

HOUSE BILL 781

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By: **Delegates McComas, Haddaway–Riccio, Eckardt, Barkley, Cluster, Dwyer, Frank, George, Glass, Impallaria, Kipke, McDonough, W. Miller, Parrott, and B. Robinson**

Introduced and read first time: February 10, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Distribution of Salvia Divinorum – Prohibition and Penalties**

3 FOR the purpose of expanding a certain prohibition on the distribution of Salvia
4 divinorum to apply to all persons; repealing a prohibition on the possession of
5 Salvia divinorum by a person under a certain age; repealing a provision
6 establishing a certain defense for a violation of the prohibition on distributing
7 Salvia divinorum; establishing and altering penalties for a violation of this Act;
8 repealing a prohibition on the preemption of a local or municipal law regulating
9 the use, possession, or distribution of Salvia divinorum or Salvinorin A;
10 repealing certain provisions of law relating to the issuance and adjudication of a
11 citation for a violation of the prohibition against the distribution of Salvia
12 divinorum to an individual under the age of 21 years; and generally relating to
13 Salvia divinorum.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 10–130 and 10–131
17 Annotated Code of Maryland
18 (2002 Volume and 2010 Supplement)

19 BY repealing
20 Article – Criminal Law
21 Section 10–132 and 10–133
22 Annotated Code of Maryland
23 (2002 Volume and 2010 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Law**

2 10–130.

3 (a) In this part, “Salvia divinorum” includes Salvinorin A and any material,
4 compound, mixture, preparation, or product that contains Salvia divinorum or
5 Salvinorin A.

6 (b) Nothing in this part shall prohibit an accredited academic or medical
7 institution or research facility from conducting research on Salvia divinorum or
8 Salvinorin A or a derivative of Salvia divinorum or Salvinorin A.

9 [(c) This part does not preempt any local or municipal law regulating the use,
10 possession, or distribution of Salvia divinorum or Salvinorin A.]

11 10–131.

12 (a) A person may not distribute Salvia divinorum [to an individual under the
13 age of 21 years].

14 (b) [In a prosecution for a violation of this section, it is a defense that the
15 defendant examined the purchaser’s or recipient’s driver’s license or other valid
16 identification issued by an employer, a government unit, or an institution of higher
17 education that positively identified the purchaser or recipient as at least 21 years of
18 age.

19 (c) A person who violates this section is guilty of a misdemeanor and on
20 conviction is subject to [a fine not exceeding:

21 (1) \$300 for a first violation;

22 (2) \$1,000 for a second violation occurring within 2 years after the first
23 violation; and

24 (3) \$3,000 for each subsequent violation occurring within 2 years after
25 the preceding violation.

26 (d) For purposes of this section, each separate incident at a different time
27 and occasion is a separate violation] **IMPRISONMENT NOT EXCEEDING 1 YEAR OR A**
28 **FINE NOT EXCEEDING \$1,000 OR BOTH.**

29 [10–132.

30 An individual under the age of 21 years may not possess Salvia divinorum.]

31 [10–133.

1 (a) A person who violates § 10–132 of this part shall be issued a citation
2 under this section.

3 (b) A citation for a violation of § 10–132 of this part may be issued by:

4 (1) a police officer authorized to make arrests; and

5 (2) in State forestry reservations, State parks, historic monuments,
6 and recreation areas, a forest or park warden under § 5–206(a) of the Natural
7 Resources Article.

8 (c) A person authorized under this section to issue a citation shall issue the
9 citation if the person has probable cause to believe that the person charged is
10 committing or has committed a violation of § 10–132 of this part.

11 (d) (1) Subject to paragraph (2) of this subsection, the form of citation
12 issued to an adult for a violation of § 10–132 of this part shall be as prescribed by the
13 District Court and shall be uniform throughout the State.

14 (2) The citation issued to an adult shall contain:

15 (i) the name and address of the person charged;

16 (ii) the statute allegedly violated;

17 (iii) the location, date, and time that the violation occurred;

18 (iv) the fine that may be imposed;

19 (v) a notice stating that prepayment of the fine is not allowed;

20 (vi) a notice that the District Court shall promptly send to the
21 person charged a summons to appear for trial;

22 (vii) the signature of the person issuing the citation; and

23 (viii) a space for the person charged to sign the citation.

24 (3) The form of citation issued to a minor shall:

25 (i) be prescribed by the State Court Administrator;

26 (ii) be uniform throughout the State; and

27 (iii) contain the information listed in § 3–8A–33(b) of the Courts
28 Article.

1 (e) (1) The issuing jurisdiction shall forward a copy of the citation and a
2 request for trial to the District Court in the district having venue.

3 (2) The District Court shall promptly schedule the case for trial and
4 summon the defendant to appear.

5 (3) Willful failure of the defendant to respond to a summons described
6 in paragraph (2) of this subsection is contempt of court.

7 (f) (1) For purposes of this section, a violation of § 10–132 of this part is a
8 Code violation and is a civil offense.

9 (2) A person charged who is under the age of 18 years shall be subject
10 to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts
11 Article.

12 (3) A person charged who is at least 18 years old shall be subject to the
13 provisions of this section.

14 (4) Adjudication of a Code violation under § 10–132 of this part is not
15 a criminal conviction for any purpose and does not impose any of the civil disabilities
16 ordinarily imposed by a criminal conviction.

17 (g) In any proceeding for a Code violation under § 10–132 of this part:

18 (1) the State has the burden to prove the guilt of the defendant to the
19 same extent as is required by law in the trial of criminal causes;

20 (2) the court shall apply the evidentiary standards as prescribed by
21 law or rule for the trial of criminal causes;

22 (3) the court shall ensure that the defendant has received a copy of the
23 charges against the defendant and that the defendant understands those charges;

24 (4) the defendant is entitled to cross-examine all witnesses who
25 appear against the defendant, to produce evidence or witnesses on behalf of the
26 defendant, or to testify on the defendant's own behalf, if the defendant chooses to do
27 so;

28 (5) the defendant is entitled to be represented by counsel of the
29 defendant's choice and at the expense of the defendant; and

30 (6) the defendant may enter a plea of guilty or not guilty, and the
31 verdict of the court in the case shall be:

32 (i) guilty of a Code violation;

33 (ii) not guilty of a Code violation; or

1 (iii) probation before judgment, imposed by the court in the same
2 manner and to the same extent as is allowed by law in the trial of a criminal case.

3 (h) (1) If the District Court finds that a person has committed a Code
4 violation, the court shall require the person to pay:

5 (i) for a first violation, a fine not exceeding \$500; or

6 (ii) for a second or subsequent violation, a fine not exceeding
7 \$1,000.

8 (2) The Chief Judge of the District Court may not establish a schedule
9 for the prepayment of fines for a violation under § 10–132 of this part.

10 (i) When a defendant has been found guilty of a Code violation and a fine
11 has been imposed by the court:

12 (1) the court may direct that the payment of the fine be suspended or
13 deferred under conditions that the court may establish; and

14 (2) if the defendant willfully fails to pay the fine imposed by the court,
15 that willful failure may be treated as a criminal contempt of court, for which the
16 defendant may be punished by the court as provided by law.

17 (j) (1) The defendant is liable for the costs of the proceedings in the
18 District Court and for payment to the Criminal Injuries Compensation Fund.

19 (2) The court costs in a Code violation case under § 10–132 of this part
20 in which costs are imposed are \$5.

21 (k) (1) A defendant who has been found guilty of a Code violation under §
22 10–132 of this part has the right to appeal or to file a motion for a new trial or a
23 motion for a revision of a judgment provided by law in the trial of a criminal case.

24 (2) A motion shall be made in the same manner as provided in the
25 trial of criminal cases, and the court, in ruling on the motion, has the same authority
26 provided in the trial of criminal cases.

27 (l) (1) The State's Attorney for any county may prosecute a Code violation
28 under § 10–132 of this part in the same manner as prosecution of a violation of the
29 criminal laws of the State.

30 (2) In a Code violation case under § 10–132 of this part, the State's
31 Attorney may:

32 (i) enter a nolle prosequi in or place the case on the stet docket;
33 and

1 (ii) exercise authority in the same manner as prescribed by law
2 for violation of the criminal laws of the State.]

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2011.