

BILL ANALYSIS

C.S.S.B. 348
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Salvia divinorum, sometimes called diviners sage or the new ecstasy, is a powerful psychoactive plant used in certain cultures by shamans for healing during spiritual journeys. The use of this traditional plant has spread to recreational use to induce psychedelic effects that can leave the user temporarily incapacitated and unable to function without supervision. In fact, some Internet providers of salvia divinorum recommend a so-called sober sitter to prevent the user from doing anything dangerous that could result in bodily harm or property damage.

Salvia divinorum is regulated by some states but is not regulated by the federal government or the State of Texas, and so the plant and its derivatives are readily available to Texas residents, including minors, over the Internet and at tobacco shops in the state. C.S.S.B. 348 seeks to prevent the sale or delivery of salvia divinorum or Salvinorin A or a product containing those substances by making it a criminal offense for a person to sell or deliver such a substance or product or to cause them to be sold or delivered to another person.

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

C.S.S.B. 348 amends the Penal Code to make it a Class A misdemeanor offense for a person, with criminal negligence, to sell, deliver, or cause to be sold or delivered, salvia divinorum, Salvinorin A, or a product containing salvia divinorum or Salvinorin A to another person.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 348 omits a provision included in the original defining "child" for purposes of provisions in the original prohibiting the sale or delivery of salvia divinorum to a child.

C.S.S.B. 348 differs from the original by making it a Class A misdemeanor offense for a person, with criminal negligence, to sell, deliver, or cause to be sold or delivered, salvia divinorum, Salvinorin A, or a product containing salvia divinorum or Salvinorin A to another person, whereas the original makes it a Class C misdemeanor offense for a person, with criminal negligence, to sell or deliver such a substance or product, or cause them to be sold or delivered, to a child or to another person who intends to deliver the substance or product to a child.

C.S.S.B. 348 omits a provision included in the original establishing that it is not a defense to prosecution under the original's provisions that, at the time of an offense of selling or delivering

salvia divinorum to a child, 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.

C.S.S.B. 348 omits a provision included in the original making it a defense to prosecution under the original's provisions that the child presented to the actor an apparently valid proof of identification and establishing that a proof of identification satisfies those requirements 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.