

Chapter 201

(House Bill 1145)

AN ACT concerning

**Criminal Law – ~~Salvinorin A~~ and Salvia Divinorum and Salvinorin A –
Distribution to and Possession by Individual Under 21 Years of Age**

FOR the purpose of prohibiting a person from distributing *Salvia divinorum* or Salvinorin A to an individual under the age of 21 years; providing that it is a defense in a certain prosecution that the defendant examined a certain license or identification that positively identified a certain purchaser or recipient as at least a certain age; establishing penalties for a certain violation of this Act; providing that certain separate incidents are separate violations for a certain purpose; prohibiting an individual under the age of 21 years from possessing *Salvia divinorum* or Salvinorin A; establishing that a person who violates this Act shall be issued a certain citation; authorizing certain individuals to issue certain citations under certain circumstances; requiring the District Court to prescribe a certain form of citation; requiring the jurisdiction that issues a certain citation to forward a copy of the citation and a request for trial to the District Court having a certain venue; requiring the District Court to schedule a certain trial and summon a certain defendant to appear; providing that a willful failure to respond to a certain summons is contempt of court; establishing that a violation of a certain provision of this Act is a Code violation and a civil offense; providing that a minor is subject to certain procedures and dispositions; providing that an individual who is under the age of 21 years but not a minor is subject to certain provisions of this Act; establishing that an adjudication of a certain Code violation is not a criminal conviction for any purpose and does not impose certain disabilities; establishing certain procedures for a certain Code violation proceeding; establishing certain penalties for a certain violation of this Act; prohibiting the Chief Judge of the District Court from establishing a certain schedule for the prepayment of fines; authorizing a court to direct the payment of a certain fine be suspended or deferred; establishing that the willful failure to pay a certain fine is criminal contempt of court; providing that a certain defendant is liable for certain costs; establishing that a certain defendant has certain rights to appeal or file certain motions; authorizing the State's Attorney to prosecute a certain violation in a certain manner; authorizing a certain intake officer to refer a certain child to a substance abuse education or rehabilitation program under certain circumstances; requiring a certain intake officer to forward a certain citation to the State's Attorney if a certain child fails to comply with a substance abuse education or rehabilitation program referral; establishing that a violation of a certain provision of this Act is a violation for certain purposes; authorizing a certain law enforcement officer to issue a citation to a child for a violation of a certain provision of this Act

under certain circumstances; providing for the application of this Act; requiring the Attorney General to submit a certain report to certain committees on or before a certain date; providing that this Act does not preempt certain local or municipal laws; defining a certain term; making conforming changes; and generally relating to Salvia divinorum and Salvinorin A.

BY adding to

Article – Criminal Law

Section 10–130 through 10–133 to be under the new part “Part IV. Salvia Divinorum”

Annotated Code of Maryland

(2002 Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 3–8A–01(dd), 3–8A–10(k), and 3–8A–33(a)

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

10–128. RESERVED.

10–129. RESERVED.

PART IV. SALVIA DIVINORUM.

10–130.

(A) IN THIS PART, “SALVIA DIVINORUM” INCLUDES SALVINORIN A AND ANY MATERIAL, COMPOUND, MIXTURE, PREPARATION, OR PRODUCT THAT CONTAINS SALVIA DIVINORUM OR SALVINORIN A.

(B) NOTHING IN THIS PART SHALL PROHIBIT AN ACCREDITED ACADEMIC OR MEDICAL INSTITUTION OR RESEARCH FACILITY FROM CONDUCTING RESEARCH ON SALVIA DIVINORUM OR SALVINORIN A OR A DERIVATIVE OF SALVIA DIVINORUM OR SALVINORIN A.

(C) THIS PART DOES NOT PREEMPT ANY LOCAL OR MUNICIPAL LAW ~~CURRENTLY~~ REGULATING THE USE, POSSESSION, OR DISTRIBUTION OF SALVIA DIVINORUM OR SALVINORIN A.

10-131.

(A) A PERSON MAY NOT DISTRIBUTE SALVIA DIVINORUM TO AN INDIVIDUAL UNDER THE AGE OF 21 YEARS.

(B) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER, A GOVERNMENT UNIT, OR AN INSTITUTION OF HIGHER EDUCATION THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 21 YEARS OF AGE.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(1) \$300 FOR A FIRST VIOLATION;

(2) \$1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION; AND

(3) \$3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE PRECEDING VIOLATION.

(D) FOR PURPOSES OF THIS SECTION, EACH SEPARATE INCIDENT AT A DIFFERENT TIME AND OCCASION IS A SEPARATE VIOLATION.

10-132.

AN INDIVIDUAL UNDER THE AGE OF 21 YEARS MAY NOT POSSESS SALVIA DIVINORUM.

10-133.

(A) A PERSON WHO VIOLATES § 10-132 OF THIS PART SHALL BE ISSUED A CITATION UNDER THIS SECTION.

(B) A CITATION FOR A VIOLATION OF § 10-132 OF THIS PART MAY BE ISSUED BY:

(1) A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS; AND

(2) IN STATE FORESTRY RESERVATIONS, STATE PARKS, HISTORIC MONUMENTS, AND RECREATION AREAS, A FOREST OR PARK WARDEN UNDER § 5-206(A) OF THE NATURAL RESOURCES ARTICLE.

(C) A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION SHALL ISSUE ~~THE~~ THE CITATION IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON CHARGED IS COMMITTING OR HAS COMMITTED A VIOLATION OF § 10-132 OF THIS PART.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE FORM OF CITATION ISSUED TO AN ADULT FOR A VIOLATION OF § 10-132 OF THIS PART SHALL BE AS PRESCRIBED BY THE DISTRICT COURT AND SHALL BE UNIFORM THROUGHOUT THE STATE.

(2) THE CITATION ISSUED TO AN ADULT SHALL CONTAIN:

- (I) THE NAME AND ADDRESS OF THE PERSON CHARGED;
- (II) THE STATUTE ALLEGEDLY VIOLATED;
- (III) THE LOCATION, DATE, AND TIME THAT THE VIOLATION OCCURRED;
- (IV) THE FINE THAT MAY BE IMPOSED;
- (V) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS NOT ALLOWED;
- (VI) A NOTICE THAT THE DISTRICT COURT SHALL PROMPTLY SEND TO THE PERSON CHARGED A SUMMONS TO APPEAR FOR TRIAL;
- (VII) THE SIGNATURE OF THE PERSON ISSUING THE CITATION; AND
- (VIII) A SPACE FOR THE PERSON CHARGED TO SIGN THE CITATION.

(3) THE FORM OF CITATION ISSUED TO A MINOR SHALL:

- (I) BE PRESCRIBED BY THE STATE COURT ADMINISTRATOR;
- (II) BE UNIFORM THROUGHOUT THE STATE; AND
- (III) CONTAIN THE INFORMATION LISTED IN § 3-8A-33(B) OF THE COURTS ARTICLE.

(E) (1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE DISTRICT HAVING VENUE.

(2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.

(3) WILLFUL FAILURE OF THE DEFENDANT TO RESPOND TO A SUMMONS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS CONTEMPT OF COURT.

(F) (1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF § 10-132 OF THIS PART IS A CODE VIOLATION AND IS A CIVIL OFFENSE.

(2) A PERSON CHARGED WHO IS UNDER THE AGE OF 18 YEARS SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

(3) A PERSON CHARGED WHO IS AT LEAST 18 YEARS OLD SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION.

(4) ADJUDICATION OF A CODE VIOLATION UNDER § 10-132 OF THIS PART IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE AND DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A CRIMINAL CONVICTION.

(G) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 10-132 OF THIS PART:

(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF CRIMINAL CAUSES;

(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CAUSES;

(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT UNDERSTANDS THOSE CHARGES;

(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;

(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE DEFENDANT; AND

(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:

(I) GUILTY OF A CODE VIOLATION;

(II) NOT GUILTY OF A CODE VIOLATION; OR

(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

(H) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO PAY:

(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$500;
OR

(II) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE NOT EXCEEDING \$1,000.

(2) THE CHIEF JUDGE OF THE DISTRICT COURT MAY NOT ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES FOR A VIOLATION UNDER § 10-132 OF THIS PART.

(I) WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:

(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY ESTABLISH; AND

(2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A CRIMINAL CONTEMPT OF COURT, FOR WHICH THE DEFENDANT MAY BE PUNISHED BY THE COURT AS PROVIDED BY LAW.

(J) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL INJURIES COMPENSATION FUND.

(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER § 10-132 OF THIS PART IN WHICH COSTS ARE IMPOSED ARE \$5.

(K) (1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE VIOLATION UNDER § 10-132 OF THIS PART HAS THE RIGHT TO APPEAL OR TO FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION OF A JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

(2) A MOTION SHALL BE MADE IN THE SAME MANNER AS PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON THE MOTION, HAS THE SAME AUTHORITY PROVIDED IN THE TRIAL OF CRIMINAL CASES.

(L) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A CODE VIOLATION UNDER § 10-132 OF THIS PART IN THE SAME MANNER AS PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

(2) IN A CODE VIOLATION CASE UNDER § 10-132 OF THIS PART, THE STATE'S ATTORNEY MAY:

(I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON THE STET DOCKET; AND

(II) EXERCISE AUTHORITY IN THE SAME MANNER AS PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

Article – Courts and Judicial Proceedings

3-8A-01.

(dd) "Violation" means a violation for which a citation is issued under:

(1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

(2) § 10-108 of the Criminal Law Article; [or]

(3) § 10-132 OF THE CRIMINAL LAW ARTICLE; OR

[(3)] (4) § 26-103 of the Education Article.

3-8A-10.

(k) (1) If the intake officer receives a citation other than a citation authorized under § 10-108 of the Criminal Law Article, the intake officer may:

(i) Refer the child to an alcohol **OR SUBSTANCE ABUSE** education or rehabilitation program;

(ii) Assign the child to a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second or subsequent violation;

(iii) Require the parent or guardian of the child to withdraw the parent's or guardian's consent to the child's license to drive, and advise the Motor Vehicle Administration of the withdrawal of consent; or

(iv) Forward the citation to the State's Attorney.

(2) The intake officer shall forward the citation, other than a citation authorized under § 10-108 of the Criminal Law Article, to the State's Attorney if:

(i) The parent or guardian of the child refuses to withdraw consent to the child's license to drive;

(ii) The child fails to comply with an alcohol **OR SUBSTANCE ABUSE** education or rehabilitation program referral; or

(iii) The child fails to comply with a supervised work program assignment.

3-8A-33.

(a) A law enforcement officer authorized to make arrests shall issue a citation to a child if the officer has probable cause to believe that the child is violating:

(1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

(2) § 10-108 of the Criminal Law Article; [or]

(3) § 10-132 OF THE CRIMINAL LAW ARTICLE; OR

[(3)] (4) § 26-103 of the Education Article.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2010, the Attorney General shall, in accordance with § 2-1246 of the State Government Article, submit to the Senate Judicial Proceedings Committee and the House Judiciary Committee a report detailing a recommended plan for the regulation of sales of Salvia divinorum and Salvinorin A, including requirements for sellers and the placement of products in stores.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2010.

Approved by the Governor, May 4, 2010.