

## **BILL ANALYSIS**

S.B. 1796  
By: Estes  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Salvia divinorum, sometimes called “diviners sage” or “new ecstasy,” is a powerful psychoactive plant used culturally by the Mazatec shamans for healing during spiritual journeys. It is readily available at tobacco shops and over the internet, and its sale to any person, including minors, is unregulated by either the state or the federal government. Recently, people have begun using the plant recreationally. Its psychedelic effects often leave the user temporarily incapacitated and unable to function without supervision. In fact, website providers of the substance often recommend a “sober sitter” to prevent the user from doing anything dangerous that could result in bodily harm or property damage.

As proposed, S.B. 1796 makes the sale or provision of salvia divinorum to a person younger than 18 years of age, or to a person intending to provide it to a person younger than 18 years of age, a Class C misdemeanor offense.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Senate Bill 1796 amends the Health and Safety Code to provide that a person commits an offense if the person, with criminal negligence, sells, gives, or causes to be sold or given salvia divinorum to someone who is younger than 18 years of age, or sells, gives or causes to be sold or given salvia divinorum to another person who intends to deliver it to someone who is younger than 18 years of age. If an offense occurs in connection with a sale by an employee of the owner of a store in which salvia divinorum is sold at retail, the employee is criminally responsible for the offense and is subject to prosecution. An offense under Section 161.091, Health and Safety Code, is a Class C misdemeanor.

The bill provides that it is a defense to prosecution under Section 161.091(a)(1), Health and Safety Code, that the person to whom the salvia divinorum was sold or given salvia divinorum presented to the defendant apparently valid proof of identification. Proof of identification satisfies the requirements of Section 161.091(d), Health and Safety Code, if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a Texas driver's license or license issued by another state, a passport, or an identification card issued by a state or the federal government.

### **EFFECTIVE DATE**

September 1, 2007.