

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: SPB 7020

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Controlled Substances

DATE: January 10, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
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.

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, and 921.0022.

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 report¹ on the possible regulation of Salvia divinorum and Salvinorin A. Provided are some of the background information, findings, and recommendations provided in that report² and drug use data obtained subsequent to the report's publication.

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.

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 and method of administration. 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.

Prevalence of use has not been determined. National and state, including Florida, drug use surveys do not ask about use of *S. divinorum*.⁴ The U.S. Department of Health intends to ask about such use in future surveys. There have been two recent research surveys of use --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*.⁵ 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.⁶

³ Chalmers, M. (2007, August 3). Parents sue over dead son's *Salvia* use. *The News Journal*. (Wilmington, DE), p. B1.

⁴ Prevalent use of *S. divinorum* is not reported by the Florida Department of Law Enforcement crime labs. However, possession and sale of *S. divinorum* are not crimes in Florida so it is unlikely that such use would be reported.

⁵ 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.

⁶ Key, 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).

Since there is little hard data yet on *S. divinorum* use, researchers have focused on some possible indicators of prevalence of use or potential for abuse, 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 2006.⁷ 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.⁸

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 states⁹ regulate one or both substances in some fashion; 4 by Schedule I scheduling.¹⁰ At the time the report was prepared, legislation had been introduced in 16 states¹¹ to regulate these substances in some fashion. Subsequent to the report, the media reported that legislation will be introduced in Nebraska¹² and Indiana¹³ 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

⁷ 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.

⁸ DiCosmo, B. (2007, July 22). Herb banned in Missouri shows up on Internet. *Southeast Missourian* (retrieved from <http://www.semissourian.com/story/1232598.html>).

⁹ Delaware, Illinois, Louisiana, Maine, Missouri, North Dakota, Oklahoma, and Tennessee.

¹⁰ Delaware, Illinois, Missouri, and North Dakota.

¹¹ 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.

¹² 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>)

¹³ 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/>).

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.¹⁴ 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, simple possession (possession without intent to sell, etc.) of this substance 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.¹⁵

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

¹⁴ s. 893.13(9), F.S.

¹⁵ 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.

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 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.

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:

The Criminal Justice Impact Conference had not met to consider the prison bed impact of the bill at the time this analysis was completed. However, since there is no current data on statewide use of S. divinorum and Salvinorin A, it appears that an estimate of the prison bed impact of the bill would be indeterminate.

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.