

SUBJECT: Criminalizing the sale or delivery of salvia divinorum to a minor

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Christian, Fletcher, Miklos, Moody, Riddle, Vaught, Vo

1 nay — Hodge

2 absent — Kent, Pierson

SENATE VOTE: On final passage, April 2 — 31-0

WITNESSES: For — Nicholas Krudy; (*Registered, but did not testify:* Laura Anderson, San Antonio Police Department; Jennifer Brown, City of San Antonio; Monty Wynn, Texas Municipal League)

Against — Tracey Hayes, ACLU of Texas

BACKGROUND: Salvia divinorum is a powerful psychoactive plant that is readily available at tobacco shops and over the Internet. While traditionally it has been used in ceremonies by the indigenous Mazatec people of southern Mexico, its recreational use in the United States has increased in recent years. Salvia divinorum currently is unregulated by the state of Texas or the federal government.

DIGEST: SB 257 would make it a class C misdemeanor (maximum fine of \$500) to, in a criminally negligent manner, sell, deliver, or cause to be sold or delivered salvia divinorum to a minor or another person who intended to deliver it to a minor.

The bill would make the employee of a store that sold salvia divinorum criminally responsible for selling the substance to a minor. It would be a defense to prosecution that the minor to whom the salvia divinorum was sold presented an apparently valid proof of identification. Proof of identification could be considered “apparently valid” if it was a state driver’s license, a passport, or an ID card issued by a state or federal government that contained a physical description and photograph

consistent with the person's appearance, purported to establish that the person was age 18 or older, and was issued by a governmental agency.

The bill would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

SB 257 would regulate the sale of salvia divinorum to minors in much the same way the state currently regulates the sale of cigarettes or tobacco products. Salvia divinorum, sometimes called "diviners sage" or "new ecstasy," is a powerful drug that increasingly is being used recreationally. Its hallucinogenic effects often leave a user temporarily incapacitated and unable to function without supervision. In fact, even proponents of salvia use recommend a "sober sitter" to prevent the user from doing anything dangerous that could result in bodily harm or property damage. The effects of this drug, both short-term and long-term, are unknown. However, the anecdotal evidence surrounding its use is serious enough that Texas should take steps to prevent children from having access to it.

SB 257 would allow Texas to take a proactive stance on what could be a dangerous substance due to its wide availability and unregulated distribution. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska (beginning September 2009), North Dakota, Ohio, Oklahoma, South Dakota, and Virginia ban salvia divinorum. California and Maine ban the sale or delivery to minors and ban minors from possessing it. Louisiana and Tennessee regulate salvia divinorum as a plant not fit for human consumption. Many westernized counties also have banned salvia divinorum.

While some might argue that the use of salvia divinorum is not problematic, the consumption of any substance through smoking represents a public health hazard at least on par with smoking tobacco. As such, minors' access to salvia divinorum should be restricted.

**OPPONENTS
SAY:**

This bill unnecessarily would impose government regulation on the sale and use of salvia divinorum, even though there is little evidence that it represents a public health or safety problem. The state should not restrict the sale of salvia divinorum or other consumer goods that are understood to be non-toxic and non-addictive.

NOTES:

During the 2007 regular session, a similar bill, SB 1796 by Estes, passed the Senate, but died on the House General State Calendar.