

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1261
Judiciary

(Delegate Mathias, *et al.*)

Judicial Proceedings

Criminal Law - Salvinorin A and Salvia Divinorum - Distribution to and
Possession by Individual Under 21 Years of Age

This bill prohibits the distribution of Salvia divinorum to an individual under the age of 21 and prohibits an individual under that age from possessing Salvia divinorum. On or before December 1, 2009, the Attorney General must submit a report detailing a recommended scheme for the regulation of sales of Salvia divinorum, including requirements for sellers and the placement of products in stores.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's monetary penalty provisions. Reporting requirements for the Office of the Attorney General can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines "Salvia divinorum" as Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. The bill prohibits the distribution of Salvia divinorum to an individual under the age of 21. In a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an

employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 21 years of age. A violator is guilty of a misdemeanor and subject to a maximum \$300 fine for a first violation. For a second violation occurring within two years after the first violation, the maximum fine is \$1,000. For each subsequent violation occurring within two years after the preceding violation, the maximum fine is \$3,000.

The bill also prohibits an individual under the age of 21 from possessing *Salvia divinorum*. A violation is a code violation, subjecting an adult violator to the issuance of a citation and a maximum \$500 fine for a first violation and \$1,000 for a second or subsequent violation. A minor who violates the prohibition against possession of *Salvia divinorum* is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation.

The Attorney General must submit a report detailing a recommended scheme for the regulation of sales of *Salvia divinorum*, including requirements for sellers and the placement of products in stores. The report must be submitted to the Senate Judicial Proceedings Committee and the House Judiciary Committee by December 1, 2009.

Current Law: Controlled dangerous substances are listed on one of five schedules set forth in statute. No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana. When the substance is marijuana, the maximum criminal penalties for a violation are one year imprisonment and/or a \$1,000 fine.

Salvia divinorum is currently not listed on a federal or State drug schedule and its use, possession, or sale is not prohibited in the State.

For specified primary crimes involving controlled dangerous substances and paraphernalia, a person may not:

- manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance;
- manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or

controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or

- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions must be sentenced to imprisonment for at least two years, which term is nonsuspendable and nonparolable.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A second-time offender or conspirator convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted offender or a conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance was specified other drugs – including PCP, LSD, and MDMA – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A second-time offender or conspirator convicted again of those same primary crimes involving the specified other drugs, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted offender or a conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

A volume dealer, as defined by the amount of specified substances, is subject to a maximum fine of \$100,000 and a mandatory minimum nonsuspendable, nonparolable sentence of five years. (See Criminal Law Article, §§ 5-602 through 5-605, 5-607 through 5-609, and 5-612.)

Federal policy dictates that a physician who prescribes Schedule I drugs to a patient may lose his or her federal license to prescribe drugs and be prosecuted. In Maryland, an authorized provider may conduct research in the State with a controlled dangerous substance listed in Schedule I if the authorized provider is registered under federal law to conduct research with a Schedule I substance and gives evidence of the registration to DHMH.

Background: According to various news accounts, *Salvia divinorum* has proliferated on the Internet and at college-area paraphernalia shops. It is sometimes referred to as Sally-D, Magic Mint, and Diviner's Sage. According to the U.S. Drug Enforcement Administration (DEA), it is usually sold as dried leaves in various degrees of potency and can cause a variety of hallucinogenic effects including a perception of overlapping realities and a loss of body awareness, dizziness, and impaired speech. Salvinorin A is the main active psychotropic molecule in *Salvia divinorum*.

Unlike hallucinogens like LSD or PCP, however, *Salvia's* effects last for a shorter time (generally up to an hour). Since 2005, five states (Delaware, Illinois, Missouri, North Dakota, and Virginia) have banned *Salvia* outright by classifying it as a Schedule I hallucinogen, putting it in the same category as heroin, LSD, marijuana, and ecstasy.

According to DEA, Schedule I substances are defined as having a high tendency for abuse and do not have a medicinal purpose. Possession of a Schedule I substance (except for marijuana) is often classified as a felony.

Thirteen states currently have statewide laws prohibiting possession or sale of *Salvia divinorum*: California, Delaware, Florida, Illinois, Kansas, Louisiana, Maine, Mississippi, Missouri, North Dakota, Oklahoma, Tennessee, and Virginia. The Maine prohibition against possession only applies to minors. A prohibition against the sale of *Salvia divinorum* to minors took effect in California on January 1, 2009. The Louisiana and Tennessee provisions allow possession of the plant when it is not intended for human consumption. In Oklahoma, all forms of *Salvia divinorum* are now illegal. Some localities, such as Suffolk County, New York, and the town of West Bridgewater, Massachusetts have enacted prohibitions.

To date, proposals at the federal level to include the substance in the controlled dangerous substances schedules have failed. DEA is currently studying *Salvia divinorum* and Salvinorin A for possible recommendations for inclusion in the federal schedules.

However, the Johns Hopkins University School of Medicine has received federal grant funding from the National Institutes of Health, with FDA approval, to study the effects of Salvinorin A in a controlled clinical laboratory trial connected to potential implication for understanding a variety of disease states, including Alzheimer's disease, schizophrenia, bipolar disorder, dementia, and drug dependence.

Several countries have enacted laws that restrict or prohibit possession and/or sale of Salvia divinorum, including Australia, Belgium, Brazil, Denmark, Estonia, Finland, Germany, Iceland, Italy, Japan, Norway, South Korea, Spain, Sweden, and the United Kingdom.

In a December 2005 report the Marketed Health Products Directorate, an arm of Health Canada, recommended that Salvia divinorum be placed under the Controlled Drugs and Substances Act. Thus far, the Canadian government has not taken any steps to restrict the substance.

Additional Information

Prior Introductions: None.

Cross File: SB 317 is identified as a cross file, however, it is not identical.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, U.S. Drug Enforcement Administration, Marketed Health Products Directorate, Department of Legislative Services

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