

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 2, 2009

2:12 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Lesil McGuire

**MEMBERS ABSENT**

Senator Kim Elton  
Senator Gene Therriault

**COMMITTEE CALENDAR**

Confirmations:

Board of Parole  
Lonzo Henderson  
POSTPONED

Judicial Conduct Commission  
Chris Brown  
POSTPONED

SENATE BILL NO. 52

"An Act relating to scheduling Salvia divinorum and Salvinorin A as controlled substances."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 52

SHORT TITLE: SALVIA DIVINORUM AS CONTROLLED SUBSTANCE

SPONSOR(S): SENATOR(S) THERRIAULT

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	HSS, JUD, FIN
02/11/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/11/09	(S)	Heard & Held
02/11/09	(S)	MINUTE(HSS)
02/23/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/23/09	(S)	Moved SB 52 Out of Committee
02/23/09	(S)	MINUTE(HSS)

02/25/09 (S) HSS RPT 1DP 3NR 1AM  
02/25/09 (S) DP: DYSON  
02/25/09 (S) NR: DAVIS, ELLIS, PASKVAN  
02/25/09 (S) AM: THOMAS  
03/02/09 (S) JUD AT 2:00 PM BELTZ 211

**WITNESS REGISTER**

DAVE STANCLIFF, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented SB 52 on behalf of the sponsor.

RODNEY DIAL, Lieutenant  
Department of Public Safety  
Ketchikan, AK

**POSITION STATEMENT:** Spoke in support of SB 52.

JACK DEGENSTEIN  
Salvia divinorum Enthusiasts  
Anchorage, AK

**POSITION STATEMENT:** Spoke in opposition to SB 52.

BRETT PATTISON  
Anchorage, AK

**POSITION STATEMENT:** Spoke in opposition to SB 52.

SCOTT KOHLHAAS, State Chairman  
Alaska Libertarian Party  
Anchorage, AK

**POSITION STATEMENT:** Spoke in opposition to SB 52.

**ACTION NARRATIVE**

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**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 2:12 p.m. Present at the call to order were Senators Wielechowski and French. Because the committee does not have a quorum, he announced that he will hold the confirmations over.

**SB 52-SALVIA DIVINORUM AS CONTROLLED SUBSTANCE**

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**CHAIR FRENCH** announced the consideration of SB 52 and said there is no intention to move the bill today.

DAVE STANCLIFF, Staff to Senator Therriault, said he has been working on this legislation for four years. Salvia divinorum is a potent hallucinogen, primarily grown in the mountains of Mexico, with a long history of use by the Mazatec Indians as a vision inducing substance. The drug enforcement administration of New Jersey has said that a dose of 200 to 500 micrograms produces profound hallucinations when smoked. Users compare it to Ketamine and Mescaline and it is touted on Internet sites aimed at young adults and adolescents.

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In the three years that this legislation has been considered, there has been a huge rise in availability, he said. A former postal station down the street has a sticker in the front window saying that Salvia is available there.

CHAIR FRENCH asked for clarification that they advertize it in the shop window.

MR. STANCLIFF said they do and he could have purchased some as a sample, but it runs counter to the way he does business.

CHAIR FRENCH commented that he made a wise decision.

MR. STANCLIFF cited an article from the U.S. News and World Report that said that a national survey from 2006 found that about 1.8 million people 12 years or older have used Salvia in their lifetime, and about 750,000 have used it in recent years. Entering the term into the YouTube search engine yielded more than 4,600 results, he said.

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CHAIR FRENCH recognized that Senator McGuire had joined the committee.

MR. STANCLIFF explained that the sponsor's primary interest in the legislation is to send a message to both Internet and smoke shop retailers that it is dangerous and should be controlled like other hallucinogenic substances. Salvia would not be disallowed for medical purposes, but it would no longer be readily available on the Internet or in smoke shops. According to the Navy's Drug Detection and Deterrence Branch, young adults have become interested in rediscovering ethno-botanical plants that can induce hallucinations and other psychological changes. Indications are that the long-term effects of using Salvia divinorum may be similar to those of other hallucinogens such as

LSD. Thos include depression and schizophrenia. Nine states have legislatively controlled or banned Salvia, 18 states are considering controls and 12 countries have made it illegal or are looking at strict controls. We may not know the long-term effects of using Salvia but when you watch the YouTube clips you can't imagine anyone's child being on it and you can't imagine any adult wanting to take the substance, he said. People who are experienced in the use of other hallucinogenic substance warn against the use of Salvia. It's hard to say why anyone would want to try it, he said, but kids are prone to try things that carry risk.

MR. STANCLIFF said the sponsor realizes that no law will shut out the use of this substance, but the increased use is cause for concern. Although some adults would argue that it should be a personal choice, he would submit that if you were to watch and listen to the people that use Salvia, you wouldn't come to that conclusion.

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MR. STANCLIFF noted that the Chair heard the bill in the previous committee and there were questions about Salvia's medicinal qualities. He has done further research and would provide the information if desired.

CHAIR FRENCH said he would like the information. Before the committee convened, he reminded himself that the Legislature put medical marijuana statutes on the books because the medical community believes there is some legitimate use under controlled circumstances. He asked if there is any recognition of Salvia divinorum in a parallel way.

MR. STANCLIFF explained that there have been experiments using Salvia divinorum to help with addictions. It may hold promise because of the way the hallucinogen interacts with brain receptors. He restated that this legislation wouldn't prohibit that continuing line of research. He noted that there has been difficulty in developing a forensic test to tell whether or not someone has taken Salvia divinorum, which is a challenge to law enforcement. The Department of Public Safety is available to respond to those questions, but the larger question asks what message it sends to young people for this substance to be completely allowed and lawful.

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SENATOR MCGUIRE questioned why the bill hadn't passed in previous years and asked if there needs to be some sort of compromise.

MR. STANCLIFF explained that in previous years the bill never had a negative vote out of committee. One year it died in the Senate Rules Committee and the next two years it died in the Senate Finance Committee.

SENATOR MCGUIRE suggested he consider including it in other crime bills.

MR. STANCLIFF said the gas line and other weighty issues eclipsed a number of things the last few years, but this year they hope for a different outcome.

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CHAIR FRENCH asked Lieutenant Dial if Salvia divinorum is on the radar and has been a problem for officers.

RODNEY DIAL, Lieutenant, Department of Public Safety (DPS), said he's discussed this with the drug enforcement unit and the consensus is that they hasn't been looking for it. Officers haven't seen it because they aren't trained to identify or track it. They know that it's available for purchase throughout the state and online with costs running from \$7.45 to \$23.45 per gram depending on concentration. Some Internet sites offer "rookie packs." The YouTube videos are a concern because users are apparently unable to perform even simple tasks. "If we start experiencing traffic accidents ... with this drug out there, we really don't know how we're going to address that or even test for that at this time." He said the department supports SB 52 and would like to address this problem before it becomes critical.

SENATOR WIELECHOWSKI asked if there is a way to test whether or not someone has used the substance.

LIEUTENANT DIAL explained that officers would perform field sobriety tests and there are drug recognition tests that may identify Salvia or other substances. At this point it would be difficult to prove in court that someone was acting under the influence with a blood test.

SENATOR WIELECHOWSKI asked if he knows of any accidents or injuries in Alaska that have been caused by someone under the influence of Salvia divinorum.

LIEUTENANT DIAL replied he isn't aware of any.

CHAIR FRENCH noted that he received a letter from someone who was dissatisfied with the way public testimony happened in the last committee. Three people signed up to testify today and he asked them to limit their testimony to five minutes.

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JACK DEGENSTEIN said he is a voter in Anchorage District M and represents a community of Salvia divinorum enthusiasts. He has researched the plant for more than six years and has grown it for more than four years. Salvia divinorum in particular was an inspiration to return to school to study chemistry. This bill has been introduced three different years and in that time there's been no reported incidence that has proved that the current legal status of the plant is a health or social crisis. This causes him to question the sponsor's true purpose for criminalizing Salvia. On April 2006 Mr. Stancliff sent an email and had the following to say about enthusiasts of Salvia divinorum:

I've heard from others using the substance that worry me. They're looking at Salvia as a God or high priestess, a plant to be worshiped and to try to attain oneness with. This is not rational or helping mental behavior.

MR. DEGENSTEIN said he believes that Senator Therriault's Catholic background is reflected in the statement and asked if religious freedom shouldn't be valued in this country. If this bill were to pass, persons wishing to use Salvia divinorum as a religious sacrament similar to the Mazatec Indians would not be able to obtain the plant for such use.

Criminalizing Salvia divinorum would also affect research in the state. The amount of regulation that must be followed in order to study a controlled substance would make the research costs unjustifiable when it's possible to study it in another state where it's still legal. Several states have already passed legislation regulating Salvia divinorum in ways that are similar to alcohol and tobacco.

MR. DEGENSTEIN said that if the bill were to pass he would have to destroy his garden even though the neighborhood hasn't been affected by his involvement with the plant. He asked that his liberties be protected.

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CHAIR FRENCH asked who is doing research on Salvia divinorum and if it is being published.

MR. DEGENSTEIN replied he hopes to do research in the future and would like to do it in Alaska. That's a primary reason for going to school.

CHAIR FRENCH asked when he will complete his chemistry degree.

MR. DEGENSTEIN replied he's a senior at UAA and hopes to attend graduate school for neurochemistry. That might not happen in Alaska, he added.

CHAIR FRENCH asked if he would vote to keep Salvia divinorum out of the hands of children under the age of 18.

MR. DEGENSTEIN said yes; California and Maine have legislation to keep it out of the hands of children and other states have discussed making the sale illegal. Possession and use would continue to be legal. "You've got to be 19 years old to buy anything out of a smoke shop so they're not getting it from Alaska under 18," he said.

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BRETT PATTISON said he is a voter in Anchorage District M representing himself and various Alaskan citizens. He has used Salvia for six years and believes that the claims about long-term psychological damage are unsubstantiated. He agrees with Mr. Degenstein that most research indicates it has potential therapeutic uses. He has found it to be helpful to his mental health given that research shows that it acts on receptors against heroin and cocaine addiction. He would support regulating the use of the plant to anyone over the age of 18. He believes that the bill would infringe on his rights and he doesn't support it.

SCOTT KOHLHAAS, State Chairman, Alaska Libertarian Party, stated opposition to SB 52. Currently the Alaska Libertarian Party represents just 6,692 registered voters but its influence outweighs those numbers. It has long-standing traditions supporting respect for civil liberties and a free market economy. They believe that sending a message by criminalizing something does more harm to the fabric of society than any effect of the substance. Describing it as a self fulfilling prophesy, he pointed out that the sponsor has tried to ban

Salvia for three years and for three years awareness has been heightened and use is rising. He hadn't heard of Salvia until he saw the bill. "We have a philosophy of live and let live. Our position is that we would be subtracting items from the scheduled substance list, not adding items." He asked the committee to let SB 52 die.

CHAIR FRENCH asked the general Libertarian position with respect to criminalizing the use of drugs.

MR. KOHLHAAS explained that they believe in self ownership. "You own your body, you own your life and you have the right to live any way you want as long as you don't infringe on someone else's right to do the same." Libertarians don't necessarily want to legalize the use of drugs but they have to. "In a free society you have to have the freedom of choice to do these things. It's not for the government to tell you that you can't. So yes, we would legalize all drugs," he said.

CHAIR FRENCH, finding no questions or further testimony, closed public testimony and held SB 52 in committee.

2:39:11 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:39.