

Legislative Analysis



***SALVIA DIVINORUM* & *SALVINORIN A*: CLASSIFY AS SCHEDULE 1 DRUG**

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5700 without amendment
Sponsor: Rep. Michael Sak
Committee: Health Policy

Complete to 2-29-08

A SUMMARY OF HOUSE BILL 5700 AS REPORTED FROM COMMITTEE

Salvia divinorum, or "Salvia", sometimes called Diviner's Sage, is a member of the sage genus and the Lamiaceae (mint) family with psychoactive properties, and *salvinorum A* is the main active psychotropic molecule in *Salvia divinorum*. According to the Sloan-Kettering Institute, the herb "has been cultivated by the Mazatec people of Mexico for centuries for use as a hallucinogen during religious ceremonies."

House Bill 5700 would amend the Public Health Code to classify *Salvia divinorum* and *salvinorum A* as Schedule 1 drugs. The bill would also delete an obsolete provision pertaining to a marihuana controlled substances therapeutic research program that no longer is in operation.

The code's penalty provisions for unlawful acts involving controlled substances would also apply to activities associated with *Salvia divinorum* or *salvinorum A*. Use of either substance would be a misdemeanor punishable by not more than one year and/or a fine of not more than \$1,000. Felony provisions would apply for conduct involving knowingly possessing *Salvia divinorum* or *salvinorum A*; manufacturing, creating, delivering, or possessing with intent to deliver either substance; or owning or using buildings, vehicles, or places to manufacture a controlled substance or a counterfeit substance.

(Note: The penalty provisions of the code prescribe lower penalties for some violations involving LSD, peyote, and other hallucinogens. For example, use of a hallucinogen is a six-month misdemeanor and simple possession is a one-year misdemeanor. However, since the bill would not specifically include *Salvia divinorum* and *salvinorin A* in Sections 7403(2)(c) and 7404(2)(c), the higher imprisonment maximums would apply—a 1 year misdemeanor for use and two-year felony for simple possession.)

BACKGROUND INFORMATION AND DISCUSSION:

Following federal law, the Public Health Code classifies controlled substances under one of five "schedules." Scheduled drugs must have the potential for abuse (where, in general, the abuse is associated with a stimulant or depressive effect on the central nervous system). Schedule 1 drugs are illegal and without any medically accepted use in the United States. In addition to opiates and opium derivatives (including heroin), Schedule 1 includes hallucinogenic drugs (such as LSD and mescaline) and non-

therapeutic uses of marijuana. Drugs in Schedules 2, 3, 4, and 5 are prescription drugs with medically accepted uses in the United States that have a potential for psychological or physical dependence in addition to the potential for abuse. A Schedule 2 drug would have a higher potential for dependence and abuse than would a Schedule 5 drug.

Some people believe that Salvia should be prohibited as a Schedule 1 drug because there are no current medical uses for the herb. Salvia can be purchased, with no restrictions, around the state at smoke shops, tattoo parlors, and stores selling herbal products, as well as on the Internet. It is cheaper than marijuana (about \$16 an ounce), thus becoming very popular with college students and high school and middle school students. Many find out about Salvia by viewing some of the hundreds of videos of people "tripping" on Salvia posted on the Internet site YouTube

(It should be noted that the variety of Salvia cultivated by many Michigan gardeners would not be covered by the bill and does not contain the hallucinogenic substance that its Mexican cousin does.)

The growing use of Salvia has led to concerns about the potential for abuse of the substance, and, because Salvia can affect a person's motor control and awareness of his or her surroundings, about the potential for physical harm or victimization that could occur when an individual is under its influence. At least eight states have enacted laws to prohibit or regulate the use of Salvia, as has Australia and several European countries. Legislation to do so is pending in over a dozen other states.

However, several concerns have been raised about a ban on Salvia. Classifying the substance as a Schedule 1 drug may be premature, as the federal Drug Enforcement Agency is currently conducting a study to determine whether Salvia presents a public health risk. Further, according to the Memorial Sloan-Kettering Cancer Center, the active ingredient in Salvia—*salvinorum A*—is currently being investigated as a treatment for diseases that produce hallucinations, i.e., schizophrenia and dementia. According to other media reports, Salvia may be useful in treating other diseases as well, due to its ability to regulate dopamine levels. To ban Salvia as a Schedule 1 drug could have a chilling effect on ongoing research studies. It might be prudent to wait for the results of the DEA study before such prohibiting Salvia.

Also, as written, the bill would punish offenses involving Salvia more harshly than stronger hallucinogens such as LSD. If Salvia is to be treated as a Schedule 1 drug, perhaps it should at least be treated similarly to other hallucinogens. Some people would prefer to regulate Salvia in the same manner as tobacco and alcohol, meaning prohibiting sales to minors, encouraging responsible use, and punishing irresponsible behavior (such as driving under the influence). The State of Maine passed this kind of legislation rather than a ban in 2007.

In addition, there is some concern that banning Salvia could impinge on the right to practice religion, as Salvia has long been used to induce religious "visions."

FISCAL IMPACT:

The bill's fiscal impact on state and local correctional systems would depend on how it affected the number of misdemeanor and felony convictions and the severity of sentences. There are no data to indicate how many people might be convicted of offenses involving the substances to be proscribed by the bill. To the extent that the bill increased the number of misdemeanor sentences, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase.

To the extent that the bill increased the number of felony sentences, the state could incur increased costs of prison incarceration or felony probation supervision. The average appropriated cost of prison incarceration is roughly \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision average about \$2,000 per supervised offender per year. To the extent that more felons were sentenced to jail, affected counties could experience increased costs; jail costs vary by county.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

The Department of Community Health indicated support for the bill. (2-28-08)

Representatives of the Waterloo Police and the Waterloo Police Explorers testified in support of the bill. (2-28-08)

The Michigan Osteopathic Association indicated support for the bill. (2-28-08)

The Michigan Pharmacists Association indicated support for the bill. (2-28-08)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.