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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 03, 2015

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.01 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 § 21-28-1.02(18), 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
13 the person delivering the substance was at the time of delivery, a drug-addicted person as defined
14 in § 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 § 21-28-4.01(a)(1) and
34 upon conviction may be imprisoned for not more than one year or fined not less than two hundred

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

11 (iv) Notwithstanding any public, special, or general law to the contrary, possession of
12 one 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 28.6 of this title shall constitute a civil
14 offense, rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars
15 (\$150) and forfeiture of the marijuana; provided the minor offender completes an approved, drug-
16 awareness program and community service as determined by the court. In addition, the court shall
17 order a substance abuse assessment and, if recommended, substance abuse treatment. If the
18 person under the age of eighteen (18) years fails to complete an approved, drug-awareness
19 program and community service within one year of the offense, the penalty shall be a three
20 hundred dollar (\$300) civil fine and forfeiture of the marijuana, except that if no drug-awareness
21 program or community service is available, the penalty shall be a fine of one hundred fifty dollars
22 (\$150) and forfeiture of the marijuana. The parents or legal guardian of any offender under the
23 age of eighteen (18) shall be notified of the offense and the availability of a drug-awareness, ~~and~~
24 community-service program, and mandatory substance abuse assessment. The drug-awareness
25 program must be approved by the court, but shall, at a minimum, provide four (4) hours of
26 instruction or group discussion, and ten (10) hours of community service. Notwithstanding any
27 other public, special or general law to the contrary, this civil penalty shall apply if the offense is
28 the first (1st) or second (2nd) violation within the previous eighteen (18) months.

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

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

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

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

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

18 (ix) Any records collected by any state agency, ~~or~~ tribunal or the family court that
19 include personally identifiable information about violations of § 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. – (i) Any and all violations of § 21-28-4.01(c)(2)(iii) ~~and 21-28-~~
22 ~~4.01(e)(2)(iv)~~ shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All money
23 associated with the civil fine issued under § 21-28-4.01(c)(2)(iii) ~~or 21-28-4.01(e)(2)(iv)~~ shall be
24 payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines collected by the
25 Rhode Island traffic tribunal from civil penalties issued pursuant to § 21-28-4.01(c)(2)(iii) ~~or 21-~~
26 ~~28-4.01(e)(2)(iv) shall be expended on drug awareness and treatment programs for youth~~ shall be
27 deposited with, and administered by the department of behavioral healthcare, developmental
28 disabilities, and hospitals (BHDDH) to fund prevention and treatment services for youth.

29 (ii) Any and all violations of § 21-28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of
30 the Rhode Island family court. All money associated with the civil fine issued under § 21-28-
31 4.01(c)(2)(iv) shall be payable to the Rhode Island family court. Fifty percent (50%) of all fines
32 collected by the Rhode Island family court from civil penalties issued shall be deposited with and
33 administered by the department of behavioral healthcare, developmental disabilities and hospitals
34 (BHDDH) to fund prevention and treatment services for youth.

1 (4) Additionally every person convicted or who pleads nolo contendere under paragraph
2 (2)(i) of this subsection or convicted or who pleads nolo contendere a second or subsequent time
3 under paragraph (2)(ii) of this subsection, who is not sentenced to a term of imprisonment to
4 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~~ behavioral healthcare,
8 developmental disabilities and hospitals and pay the sum of four hundred dollars (\$400) to help
9 defray the costs of this program which shall be deposited ~~as general revenues~~ with and
10 administered by the department of behavioral healthcare, developmental disabilities and hospitals
11 (BHDDH) to fund prevention and treatment services. Failure to attend may result, after hearing
12 by the court, in jail sentence up to one year;

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

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

19 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall
20 be deposited ~~as general revenues~~ with, and administered by the department of behavioral
21 healthcare, developmental disabilities and hospitals (BHDDH) to fund prevention and treatment
22 services, and shall be collected from the person convicted or who pleads nolo contendere before
23 any other fines authorized by this chapter.

24 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent
25 to manufacture or distribute, an imitation controlled substance. Any person who violates this
26 subsection is guilty of a crime and upon conviction shall be subject to the same term of
27 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
28 controlled substance that the particular imitation controlled substance forming the basis of the
29 prosecution was designed to resemble and/or represented to be; but in no case shall the
30 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
31 (\$20,000).

32 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
33 anabolic steroid or human growth hormone for: (1) enhancing performance in an exercise, sport,
34 or game, or (2) hormonal manipulation intended to increase muscle mass, strength, or weight

1 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
2 and upon conviction may be imprisoned for not more than six (6) months or a fine of not more
3 than one thousand dollars (\$1,000), or both.

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

14 SECTION 2. This act shall take effect on September 1, 2015.

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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 transfer the jurisdiction of possession of one ounce (1 oz.) or less of
2 marijuana by a person who is under the age of eighteen (18) years from the Rhode Island traffic
3 tribunal to the Rhode Island family court. The act would also require the family court to order a
4 substance abuse assessment and, if recommended, substance abuse treatment, for such violations.

5 This act would take effect on September 1, 2015.

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