The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	PCS for SBs 340 & 1612
INTRODUCER:	Criminal Justice Committee
SUBJECT:	Controlled Substances
DATE:	January 10, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Pre-meeting**
2.			HR	
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill implements recommendations of a staff interim report, *Salvia Divinorum and Salvinorin A as Controlled Substances*, Interim Project Report 2008-115 (November 2007), Senate Committee on Criminal Justice. Specifically, staff found in this report that Salvia divinorum, a relatively rare sage plant, and Salvinorin A, the plant's main psychoactive component, are being used recreationally in the United States for their hallucinogenic-like effects and that these substances meet criteria for scheduling as a Schedule I controlled substance. Staff recommended that the Legislature consider several options for regulating these substances, including Schedule I scheduling. The bill schedules Salvia divinorum and Salvinorin A in Schedule I of Florida's controlled substance schedules.

The bill also provides for an exception to the scheduling of Salvia divinorum and Salvinorin A: any drug product approved by the U.S. Food and Drug Administration which contains either of these substances or their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers.

This bill substantially amends s. 893.03, F.S., and reenacts provisions of ss. 893.13 and 921.0022, F.S.

II. Present Situation:

Staff Interim Report on Salvia Divinorum and Salvinorin A

In 2007, staff of the Senate Committee on Criminal Justice completed an interim report[1] on the possible regulation of Salvia divinorum and Salvinorin A. Provided are some of the background information, findings, and recommendations provided in that report[2] and drug use data obtained subsequent to the report's publication.

Salvia divinorum (S. divinorum), a relatively rare sage plant, and Salvinorin A, its main psychoactive component, are being used recreationally in the United States for their hallucinogenic-like effects. The plant is indigenous to the Sierra Mazateca of Oaxaco, Mexico, is not native to the United States, and does not grow wild. There is no indication that the plant is being used in Florida for landscaping or sold by nurseries. It is being sold on the Internet and in some local head shops, tobacco shops, and other retail establishments.

While S. divinorum can be consumed orally, which is the traditional practice in Mexico, the primary means of using the plant in the United States is by smoking its crushed leaves, the potency of which may be enhanced with Salvinorin A extract. Researchers have reported that the hallucinogenic-like effects of the plant are as great if not greater than LSD. Salvinorin A appears to have an affinity for the kappa-opioid receptor sites of the human body, which is atypical for known opioids.

The effects of S. divinorum are relatively short in duration --roughly five minutes to an hour, depending on the amount, potency, method of administration, and other factors. In addition to the hallucinogenic-like effects, physical effects noted by researchers run the gamut from dizziness to unconsciousness (in high dosages). There have been no studies to date of human toxicity, though limited animal studies do not indicate toxicity. There have been no reports of the plant's use directly causing a death, though a Delaware medical examiner listed its use as a contributing factor in the suicide death of a Delaware high school student.[3] Further, there has not been any clinical research on humans to determine addictive potential, long-term effects, the effects of interaction with other substances, and the effects on at-risk groups such as children. There is no accepted medical use for the plant in treatment in the United States.

The Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services recently published the results of the National Survey on Drug Use and Health (NSDUH) as it relates to use of hallucinogens, including S. divinorum, by persons aged 12 or older.[4] The results of the NSDUH survey indicate that about 1.8 million persons aged 12 or older used S. divinorum in their lifetime, and approximately 750,000 did so in the past year (2006). The number of reported lifetime-users of S. divinorum exceeded the number of reported lifetime users of DMT, AMT, and Foxy[5] combined (approximately 658,000). The number of

[1] *Salvia Divinorum and Salvinorin A as Controlled Substances*, Interim Project Report 2008-115 (November 2007), Senate Committee on Criminal Justice.
[2] Sources for the information provided in this analysis are referenced in the interim report if not referenced in this analysis.
[3] Chalmers, M. (2007, August 3). Parents sue over dead son's Salvia use. *The News Journal.* (Wilmington, DE), p. B1.
[4] Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (February 14, 2008). *The NSDUH Report: Use of Specific Hallucinogens: 2006*. Rockville, MD.
[5] Respectively, dimethyltryptamine, alpha-methyltryptamine, and 5-methoxy-diisopropyltryptamine.

past-year users of S. divinorum was less than but relatively close to the number of past-year users of Ecstasy[6] (approximately 2,130,000) and exceeded the number of past year-users of LSD[7] (approximately 666,000), ketamine (approximately 203,000), PCP[8] (approximately 187,000), and DMT, AMT, and Foxy combined (approximately 104,000). Ecstasy, LSD, PCP, ketamine, DMT, AMT, and Foxy are all Schedule I controlled substances in Florida. Young adults aged 18 to 25 were more likely than adults aged 26 or older to have used S. divinorum in the past year. Young adults also were nearly 3 times more likely than youths aged 12 to 17 to have used S. divinorum in the past year. Among youths aged 12 to 17 and young adults aged 18 to 25, males were about 3 to 4 times more likely than females to have used S. divinorum in the past year.

There have been two recent research surveys of college campus use of S. divinorum --one by researchers at the San Diego State University and the other by researchers at the University of Florida. The San Diego State researchers found 4.4 percent of the survey respondents used S. divinorum in the past year and of those respondents who used illicit drugs in the last year, 10 percent also used S. divinorum. Prior drug use was determined to be the highest predictor of use of S. divinorum.[9] The University of Florida researchers found 6.5 percent overall prevalence of lifetime S. divinorum use by the survey respondents at that university. The majority of sales were from head shops. Use of the plant was significantly concentrated among white, higher socio-economic status, male, marijuana smokers.[10]

Researchers have also provided other possible indicators of prevalence of use or potential for abuse of S. divinorum, including its easy availability, relatively low cost, lack of significant regulation, Internet search queries, and videos posted on the Internet by users about their 'trips.' One study found that there were 100 Yahoo search hits for S. divinorum in 2003 and 881,000 hits in 2006.[11] One newspaper reported there are more than 300 videos of people recording and posting their trips on the Internet, and 84 Facebook groups and 11,900 on MySpace.[12]

S. divinorum and Salvinorin A are listed as Drugs and Chemicals of Concern by the Drug Enforcement Administration (DEA). They are not scheduled by the federal government but staff was informed that the DEA has recently completed its 8-factor analysis of the substances for submission to the U.S. Department of Health. Eight states[13] regulate one or both substances in some fashion; 4 by Schedule I scheduling.[14] At the time the report was prepared, legislation had

[6] Methylenedioxymethamphetamine.
[7] Lysergic acid diethylamide.
[8] Phencyclidine.
[9] Lange, J., Reed, M., Ketchie, J., Clapp, J., & Homer, K. (2007, October 18-21). *College Student Use of Salvia Divinorum*. Poster session presented at the U.S. Department of Education's 21st Annual National Meeting on Alcohol and Other Drug Abuse and Violence Prevention in Higher Education, Omaha, NE.
[10] Khey, DN., Miller, BL, and Griffin, H. (Department of Criminology, Law, & Society, University of Florida), *Salvia divinorum: Prevalence and Trends at the University of Florida,* Presentation before the Florida Drug Policy Advisory Council (November 13, 2007).
[11] Wolowich, W., Perkins, A., & Cienki, J. (2006, September). Analysis of the psychoactive terpenoid salvinorin A content in five Salvia divinorum herbal products. *Pharmacother.*, 26(9), 1268-1272.
[12] DiCosmo, B. (2007, July 22). Herb banned in Missouri shows up on Internet. *Southeast Missourian* (retrieved from http://www.semissourian.com/story/1232598.html).
[13] Delaware, Illinois, Louisiana, Maine, Missouri, North Dakota, Oklahoma, and Tennessee.
[14] Delaware, Illinois, Missouri, and North Dakota.

been introduced in 16 states[15] to regulate these substances in some fashion. Subsequent to the report, the media reported that legislation will be introduced in Nebraska[16] and Indiana[17] so there are now at least 18 states with legislation. At present, Florida does not regulate possession or sale of these substances. Because these substances are not scheduled or otherwise proscribed, most criminal laws like the DUI laws do not apply. It is possible that the offenses of disorderly intoxication, careless or reckless driving, and contributing to the delinquency of a minor might apply in particular cases.

The Florida Office of Drug Control, the Florida Department of Health, and the Miami Dade-County Commission believe Schedule I scheduling of S. divinorum and Salvinorin A is appropriate. Staff found that these substances do meet statutory criteria for scheduling in Schedule I. They have no accepted medical use in treatment in the United States. For that reason, Schedules II-V are inappropriate because such scheduling requires an accepted medical use. There is a "potential for abuse" because there is a substantial likelihood of these substances being taken on the user's own initiative rather than on the basis of professional medical advice. While prevalence of use needs further research, proof of use has been established. The "potential for abuse" is serious or 'high' because a designation of 'low' potential for abuse would suggest that these substances are being taken on the basis of professional medical advice, which is not the case. Finally, since there is no accepted medical use, it logically follows that these substances cannot be used under medical supervision that meets accepted safety standards.

Staff recommended that the Legislature consider a number of different options for regulating S. divinorum and Salvinorin A if the Legislature wants to regulate these substances. For example, the Legislature could place these substances in Schedule I with Schedule I penalties. Placing these substances in Schedule I would not preclude medical research since Florida law provides an exception for such research.[18] However, if the Legislature elected to schedule these substances, it could also make an exception for any possible drug product approved by the U.S. Food and Drug Administration that would be a Schedule I controlled substance because of the Schedule I scheduling of Salvia divinorum and Salvinorin A, including their salts, isomers, and salts of isomers. While no such drug product currently exists, there is some research being conducted on Salvinorin A, which may lead to discoveries of medical drugs for the treatment of diseases in which hallucinations are prominent. The Legislature has, on occasion, created scheduling exceptions. For example, a drug that treats narcolepsy is scheduled in Schedule III; absent this scheduling, the drug would fall under the Schedule I scheduling of GHB (Gamma-hydroxybutyric acid). Hydrochloride salt is an exception to the Schedule I scheduling of etophorine. Also, several years ago the Legislature created an industrial use exception for the Schedule I drugs, GBL (Gamma-butyrolactone) and 1,4-Butanediol.

If S. divinorum and Salvinorin A are scheduled in Schedule I, Schedule I penalties will apply. For example, if S. divinorum is made a Schedule I controlled substance, possession without

[15] Alabama, Alaska, California, Florida (SB 340 by Senator Lynn; 2008 Session), Georgia, Iowa, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Virginia, Wisconsin, Wyoming, and Utah.
[16] News Release: *1-7-08 Attorney General Bruning Unveils 2008 Legislative Package*, Nebraska Attorney General. (http://www.ago.state.ne.us/headlines/index.htm?articleno=4364)
[17] Corbin, B. (2008, January 13). Crouch targets hallucinogenic drug. *Evansville Courier & Press* (retrieved from http:www.courierpress.com/news/2008/jan/13/crouch-targets-hallucinogenic-drug/).
[18] s. 893.13(9), F.S.

intent to sell, etc., of these substances would be a third degree felony. Staff noted in the report that the Legislature could schedule S. divinorum and Salvinorin A in Schedule I but impose lesser penalties for possession. Other options presented include leaving the substances unscheduled but punishing possession, sale, etc., or adopting any of an array of options present by legislation in other states, including, but not limited to, penalties for human consumption and fines for sales.[19]

Schedule I Criteria

Section 893.03, F.S., contains Florida's schedules for controlled substances. Scheduling a substance as a controlled substance can affect access to the substance as well as result in criminal penalties for sale, manufacture, distribution, and possession of the substance. A substance considered for scheduling in Schedule I must meet these criteria: (1) the substance has a high potential for abuse; (2) the substance does not have an accepted medical use in treatment in the United States; and (3) in its use under medical supervision the substance does not meet accepted safety standards.

Section 893.02(18), F.S., defines "potential for abuse" as meaning 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. The definition is structured so as to provide for three equally acceptable meanings of the term.

Proof of potential for abuse can be based upon a showing that these activities are already taking place. Alternatively, it can be based 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.

III. Effect of Proposed Changes:

The bill combines the substance of SB 340 and SB 1612. Both bills schedule S. divinorum and Salvinorin A in Schedule I. Senate Bill 1612 also includes an exception to this Schedule I scheduling (as described, *supra*).

The bill implements recommendations of a staff interim report, *Salvia Divinorum and Salvinorin A as Controlled Substances*, Interim Project Report 2008-115 (November 2007), Senate Committee on Criminal Justice. Specifically, staff found in this report that Salvia divinorum, a relatively rare sage plant, and Salvinorin A, the plant's main psychoactive component, are being used recreationally in the United States for their hallucinogenic-like effects and that these substances meet criteria for scheduling as a Schedule I controlled substance. Staff recommended that the Legislature consider several options for regulating these substances, including Schedule I scheduling. The bill amends s. 893.03, F.S., to schedule Salvia divinorum and Salvinorin A in Schedule I of Florida's controlled substance schedules.

[19] The Legislature could wait to see what the federal government does regarding scheduling but the Legislature has acted before federal scheduling as, for example, when it scheduled GHB, GBL, 1,4-Butanediol, and flunitrazepam.

The bill also provides for an exception to the scheduling of Salvia divinorum and Salvinorin A: any drug product approved by the U.S. Food and Drug Administration which contains either of these substances or their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

The bill also reenacts ss. 893.13(1)(a), (c), (d), (e), (f), and (h), (2)(a), (4)(b), and (5(b) and 921.0022(3)(b),(c), and (e), F.S., relating to proscribed acts and penalties for controlled substances and the offense severity level ranking chart of the Criminal Punishment Code, to incorporate the amendment to s. 893.03, F.S., in reference to that section.

The bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill combines the substance of SB 340 and SB 1612. The Criminal Justice Impact Conference estimates that both of these bills have a potentially insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.