

BILL ANALYSIS

S.B. 257
By: Estes
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Salvia divinorum, sometimes called "diviners sage" or the "new ecstasy," is unregulated by the federal government and in Texas. It is, however, regulated by some states, including Tennessee and Delaware.

Salvia divinorum, unlike other sages, is a powerful psychoactive plant used culturally by the Mazatec shamans for healing during spiritual journeys.

The use of this traditional plant has spread to recreational use where the leaves are dried and then smoked (most common), chewed, or used as oral tincture to induce psychedelic effects. These effects often leave the user temporarily incapacitated and unable to function without supervision. In fact, website providers of salvia divinorum recommend a "sober sitter" to prevent the user from doing anything dangerous that could result in bodily harm or property damage.

Salvia divinorum is commonly available at tobacco shops and over the Internet. Because it is not regulated by the federal government or the State of Texas, it is readily available to minors.

S.B. 257 prohibits the sale or provision of salvia divinorum, Salvinorin A, or a product containing either to persons age 18 or younger and make such sale or delivery a Class C misdemeanor.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Chapter 48, Penal Code, by adding Section 48.03, as follows:

Sec. 48.03. PROHIBITION RELATING TO SALE OR DELIVERY OF SALVIA DIVINORUM TO CHILD. (a) Defines "child."

(b) Provides that a person commits an offense if the person, with criminal negligence, sells, delivers, or causes to be sold or delivered salvia divinorum, Salvinorin A, or a product containing salvia divinorum or Salvinorin A to a child or to another person who intends to deliver it to a child.

(c) Provides that an offense under this section is a Class C misdemeanor.

(d) Provides that it is not a defense to prosecution under this section that, at the time of the offense, the actor was an employee of a retail establishment that sold or offered for sale salvia divinorum, Salvinorin A, or a product containing salvia divinorum or Salvinorin A.

(e) Provides that it is a defense to prosecution under this section that the child presented to the actor an apparently valid proof of identification, including a driver's license issued by this state or another state, a passport, or an identification certificate or card issued by a state or the federal government. Provides that a

proof of identification satisfies the requirements of this subsection if the identification 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.

SECTION 2. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.