

**2012 -- H 7092 SUBSTITUTE A**

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LC00269/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2012**

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A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Edwards, Ferri, Newberry, Williams, and Palumbo

Date Introduced: January 11, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 21-28-4.01, 21-28-4.11 and 21-28-4.14 of the General Laws in  
2 Chapter 21-28 entitled "Uniform Controlled Substances Act" are hereby amended to read as  
3 follows:

4           **21-28-4.01. Prohibited acts A -- Penalties.** -- (a) (1) Except as authorized by this  
5 chapter, it shall be unlawful for any person to manufacture, deliver, or possess with intent to  
6 manufacture or deliver a controlled substance.

7           (2) Any person who is not a drug addicted person, as defined in section 21-28-1.02(18),  
8 who violates this subsection with respect to a controlled substance classified in schedule I or II,  
9 except the substance classified as marijuana, is guilty of a crime and upon conviction may be  
10 imprisoned to a term up to life, or fined not more than five hundred thousand dollars (\$500,000)  
11 nor less than ten thousand dollars (\$10,000), or both.

12           (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of  
13 death to the person to whom the controlled substance is delivered, it shall not be a defense that  
14 the person delivering the substance was at the time of delivery, a drug addicted person as defined  
15 in section 21-28-1.02(18).

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

18           (i) A controlled substance classified in schedule I or II, is guilty of a crime and upon  
19 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one

1 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

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

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

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

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

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

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

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

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

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

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

33 (ii) ~~A~~ [More than one ounce \(1 oz.\) of a](#) controlled substance classified in schedule I as  
34 marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not more than

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

3 (iii) Notwithstanding any public, special or general law to the contrary, the possession of  
4 one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older and  
5 who is not exempted from penalties pursuant to chapter 21-28.6-1 shall constitute a civil offense,  
6 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)  
7 and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or  
8 disqualification. Notwithstanding any public, special or general law to the contrary, this civil  
9 penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the  
10 offense is the first (1<sup>st</sup>) or second (2<sup>nd</sup>) offense issued to the offender within the previous eighteen  
11 (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 under the age of eighteen (18) years and  
14 who is not exempted from penalties pursuant to chapter 21-28.6-1 shall constitute a civil offense,  
15 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)  
16 and forfeiture of the marijuana; provided the minor offender completes an approved drug  
17 awareness program and community service as determined by the court or hearing board with  
18 jurisdiction. If the person under the age of eighteen (18) years fails to complete an approved drug  
19 awareness program and community service within one year of the offense, the penalty shall be a  
20 three hundred dollar (\$300) civil fine and forfeiture of the marijuana, except that if no drug  
21 awareness program or community service is available, the penalty shall be a fine of one hundred  
22 fifty dollars (\$150) and forfeiture of the marijuana. The parents or legal guardian of any offender  
23 under the age of eighteen (18) shall be notified of the offense and the availability of a drug  
24 awareness and community service program. The drug awareness program must be approved by  
25 the court or juvenile hearing board having jurisdiction over the offense, but shall, at a minimum,  
26 provide four (4) hours of instruction or group discussion, and ten (10) hours of community  
27 service. Notwithstanding any other public, special or general law to the contrary, this civil penalty  
28 shall apply if the offense is the first (1<sup>st</sup>) or second (2<sup>nd</sup>) offense issued to the offender 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 21-28.6 found in possession of one ounce (1 oz.) or  
32 less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not  
33 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 cited for possession of less

1 than one ounce (1 oz.) of marijuana under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
2 4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3<sup>rd</sup>) offense.

3 (vi) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
4 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of  
5 the offense. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid  
6 within ninety (90) days.

7 (vii) No person may be arrested for a violation of subparagraphs 21-28-4.01(c)(2)(iii) or  
8 21-28-4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an  
9 identification card, license, or other form of identification issued by the state or any state, city or  
10 town, or any college or university, who fails to produce the same upon request of a police officer  
11 who informs the person that he or she has been found in possession of what appears to the officer  
12 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of  
13 identification that fails or refuses to truthfully provide his or her name, address, and date of birth  
14 to a police officer who has informed such person that the officer intends to provide such  
15 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be  
16 arrested.

17 (viii) No violation of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be  
18 considered a violation of parole or probation.

19 (ix) Records of violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv)  
20 shall be confidential and shall not be disclosed to anyone except for municipal or state law  
21 enforcement for the sole purpose of determining if an individual has been previously cited for a  
22 violation of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) in the previous eighteen  
23 (18) months, except that aggregate non-identifiable data, including the total number of citations  
24 issued, the number of fines paid, and demographic information about individuals issued citations,  
25 shall be released to the public at least once per year for the previous year and shall be available to  
26 researchers upon request.

27 (x) Any records collected by any state agency or tribunal that include personally  
28 identifiable information about violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
29 4.01(c)(2)(iv) shall be destroyed eighteen (18) months after the issuance of said civil fine.

30 (3) The money associated with the civil fine issued under subparagraphs 21-28-  
31 4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty  
32 percent (50%) of all fines collected by the Rhode Island traffic tribunal from civil penalties issued  
33 pursuant to subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be expended on drug  
34 awareness and treatment programs for youth.

1           ~~(3)~~(4) Additionally every person convicted or who pleads nolo contendere under  
2 paragraph (2)(i) of this subsection or convicted or who pleads nolo contendere a second or  
3 subsequent time under paragraph (2)(ii) of this subsection, who is not sentenced to a term of  
4 imprisonment to serve for the offense, shall be required to:

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

6           (ii) Attend and complete a drug counseling and education program as prescribed by the  
7 director of the department of mental health, retardation and hospitals and pay the sum of four  
8 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as  
9 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one  
10 year;

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

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

17           ~~(4)~~(5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection  
18 shall be deposited as general revenues and shall be collected from the person convicted or who  
19 pleads nolo contendere before any other fines authorized by this chapter.

20           (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent  
21 to manufacture or distribute, an imitation controlled substance. Any person who violates this  
22 subsection is guilty of a crime, and upon conviction shall be subject to the same term of  
23 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the  
24 controlled substance which the particular imitation controlled substance forming the basis of the  
25 prosecution was designed to resemble and/or represented to be; but in no case shall the  
26 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars  
27 (\$20,000).

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

34           **21-28-4.11. Second offenses.** -- ~~(A)~~ (a) Any person convicted of a second offense under

1 this chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or  
2 21-28-4.01(c)(2)(v), may be imprisoned for a term up to twice the term authorized, fined an  
3 amount up to twice that authorized, or both.

4 ~~(B)~~ (b) For purposes of this section, an offense is considered a second offense if, prior to  
5 his or her conviction of the offense, the offender has at any time been convicted under this  
6 chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or 21-  
7 28-4.01(c)(2)(v), or under any statute of the United States or of any state relating to narcotic  
8 drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

9 **21-28-4.14. Third or subsequent offenses.** -- (a) Any person convicted of a third or  
10 subsequent offense under this chapter, except for violations of subparagraphs 21-28-  
11 4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), may be imprisoned for a term up to  
12 three (3) times the term authorized, and fined an amount up to three (3) times that authorized by  
13 section 21-28-4.11, or both.

14 (b) For purposes of this section, an offense is considered a third or subsequent offense if,  
15 prior to his or her conviction of the offense, the offender has at any time been convicted twice  
16 under this chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii), 21-28-  
17 4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), or twice under any statute of the United States or of any  
18 state, or any combination of them, relating to narcotic drugs, marijuana, depressant, stimulant, or  
19 hallucinogenic drug.

1 SECTION 2. This act shall take effect January 1, 2013.

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

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1           This act would decriminalize the possession of one ounce (1 oz.) or less of marijuana and  
2 make it a civil offense in most cases, and would impose civil penalties starting at one hundred  
3 fifty dollars (\$150).

4           This act would take effect January 1, 2013.

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