

2012 -- H 7092 SUBSTITUTE A AS AMENDED

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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 [except for those persons subject to subdivision 21-28-](#)

1 4.01(a)(1) and upon conviction may be imprisoned for not more than one year or fined not less
2 than two hundred 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 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 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 (1st) or second (2nd) violation within the previous eighteen (18) months.

11 (iv) Notwithstanding any public, special or general law to the contrary, possession of one
12 ounce (1 oz.) or less of marijuana by a person who is under the age of eighteen (18) years and
13 who is not exempted from penalties pursuant to chapter 21-28.6 shall constitute a civil offense,
14 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)
15 and forfeiture of the marijuana; provided the minor offender completes an approved drug
16 awareness program and community service as determined by the court. If the person under the
17 age of eighteen (18) years fails to complete an approved drug awareness program and community
18 service within one year of the offense, the penalty shall be a three hundred dollar (\$300) civil fine
19 and forfeiture of the marijuana, except that if no drug awareness program or community service is
20 available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of the
21 marijuana. The parents or legal guardian of any offender under the age of eighteen (18) shall be
22 notified of the offense and the availability of a drug awareness and community service program.
23 The drug awareness program must be approved by the court, but shall, at a minimum, provide
24 four (4) hours of instruction or group discussion, and ten (10) hours of community service.
25 Notwithstanding any other public, special or general law to the contrary, this civil penalty shall
26 apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen (18)
27 months.

28 (v) Notwithstanding any public, special, or general law to the contrary, a person not
29 exempted from penalties pursuant to chapter 21-28.6 found in possession of one ounce (1 oz.) or
30 less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not
31 more than thirty (30) days or fined not less than two hundred dollars (\$200) nor more than five
32 hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation for
33 possession of less than one ounce (1 oz.) of marijuana under subparagraphs 21-28-4.01(c)(2)(iii)
34 or 21-28-4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.

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

5 (vii) No person may be arrested for a violation of subparagraphs 21-28-4.01(c)(2)(iii) or
6 21-28-4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an
7 identification card, license, or other form of identification issued by the state or any state, city or
8 town, or any college or university, who fails to produce the same upon request of a police officer
9 who informs the person that he or she has been found in possession of what appears to the officer
10 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of
11 identification that fails or refuses to truthfully provide his or her name, address, and date of birth
12 to a police officer who has informed such person that the officer intends to provide such
13 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be
14 arrested.

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

17 (ix) Any records collected by any state agency or tribunal that include personally
18 identifiable information about violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
19 4.01(c)(2)(iv) shall be sealed eighteen (18) months after the payment of said civil fine.

20 (3) Jurisdiction. – Any and all violations of subparagraphs 21-28-4.01(c)(2)(iii) and 21-
21 28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All
22 money associated with the civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
23 4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
24 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to
25 subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be expended on drug awareness
26 and treatment programs for youth.

27 ~~(3)~~ (4) Additionally every person convicted or who pleads nolo contendere under
28 paragraph (2)(i) of this subsection or convicted or who pleads nolo contendere a second or
29 subsequent time under paragraph (2)(ii) of this subsection, who is not sentenced to a term of
30 imprisonment to serve for the offense, shall be required to:

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

32 (ii) Attend and complete a drug counseling and education program as prescribed by the
33 director of the department of mental health, retardation and hospitals and pay the sum of four
34 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as

1 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one
2 year;

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

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

9 ~~(4)~~ (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection
10 shall be deposited as general revenues and shall be collected from the person convicted or who
11 pleads nolo contendere before any other fines authorized by this chapter.

12 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent
13 to manufacture or distribute, an imitation controlled substance. Any person who violates this
14 subsection is guilty of a crime, and upon conviction shall be subject to the same term of
15 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
16 controlled substance which the particular imitation controlled substance forming the basis of the
17 prosecution was designed to resemble and/or represented to be; but in no case shall the
18 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
19 (\$20,000).

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

26 **21-28-4.11. Second offenses.** -- ~~(A)~~ (a) Any person convicted of a second offense under
27 this chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or
28 21-28-4.01(c)(2)(v), may be imprisoned for a term up to twice the term authorized, fined an
29 amount up to twice that authorized, or both.

30 ~~(B)~~ (b) For purposes of this section, an offense is considered a second offense if, prior to
31 his or her conviction of the offense, the offender has at any time been convicted under this
32 chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or 21-
33 28-4.01(c)(2)(v), or under any statute of the United States or of any state relating to narcotic
34 drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

1 **21-28-4.14. Third or subsequent offenses.** -- (a) Any person convicted of a third or
2 subsequent offense under this chapter, [except for violations of subparagraphs 21-28-](#)
3 [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
4 three (3) times the term authorized, and fined an amount up to three (3) times that authorized by
5 section 21-28-4.11, or both.

6 (b) For purposes of this section, an offense is considered a third or subsequent offense if,
7 prior to his or her conviction of the offense, the offender has at any time been convicted twice
8 under this chapter, [except for violations of subparagraphs 21-28-4.01\(c\)\(2\)\(iii\), 21-28-](#)
9 [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
10 state, or any combination of them, relating to narcotic drugs, marijuana, depressant, stimulant, or
11 hallucinogenic drug.

12 SECTION 2. Chapter 21-28 of the General Laws entitled "Uniform Controlled
13 Substances Act" is hereby amended by adding thereto the following section:

14 **21-28-4.22. Preparation of summons and related records -- Consent and form.** -- [The](#)
15 [laws related to summonses, subpoenas and related records for violations of subparagraphs 21-28-](#)
16 [4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\), shall be served and heard in the same manner and in a](#)
17 [similar form as ordinary civil actions in the traffic tribunal, as provided for in sections 31-27-12,](#)
18 [31-27-12.1, 31-41.1-1, and as may be prescribed by rules and regulations promulgated by the](#)
19 [chief magistrate of the traffic tribunal pursuant to section 8-6-2.](#)

20 SECTION 3. Sections 31-27-2.4 and 31-27-12 of the General Laws in Chapter 31-27
21 entitled "Motor Vehicle Offenses" are hereby amended to read as follows:

22 **31-27-2.4. Driving while in possession of controlled substances.** -- (a) In addition to
23 any other penalty prescribed by law, whoever operates any motor vehicle while knowingly having
24 in the motor vehicle or in his or her possession, a controlled substance, as defined in section 21-
25 28-1.02, [except for possession of up to one ounce \(1 oz.\) of marijuana,](#) shall have his or her
26 license suspended for a period of six (6) months.

27 (b) This section shall not apply to any person who lawfully possesses a controlled
28 substance, as defined in section 21-28-1.02, as a direct result and pursuant to a valid prescription
29 from a licensed medical practitioner, or as otherwise authorized by chapter 28 of title 21.

30 **31-27-12. Service of notice -- Summons.** -- (a) Any police officer observing the
31 violation of any statute or ordinance relating to the operation, control, or maintenance of a motor
32 vehicle [or a violation of subparagraphs 21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\),](#) shall at the
33 time or place of the violation or, if it is not possible to halt the alleged offender, as soon as
34 possible after observing the violation, issue a written notice, of a form and content provided for in

1 section 31-27-12.1, signed by the police officer and constituting a summons to appear before the
2 court having jurisdiction at a time and place designated in the notice.

3 (b) Nothing in this chapter shall preclude a police officer from exercising in the
4 alternative his or her statutory powers of arrest, nor shall anything contained in this chapter
5 preclude the making of additional complaints against the alleged offender arising out of the
6 violation of any statute or ordinance relating to the operation, control, or maintenance of a motor
7 vehicle observed by the police officer. Nothing in this chapter shall prevent a person other than a
8 police officer from applying for a criminal complaint for the violation of any statute or ordinance
9 relating to the operation, control, or maintenance of a motor vehicle, and the person need not
10 show that the alleged offender has been issued a summons in connection with the alleged
11 violation.

12 SECTION 4. Section 8-8.2-2 of the General Laws in Chapter 8-8.2 entitled "Traffic
13 tribunal" is hereby amended to read as follows:

14 **8-8.2-2. Jurisdiction.** -- (a) Notwithstanding any inconsistent provision of law, all
15 probationary license hearings as provided in section 31-10-26, all violations of the department of
16 transportation, department of environmental management or board of governors for higher
17 education regulations regarding parking, standing, or stopping in areas under the jurisdiction of
18 said agencies, all violations of state statutes relating to motor vehicles, littering and traffic
19 offenses, except those traffic offenses committed in places within the exclusive jurisdiction of the
20 United States, and except driving so as to endanger resulting in death, driving so as to endanger
21 resulting in personal injury, driving while under the influence of liquor or drugs, driving while
22 under the influence of liquor or drugs resulting in death, driving while under the influence of
23 liquor or drugs resulting in serious bodily injury, reckless driving and other offenses against
24 public safety as provided in section 31-27-4, eluding a law enforcement officer with a motor
25 vehicle in a high speed pursuit, driving after denial, suspension or revocation of license, and
26 leaving the scene of an accident in violation of section 31-26-1 and section 31-26-2, and driving
27 without the consent of the owner and possession of a stolen motor vehicle in violation of section
28 31-9-1 and section 31-9-2, shall be heard and determined by the traffic tribunal pursuant to the
29 regulations promulgated by the chief magistrate of the traffic tribunal; provided, however, the
30 traffic tribunal shall not hear any parking, standing or stopping violations which occur in any city
31 or town which has established its own municipal court and has jurisdiction over such violations.
32 Nothing contained herein shall abrogate the powers of the Rhode Island family court under the
33 provisions of chapter 1 of title 14.

34 (b) Notwithstanding any inconsistent provision of law, the traffic tribunal shall have

1 concurrent jurisdiction to hear and determine, pursuant to rules and regulations promulgated by
2 the chief magistrate of the traffic tribunal, all violations of any ordinances, rules and regulations
3 governing the public waters and the speed, management and control of all vessels and the size,
4 type and location and use of all anchorages and moorings within the jurisdiction of the towns of
5 North Kingstown, South Kingstown, Portsmouth, Middletown, Narragansett and Tiverton
6 enforced and supervised by the harbormaster and referred to the traffic tribunal, and the terms
7 "traffic violations" and "traffic infraction" when used in this chapter shall include the aforesaid
8 violations and such violations shall be adjudicated in accordance with the provisions of this
9 chapter. Nothing contained herein shall abrogate the powers of the Rhode Island coastal
10 management council under the provisions of chapter 23 of title 46.

11 (c) Notwithstanding any inconsistent provision of law, the traffic tribunal shall have
12 jurisdiction to hear and determine, pursuant to rules and regulations promulgated by the chief
13 magistrate of the Rhode Island traffic tribunal, all civil violations for sections 20-1-12, 20-11-20,
14 20-16-17, 23-22.5-9, 32-2-4, [subparagraphs 21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\)](#) and
15 subsection 46-22-19(1) as set forth in section 42-17.10-1.

16 (d) A party aggrieved by a final order of the traffic tribunal appeals panel shall be
17 entitled to a review of the order by a judge of the district court. Unless otherwise provided in the
18 rules of procedure of the district court, such review shall be on the record and appellate in nature.
19 The district court shall by rules of procedure establish procedures for review of an order entered
20 by the appeals panel of the traffic tribunal.

21 (e) Violations of any statute, rule, ordinance or regulation referenced in this section are
22 subject to fines enumerated in section 31-41.1-4, [except for violations of subparagraphs 21-28-](#)
23 [4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\).](#)

24 SECTION 5. Chapter 8-8.2 of the General Laws entitled "Traffic tribunal" is hereby
25 amended by adding thereto the following section:

26 **8-8.2-21. Abstracts of court records -- Traffic tribunal.** – [A full record shall be kept by](#)
27 [the Rhode Island traffic tribunal in this state of every case in which a person is charged with](#)
28 [violating subparagraphs 21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\). An abstract of the record](#)
29 [shall be retained by the court. The abstract shall be made upon forms prepared by the chief](#)
30 [magistrate of the Rhode Island traffic tribunal and shall include all necessary information as to](#)
31 [the parties to the cause, the nature of the offense, the date of the hearing, the plea, the decision,](#)
32 [the judgment, and the result, and every abstract shall be certified by the clerk of the court. The](#)
33 [Rhode Island traffic tribunal shall keep the records and they shall not be open to public](#)
34 [inspection. The chief magistrate of the traffic tribunal shall make the records available to Rhode](#)

1 [Island state and local police departments for their inspection of the details of cases which have](#)
2 [been heard before the tribunal.](#)

3 SECTION 6. This act shall take effect on April 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

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 April 1, 2013.

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