

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2010 Legislative Session, Legislative Day No. : August 10, 2010

Bill No.: 1198

Expiration Date: October 14, 2010

Introduced by: Mr. Bartlett, Mr. Foster, Mr. Harrison, Mr. Pack

A BILL TO MAKE IT UNLAWFUL TO POSSESS, ADMINISTER, MANUFACTURE, DISTRIBUTE, OR DISPENSE SALVIA, OR TO DISTRIBUTE OR ATTEMPT TO DISTRIBUTE ANY NON-CONTROLLED SUBSTANCE REPRESENTING IT TO BE SALVIA, INTENDING IT FOR USE OR DISTRIBUTION AS SALVIA, OR UNDER CIRCUMSTANCES WHERE ONE SHOULD REASONABLY KNOW IT WILL BE USED OR DISTRIBUTED AS SALVIA, OR TO MAINTAIN A COMMON NUISANCE WITH RESPECT TO SALVIA, OR TO USE OR POSSESS WITH INTENT TO USE SALVIA PARAPHERNALIA, OR TO OWN, RENT, OR OTHERWISE UTILIZE A STORE, DWELLING, BUILDING, OR OTHER FACILITY FOR THE PURPOSE OF ADMINISTERING, SELLING, DISPLAYING, DISTRIBUTING, POSSESSING, OR DISPENSING SALVIA, OR MANUFACTURING, DISTRIBUTING, DISPENSING, STORING, OR CONCEALING SALVIA PARAPHERNALIA, MAKING VIOLATIONS A MISDEMEANOR SUBJECT TO PENALTIES OF IMPRISONMENT FOR UP TO SIX (6) MONTHS, FINES OF UP TO \$1000, OR BOTH

By the Council: August 10, 2010

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 28, 2010 at 2:00 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran
Susan W. Moran, Secretary

A BILL TO MAKE IT UNLAWFUL TO POSSESS, ADMINISTER, MANUFACTURE, DISTRIBUTE, OR DISPENSE SALVIA, OR TO DISTRIBUTE OR ATTEMPT TO DISTRIBUTE ANY NON-CONTROLLED SUBSTANCE REPRESENTING IT TO BE SALVIA, INTENDING IT FOR USE OR DISTRIBUTION AS SALVIA, OR UNDER CIRCUMSTANCES WHERE ONE SHOULD REASONABLY KNOW IT WILL BE USED OR DISTRIBUTED AS SALVIA, OR TO MAINTAIN A COMMON NUISANCE WITH RESPECT TO SALVIA, OR TO USE OR POSSESS WITH INTENT TO USE SALVIA PARAPHERNALIA, OR TO OWN, RENT, OR OTHERWISE UTILIZE A STORE, DWELLING, BUILDING, OR OTHER FACILITY FOR THE PURPOSE OF ADMINISTERING, SELLING, DISPLAYING, DISTRIBUTING, POSSESSING, OR DISPENSING SALVIA, OR MANUFACTURING, DISTRIBUTING, DISPENSING, STORING, OR CONCEALING SALVIA PARAPHERNALIA, MAKING VIOLATIONS A MISDEMEANOR SUBJECT TO PENALTIES OF IMPRISONMENT FOR UP TO SIX (6) MONTHS, FINES OF UP TO \$1000, OR BOTH

KEY

Boldface..... Heading or defined term.

Double underlining..... Added to bill by amendment.

~~Double strikethrough~~ Deleted from bill by amendment.

* * *..... Existing law unaffected.

WHEREAS, Salvia is known to be a hallucinogenic psychoactive substance that can cause a loss of physical coordination, visual alterations or visions, multiple realities, a sense of total confusion or madness, a sense of flying, floating twisting or turning, a loss of sense of awareness as an individual, and other hallucinations; and

WHEREAS, the Talbot County Council believes that it is in the best interest of the health, safety and general welfare of its citizens and visitors to prohibit the possession and distribution of salvia, and its related paraphernalia.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that the Talbot County Code shall be and is hereby amended by adding Chapter 119 entitled "Public Health," Article I, entitled "Salvia" as set forth herein.

Article I. Salvia

1 Section 119-1 Definitions

2 In this section, the following definitions apply:

3 “Administer,” “Deliver,” “Distribute,” “Manufacture,” “Possess,” and “Produce,” shall
4 have the meanings set forth in Criminal Law Article §5-101, Md. Ann. Code, as
5 amended, codified, or re-codified from time to time.

6 “Common nuisance” means a dwelling, building, vehicle, vessel, aircraft, or other place (1)
7 resorted to by individuals for the purpose of administering salvia; or (2) where salvia or
8 salvia paraphernalia is manufactured, distributed, stored, or concealed illegally.

9 “Salvia” means a material, compound, mixture, or preparation in any form that contains the
10 component Salvinorin A, and is commonly known as Salvia, Salvia Divinorum, Ska
11 Pastora, Diviner’s Mint, Sally-D, Lady Salvia, or any other name.

12 “Salvia Paraphernalia” means equipment, product, or material that is used, intended for
13 use, or designed for use in: (i) planting, propagating, cultivating, growing, harvesting,
14 manufacturing, compounding, converting, producing, processing, preparing, testing,
15 analyzing, packaging, repackaging, storing, containing, or concealing salvia; or (ii)
16 injecting, ingesting, inhaling, or otherwise introducing salvia into the human body as
17 defined and set forth in § 5-101 Criminal Law Article, Md. Ann. Code, pursuant to the
18 factors set forth in § 5-619 Criminal Law Article, Md. Ann. Code.

19 Section 119-2 Prohibited Acts

20 (a) It shall be unlawful to possess salvia.

21 (b) It shall be unlawful to administer salvia to another.

- 22 (c) It shall be unlawful to manufacture or distribute salvia.
- 23 (d) It shall unlawful to distribute or attempt to distribute a non-controlled substance that:
- 24 (i) the person represents is salvia; (ii) the person intends for use or distribution as
- 25 salvia; or, (iii) under circumstances where one reasonably should know that the non-
- 26 controlled substance will be used or distributed for use as salvia. To determine if a
- 27 person has violated this section, the court or other authority shall include in its
- 28 consideration the factors set forth in § 5-617, Criminal Law Article, Md. Ann. Code, as
- 29 amended, codified, or re-codified from time to time.
- 30 (e) It shall be unlawful to possess or purchase a non-controlled substance that the person
- 31 reasonably believes is salvia. To determine if a person has violated this section, the
- 32 court or other authority shall include in its consideration the factors set forth in § 5-617,
- 33 Criminal Law Article, Md. Ann. Code, as amended, codified, or re-codified from time
- 34 to time.
- 35 (f) It shall be unlawful to use or possess with intent to use salvia paraphernalia.
- 36 (g) It shall be unlawful to possess salvia with intent to distribute.
- 37 (h) It shall be unlawful to possess salvia in sufficient quantity reasonably to indicate under
- 38 all the circumstances an intent to distribute.
- 39 (i) It shall be unlawful to offer for sale, deliver, sell, or distribute salvia paraphernalia.
- 40 (j) It shall be unlawful to maintain a common nuisance with respect to salvia, or to own,
- 41 rent, or otherwise utilize a store, dwelling, building, or other facility for the purpose of:
- 42 (i) administering, selling, displaying, distributing, possessing, or dispensing salvia;
- 43 or,
- 44 (ii) manufacturing, distributing, storing, or concealing salvia paraphernalia.

45 **Section 119-3 School Zones**

46 (a) A person may not possess, manufacture, distribute, or possess with intent to distribute
47 salvia, or conspire to commit any of these crimes:

48 (i) in a school vehicle as defined under Transportation Article § 11-154, Md. Ann.
49 Code; or,

50 (ii) in, on, or within 500 feet of real property owned by or leased to an elementary
51 school, secondary school, or county board, and used for elementary or secondary
52 education.

53 (b) This section applies whether or not:

54 (i) school was in session at the time of the crime; or

55 (ii) the real property was being used for purposes other than school purposes at the time
56 of the crime.

57 (c) Penalty. A person who violates this section is guilty of a misdemeanor and on conviction
58 is subject to a fine of up to \$1,000 or imprisonment for up to six (6) months, or both.

59

60 **Section 119-4 Violations and Penalties**

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62 A person who is convicted of a Prohibited Act under this Article shall be guilty of a
63 misdemeanor, and for each such conviction shall be subject to a fine of up to One Thousand
64 Dollars (\$1,000.00), or imprisonment in accordance with the following schedule, or both fine
65 and imprisonment:

66 (a) offer for sale, deliver, or sell salvia paraphernalia, or possession, use, or possession with
67 intent to use, salvia paraphernalia: thirty (30) days;

- 68 (b) possession of salvia, possession or purchase of a non-controlled substance that the person
69 reasonably believes is salvia, or administration of salvia to another: sixty (60) days;
- 70 (c) distribution or attempted distribution of a non-controlled substance as salvia: one hundred
71 twenty (120) days;
- 72 (d) possession of salvia in sufficient quantity to indicate an intent to distribute, possession
73 with intent to distribute, manufacture, distribution, maintaining a common nuisance, or
74 other violation of § 119-2 (j): six (6) months.

SECTION TWO: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

SECTION THREE: AND BE IT FURTHER ENACTED, That if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance that can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1198 having been published, a public hearing was held on Tuesday, September 28, 2010 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: September 28, 2010

By Order *Susan W. Moran*
Susan W. Moran, Secretary

Harrison - Aye

Pack - Aye

Duncan - Aye

Foster - Aye

Bartlett - Aye