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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO FOOD AND DRUGS-UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives McNamara, Vella-Wilkinson, and Bennett

Date Introduced: February 08, 2017

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.**

4 (a) (1) Except as authorized by this chapter, it shall be unlawful for any person to
5 manufacture, deliver, or possess with intent to 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
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; provided, however, notwithstanding any
11 public, special or general law to the contrary, not to any regulation promulgated thereunder, the
12 manufacture, delivery or possession of a substance legally prescribed, which has been approved
13 for marketing as a prescription medication by the FDA shall be excepted from the penalties
14 provided under the provisions of this chapter.

15 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
16 death to the person to whom the controlled substance is delivered, it shall not be a defense that
17 the person delivering the substance was, at the time of delivery, a drug-addicted person as defined
18 in § 21-28-1.02(18).

19 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates

1 this subsection with respect to:

2 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon
3 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
4 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

5 (ii) A controlled substance, classified in schedule III or IV, is guilty of a crime and, upon
6 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
7 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
8 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
9 more than twenty thousand dollars (\$20,000), or both.

10 (iii) A controlled substance, classified in schedule V, is guilty of a crime and, upon
11 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
12 dollars (\$10,000), or both.

13 (b) (1) Except as authorized by this chapter, it is unlawful for any person to create,
14 deliver, or possess with intent to deliver, a counterfeit substance.

15 (2) Any person who violates this subsection with respect to:

16 (i) A counterfeit substance, classified in schedule I or II, is guilty of a crime and, upon
17 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one
18 hundred thousand dollars (\$100,000), or both;

19 (ii) A counterfeit substance, classified in schedule III or IV, is guilty of a crime and, upon
20 conviction, may be imprisoned for not more than twenty (20) years, or fined not more than forty
21 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
22 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
23 more than twenty thousand dollars (\$20,000), or both.

24 (iii) A counterfeit substance, classified in schedule V, is guilty of a crime and, upon
25 conviction, may be imprisoned for not more than one year, or fined not more than ten thousand
26 dollars (\$10,000), or both.

27 (c) (1) It shall be unlawful for any person knowingly or intentionally to possess a
28 controlled substance, unless the substance was obtained directly from, or pursuant to, a valid
29 prescription or order of a practitioner while acting in the course of his or her professional
30 practice, or except as otherwise authorized by this chapter.

31 (2) Any person who violates this subsection with respect to:

32 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the
33 substance classified as marijuana, is guilty of a crime and, upon conviction, may be imprisoned
34 for not more than three (3) years, or fined not less than five hundred dollars (\$500) nor more than

1 five thousand dollars (\$5,000), or both;

2 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
3 marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon
4 conviction, may be imprisoned for not more than one year, or fined not less than two hundred
5 dollars (\$200) nor more than five hundred dollars (\$500), or both.

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

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

32 (v) Notwithstanding any public, special, or general law to the contrary, a person not
33 exempted from penalties pursuant to chapter 28.6 of this title found in possession of one ounce (1
34 oz.) or less of marijuana is guilty of a misdemeanor and, upon conviction, may be imprisoned for

1 not more than thirty (30) days, or fined not less than two hundred dollars (\$200) nor more than
2 five hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation
3 for possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) two (2)
4 times in the eighteen (18) months prior to the third (3rd) offense.

5 (vi) Any unpaid civil fine issued under (c)(2)(iii) or (c)(2)(iv) shall double to three
6 hundred dollars (\$300) if not paid within thirty (30) days of the disposition. The civil fine shall
7 double again to six hundred dollars (\$600) if it has not been paid within ninety (90) days.

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

17 (viii) No violation of (c)(2)(iii) or (c)(2)(iv) of this subsection shall be considered a
18 violation of parole or probation.

19 (ix) Any records collected by any state agency, tribunal, or the family court that include
20 personally identifiable information about violations of (c)(2)(iii) or (c)(2)(iv) shall not be open to
21 public inspection in accordance with § 8-8.2-21.

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

28 (4) Additionally, every person convicted or who pleads nolo contendere under (c)(2)(i) or
29 convicted or who pleads nolo contendere a second or subsequent time under (c)(2)(ii), who is not
30 sentenced to a term of 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 behavioral healthcare, developmental disabilities and hospitals and
34 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be

1 deposited as general revenues. Failure to attend may result, after hearing by the court, in jail
2 sentence up to one 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 (c)(2)(i) and (c)(2)(ii) shall be subject to a loss of license for a period of six (6) months for
8 a first offense and one year for each offense after.

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

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

1 use of salvia divinorum or datura stramonium.

2 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

1 This act would make those persons who are convicted of the manufacture, delivery or
2 possession with the intent to manufacture, deliver or possess with the intent to manufacture or
3 deliver of a controlled substance no longer subject to a life sentence or subject the fines structure
4 provided in §21-28-4.01(a)(2) provided that the controlled substance is one legally prescribed and
5 which has been approved for marketing as a prescription medication by the FDA.

6 This act would take effect upon passage.

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