authorized provider is:

13 (1) registered under federal law to conduct research with a controlled
14 dangerous substance listed in Schedule I and gives evidence of the registration to the
15 Department;

16 (2) **APPROVED BY A FEDERALLY REGISTERED INSTITUTIONAL**
17 **REVIEW BOARD OR INSTITUTIONAL ANIMAL CARE AND USE COMMITTEE TO**
18 **CONDUCT RESEARCH ON A CONTROLLED DANGEROUS SUBSTANCE LISTED IN**
19 **SCHEDULE I THAT IS NOT SCHEDULED UNDER FEDERAL LAW AND GIVES**
20 **EVIDENCE OF THE APPROVAL TO THE DEPARTMENT; OR**

21 (3) **APPROVED BY THE DEPARTMENT TO CONDUCT RESEARCH ON**
22 **A CONTROLLED DANGEROUS SUBSTANCE IN SCHEDULE I THAT IS NOT**
23 **SCHEDULED UNDER FEDERAL LAW.**

24 5-402.

25 (a) Schedule I consists of each controlled dangerous substance:

26 (1) listed in this section;

27 (2) added to Schedule I by the Department under § 5-202(b) of this
28 title; or

29 (3) designated as a Schedule I controlled dangerous substance by the
30 federal government unless the Department objects under § 5-202(f) of this title.

1 (d) (1) A material, compound, mixture, or preparation that contains any of
2 the following hallucinogenic or hallucinogenic-like substances is a substance listed in
3 Schedule I:

4 (i) bufotenine;

5 (ii) diethyltryptamine;

6 (iii) dimethyltryptamine;

7 (iv) 4-methyl-2, 5-dimethoxyamphetamine;

8 (v) ibogaine;

9 (vi) lysergic acid diethylamide;

10 (vii) marijuana;

11 (viii) mescaline;

12 (ix) peyote;

13 (x) psilocybin;

14 (xi) psilocyn;

15 (XII) SALVINORIN A, EXCEPT FOR A DRUG PRODUCT
16 APPROVED BY THE U. S. FOOD AND DRUG ADMINISTRATION (FDA) THAT
17 CONTAINS SALVINORIN A OR THE ISOMERS, ESTERS, ETHERS, SALTS, AND
18 SALTS OF ISOMERS, ESTERS, AND ETHERS, WHENEVER THE EXISTENCE OF THE
19 ISOMERS, ESTERS, ETHERS, AND SALTS IS POSSIBLE WITHIN THE SPECIFIC
20 CHEMICAL DESIGNATION;

21 (XIII) SALVIA DIVINORUM, EXCEPT FOR A DRUG PRODUCT
22 APPROVED BY THE U. S. FOOD AND DRUG ADMINISTRATION (FDA) THAT
23 CONTAINS SALVIA DIVINORUM OR THE ISOMERS, ESTERS, ETHERS, SALTS, AND
24 SALTS OF ISOMERS, ESTERS, AND ETHERS, WHENEVER THE EXISTENCE OF THE
25 ISOMERS, ESTERS, ETHERS, AND SALTS IS POSSIBLE WITHIN THE SPECIFIC
26 CHEMICAL DESIGNATION;

27 [(xii)] (XIV) tetrahydrocannabinol;

28 [(xiii)] (XV) thiophene analog of phencyclidine;

29 [(xiv)] (XVI) 2, 5-dimethoxyamphetamine;

- 1 [(xv)] (XVII) 4-bromo-2, 5-dimethoxyamphetamine;
2 [(xvi)] (XVIII) 4-methoxyamphetamine;
3 [(xvii)] (XIX) 3, 4-methylenedioxyamphetamine;
4 [(xviii)] (XX) 3, 4-methylenedioxymethamphetamine (MDMA);
5 [(xix)] (XXI) 5-methoxy-3, 4-methylenedioxyamphetamine;
6 [(xx)] (XXII) 3, 4, 5-trimethoxyamphetamine;
7 [(xxi)] (XXIII) N-methyl-3-piperidyl benzilate;
8 [(xxii)] (XXIV) N-ethyl-3-piperidyl benzilate;
9 [(xxiii)] (XXV) N-ethyl-1-phenylcyclohexylamine;
10 [(xxiv)] (XXVI) 1-(1-phenylcyclohexyl)-pyrrolidine;
11 [(xxv)] (XXVII) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;
12 [(xxvi)] (XXVIII) 1-methyl-4-phenyl-4-propionoxypiperidine
13 (MPPP); and
14 [(xxvii)] (XXIX) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine
15 (PEPAP).

16 (2) Unless specifically excepted under this subtitle, a salt, isomer, or
17 salt of an isomer of a substance listed in this subsection is a substance listed in
18 Schedule I if the existence of the salt, isomer, or salt of an isomer is possible within
19 the specific chemical designation.

20 5-601.

21 (a) Except as otherwise provided in this title, a person may not:

22 (1) possess or administer to another a controlled dangerous substance,
23 unless obtained directly or by prescription or order from an authorized provider acting
24 in the course of professional practice; or

25 (2) obtain or attempt to obtain a controlled dangerous substance, or
26 procure or attempt to procure the administration of a controlled dangerous substance
27 by:

28 (i) fraud, deceit, misrepresentation, or subterfuge;

1 (ii) the counterfeiting or alteration of a prescription or a written
2 order;

3 (iii) the concealment of a material fact;

4 (iv) the use of a false name or address;

5 (v) falsely assuming the title of or representing to be a
6 manufacturer, distributor, or authorized provider; or

7 (vi) making, issuing, or presenting a false or counterfeit
8 prescription or written order.

9 (b) Information that is communicated to a physician in an effort to obtain a
10 controlled dangerous substance in violation of this section is not a privileged
11 communication.

12 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
13 person who violates this section is guilty of a misdemeanor and on conviction is subject
14 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

15 (2) A person whose violation of this section involves the use or
16 possession of marijuana, **SALVINORIN A, OR SALVIA DIVINORUM** is subject to
17 imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

18 (3) (i) In a prosecution for the use or possession of marijuana, the
19 defendant may introduce and the court shall consider as a mitigating factor any
20 evidence of medical necessity.

21 (ii) Notwithstanding paragraph (2) of this subsection, if the
22 court finds that the person used or possessed marijuana because of medical necessity,
23 on conviction of a violation of this section, the maximum penalty that the court may
24 impose on the person is a fine not exceeding \$100.

25 5-612.

26 (a) A person may not manufacture, distribute, dispense, or possess:

27 (1) 50 pounds or more of marijuana;

28 (2) 448 grams or more of cocaine;

29 (3) 448 grams or more of any mixture containing a detectable amount
30 of cocaine;

31 (4) 50 grams or more of cocaine base, commonly known as "crack";

1 (5) 28 grams or more of morphine or opium or any derivative, salt,
2 isomer, or salt of an isomer of morphine or opium;

3 (6) any mixture containing 28 grams or more of morphine or opium or
4 any derivative, salt, isomer, or salt of an isomer of morphine or opium;

5 (7) 1,000 dosage units or more of lysergic acid diethylamide;

6 (8) any mixture containing the equivalent of 1,000 dosage units of
7 lysergic acid diethylamide;

8 (9) 16 ounces or more of phencyclidine in liquid form;

9 (10) 448 grams or more of any mixture containing phencyclidine;

10 (11) 448 grams or more of methamphetamine; [or]

11 (12) any mixture containing 448 grams or more of methamphetamine;

12 **OR**

13 **(13) 50 POUNDS OR MORE OF SALVINORIN A OR SALVIA**
14 **DIVINORUM.**

15 (b) For the purpose of determining the quantity of a controlled dangerous
16 substance involved in individual acts of manufacturing, distributing, dispensing, or
17 possessing under subsection (a) of this section, the acts may be aggregated if each of
18 the acts occurred within a 90-day period.

19 (c) (1) A person who is convicted of a violation of subsection (a) of this
20 section shall be sentenced to imprisonment for not less than 5 years and is subject to a
21 fine not exceeding \$100,000.

22 (2) The court may not suspend any part of the mandatory minimum
23 sentence of 5 years.

24 (3) Except as provided in § 4-305 of the Correctional Services Article,
25 the person is not eligible for parole during the mandatory minimum sentence.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 June 1, 2009.