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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Mack, Acosta, Mendes, Calkin, Anderson, and Bell

Date Introduced: March 11, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.1 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.**

4 (a)(1) Except as authorized by this chapter, it shall be unlawful for any person to
5 manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

6 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(20), who
7 violates this subsection with respect to a controlled substance classified in schedule I or II, except
8 the substance classified as marijuana, is guilty of a crime and, upon conviction, may be imprisoned
9 to a term up to life or fined not more than five hundred thousand dollars (\$500,000) nor less than
10 ten thousand dollars (\$10,000), or both.

11 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
12 death to the person to whom the controlled substance is delivered, it shall not be a defense that the
13 person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §
14 21-28-1.02(20).

15 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates
16 this subsection with respect to:

17 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon
18 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
19 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

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

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

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

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

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

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

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

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

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

28 (i) A controlled substance classified in schedules I, II and III, IV, and V, ~~except the~~
29 ~~substance classified as marijuana,~~ is guilty of a civil violation ~~crime and, upon conviction, may be~~
30 ~~imprisoned for not more than three (3) years, or fined not less than five hundred dollars (\$500) nor~~
31 ~~more than five thousand dollars (\$5,000), or both~~ and fined one hundred dollars (\$100) for each
32 offense;

33 ~~(ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as~~
34 ~~marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon~~

1 ~~conviction, may be imprisoned for not more than one year, or fined not less than two hundred~~
2 ~~dollars (\$200) nor more than five hundred dollars (\$500), or both.~~

3 (iii) Notwithstanding any public, special, or general law to the contrary, the possession of
4 a controlled substance for personal use, shall result in the forfeiture of the controlled substance. ~~of~~
5 ~~one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older, and~~
6 ~~who is not exempted from penalties pursuant to chapter 28.6 of this title, shall constitute a civil~~
7 ~~offense, rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars~~
8 ~~(\$150) and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or~~
9 ~~disqualification. Notwithstanding any public, special, or general law to the contrary, this civil~~
10 ~~penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the offense~~
11 ~~is the first (1st) or second (2nd) violation within the previous eighteen (18) months.~~

12 (iv) Notwithstanding any public, special, or general law to the contrary, possession of one
13 ounce (1 oz.) or less of marijuana by a person who is seventeen (17) years of age or older and under
14 the age of eighteen (18) years, and who is not exempted from penalties pursuant to chapter 28.6 of
15 this title, shall constitute a civil offense, rendering the offender liable to a civil penalty in the amount
16 of ~~one hundred fifty dollars (\$150)~~ one hundred dollars (\$100) and forfeiture of the marijuana;
17 provided the minor offender completes an approved, drug-awareness program and community
18 service as determined by the court. If the person seventeen (17) years of age or older and under the
19 age of eighteen (18) years fails to complete an approved, drug-awareness program and community
20 service within one year of the disposition, the penalty shall be a three hundred dollar (\$300) civil
21 fine and forfeiture of the marijuana, except that if no drug-awareness program or community
22 service is available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of
23 the marijuana. The parents or legal guardian of any offender seventeen (17) years of age or older
24 and under the age of eighteen (18) shall be notified of the offense and the availability of a drug-
25 awareness and community-service program. The drug-awareness program must be approved by the
26 court, but shall, at a minimum, provide four (4) hours of instruction or group discussion and ten
27 (10) hours of community service. Notwithstanding any other public, special, or general law to the
28 contrary, this civil penalty shall apply if the offense is the first or second violation within the
29 previous eighteen (18) months.

30 ~~(v) Notwithstanding any public, special, or general law to the contrary, a person not~~
31 ~~exempted from penalties pursuant to chapter 28.6 of this title found in possession of one ounce (1~~
32 ~~oz.) or less of marijuana is guilty of a misdemeanor and, upon conviction, may be imprisoned for~~
33 ~~not more than thirty (30) days, or fined not less than two hundred dollars (\$200) nor more than five~~
34 ~~hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation for~~

1 ~~possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) two (2) times~~
2 ~~in the eighteen (18) months prior to the third (3rd) offense.~~

3 (vi) Any unpaid civil fine issued under ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) shall double ~~to three~~
4 ~~hundred dollars (\$300)~~ if not paid within thirty (30) days of the disposition. The civil fine shall
5 double again ~~to six hundred dollars (\$600)~~ if it has not been paid within ninety (90) days.

6 (vii) No person may be arrested for a violation of ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) of this
7 subsection except as provided in this subparagraph. Any person in possession of an identification
8 card, license, or other form of identification issued by the state or any state, city, or town, or any
9 college or university, who fails to produce the same upon request of a police officer who informs
10 the person that he or she has been found in possession of what appears to the officer to be ~~one ounce~~
11 ~~(1 oz.) or less of marijuana,~~ a controlled substance, or any person without any such forms of
12 identification who fails or refuses to truthfully provide his or her name, address, and date of birth
13 to a police officer who has informed such person that the officer intends to provide such individual
14 with a citation for possession of ~~one ounce (1 oz.) or less of marijuana,~~ a controlled substance, may
15 be arrested.

16 (viii) No violation of ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) of this subsection shall be considered
17 a violation of parole or probation.

18 (ix) Any records collected by any state agency, tribunal, or the family court that include
19 personally identifiable information about violations of ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) shall not be
20 open to public inspection in accordance with § 8-8.2-21.

21 (3) Jurisdiction. Any and all violations of ~~(e)(2)(iii)~~ (c)(2)(i) and (c)(2)(iv) shall be the
22 exclusive jurisdiction of the Rhode Island traffic tribunal. All money associated with the civil fine
23 issued under ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) shall be payable to the Rhode Island traffic tribunal.
24 Fifty percent (50%) of all fines collected by the Rhode Island traffic tribunal from civil penalties
25 issued pursuant to ~~(e)(2)(iii)~~ (c)(2)(i) or (c)(2)(iv) shall be expended on drug-awareness and
26 treatment programs for youth.

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

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

31 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the
32 director of the department of behavioral healthcare, developmental disabilities and hospitals and
33 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be
34 deposited as general revenues. ~~Failure to attend may result, after hearing by the court, in jail~~

1 ~~sentence up to one year;~~

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

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

8 (5) All fees assessed and collected pursuant to ~~(e)(3)(ii)~~ (c)(2)(i) and (c)(2)(iv) shall be
9 deposited as general revenues and shall be collected from the person convicted or who pleads nolo
10 contendere before any other fines authorized by this chapter.

11 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent to
12 manufacture or distribute, an imitation controlled substance. Any person who violates this
13 subsection is guilty of a crime and, upon conviction, shall be subject to the same term of
14 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
15 controlled substance that the particular imitation controlled substance forming the basis of the
16 prosecution was designed to resemble and/or represented to be; but in no case shall the
17 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
18 (\$20,000).

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

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

1 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 make the possession of schedule I through V controlled substances civil
2 violations punishable by a one hundred dollar (\$100) fine for each offense. Offenders would also
3 be subject to drug counseling and community service.

4 This act would take effect upon passage.

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