

2023 -- H 6162

LC002563

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Vella-Wilkinson, Craven, Felix, Batista, Knight,
Edwards, Morales, Slater, and Shanley

Date Introduced: March 17, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.01 of the General Laws in Chapter 21-28 entitled "Uniform
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-4.01. Prohibited acts A — Penalties. [As amended by P.L. 2021, ch. 286, § 2 and**
4 **P.L. 2021, ch. 287, § 2.]**

5 (a)(1) Except as authorized by this chapter and chapters 28.6 and 28.11 of title 21, it shall
6 be unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver
7 a controlled substance.

8 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02, who violates
9 this subsection with respect to a controlled substance classified in schedule I or II, except the
10 substance classified as marijuana, is guilty of a crime and, upon conviction, may be imprisoned to
11 a term up to life or fined not more than five hundred thousand dollars (\$500,000) nor less than ten
12 thousand dollars (\$10,000), or both.

13 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
14 death to the person to whom the controlled substance is delivered, it shall not be a defense that the
15 person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §
16 21-28-1.02.

17 (4) Any person, except as provided for in subsection (a)(2), who violates this subsection
18 with respect to:

19 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon

1 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
2 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

3 (ii) A controlled substance, classified in schedule III or IV, is guilty of a crime and, upon
4 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
5 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
6 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
7 more than twenty thousand dollars (\$20,000), or both.

8 (iii) A controlled substance, classified in schedule V, is guilty of a crime and, upon
9 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
10 dollars (\$10,000), or both.

11 (b)(1) Except as authorized by this chapter, it is unlawful for any person to create, deliver,
12 or possess with intent to deliver, a counterfeit substance.

13 (2) Any person who violates this subsection with respect to:

14 (i) A counterfeit substance, classified in schedule I or II, is guilty of a crime and, upon
15 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
16 hundred thousand dollars (\$100,000), or both;

17 (ii) A counterfeit substance, classified in schedule III or IV, is guilty of a crime and, upon
18 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
19 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
20 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
21 more than twenty thousand dollars (\$20,000), or both.

22 (iii) A counterfeit substance, classified in schedule V, is guilty of a crime and, upon
23 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
24 dollars (\$10,000), or both.

25 (c)(1) It shall be unlawful for any person knowingly or intentionally to possess a controlled
26 substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or
27 order of a practitioner while acting in the course of his or her professional practice, or except as
28 otherwise authorized by this chapter or chapters 28.6 and 28.11 of title 21.

29 (2) Any person who violates this subsection with respect to:

30 (i) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, ~~ten grams (10 g.)~~
31 twenty-eight grams (28 g.) or less of a mixture or substance containing a detectable amount of a
32 controlled substance classified in schedules I, II, III, IV, and V, except buprenorphine and the
33 substance classified as marijuana, is guilty of a misdemeanor and, upon conviction, may be
34 imprisoned for not more than two (2) years, or fined not more than five hundred dollars (\$500) or

1 both. Any person previously convicted of possession of twenty-eight grams (28 g.) or less of a
2 controlled substance subject to the provisions of this subsection shall have their record modified to
3 a misdemeanor.

4 (ii) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than ~~ten grams~~
5 ~~(10 g.)~~ twenty-eight grams (28 g.), but less than one ounce (1 oz.) of a mixture or substance
6 containing a detectable amount of a controlled substance classified in schedules I, II and III, IV,
7 and V, except buprenorphine and the substance classified as marijuana, is guilty of a felony and,
8 upon conviction, may be imprisoned for not more than three (3) years, or fined not more than five
9 thousand dollars (\$5,000), or both.

10 (iii) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than two
11 ounces (2 oz.) or the equivalent amount in the form of cannabis concentrate of a controlled
12 substance classified in schedule I as marijuana is guilty of a misdemeanor unless possessed inside
13 one's own primary residence, except for those persons subject to (a)(1), and, upon conviction, may
14 be imprisoned for not more than one year, or fined not more than five hundred dollars (\$500), or
15 both. Exclusive of live marijuana plants, more than ten ounces (10 oz.) of a controlled substance
16 classified in schedule I as marijuana or the equivalent amount in the form of cannabis concentrate,
17 when possessed within one's personal residence is guilty of a misdemeanor, except for those
18 persons subject to (a)(1), and, upon conviction, may be imprisoned for not more than one year, or
19 fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

20 Possession of live marijuana plants in excess of the number authorized pursuant to § 21-
21 28.11-22 but less than twenty-five (25) marijuana plants is guilty of a misdemeanor, except for
22 those persons subject to (a)(1) and, upon conviction, may be imprisoned for not more than one year,
23 or fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or
24 both.

25 Possession of twenty-five (25) or more live marijuana plants is guilty of a felony, except
26 for those persons subject to (a)(1), and upon conviction, may be imprisoned for not more than three
27 (3) years or fined not more than five thousand dollars (\$5,000), or both.

28 (iv) Notwithstanding any public, special, or general law to the contrary, and except as
29 otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, the possession of more than one ounce (1
30 oz.) but not more than two ounces (2 oz.) of marijuana or the equivalent amount in the form of
31 cannabis concentrate by a person who is at least twenty-one (21) years old, and who is not exempted
32 from penalties pursuant to chapter 28.6 of this title, shall constitute a civil offense, rendering the
33 offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150) and forfeiture of
34 the marijuana, but not to any other form of criminal or civil punishment or disqualification.

1 Notwithstanding any public, special, or general law to the contrary, this civil penalty of one hundred
2 fifty dollars (\$150) and forfeiture of the marijuana shall apply if the offense is the first (1st) or
3 second (2nd) violation within the previous eighteen (18) months.

4 (v) Notwithstanding any public, special, or general law to the contrary, possession of two
5 ounces (2 oz.) or less of marijuana or the equivalent amount in the form of cannabis concentrate by
6 a person between seventeen (17) and twenty (20) years old, and who is not exempted from penalties
7 pursuant to chapter 28.6 of this title, shall constitute a civil offense, rendering the offender liable to
8 a civil penalty in the amount of one hundred fifty dollars (\$150) and forfeiture of the marijuana;
9 provided the minor offender completes an approved, drug-awareness program and community
10 service as determined by the court. If the person seventeen (17) years of age or older and under the
11 age of eighteen (18) years fails to complete an approved, drug-awareness program and community
12 service within one year of the disposition, the penalty shall be a three hundred dollar (\$300) civil
13 fine and forfeiture of the marijuana, except that if no drug-awareness program or community
14 service is available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of
15 the marijuana. The parents or legal guardian of any offender seventeen (17) years of age or older
16 and under the age of eighteen (18) shall be notified of the offense and the availability of a drug-
17 awareness and community-service program. The drug-awareness program must be approved by the
18 court, but shall, at a minimum, provide four (4) hours of instruction or group discussion and ten
19 (10) hours of community service. Notwithstanding any other public, special, or general law to the
20 contrary, this civil penalty shall apply if the offense is the first or second violation within the
21 previous eighteen (18) months.

22 (vi) [Deleted by P.L. 2022, ch. 31, § 10 and P.L. 2022, ch. 32, § 10.]

23 (vii) Any unpaid civil fine issued under (c)(2)(iv) or (c)(2)(v) shall double to three hundred
24 dollars (\$300) if not paid within thirty (30) days of the disposition. The civil fine shall double again
25 to six hundred dollars (\$600) if it has not been paid within ninety (90) days.

26 (viii) No person may be arrested for a violation of (c)(2)(iv) or (c)(2)(v) of this subsection
27 except as provided in this subparagraph. Any person in possession of an identification card, license,
28 or other form of identification issued by the state or any state, city, or town, or any college or
29 university, who fails to produce the same upon request of a police officer who informs the person
30 that he or she has been found in possession of what appears to the officer to be more than one ounce
31 (1 oz.) of marijuana, or the equivalent amount in the form of cannabis concentrate or any person
32 without any such forms of identification who fails or refuses to truthfully provide his or her name,
33 address, and date of birth to a police officer who has informed such person that the officer intends
34 to provide such individual with a citation for possession of more than one ounce (1 oz.) but less

1 than two ounces (2 oz.) of marijuana or the equivalent amount in the form of cannabis concentrate,
2 may be arrested.

3 (ix) No violation of (c)(2)(iv) or (c)(2)(v) of this subsection shall be considered a violation
4 of parole or probation.

5 (x) Any records collected by any state agency, tribunal, or the family court that include
6 personally identifiable information about violations of (c)(2)(iv) or (c)(2)(v) shall not be open to
7 public inspection in accordance with § 8-8.2-21.

8 (d) The chief justice of the district court and the presiding justice of the superior court shall
9 provide an annual report to the general assembly that provides information concerning the racial
10 demographics of all parties convicted pursuant to this section or §§ 21-28-4.01.1 or 21-28-4.01.2.

11 **(3) Jurisdiction.**

12 (i) Any and all adjudications of violations of (c)(2)(i) shall be within the original
13 jurisdiction of the Rhode Island superior court. The department of attorney general shall prosecute
14 any and all violations of (c)(2)(i).

15 (ii) Any and all violations of (c)(2)(iv) and (c)(2)(v) shall be the exclusive jurisdiction of
16 the Rhode Island traffic tribunal. All money associated with the civil fine issued under (c)(2)(iv) or
17 (c)(2)(v) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
18 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to (c)(2)(iv) or
19 (c)(2)(v) shall be expended on drug-awareness and treatment programs for youth.

20 (4) Additionally, every person convicted or who pleads nolo contendere under (c)(2)(i) or
21 (c)(2)(ii) or convicted or who pleads nolo contendere a second or subsequent time under (c)(2)(iii),
22 who is not sentenced to a term of imprisonment to serve for the offense, shall be required to:

23 (i) Perform up to one hundred (100) hours of community service;

24 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the
25 director of the department of behavioral healthcare, developmental disabilities and hospitals
26 (BHDDH) similar to that in § 21-28.11-27.2, and pay the sum of four hundred dollars (\$400) to
27 help defray the costs of this program which shall be deposited as general revenues. Failure to attend
28 may result, after hearing by the court, in jail sentence up to one year;

29 (iii) The court shall not suspend any part or all of the imposition of the fee required by this
30 subsection, unless the court finds an inability to pay;

31 (iv) If the offense involves the use of any automobile to transport the substance or the
32 substance is found within an automobile, then a person convicted or who pleads nolo contendere
33 under (c)(2)(i), (c)(2)(ii) or (c)(2)(iii) shall be subject to a loss of license for a period of six (6)
34 months for a first offense and one year for each offense after.

1 (5) All fees assessed and collected pursuant to (c)(2)(iii) shall be deposited as general
2 revenues and shall be collected from the person convicted or who pleads nolo contendere before
3 any other fines authorized by this chapter.

4 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent to
5 manufacture or distribute, an imitation controlled substance. Any person who violates this
6 subsection is guilty of a crime and, upon conviction, shall be subject to the same term of
7 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
8 controlled substance that the particular imitation controlled substance forming the basis of the
9 prosecution was designed to resemble and/or represented to be; but in no case shall the
10 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
11 (\$20,000).

12 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
13 anabolic steroid or human growth hormone for: (1) Enhancing performance in an exercise, sport,
14 or game, or (2) Hormonal manipulation intended to increase muscle mass, strength, or weight
15 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
16 and, upon conviction, may be imprisoned for not more than six (6) months or a fine of not more
17 than one thousand dollars (\$1,000), or both.

18 (f) It is unlawful for any person to knowingly or intentionally possess, manufacture,
19 distribute, or possess with intent to manufacture or distribute, any extract, compound, salt
20 derivative, or mixture of salvia divinorum or datura stramonium or its extracts unless the person is
21 exempt pursuant to the provisions of § 21-28-3.30. Notwithstanding any laws to the contrary, any
22 person who violates this section is guilty of a misdemeanor and, upon conviction, may be
23 imprisoned for not more than one year, or fined not more than one thousand dollars (\$1,000), or
24 both. The provisions of this section shall not apply to licensed physicians, pharmacists, and
25 accredited hospitals and teaching facilities engaged in the research or study of salvia divinorum or
26 datura stramonium and shall not apply to any person participating in clinical trials involving the
27 use of salvia divinorum or datura stramonium.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

1 This act would amend the uniform controlled substances act and reclassify simple
2 possession of twenty-eight grams (28 g.) or less of certain controlled substances as a misdemeanor.
3 The act would also require that persons with previous convictions of possession of twenty-eight
4 grams (28 g.) or less shall have their record modified to reflect a misdemeanor conviction. It would
5 also create reporting requirements related to the racial demographics of parties convicted of
6 controlled substance offenses.

7 This act would take effect upon passage.

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