

2020 -- H 7634

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Slater, Edwards, Diaz, Solomon, and Johnston

Date Introduced: February 14, 2020

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 21-28-4.01, 21-28-4.01.1, 21-28-4.01.2, 21-28-4.11 and 21-28-4.14
2 of the General Laws in Chapter 21-28 entitled "Uniform Controlled Substances Act" is hereby
3 amended to read as follows:

4 **21-28-4.01. Prohibited acts A -- Penalties.**

5 (a)(1) Except as authorized by this chapter, it shall be unlawful for any person to
6 manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

7 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(20), who
8 violates this subsection with respect to a controlled substance classified in schedule I or II, except
9 the substance classified as marijuana, is guilty of a crime and, upon conviction, may be imprisoned
10 to a term up to life or fined not more than five hundred thousand dollars (\$500,000) nor less than
11 ten thousand dollars (\$10,000), or both.

12 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
13 death to the person to whom the controlled substance is delivered, it shall not be a defense that the
14 person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §
15 21-28-1.02(20).

16 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates
17 this subsection with respect to:

18 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon
19 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, deliver,
11 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 controlled
25 substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or
26 order of a practitioner while acting in the course of his or her professional practice, or except as
27 otherwise authorized by this chapter.

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

29 (i) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, ten grams (10 g) or
30 less of a mixture or substance containing a detectable amount of a controlled substance classified
31 in schedules I, II, III, IV, and V, except the substance classified as marijuana, is guilty of a
32 misdemeanor and, upon conviction, may be imprisoned for not more than two (2) years, or fined
33 not more than five hundred dollars (\$500) or both.

34 ~~(ii)~~ (ii) Except as provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than ten grams (10

1 g), but less than one ounce (1 oz.) of a mixture or substance containing a detectable amount of a A
2 controlled substance classified in schedules I, II and III, IV, and V, except the substance classified
3 as marijuana, is guilty of a ~~crime~~ felony and, upon conviction, may be imprisoned for not more
4 than three (3) years, or fined not ~~less than five hundred dollars (\$500) nor~~ more than five thousand
5 dollars (\$5,000), or both;

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

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

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

1 (18) months.

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

9 ~~(vi)~~(vii) Any unpaid civil fine issued under ~~(e)(2)(iii)~~ (c)(2)(iv) or ~~(e)(2)(iv)~~ (c)(2)(v) shall
10 double to three hundred dollars (\$300) if not paid within thirty (30) days of the disposition. The
11 civil fine shall double again to six hundred dollars (\$600) if it has not been paid within ninety (90)
12 days.

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

22 ~~(viii)~~(ix) No violation of ~~(e)(2)(iii)~~ (c)(2)(iv) or ~~(e)(2)(iv)~~ (c)(2)(v) of this subsection shall
23 be considered a violation of parole or probation.

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

27 (3) Jurisdiction.

28 (i) Any and all adjudications of violations of (c)(2)(i) shall be within the original
29 jurisdiction of the Rhode Island superior court. The department of attorney general shall prosecute
30 any and all violations (c)(2)(i).

31 (ii) Any and all violations of ~~(e)(2)(iii)~~ (c)(2)(iv) and ~~(e)(2)(iv)~~ (c)(2)(v) shall be the
32 exclusive jurisdiction of the Rhode Island traffic tribunal. All money associated with the civil fine
33 issued under ~~(e)(2)(iii) or (e)(2)(iv)~~ (c)(2)(iv) or (c)(2)(v) shall be payable to the Rhode Island
34 traffic tribunal. Fifty percent (50%) of all fines collected by the Rhode Island traffic tribunal from

1 civil penalties issued pursuant to ~~(e)(2)(iii) or (e)(2)(iv)~~ (c)(2)(iv) or (c)(2)(v) shall be expended on
2 drug-awareness and treatment programs for youth.

3 (4) Additionally, every person convicted or who pleads nolo contendere under (c)(2)(i) or
4 (c)(2)(ii) or convicted or who pleads nolo contendere a second or subsequent time under ~~(e)(2)(ii)~~
5 (c)(2)(iii), who is not sentenced to a term of imprisonment to serve for the offense, shall be required
6 to:

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

8 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the
9 director of the department of behavioral healthcare, developmental disabilities and hospitals and
10 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be
11 deposited as general revenues. Failure to attend may result, after hearing by the court, in jail
12 sentence up to one year;

13 (iii) The court shall not suspend any part or all of the imposition of the fee required by this
14 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 (c)(2)(i), ~~and~~ (c)(2)(ii) or (c)(2)(iii) shall be subject to a loss of license for a period of six (6)
18 months for a first offense and one year for each offense after.

19 (5) All fees assessed and collected pursuant to ~~(e)(3)(ii)~~ (c)(2)(iii) shall be deposited as
20 general revenues and shall be collected from the person convicted or who pleads nolo contendere
21 before any other fines authorized by this chapter.

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

30 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
31 anabolic steroid or human growth hormone for: (1) Enhancing performance in an exercise, sport,
32 or game, or (2) Hormonal manipulation intended to increase muscle mass, strength, or weight
33 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
34 and, upon conviction, may be imprisoned for not more than six (6) months or a fine of not more

1 than one thousand dollars (\$1,000), or both.

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

12 **21-28-4.01.1. Minimum sentence -- Certain quantities of controlled substances.**

13 (a) Except as authorized by this chapter, it shall be unlawful for any person to manufacture,
14 sell, or possess with intent to manufacture or sell, a controlled substance classified in schedule I or
15 II (excluding marijuana) or to possess or deliver the following enumerated quantities of certain
16 controlled substances:

17 (1) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
18 detectable amount of heroin;

19 (2) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
20 detectable amount of:

21 (i) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine,
22 ecgonine, and derivatives of ecgonine or their salts have been removed;

23 (ii) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

24 (iii) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

25 (iv) Any compound, mixture, or preparation that contains any quantity of any of the
26 substances referred to in paragraphs (i) -- (iii) of this subdivision;

27 (3) One gram (1 g.) to ten grams (10 gs.) of phencyclidine (PCP) or one hundred (100) to
28 one thousand (1,000) tablets of a mixture or substance containing a detectable amount of
29 phencyclidine (PCP);

30 (4) One-tenth of a gram (0.1 g.) to one gram (1 g.) of lysergic acid diethylamide (LSD) or
31 one hundred (100) to one thousand (1,000) tablets of a mixture or substance containing a detectable
32 amount of lysergic acid diethylamide (LSD);

33 (5) One kilogram (1 kg.) to five kilograms (5 kgs.) of a mixture containing a detectable
34 amount of marijuana;

1 (6) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
2 detectable amount of synthetic drugs; or

3 (7) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
4 detectable amount of fentanyl or its analogs, including, but not limited to, N-(1-phenethylpiperidin-
5 4-yl)-N-phenylacetamide, its optical, positional, and geometric isomers, salts and salts of isomers
6 (acetyl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2carboxamide (furanyl fentanyl);
7 and N-Phenethyl-4-piperidinone (4-AN-PP); or

8 (8) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
9 detectable amount of carfentanil; or

10 (9) One ounce (1 oz.) to one kilogram (1 kg.) of 3,4-methyl-enedioxymethamphetamine
11 (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers; or

12 (10) One ounce (1 oz.) to one kilogram (1 kg.) of amphetamine, its salts, optical isomers,
13 and salts of its optical isomers; or

14 (11) One ounce (1 oz.) to one kilogram (1 kg.) of methamphetamine, its salts, and salts of
15 its isomers.

16 (b) Any person who violates this section shall be guilty of a crime, and upon conviction,
17 may be imprisoned for a term up to fifty (50) years and fined not more than five hundred thousand
18 dollars (\$500,000).

19 **21-28-4.01.2. Minimum sentence -- Certain quantities of controlled substances.**

20 (a) Except as authorized by the chapter, it shall be unlawful for any person to possess,
21 manufacture, sell, or deliver the following enumerated quantities of certain controlled substances:

22 (1) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
23 amount of heroin;

24 (2) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
25 amount of:

26 (i) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine,
27 ecgonine, and derivatives of ecgonine or their salts have been removed;

28 (ii) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

29 (iii) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

30 (iv) Any compound, mixture, or preparation that contains any quantity of any of the
31 substances referred to in paragraphs (i) -- (iii) of this subdivision;

32 (3) More than ten grams (10 gs.) of phencyclidine (PCP) or more than one thousand (1,000)
33 tablets of a mixture or substance containing a detectable amount of phencyclidine (PCP);

34 (4) More than one gram (1 g.) of lysergic acid diethylamide (LSD); or more than one

1 thousand (1,000) tablets of a mixture or substance containing a detectable amount of lysergic acid
2 diethylamide (LSD);

3 (5) More than five kilograms (5 kgs.) of a mixture containing a detectable amount of
4 marijuana;

5 (6) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
6 amount of synthetic drugs; or

7 (7) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
8 amount of fentanyl or its analogs, including, but not limited to, N-(1-phenethylpiperidin-4-yl)-N-
9 phenylacetamide, its optical, positional, and geometric isomers, salts and salts of isomers (acetyl
10 fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2carboxamide (furanyl fentanyl); and N-
11 Phenethyl-4-piperidinone (4-AN-PP); or

12 (8) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
13 amount of carfentanil; or

14 (9) More than one kilogram (1 kg.) of 3,4-methyl-enedioxymethamphetamine (MDMA),
15 its optical, positional, and geometric isomers, salts, and salts of isomers; or

16 (10) More than one kilogram (1 kg.) of amphetamine, its salts, optical isomers, and salts of
17 its optical isomers; or

18 (11) More than one kilogram (1 kg.) of methamphetamine, its salts, and salts of its isomers.

19 (b) Any person who violates this section shall be guilty of a crime, and upon conviction,
20 may be imprisoned for a term up to life and fined not more than one million dollars (\$1,000,000).

21 **21-28-4.11. Second offenses.**

22 (a) Any person convicted of a second offense under this chapter, except for violations of
23 ~~subparagraphs §§ 21-28-4.01(c)(2)(i), 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv), or 21-28-~~
24 ~~4.01(c)(2)(v), or 21-28-4.01(c)(2)(vi)~~ may be imprisoned for a term up to twice the term authorized,
25 fined an amount up to twice that authorized, or both.

26 (b) For purposes of this section, an offense is considered a second offense if, prior to his or
27 her conviction of the offense, the offender has at any time been convicted under this chapter, except
28 for violations of ~~subparagraphs §§ 21-28-4.01(c)(2)(i), 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv)~~
29 ~~or 21-28-4.01(c)(2)(v), or 21-28-4.01(c)(2)(vi)~~ or under any statute of the United States or of any
30 state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

31 **21-28-4.14. Third or subsequent offenses.**

32 (a) Any person convicted of a third or subsequent offense under this chapter, except for
33 violations of ~~subparagraphs 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v) §§~~
34 21-28-4.01(c)(2)(iv), 21-28-4.01(c)(2)(v), or 21-28-4.01(c)(2)(vi), may be imprisoned for a term

1 up to three (3) times the term authorized, and fined an amount up to three (3) times that authorized
2 by § 21-28-4.11, or both.

3 (b) For purposes of this section, an offense is considered a third or subsequent offense if,
4 prior to his or her conviction of the offense, the offender has at any time been convicted twice under
5 this chapter, except for violations of ~~subparagraphs~~ [§§ 21-28-4.01\(c\)\(2\)\(i\)](#), 21-28-4.01(c)(2)(iii),
6 21-28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), [21-28-4.01\(c\)\(2\)\(vi\)](#), or twice under any statute of the
7 United States or of any [other](#) state, or any combination of them, relating to narcotic drugs,
8 marijuana, depressant, stimulant, or hallucinogenic drug.

9 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 amends the uniform controlled substances act and reclassifies simple possession
2 of ten grams (10 g.) or less of certain controlled substances as a misdemeanor punishable as a two
3 (2) year misdemeanor rather than a felony.

4 This act would take effect upon passage.

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