

2016 -- H 7208

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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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, Solomon, Coughlin, Kazarian, and Ajello

Date Introduced: January 15, 2016

Referred To: House Judiciary

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

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
32 five 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 (a)(1) of this section and

1 upon conviction may be imprisoned for not more than one year, or fined not less than two
2 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
4 of one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older
5 and who is not exempted from penalties pursuant to chapter 28.6 of this title shall constitute a
6 civil offense, rendering the offender liable to a civil penalty in the amount of ~~one hundred fifty~~
7 ~~dollars (\$150)~~ not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200)
8 and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or
9 disqualification. ~~Notwithstanding any public, special, or general law to the contrary, this civil~~
10 ~~penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply if the~~
11 ~~offense is the first (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
13 one 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 28.6 of this title shall constitute a civil
15 offense, rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars
16 (\$150) 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
19 community service within one year of the disposition, the penalty shall be a three hundred dollar
20 (\$300) civil fine and forfeiture of the marijuana, except that if no drug-awareness program or
21 community service is available, the penalty shall be a fine of one hundred fifty dollars (\$150) and
22 forfeiture of the marijuana. The parents or legal guardian of any offender under the age of
23 eighteen (18) shall be notified of the offense and the availability of a drug-awareness and
24 community-service program. The drug-awareness program must be approved by the court, but
25 shall, at a minimum, provide four (4) hours of instruction or group discussion and ten (10) hours
26 of community service. Notwithstanding any other public, special, or general law to the contrary,
27 this civil penalty shall apply if the offense is the first or second violation within the previous
28 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 (c)(2)(iii) or (c)(2)(iv) of this~~

1 ~~subsection two (2) times in the eighteen (18) months prior to the third (3rd) offense.~~

2 (vi) Any unpaid civil fine issued under (c)(2)(iii) or (c)(2)(iv) of this subsection shall
3 double to three hundred dollars (\$300) if not paid within thirty (30) days of the disposition. 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 (c)(2)(iii) or (c)(2)(iv) of this
7 subsection except as provided in this subparagraph. Any person in possession of an identification
8 card, license, or other form of identification issued by the state or any state, city, or town, or any
9 college or university, who fails to produce the same upon request of a police officer who informs
10 the person that he or she has been found in possession of what appears to the officer to be one
11 ounce (1 oz.) or less of marijuana, or any person without any such forms of identification who
12 fails or refuses to truthfully provide his or her name, address, and date of birth to a police officer
13 who has informed such person that the officer intends to provide such individual with a citation
14 for possession of one ounce (1 oz.) or less of marijuana, may be arrested.

15 (viii) No violation of (c)(2)(iii) or (c)(2)(iv) of this subsection shall be considered a
16 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 (c)(2)(iii) or (c)(2)(iv) of this subsection shall not be
19 open to public inspection in accordance with § 8-8.2-21.

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

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

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

31 (ii) Attend and complete a drug counseling and education program as prescribed by the
32 director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals
33 and pay the sum of four hundred dollars (\$400) to help defray the costs of this program which
34 shall be deposited as general revenues. Failure to attend may result, after hearing by the court, in

1 jail sentence up to one year;

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

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

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

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

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

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

1 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) but 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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