

## **BILL ANALYSIS**

Senate Research Center  
82R3116 GCB-F

S.B. 348  
By: Estes  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Salvia divinorum, sometimes called "diviners sage" or the "new ecstasy," is unregulated by the federal government or in Texas. It is, however, regulated in some states such as Tennessee and Delaware. S.B. 348 seeks to prevent the sale or giving of salvia divinorum or Salvinorin A (the main active psychotropic molecule) to persons age 18 or younger. A violation would be a Class C misdemeanor.

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 smoked (the most common use), 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.

As proposed, S.B. 348 amends current law relating to the sale or delivery of salvia divinorum or Salvinorin A to a child and provides a penalty.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION 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" in this section.

(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, 2011.