

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1072
Judiciary

(Delegate Conaway, *et al.*)

Judicial Proceedings

Criminal Law - Salvia Divinorum - Regulations

This bill requires the Department of Health and Mental Hygiene (DMHM) to adopt and enforce regulations regarding the sale of Salvia divinorum. The regulations must require a seller of Salvia divinorum to (1) verify the birth date of a purchaser who is younger than age 27 by checking appropriate photo identification; (2) keep the Salvia divinorum in a place that is inaccessible to customers; (3) maintain a current list of products that contain Salvia divinorum; and (4) post and continuously update a sign in the seller's place of business that shows the birth date of a person who is 21 years of age.

Fiscal Summary

State Effect: General fund expenditures increase beginning in FY 2012 to reflect the cost of adopting and enforcing regulations regarding the sale of Salvia divinorum. Exact costs cannot be reliably estimated at this time, as discussed below.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Chapter 201 of 2010 enacted the first statewide statutory prohibitions on the use and possession of "Salvia divinorum." "Salvia divinorum" is defined as Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. A person is prohibited from distributing Salvia divinorum to an individual younger than age 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 age 21. 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.

An individual younger than age 21 is also prohibited 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 a \$1,000 fine 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.

Background: *Salvia divinorum* is an herbaceous plant in the mint family native to the Sierra Mazateca region of Oaxaca, Mexico. The plant is sometimes referred to as Maria Pastora, Sage of the Seers, 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, a loss of body awareness, dizziness, and impaired speech. Unlike hallucinogens like LSD or PCP, however, *Salvia*'s effects last for a shorter time (generally up to an hour). Salvinorin A is the main active psychotropic molecule in *Salvia divinorum*.

According to various news accounts, *Salvia divinorum* has proliferated on the Internet and at college-area paraphernalia shops. The increased availability of the substance and its physical effects have motivated a number of states to enact laws to regulate or restrict the availability, possession, or sale of *Salvia divinorum* and/or Salvinorin A.

Salvia divinorum and/or Salvinorin A are classified as Schedule I substances in at least 13 states. Schedule I substances are typically 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. In California, the sale or distribution of *Salvia divinorum* or Salvinorin A, or any substance or material containing those substances to a minor, is a misdemeanor subject to a \$1,000 fine and/or six-months imprisonment.

In addition to states, several localities have enacted legislation concerning *Salvia*. Ocean City banned *Salvia* products in August 2009 in response to extensive availability of the substance in boardwalk shops and numerous reports of police officers having to restrain individuals under the influence of *Salvia*. Worcester County enacted a countywide ban effective September 2009.

In a recent plan submitted by the Office of the Attorney General (OAG) to the General Assembly, OAG recommended that (1) products containing Salvia be kept behind a watched counter or other location that is inaccessible to customers; (2) a seller of Salvia be required to ask a customer who is younger than age 27 for valid photo identification; (3) a seller be required to review the store inventory and maintain a current list of commercial names of products that contain Salvia; and (4) a store selling Salvia be required to contain a sign displaying the current month and birth year for a person who is 21 years old.

To date, proposals at the federal level to include the substance in the controlled dangerous substances schedules have failed. DEA has classified Salvia divinorum as a “drug of concern” and is currently studying Salvia divinorum and Salvinorin A for possible recommendations for inclusion in the federal schedules.

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

In February 2011, Health Canada posted its intention to add Salvia divinorum and Salvinorin A to the Controlled Drugs and Substances Act, making it illegal to produce, possess, traffic, import, or export the substances.

State Fiscal Effect: General fund expenditures increase beginning in fiscal 2012 to reflect the cost of adopting and enforcing regulations regarding the sale of Salvia divinorum. DHMH advises that the Alcohol and Drug Abuse Administration (ADAA) within the department will be tasked with enforcement of the regulations. It is assumed that, if ADAA adopts similar regulations and enforcement measures with regard to Salvia as it has adopted with regard to tobacco, at least four full-time supervisors and eight part-time contractual student workers will be needed at an annual cost of \$300,000 to \$400,000. (ADAA cannot use the same staff for Salvia enforcement as it uses for tobacco enforcement because those employees are funded through federal grants and correspondingly restricted in their duties to tobacco enforcement.) However, as no penalties are imposed under the bill, it might be assumed that enforcement will be fairly limited and primarily complaint-based. In that scenario, fewer new employees would be needed.

Legislative Services advises that additional staff will be needed in either case, given that (1) Salvia is sold throughout the different geographic regions of the State; and (2) the receipt of federal grant funds precludes certain existing staff from participating in enforcement. However, the cost will depend upon the content of the regulations ultimately adopted by DHMH and cannot be reliably estimated at this time.

Small Business Effect: Because businesses are already prohibited from distributing *Salvia divinorum* to an individual younger than age 21, any effect to small businesses is expected to be minimal. Some businesses may be required to post additional signage, conduct additional inventory, or restrict the accessibility of *Salvia* products in their stores.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): CTV News, Office of the Attorney General, Department of Health and Mental Hygiene, Department of Legislative Services

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