



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@legis.state.ak.us

March 9, 2010

Memorandum

TO: Representative Kyle Johansen
FROM: Patricia Young, Manager
RE: State Laws Regulating *Salvia Divinorum*
LRS Report 10.201

You asked for information on state regulation of *salvia divinorum*. According to a recent compilation by the National Conference of State Legislatures (NCSL), at least 17 states criminalize some aspect of the use, possession, or distribution of this substance. We include this document as Attachment A.

Attachment B is a copy of "The Legal Status of *Salvia Divinorum*," by Daniel Siebert, an independent researcher who closely follows this issue. Mr. Siebert's article, last updated on March 4, 2010, identifies 19 states with laws addressing the legality of *salvia divinorum*. This article also provides further discussion of pending bills and passed legislation in states as well as in 20 countries that prohibit some aspect of the possession, sale, or use of the substance. For your convenience, we insert a table from Mr. Siebert's article here:

US States with Laws Prohibiting Salvia Illegal (Schedule I) Delaware Florida Hawaii Illinois Kansas Mississippi Missouri Nebraska North Dakota Ohio Oklahoma South Dakota Virginia Only Legal When Not Intended for Human Consumption Louisiana North Carolina Tennessee Legal for Adults, but Illegal To Sell to Minors California Maine (possession by minors also illegal) Illegal to Manufacture, Deliver, or Sell Salvinorin A, but Legal to Possess Wisconsin Source: Daniel Siebert, "The Legal Status of <i>Salvia Divinorum</i> ," updated, March 4, 2010.	Other Countries with Laws Prohibiting Salvia Illegal to Possess or Sell Australia Belgium Croatia Denmark Germany Italy Japan Latvia Lithuania Poland Romania South Korea Sweden Illegal to Sell, but Legal to Possess Chile Spain Illegal to Grow or Sell, but Legal to Possess Russia Treated as a Medicinal Herb that Requires a Doctor's Prescription Estonia Finland Iceland Norway
---	---

We hope this information is useful. If you have questions or need additional information, please let us know.

Attachment A

National Conference of State Legislatures, "State Laws on *Salvia Divinorum*," March 2010

State Laws on Salvia Divinorum

In recent years, the drug Salvia Divinorum, or Salvia, has gained the attention of state legislators. Since 2006, at least 17 states have passed laws regulating or controlling the drug.

Salvia is an herb related to mint that is known for its psychoactive effects. The plant is native to parts of Mexico, where historically it has been used as part of indigenous religious rituals. Common methods of ingestion include infusing leaves into a tea; smoking dried herbs; and chewing. In the United States, use of Salvia is most common among 18-25 year olds and to a much lesser extent among adolescents (see chart below).

Percentages and Standard Errors (SE) of Past Year Hallucinogen Use among Persons Aged 12 or Older, by Age Group: 2006								
	12 or Older		12 to 17		18 to 25		26 or Older	
Hallucinogen	Percent	SE	Percent	SE	Percent	SE	Percent	SE
LSD	0.3%	0.02	0.4%	0.05	1.2%	0.10	0.1%	0.02
PCP	0.1%	0.02	0.2%	0.04	0.2%	0.04	0.0 ⁺ %	0.02
Ecstasy	0.9%	0.04	1.2%	0.09	3.8%	0.19	0.3%	0.04
Ketamine	0.1%	0.02	0.1%	0.03	0.2%	0.04	0.1%	0.02
DMT/AMT/Foxy	0.0 ⁺ %	0.01	0.1%	0.02	0.2%	0.05	0.0 ⁺ %	0.01
<i>Salvia divinorum</i>	0.3%	0.02	0.6%	0.06	1.7%	0.12	0.0 ⁺ %	0.01

Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (February 14, 2008). *The NSDUH Report -- Use of Specific Hallucinogens: 2006*. Rockville, MD. <http://www.oas.samhsa.gov/2k8/hallucinogens/hallucinogens.htm>

Effects of Salvia

Salvia originally became popular as a legal alternative to marijuana. However, the effects are markedly different. The effects of Salvia are hallucinogenic and vary based on method of ingestion. For example, smoking Salvia can lead to strong, instantaneous effects, whereas chewing or drinking tea can lead to longer lasting scenarios, but less intense. Some common effects include uncontrollable laughter, visions, dysphoria, experiencing multiple realities, and loss of physical coordination. So far, there has been limited study into the long-term effects of Salvia or its potential for addiction or abuse or its potential medicinal benefits. Initial studies have found that since Salvia increases dopamine levels in the brain, it contains potential as an addictive substance. Other studies, though, have found that Salvia could have potential as a treatment for gastrointestinal disorders.

Legal Status

No Federal statutes control or regulate distribution of Salvia. So far, at least 17 states have felt the need to act, passing laws ranging from banning possession or sale for minors to outright bans. Some states have classified Salvia as a Schedule 1 substance, modeled after the federal Controlled Substances Act, where Schedule 1 substances are considered to have a high potential for dependency and no accepted

medical use.

State Laws Regulating Salvia Divinorum (Current as of March 2010)	
California <u>Penal Code Section 379</u>	Every person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, or give Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, to any person who is less than 18 years of age, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.
Delaware <u>16 Del.C. § 4714</u>	Lists Salvia as a Schedule I controlled substance.
Florida <u>Annotated Title XLVI, Crimes Chapter 893.</u> <u>Drug Abuse Prevention and Control</u> <u>893.03.</u>	Lists Salvia as a Schedule I controlled substance.
Illinois <u>Illinois Compiled Statutes Annotated,</u> <u>Chapter 720. Criminal Offenses, Act 570.</u> <u>Illinois Controlled Substances Act, Article</u> <u>II. Schedules of Controlled Substances</u>	Lists Salvia as a Schedule I controlled substance.
Kansas <u>Statute 61-4104, Controlled Substances</u>	Lists Salvia as a Schedule I controlled substance.
Louisiana <u>Louisiana Revised Statutes, Title 40—</u> <u>Public Health and Safety, Chapter 4—</u> <u>Food and Drugs. Part X. §989.1</u>	Lists Salvia as a Schedule I controlled substance.
Maine <u>Maine Revised Statute Title 17: CRIMES.</u> <u>Chapter 70: Salvia Divinorum</u>	A person may not transfer Salvia divinorum to a minor. A minor may not Purchase, possess or use Salvia divinorum
Mississippi <u>Miss. Code Ann. § 41-29-113</u>	Lists Salvia as a Schedule I controlled substance.
Missouri <u>Missouri Revised Statutes, Chapter 195,</u> <u>Drug Regulations, Section 195.017</u>	Lists Salvia as a Schedule I controlled substance.
North Dakota <u>CHAPTER 19-03.1, UNIFORM</u> <u>CONTROLLED SUBSTANCES ACT</u>	Lists Salvia as a Schedule I controlled substance.
Nebraska <u>Nebraska Revised Statutes 28-405</u>	Lists Salvia as a Schedule I controlled substance.
North Carolina <u>North Carolina General Statutes</u> <u>Annotated 14-401.23</u>	(a) It shall be unlawful for any person to knowingly or intentionally manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver Salvia divinorum or Salvinorin A. (b) It shall be unlawful for any person to knowingly or intentionally possess Salvia

	divinorum or Salvinorin A.
Ohio <u>Ohio Revised Code Title 37, Chapter 3719.41, Controlled substance schedules.</u>	Lists Salvia as a Schedule I controlled substance.
Oklahoma <u>Oklahoma Statutes Citationized Title 63, Public Health and Safety Chapter 2 - Uniform Controlled Dangerous Substances Act, Article 2 - Standards and Schedules, Section 2-204 - Schedule I</u>	Lists Salvia as a Schedule I controlled substance.
South Dakota <u>South Dakota Codified Laws 22-42-22</u>	Possession of Salvia divinorum or salvinorin A prohibited--Felony or misdemeanor. No person may knowingly possess Salvia divinorum or salvinorin A. It is a Class 1 misdemeanor to possess two ounces or less of Salvia divinorum or salvinorin A. It is a Class 6 felony to possess more than two ounces of Salvia divinorum or salvinorin A.
Tennessee <u>Tennessee Code Annotated 39-17-438</u>	(a) It is an offense to knowingly produce, manufacture, distribute, possess or possess with intent to produce, manufacture, or distribute the active chemical ingredient in the hallucinogenic plant Salvia divinorum A. (b) The provisions of this section shall not apply to the possession, planting, cultivation, growing, or harvesting of the hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes. (c) The provisions of this section shall not apply to any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the Federal Food and Drug Administration as a homeopathic drug. (d) A violation of subsection (a) is a Class A misdemeanor.
Wisconsin <u>Wisconsin Statute 941.318</u>	Except as provided in sub. (3), whoever manufactures, distributes, or delivers salvinorin A with intent that it be consumed by an individual may be fined not more than \$10,000. (3) (a) Subsection (2) does not apply to the manufacture of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug. (b) Subsection (2) does not apply to the distribution or delivery to an individual who is 18 years of age or older of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug.

For more information, contact

Matthew Gever
Policy Specialist
Forum for State Health Policy Leadership
National Conference of State Legislatures
444 North Capitol Street, NW, Suite 515
Washington, DC 20001
Ph: 202.624.3576
Fax: 202.737.1069
matthew.gever@ncsl.org

Attachment B

Daniel Siebert, "The Legal Status of *Salvia Divinorum*," Updated March 4, 2010;
www.sagewisdom.org/legal status.html

THE LEGAL STATUS OF *SALVIA DIVINORUM*

(This page was last updated on March 4, 2010)

The *Salvia divinorum* Research and Information Center
is created and maintained by
Daniel Siebert

Legal Status

Salvia divinorum is a valuable medicinal herb. Because it produces profoundly introspective states of awareness, it is intrinsically unsuitable for recreational use (i.e., it is not a “party drug”). It is not habit-forming, not addictive, and does not present a significant risk to public health or safety. Because it is a powerful consciousness-altering herb, some regulation of sales is sensible and appropriate. It is reasonable to require that vendors provide detailed safety information and guidelines for responsible use. It also makes sense to limit the salvinorin A content of extracts sold in bulk form—extremely potent extracts should only be sold in pre-measured individual doses. It is appropriate to prohibit delivery to minors. It is also appropriate to prohibit reckless use, such as driving a vehicle while inebriated. There are many already-existing non-drug-specific laws that can be enforced against reckless salvia users (e.g., laws that prohibit public endangerment, public intoxication, reckless driving, etc.). Legislation should only penalize irresponsible use, not all use. Legislation that imposes punishment for possession of *Salvia divinorum* is neither useful nor humane. The idea of making any species illegal is absurd—after all, every species is a precious and irreplaceable part of our natural heritage. A sensible approach would be to regulate *Salvia divinorum* in a similar manner as alcohol and tobacco. Another sensible option would be to regulate it as a prescription medication, as some US states have done with cannabis. Certainly, physicians and psychiatrists should be able to prescribe salvia to patients who might benefit from it. It should also remain available for use in psychotherapy.

Decisions regarding the regulation of *Salvia divinorum* (or any substance) should always be based on science. The evidence shows that this herb is relatively safe and non-addictive. The pharmacology of its primary active constituent, salvinorin A, is unique and shows great promise as a lead compound for the development of useful medications. Excessively restrictive regulation would seriously impede further scientific research. For a well-reasoned, scientifically informed, perspective on the relative safety of *Salvia divinorum* and its importance in medical research, I encourage you to read these documents by Dr. Roland Griffiths and Dr. Matthew Johnson of Johns Hopkins University School of Medicine, which were presented as testimony opposing efforts to make salvia a Schedule I controlled substance in the state of Maryland. I also encourage you to read my open letter to lawmakers, which I have sent to legislators in several states.

Unfortunately, several countries have enacted laws that prohibit possession and/or sale of *Salvia divinorum*. In some cases, the penalties for violating these laws are quite severe. There are some countries that do not prohibit possession or sale, but do prohibit importation. The following listing describes all of the laws, regulations, and proposed legislation pertaining to *Salvia divinorum* that I am currently aware of. Because of the controversial nature of vision-inducing substances in general, it is probable that the legal status of *Salvia divinorum* will continue to change in the future. To stay abreast of changes in the legal status of *Salvia divinorum*, I encourage you to subscribe to my free email newsletter, The *Salvia divinorum* Observer. If you are aware of any attempts to prohibit *Salvia divinorum* in countries or states not listed below, please [click here](#) to send me an email.

US States with Laws Prohibiting <i>Salvia</i>	Other Countries with Laws Prohibiting <i>Salvia</i>
Illegal (Schedule I) Delaware Florida Hawaii Illinois Kansas Mississippi Missouri Nebraska North Dakota Ohio Oklahoma South Dakota Virginia	Illegal to Possess or Sell Australia Belgium Croatia Denmark Germany Italy Japan Latvia Lithuania Poland Romania South Korea Sweden
Only Legal When Not Intended for Human Consumption Louisiana North Carolina Tennessee	Illegal to Sell, but Legal to Possess Chile Spain
Legal for Adults, but Illegal To Sell to Minors California Maine (possession by minors also illegal)	Illegal to Grow or Sell, but Legal to Possess Russia
Illegal to Manufacture, Deliver, or Sell Salvinorin A, but Legal to Possess Wisconsin	Treated as a Medicinal Herb that Requires a Doctor's Prescription Estonia Finland Iceland Norway

Australia

Australia was the first country to prohibit *Salvia divinorum* and salvinorin A. The committee responsible for the ban has admitted that there is "no evidence of a major public health hazard." The ban went into effect June 1, 2002. Anyone living in Australia or its territories who is considering being involved with this plant is urged to first obtain professional legal advice. Readers are urged *not* to ship *Salvia divinorum*, or products made from it, to Australia or its territories because the person who receives the shipment could face severe criminal penalties. Please go [here](#) for more details on this recent action by Australia's government and to learn what you can do to fight it.

Denmark

Salvia divinorum and salvinorin A have been placed in category B of the Danish list of controlled substances. Category B includes psilocybin mushrooms, cocaine, amphetamine, and several others substances that are only legal for medicinal and scientific purposes. Possession of *Salvia divinorum* in Denmark now carries a penalty of up to 2 years in prison. The law