

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 Controlled Substances

SPONSOR(S): Brandenburg and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>10 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Salvia divinorum (Salvia) is a perennial herb in the mint family that is native to Oaxaca, Mexico. The active component is the hallucinogen salvinorin A. In recent years, Salvia divinorum has begun to be used as a recreational drug in this country. No state or federal statute regulates the sale, purchase or possession of Salvia divinorum or salvinorin A in Florida.

Chapter 893 classifies controlled substances into five different categories, known as schedules, in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States and its use under medical supervision does not meet accepted safety standards.

The bill adds salvia divinorum and salvinorin A to schedule I. This will make possession of these substances a third degree felony in conformity with other Schedule I hallucinogens. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver Salvia divinorum or salvinorin A will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The offense of purchase of Salvia or salvinorin A will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

On February 26, 2008, the Criminal Justice Impact Conference determined that, SB 1612, which is identical to this bill, would have an insignificant prison bed impact on the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will criminalize the sale, purchase or possession of salvia divinorum and salvinorin A.

B. EFFECT OF PROPOSED CHANGES:

Background: Salvia divinorum¹ (Salvia) is a perennial herb in the mint family that is native to Oaxaca, Mexico. The Mazatec Indians of Mexico have used the plant in healing rituals.² The active component is the hallucinogen salvinorin A. Salvia divinorum has recently begun to be used as a recreational drug in this country.³ As discussed further below, no state or federal statute regulates the sale, purchase or possession of Salvia divinorum or salvinorin A in Florida. According to the Drug Enforcement Administration, “neither Salvia divinorum or active constituent salvinorin A has an approved medical use in the United States.”⁴ Salvia has a hallucinogenic affect on the user when ingested.⁵

Salvia is readily available for purchase on the Internet. Numerous websites purport to sell Salvia plants, leaves or liquid salvinorin A extract. The extract is sold in a variety of concentrations. Dried Salvia leaves are also sold with an enhanced level of salvinorin A. These are often referred to as “5x”, “10x” or “20x” to indicate that they are 5, 10 or 20 times stronger than the untreated leaf. These labels are not necessarily an accurate measure of the potency of the Salvia as there are no generally accepted standards or regulation of the process of extraction.

Salvia can be ingested using one of several different methods. When Salvia leaves are chewed, the substance begins to affect the user within 5 to 10 minutes.⁶ More commonly, Salvia leaves or salvinorin A extract are smoked. A dose of “200 to 500 micrograms [of salvinorin A] produces profound hallucinations when smoked.”⁷ When smoked, the substance begins to affect the user almost immediately.⁸ Users experience hallucinations whose intensity and duration depend on the amount and strength of the substance ingested. Salvia can affect “motor co-ordination, balance as well as

¹ There are nearly 1000 species of Salvia – this report is specific to the plant known as Salvia divinorum. Although other salvia plants can have a pharmacological effect, salvia divinorum is the only plant that has been shown to have a hallucinogenic effect when ingested. Grundmann O, Phipps SM, Zadezensky I, Butterweck V, (2007) Salvia divinorum and Salvinorin A: An Update on Pharmacology and Analytical Methodology, *Planta Med* 73: 1040; Prisinsano, T., (2005) Psychopharmacology of the hallucinogenic sage Salvia divinorum, *Life Sciences* 78: 527

² Microgram Bulletin, Volume XXXVI, No. 6, June 2003, pg. 122, Selected Intelligence Brief, Information Bulletin: Salvia Divinorum. <http://www.usdoj.gov/dea/programs/forensicsci/microgram/mg0603/mg0603.html>

³ Appel, J., Dohee, K., The Rise of a New Psychoactive Agent: Salvia divinorum, *Int. J. Ment. Health Addiction* (2007) 5: 248-253 (indicating that “since the early 1990’s, there has been a rise in the recreational use” of Salvia).

⁴ Office of Diversion Control, Drug Enforcement Administration, Department of Justice, Drugs and Chemicals of Concern: Salvia divinorum and Salvinorin A. (August 2007); http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm

⁵ After the 2007 session, staff of the Homeland Security & Public Safety Committee completed an interim project regarding salvia divinorum and salvinorin A. Information from that interim project is used throughout this bill analysis. [http://www.myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2364&PublicationType=Committees&DocumentType=Interim%20Projects%20\(Reports\)&Session=2008&SessionId=57](http://www.myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2364&PublicationType=Committees&DocumentType=Interim%20Projects%20(Reports)&Session=2008&SessionId=57)

⁶ *Id.*

⁷ Drug Enforcement Administration, Newark Division, *Salvia divinorum, aka Maria Pastora, Salvia* (September 2002); http://www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html

⁸ Grundman, O, *supra* note 1.

awareness of surroundings.”⁹ Although experiences vary depending on the user, the National Drug Intelligence Center describes use of the substance as follows:

Immediately after ingesting the drug, abusers typically experience vivid hallucinations—including out-of-body experiences, sensations of traveling through time and space, and feelings of merging with inanimate objects. Some abusers experience intense synesthesia, an effect that causes the abusers’ senses to become confused. For example, abusers may describe hearing colors or smelling sounds. The hallucinogenic effects generally last 1 hour or less unlike other hallucinogens like LSD and PCP. High doses of the drug can cause unconsciousness and short-term memory loss.¹⁰

The National Institute on Drug Abuse characterizes use of the substance as follows:¹¹

Effects include psychedelic-like changes in visual perception, mood, and body sensations; emotional swings; feelings of detachment; and importantly, a highly modified perception of external reality and the self, which leads to a decreased ability to interact with one’s surroundings. This last effect has promoted concerns about the dangers of driving under the influence of salvinorin.¹²

Studies have not been done on the long term effects of Salvia abuse. According to the National Drug Intelligence Center:

[I]nformation provided by abusers indicates that the negative long-term effects of Salvia divinorum may be similar to those produced by other hallucinogens such as LSD (lysergic acid diethylamide) including depression and schizophrenia. Some abusers also indicate that long-term abuse can cause hallucinogen persisting perception disorder, or "flashbacks". Numerous individuals report experiencing negative effects during their first experience with Salvia divinorum and indicate that they would not use it a second time. Some others report that the drug caused them to become introverted and sometimes unable to communicate clearly.¹³

Many websites contain videos of people who claim to be documenting their experience using Salvia. For example, typing the term “Salvia” into the search engine of the popular website “Youtube.com”, yields more than 3,000 results. Social networking websites host “groups” devoted to Salvia. There are more than one hundred groups on Facebook and more than a dozen groups on MySpace related to Salvia. Other websites tout the benefits of using Salvia as an enjoyable, legal alternative to other illegal substances and provide specific information on how to use Salvia. These websites generally oppose the regulation of the substance and claim that the substance is non-addictive and harmless if used correctly.

Prevalence of Use: At present, there is limited information on how widespread the use of Salvia is in this state or nationwide. Several factors contribute to the lack of information on the prevalence of salvia use. State surveys do not ask about Salvia use. The federal government has only recently begun to gather information on the prevalence of salvia use. On February 14, 2008, the Substance Abuse and Mental Health Services Administration issued a report titled *Use of Specific Hallucinogens: 2006*.

⁹ Appel, J., *supra* note 3, page 251.

¹⁰ Microgram Bulletin, *supra*, note 2.

¹¹ National Institute on Drug Abuse, *NIDA Info Facts : Salvia* (October 2007); <http://www.drugabuse.gov/Infofacts/salvia.html>

¹² Section 316.193, F.S. prohibits driving under the influence of alcoholic beverages, chemical substances set forth in s. 877.111 or any substance controlled under chapter 893. Because salvia does not fit into any of these categories, a person cannot be charged with driving under the influence of salvia. If the person was driving recklessly or carelessly, other criminal charges could apply.

¹³ Microgram Bulletin, *supra* note 2.

According to this report “there is evidence suggesting the emergence of new hallucinogens, such as Salvia divinorum, which has been marketed as a herbal high.” The report indicates that approximately “1.8 million persons aged 12 or older used Salvia divinorum in their lifetime, and approximately 750,000 did so in the past year.”¹⁴ Adults aged 18 to 25 were more likely than older adults to have used salvia and males were about 3 to 4 times more likely to have used salvia in the last year than females.

Because it is currently not illegal to sell, use or possess Salvia or salvinorin, no data is available from law enforcement on how often they encounter the substance. According to responses to staff inquiries, several local law enforcement agencies reported that the substance is sold in “head shops” and “hookah lounges”, in their jurisdiction.

Also, because the substance is not illegal to possess in Florida, it is unlikely that the substance would be sent to a drug lab for testing. An intelligence brief published by the Drug Enforcement Administration indicates that in 2003, the Miami-Dade Police Department Crime Laboratory received a small amount of Salvia divinorum that was seized from a student by a school resource officer. The brief indicated that this was the crime laboratory’s first submission of the material.¹⁵ According to the Florida Department of Law Enforcement’s (FDLE) response to a Senate survey, the Miami-Dade Crime Laboratory has not encountered the substance since 2003.¹⁶ The FDLE indicated that they are unaware of any instances of Salvia divinorum being submitted to one of the seven FDLE laboratories.¹⁷ Further, common toxicology screenings do not test for the presence of Salvia.¹⁸

Drug schedules: Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five different categories, known as schedules, in order to regulate the manufacture, distribution, preparation, and dispensing of the substances.¹⁹ According to s. 893.03, F.S., the distinguishing factors between the different drug schedules are the potential for abuse of the substances contained therein and whether there is a currently accepted medical use for the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States and its use under medical supervision does not meet accepted safety standards. Cannabis and heroin are examples of Schedule I drugs.²⁰

¹⁴ <http://www.oas.samhsa.gov/2k8/hallucinogens/hallucinogens.cfm>

¹⁵ Microgram Bulletin, Vol. XXXVI, No. 8, August 2003, pg 177

<http://www.usdoj.gov/dea/programs/forensicsci/microgram/mg0803/mg0803.html>

¹⁶ As part of an interim project, staff of the Senate Criminal Justice Committee surveyed several state agencies regarding Salvia divinorum including the Florida Department of Law Enforcement and the Department of Health as well as the Office of Drug Control within the Executive Office of the Governor. The Senate staff also surveyed a number of medical professionals and researchers for their input. The results of these surveys were shared with the staff of this committee and are on file with this committee. Information from these surveys was used as background material for this analysis.

¹⁷ This response includes information provided by the Broward County Crime Laboratory, the Indian River County Laboratory, Palm Beach County Crime Laboratory, Pinellas County Crime Laboratory, Miami Dade Crime Laboratory as well as the Florida Department of Law Enforcement Crime Laboratory.

¹⁸ See generally, Grundman, O., *supra* note 1.

¹⁹ s. 893.03, F.S.

²⁰ Schedule II drugs have a high potential for abuse and a severely restricted medical use and abuse of the substance may lead to severe psychological or physical dependence. Cocaine and morphine are examples of Schedule II drugs.

Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have an accepted medical use and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

Substances listed in Schedule III include anabolic steroids and codeine.

Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in treatment and abuse of the substance may lead to limited physical or psychological dependence. Substances in Schedule IV include phenobarbital, librium, and valium.

The term “potential for abuse” is defined as follows:²¹

Potential for abuse means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being:

- (a) Used in amounts that create a hazard to the user's health or the safety of the community;
- (b) Diverted from legal channels and distributed through illegal channels; or
- (c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Possible legitimate uses: According to media reports, concern has been raised that making Salvia a controlled substance would impair the ability of the substance to be used in research. Salvinorin A does not affect the same receptors in the brain as other hallucinogens.²² For this reason, some researchers believe that there is a possibility that salvinorin A could have potential in the treatment of Alzheimer’s disease and schizophrenia.²³ However, Florida law already includes a research exception. In pertinent part, s. 893.13(9), F.S. provides that the criminal penalties contained in the section are not applicable to possession of a controlled substance for:

medical or scientific use or purpose only.....by, persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

- (a) Pharmacists.
- (b) Practitioners.
- (c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

It appears that this exception would apply to medical research which may be conducted in the state and would allow research to proceed if Salvia were to be made a controlled substance.

Several websites claim that Salvia divinorum is commonly cultivated for landscaping uses and for that reason should not be regulated. There appears to be confusion between Salvia divinorum and other forms of Salvia which are used in landscaping. Staff of the Division of Plant Industry within the Florida Department of Agriculture and Consumer Services indicated that they were not aware of Salvia divinorum being used in the nursery trade. Similarly, a representative of the Florida Nursery Growers and Landscape Association indicated that they were not aware of any members who were growing or

Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in treatment and abuse of the substance may lead to limited physical or psychological dependence. Substances in Schedule V include certain stimulants and narcotic compounds.

²¹ s. 893.02(18), F.S.

²² Hallucinogens such as LSD and mescaline bind to the serotonin receptors in the brain while salvinorin A binds to the kappa-opioid receptor. Prinsano, *supra* note 1.

²³ Grundmann O, *supra* note 1.

selling *Salvia divinorum*. Therefore, it does not appear that if the substance were regulated within the state that it would have any effect on this industry.

Federal approach: Neither *Salvia divinorum* nor salvinorin A is listed within the federal Controlled Substances Act.²⁴ The Drug Enforcement Administration includes *Salvia divinorum* and salvinorin A in its list of “Drugs and Chemicals of Concern” and is considering classifying *Salvia* as a Schedule I drug.²⁵

Other jurisdictions: As discussed further below, in 2005, Louisiana became the first state to regulate the sale or possession of *Salvia divinorum*. As of March 10, 2008 nine states have passed legislation criminalizing the sale, consumption, possession or purchase of *Salvia divinorum* or salvinorin A in some manner. These states have taken a variety of approaches to the issue.

- North Dakota and Missouri placed *Salvia divinorum* and salvinorin A within Schedule I.²⁶
- Maine made it a civil violation, punishable by up to \$1,500 to sell *Salvia divinorum* or salvinorin A to a minor. The act made it a civil violation for a minor to purchase, possess or use *Salvia divinorum*. The act also made it a civil violation to use false identification in an attempt to purchase *Salvia divinorum*.²⁷
- Illinois placed *Salvia divinorum* and any extract from the plant within Schedule I.²⁸
- Virginia placed salvinorin A within Schedule 1.²⁹
- Tennessee made it a misdemeanor to knowingly produce, manufacture, distribute or possess the active chemical ingredient in *Salvia divinorum*. This statute provides an exception for the possession, planting, cultivation, growing, or harvesting of the plant for aesthetic, landscaping or decorative purposes. The bill also provides an exception for any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal Food and Drug Administration as a homeopathic drug.³⁰
- Oklahoma’s law provides that prima facie evidence that a substance containing *Salvia divinorum* has been enhanced, concentrated or chemically or physically altered gives rise to a rebuttable presumption that the substance is a synthetic controlled substance.³¹ Oklahoma law makes it a felony to manufacture or distribute a synthetic controlled substance.³²
- Delaware added *Salvia divinorum* to Schedule I.³³

²⁴ 21 U.S.C 812 In 2002, federal legislation was filed to place *Salvia divinorum* and salvinorin A within Schedule I of the Controlled Substances Act. Congress adjourned without the bill being passed. No similar legislation has been filed since that time.

²⁵ http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm; <http://www.drugabuse.gov/Infofacts/salvia.html> =

In response to the Senate staff survey, the Florida Office of Drug Control indicated that they had been informed that the DEA has completed their analysis of salvinorin A and will be sending documentation to the Department of Health and Human Services to begin the scheduling process. There is no deadline for a response from that department.

²⁶ ND ST 19-03.1-05; V.A.M.S. 195.017

²⁷ Public Law 120, 123rd Maine Legislature.

²⁸ 720 ILCS 570/204

²⁹ See HB 21, signed by the Governor on March 2, 2008.

³⁰ T.C.A. s. 39-17-438

³¹ 63 Ok.St. Ann. s. 2-101

³² 63 Ok.St. Ann. s. 2-401

³³ 16 Del.C. s. 4714; This law was known as “Brett’s Law” and was named after a teenager who committed suicide. His parents believe that his use of *salvia divinorum* contributed to his death. Their son had claimed that because *Salvia* could be legally

- Louisiana³⁴ added *Salvia divinorum* to a section of statute which makes it unlawful for any person to knowingly or intentionally produce, manufacture, distribute or possess a material, compound, mixture or preparation intended for human consumption that contains a hallucinogenic plant. The offense is punishable by a term of imprisonment up to five years. This statute provides an exception for the possession, planting, cultivation, growing, or harvesting of the plant for aesthetic, landscaping or decorative purposes. The bill also provides an exception for any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal Food and Drug Administration as a homeopathic drug.

In addition, legislation has been filed in the state legislatures of the following states: Alabama, Alaska, California, Georgia, Iowa, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Wisconsin and Wyoming. Most of these bills placed *Salvia divinorum* and salvinorin A within Schedule I. These bills have either failed to pass or are still pending at the time of this writing.

On March 20, 2007, the Board of County Commissioners of Miami-Dade County adopted a resolution requesting that the State of Florida add *Salvia divinorum* and salvinorin A to Schedule I of the Florida Comprehensive Drug Abuse Prevention and Control Act.³⁵

Effect of bill:

The bill adds *salvia divinorum* and salvinorin A to schedule I. This will make possession of the substance a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote.³⁶ The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver *Salvia divinorum* or salvinorin A will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.³⁷ The offense of purchase of *Salvia* or salvinorin A will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.³⁸

C. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S. relating to standards and schedules.

Section 2. Reenacts portions of s. 893.13, F.S. relating to prohibited acts for the purpose of incorporating by reference the amendment to s. 893.03, F.S. made by the bill.

Section 3. Reenacts s. 921.0022(3)(b),(c) and (e), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, for the purpose of incorporating by reference the amendment to s. 893.03, F.S. made by the bill.

Section 4. Provides effective date of July 1, 2008.

purchased, it must be safe to use. Chalmers, M. (2006, February 26) Legal high new worry for parents-LSD-like her blamed in Delaware teen's suicide, *News Journal (Wilmington, DE)*, pp. A1, A13.

³⁴ LSA-R.S. 40:989.1

³⁵ <http://www.miamidade.gov/govaction/matter.asp?matter=070579&file=true&yearFolder=Y2007>

³⁶ s. 893.13(6)(a), F.S. Possession of less than 20 grams of cannabis is a first degree misdemeanor. s. 893.13(6)(b), F.S.

³⁷ s. 893.13(1)(a)2, F.S and s. 921.0022, F.S.. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

³⁸ S. 893.13(2)(a)2, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would make it illegal to sell salvia divinorum, a substance that is currently available for sale in some retail locations in the state and through a variety of websites.

D. FISCAL COMMENTS:

On February 26, 2008, the Criminal Justice Impact Conference determined that, SB 1612, which is identical to this bill would have an insignificant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Salvia divinorum (street names: Sally-D, Magic Mint, Maria Pastora, diviner's sage) is a psychoactive hallucinogen that is growing in popularity among teens and young adults. The federal Drug Enforcement Administration reports that effects include vivid hallucinations, and that high doses can cause unconsciousness, short-term memory loss, and flashbacks. Salvia divinorum has no currently accepted medical use, and a high potential for abuse. That is why it should be added to Florida's list of Schedule I drugs.

There are hundreds of salvia varieties, including the commonly planted Scarlet Sage, Salvia splendens. Salvia divinorum is the only variety that is hallucinogenic, and the only variety that will be affected by this bill.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on Homeland Security & Public Safety adopted an amendment which is traveling with the bill. The amendment provides an exception to scheduling for any drug product approved by the United States Food and Drug Administration which contains Salvia divinorum or salvininorin A.