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FISCAL IMPACT REPORT

SPONSOR HCPAC **ORIGINAL DATE** 02/27/09
LAST UPDATED 3/11/09 **HB** HCPAC/CS/144/aHJC
SHORT TITLE Salvia Divinorum as Controlled Substance **SB** _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|---------------------------------|--------------------------|
| Total | | \$0.1 | \$0.1 | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HCPAC/CS/HB 144 corrects a statute citation from Section 31-19-1NMSA 1978 and cites instead Section 32A-1-5 which is part of the Children's Code.

Synopsis of Original Bill

The House Consumer and Public Affairs Committee substitute for House Bill 144 makes it illegal for a person to knowingly and intentionally sell, give, deliver, transfer or distribute Salvia divinorum to a person who is less than 18 years of age. A person who violates this subsection is guilty of a misdemeanor

A person under 18 years of age shall not knowingly procure or attempt to procure Salvia divinorum for the minor's own use or for use by another minor. A minor who violates this subsection is guilty of a petty misdemeanor and shall be punished by a fine not to exceed \$100 or 48 hours of community service.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

The revenues received by the provisions of this bill will be miniscule, if any.

SIGNIFICANT ISSUES

There is no definition of *Salvia divinorum* in the bill.

Salvia Divinorum or Diviner's sage is used as part of religious ceremonies by Mezatec shamans from southern Mexico. Therefore, this amendment could face a potential challenge under the First Amendment for substantially burdening freedom of religion from a plaintiff who practices the Mezatac religion in New Mexico.

The PDD provided the following:

Plaintiffs, who practice a Christian spiritist religion based in Brazil who use the hallucinogenic herb hoasca, have successfully challenged the federal government's classification of hoasca as a schedule 1 controlled substance under the federal Controlled Substances Act by invoking the Religious Freedom Restoration Act (RFRA) of 1993. In this U.S. Supreme Court case, plaintiffs argued that under the RFRA, the government must show a compelling interest to burden their exercise of religion by regulating hoasca. Where the harmful effects of the drug are equally counterbalanced by the helpful effects, the government cannot show a compelling interest to regulate a controlled substance that is used based on sincere religious belief. A plaintiff who practices the Mezatac religion in New Mexico may be able to show that *Salvia Divinorum* has beneficial uses. However, this may not be of any consequence since the Religious Freedom Restoration Act of 1993 cannot be applied to the states.

A handful of states have banned *Salvia Divinorum* with Virginia being the most recent to do so.

ADMINISTRATIVE IMPLICATIONS

It is unclear how widespread the use of this herb is in New Mexico. Depending on how many prosecutions are brought about relating to the use of *Salvia Divinorum* procured by or for minors, there could be some impact on the enforcement agencies and the legal system.

OTHER SUBSTANTIVE ISSUES

By report of herbalists in the field, *salvia divinorum* is an ancient, old use herb of mild affective properties. There are no medicinal purposes for this herb. It is used for shamanistic purposes.

DW/mt:svb