

2014 -- S 2351

=====
LC004650
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO THE UNIFORMED CONTROLLED SUBSTANCE ACT

Introduced By: Senator Joshua Miller

Date Introduced: February 12, 2014

Referred To: Senate Health & Human Services

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.** -- (a) (1) Except as authorized by this
4 chapter, it shall be unlawful for any person to manufacture, deliver, or possess with intent to
5 manufacture 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
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,
10 deliver, 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
24 controlled substance, unless the substance was obtained directly from or pursuant to a valid
25 prescription or order of a practitioner while acting in the course of his or her professional
26 practice, or except as 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 crime and upon conviction may be imprisoned for
30 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five
31 thousand dollars (\$5,000), or both;

32 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
33 marijuana is guilty of a misdemeanor except for those persons subject to subdivision 21-28-
34 4.01(a)(1) and upon conviction may be imprisoned for not more than one year or fined not less

1 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

2 (iii) Notwithstanding any public, special or general law to the contrary, the possession of
3 one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older and
4 who is not exempted from penalties pursuant to chapter 21-28.6 shall constitute a civil offense,
5 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)
6 and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or
7 disqualification. Notwithstanding any public, special or general law to the contrary, this civil
8 penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the
9 offense is the first (1st) or second (2nd) violation within the previous eighteen (18) months.

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

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

34 (vi) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-

1 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of
2 the offense. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid
3 within ninety (90) days.

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

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

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

19 (3) Jurisdiction. - Any and all violations of subparagraphs 21-28-4.01(c)(2)(iii) and 21-
20 28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All
21 money associated with the civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
22 4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
23 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to
24 subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be ~~expended on drug awareness~~
25 ~~and treatment~~ deposited with and administered by the department of behavioral healthcare,
26 developmental disabilities and hospitals (BHDDH) to fund BHDDH authorized student assistance
27 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~~ behavioral healthcare, developmental

1 [disabilities](#) and hospitals and pay the sum of four hundred dollars (\$400) to help defray the costs
2 of this program which shall be deposited as general revenues [into the Rhode Island Substance](#)
3 [Abuse Prevention Act Fund as set forth in chapter 16-21](#). Failure to attend may result after
4 hearing by the court in jail sentence up to one year;

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

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

11 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall
12 be deposited as general revenues [into the Rhode Island Substance Abuse Prevention Act Fund as](#)
13 [set as set forth in chapter 16-21](#) and shall be collected from the person convicted or who pleads
14 nolo contendere before any other fines authorized by this chapter.

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

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

29 SECTION 2. Sections 16-21.2-4 and 16-21.2-5 of the General Laws in Chapter 16-21.2
30 entitled "The Rhode Island Substance Abuse Prevention Act" are hereby amended to read as
31 follows:

32 **16-21.2-4. Substance abuse prevention program.** -- (a) The department of behavioral
33 healthcare, developmental disabilities and hospitals shall be charged with the administration of
34 this chapter and shall provide grants to assist in the planning, establishment, and operation of

1 ~~substance abuse prevention~~ student assistance programs. Grants under this section shall be made
2 to ~~municipal governments or their designated agents~~ the BHDDH recognized student assistance
3 program provider designated to serve each community according to the following guidelines:

4 (1) The maximum grant shall be one hundred twenty-five thousand dollars (\$125,000);
5 provided, however, in the event that available funding exceeds \$1.6 million in a fiscal year, those
6 surplus funds are to be divided proportionately among the cities and towns on a per capita basis
7 but in no event shall the city of Providence exceed a maximum grant cap of \$175,000.00.

8 (2) In order to obtain a grant, the ~~municipality or its designated agent~~ student assistance
9 program provider must in the first year:

10 (i) Demonstrate the municipality's need for a ~~comprehensive substance abuse~~ student
11 assistance program ~~in the areas of prevention and education~~.

12 (ii) Demonstrate that the municipality to be served has established by appropriate
13 legislative or executive action, a substance abuse prevention council which shall assist in
14 assessing the needs and resources of the community, developing a three (3) year plan of action
15 addressing the identified needs, the operation and implementation of the overall substance abuse
16 prevention program; coordinating existing services such as law enforcement, prevention,
17 treatment, and education; consisting of representatives of the municipal government,
18 representatives of the school system, parents, and human service providers.

19 (iii) Demonstrate the municipality's ability to develop a plan of implementation of a
20 comprehensive three (3) year substance abuse prevention program based on the specific needs of
21 the community to include high risk populations of adolescents, children of substance abusers, and
22 primary education school aged children.

23 (iv) Agree to conduct a survey/questionnaire of the student population designed to
24 establish the extent of the use and abuse of drugs and alcohol in students throughout the local
25 community's school population.

26 (v) Demonstrate that at least twenty percent (20%) of the cost of the proposed program
27 will be contributed either in cash or in-kind by public or private resources within the
28 municipality.

29 (vi) Demonstrate that the funding issued is expended on counseling and education
30 provided through BHDDH authorized student assistance programs approved by the department.

31 (b) The department of behavioral healthcare, developmental disabilities and hospitals
32 shall adopt rules and regulations necessary and appropriate to carry out the purposes of this
33 section.

34 **16-21.2-5. Funding of substance abuse prevention program.** – (a)(1) Money to fund

1 the Rhode Island Substance Abuse Prevention Act shall be appropriated from state general
2 revenues and shall be raised by assessing an additional penalty of thirty dollars (\$30.00) for all
3 speeding violations as set forth in section 31-43-5.1.

4 (2) State general revenues collected by the Rhode Island traffic tribunal for any and all
5 violations of paragraphs and all offenses as set forth in § 1-28-4.01(c)(2)(iii) or 21-28-
6 4.01(c)(2)(iv).

7 (b) The money shall be deposited as general revenues. The department of behavioral
8 healthcare, developmental disabilities and hospitals may utilize up to ten percent (10%) of the
9 sums appropriated for the purpose of administering the substance abuse prevention program.

10 ~~(b)~~(c) Grants made under this chapter shall not exceed money available in the substance
11 abuse prevention program.

12 SECTION 3. This act shall take effect upon passage.

=====
LC004650
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO THE UNIFORMED CONTROLLED SUBSTANCE ACT

1 This act would redirect substance abuse prevention funds to "Student Assistance
2 Programs".

3 This act would take effect upon passage.

=====
LC004650
=====