

**SUBJECT:** Criminal offense to sell or give salvia divinorum to minors

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 6 ayes — Peña, Vaught, Riddle, Mallory Caraway, Pierson, Talton  
0 nays  
3 absent — Escobar, Hodge, Moreno

**SENATE VOTE:** On final passage, April 26 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** For — None  
Against — None  
On — Pat Johnson, Texas Department of Public Safety Crime Laboratory

**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, although its possession or use is illegal in five states.

**DIGEST:** SB 1796 would make it a class C misdemeanor (maximum fine of \$500) to sell, give, or cause to sell or give salvia divinorum to someone who was younger than 18 years old or someone who intended to deliver it to someone younger than 18 years old.

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 September 1, 2007.

**SUPPORTERS  
SAY:**

SB 1796 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 people increasingly is being used recreationally. Its hallucinogenic effects often leave the user temporarily incapacitated and unable to function without supervision. In fact, even proponents of salvia use on the Internet 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, and Texas should take steps to prevent children from having access to it.

The bill would allow Texas to take a proactive stance on what could be a dangerous substance, due to its wide availability and unregulated distribution. Delaware, Louisiana, Missouri, Oklahoma, and Tennessee have passed laws criminalizing its possession and use, and many other states also are considering action to make it illegal or prohibit its sale to minors. 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 from which minors should be restricted.

**OPPONENTS  
SAY:**

This bill unnecessarily would insert governmental 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.