



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Am. H.B. 215
127th General Assembly
(As Passed by the House)

Reps. Collier, Evans, Latta, Brown, Chandler, Stebelton, Combs, Setzer, Aslanides, Bacon, Batchelder, Blessing, Book, Boyd, Core, Daniels, DeBose, DeGeeter, Dodd, Domenick, Dyer, Flowers, Gibbs, J. Hagan, R. Hagan, Mallory, Patton, Schindel, Schlichter, Sears, Wagner, B. Williams, S. Williams, Yuko

BILL SUMMARY

- Includes *Salvia divinorum* and salvinorin A as controlled substances, in Schedule 1.

CONTENT AND OPERATION

Background

Existing law defines a controlled substance as any drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of Ohio's controlled substances law (R.C. 3719.01, not in the bill). Schedules I, II, III, IV, and V are established by R.C. 3719.41, as amended pursuant to R.C. 3719.43 or 3719.44 (see **COMMENT 1** and **2**). Schedule I contains controlled substances that generally are considered to be the most dangerous (e.g., heroin, LSD, marijuana, mescaline, peyote, psilocybin, hashish, methaqualone, etc.), whereas Schedule V contains controlled substances that generally are considered to be less potent but still dangerous (e.g., not more than specified small amounts of codeine or opium in medicinal usage, ephedrine unless exempted pursuant to R.C. 3719.44 as described in **COMMENT 2**, etc.). Schedules II, III, and IV controlled substances fit in a continuum between Schedules I and V.

The sale and distribution of controlled substances is regulated pursuant to R.C. Chapters 3719 and 4729., and a series of criminal offenses contained in those Chapters and R.C. Chapter 2925. prohibit the sale, distribution, possession, use, manufacture, etc., of controlled substances other than in accordance with the regulatory provisions of R.C. Chapters 3719. and 4729. The criminal penalties for certain drug offenses differ, depending on whether the drug involved in the offense is a Schedule I, II, III, IV, or V controlled substance, with the penalties for

offenses involving a Schedule I or II controlled substance generally being classified as a higher degree of misdemeanor or felony than the same offenses involving Schedule III, IV, or V controlled substances.

Salvia divinorum

According to the U.S. Drug Enforcement Agency (DEA), *Salvia divinorum* is a perennial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. The herb can be chewed or smoked to induce illusions and hallucinations. Currently, *Salvia divinorum* is not listed in the federal Controlled Substances Act but is considered a "drug of concern" by the DEA. According to the DEA, salvinorin A (also called Divinorin A) has been identified to be the active constituent of *Salvia divinorum* that is responsible for the hallucinogenic effects of the herb.¹

Currently, *Salvia divinorum* and salvinorin A are not included in any of the controlled substance Schedules set forth in R.C. 3719.41 and are not otherwise classified as controlled substances in Ohio. The bill includes *Salvia divinorum* and salvinorin A as Schedule I controlled substances (R.C. 3719.41, Schedule 1 (C)(33) and (34)). Consequently, all of the Revised Code provisions pertaining to controlled substances (such as the drug offenses) will apply to *Salvia divinorum* and salvinorin A.

COMMENT

1. Existing R.C. 3719.43, which is not in the bill, provides that when, pursuant to the federal drug abuse control laws, the United States Attorney General adds a compound, mixture, preparation, or substance to a Schedule of the laws, transfers any of the same between one Schedule of the laws to another, or removes a compound, mixture, preparation, or substance from the Schedules of the laws, then that addition, transfer, or removal is automatically effected in the corresponding Schedule or Schedules in R.C. 3719.41, subject to amendment pursuant to R.C. 3719.44, as described below in **COMMENT 2**.

2. Existing R.C. 3719.44, which is not in the bill, provides that, pursuant to the provisions described in this **COMMENT**, and by rule adopted in accordance with the Administrative Procedure Act, the State Board of Pharmacy may do any of the following with respect to controlled substance Schedules I, II, III, IV, and V established in R.C. 3719.41: (a) add a previously unscheduled compound, mixture, preparation, or substance to any Schedule, (b) transfer a compound, mixture, preparation, or substance from one Schedule to another, provided the

¹ See http://www.dea diversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm.

transfer does not have the effect under R.C. Chapter 3719. of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws, or (c) remove a compound, mixture, preparation, or substance from the Schedules where the Board had previously added the compound, mixture, preparation, or substance to the Schedules, provided that the removal cannot have the effect under R.C. Chapter 3719. of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws.

In making a determination to add, remove, or transfer as described in the preceding paragraph, the Board must consider the following: (a) the actual or relative potential for abuse, (b) the scientific evidence of the pharmacological effect of the substance, if known, (c) the state of current scientific knowledge regarding the substance, (d) the history and current pattern of abuse, (e) the scope, duration, and significance of abuse, (f) the risk to the public health, (g) the potential of the substance to produce psychic or physiological dependence liability, and (h) whether the substance is an immediate precursor.

The Board may add or transfer a compound, mixture, preparation, or substance to Schedule I when it appears that there is a high potential for abuse, that it has no accepted medical use in treatment in Ohio, or that it lacks accepted safety for use in treatment under medical supervision. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule II when it appears that there is a high potential for abuse, that it has a currently accepted medical use in treatment in Ohio, or currently accepted medical use in treatment with severe restrictions, and that its abuse may lead to severe physical or severe psychological dependence. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule III when it appears that there is a potential for abuse less than the substances included in Schedules I and II, that it has a currently accepted medical use in treatment in Ohio, and that its abuse may lead to moderate or low physical or high psychological dependence. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule IV when it appears that it has a low potential for abuse relative to substances included in Schedule III, that it has a currently accepted medical use in treatment in Ohio, and that its abuse may lead to limited physical or psychological dependence relative to the substances included in Schedule III. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule V when it appears that it has lower potential for abuse than substances included in Schedule IV, that it has currently accepted medical use in treatment in Ohio, and that its abuse may lead to limited physical or psychological dependence relative to substances included in Schedule IV.

HISTORY

ACTION	DATE
Introduced	05-09-07
Reported, H. Criminal Justice	04-08-08
Passed House (95-0)	04-15-08

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