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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT -
OFFENSES AND PENALTIES

Introduced By: Representatives Edwards, Williams, Almeida, Ajello, and Cimini

Date Introduced: March 04, 2014

Referred To: House 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 **21-28-4.1. Prohibited acts A -- Penalties.** -- (a) (1) Except as authorized by this chapter,
4 it shall be unlawful for any person to manufacture, deliver, or possess with intent to manufacture
5 or deliver a controlled substance.

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

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

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) 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 not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) and forfeiture
8 of the marijuana, but not to any other form of criminal or civil punishment or disqualification.
9 ~~Notwithstanding any public, special or general law to the contrary, this civil penalty of one~~
10 ~~hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the offense is the first~~
11 ~~(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 under the age of eighteen (18) years and
14 who is not exempted from penalties pursuant to chapter 21-28.6 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. If the person under the
18 age of eighteen (18) years fails to complete an approved drug awareness program and community
19 service within one year of the offense, the penalty shall be a three hundred dollar (\$300) civil fine
20 and forfeiture of the marijuana, except that if no drug awareness program or community service is
21 available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of the
22 marijuana. The parents or legal guardian of any offender under the age of eighteen (18) shall be
23 notified of the offense and the availability of a drug awareness and community service program.
24 The drug awareness program must be approved by the court, but shall, at a minimum, provide
25 four (4) hours of instruction or group discussion, and ten (10) hours of community service.
26 Notwithstanding any other public, special or general law to the contrary, this civil penalty shall
27 apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen (18)
28 months.

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

1 ~~or 21-28-4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.~~

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

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

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

18 ~~(ix)~~ (viii) Any records collected by any state agency or tribunal that include personally
19 identifiable information about violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
20 4.01(c)(2)(iv) shall be sealed eighteen (18) months after the payment of said civil fine.

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

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

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

33 (ii) Attend and complete a drug counseling and education program as prescribed by the
34 director of the department of mental health, retardation and hospitals and pay the sum of four

1 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as
2 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one
3 year;

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

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

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

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

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

27 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 -
OFFENSES AND PENALTIES

1 This act would amend the civil penalty for possession of one ounce or less of marijuana
2 from a one hundred fifty dollar (\$150) fine to a fine of one hundred dollars (\$100) to not more
3 than two hundred dollars (\$200), and would make said fine applicable whether the fine is
4 imposed on a first or subsequent offense.

5 This act would take effect upon passage.

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