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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: Senators Lombardi, Archambault, Miller, Goodwin, and Conley

Date Introduced: February 25, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 21-28-4.01, 21-28-4.11 and 21-28-4.14 of the General Laws in
2 Chapter 21-28 entitled "Uniform Controlled Substances Act" are hereby amended to read as
3 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) A controlled substance classified in schedules I, II and III, IV, and V, except the
30 substance classified as buprenorphine and marijuana, is guilty of a ~~crime~~ misdemeanor and, upon
31 conviction, may be imprisoned for not more than ~~three (3)~~ two (2) years, or fined not ~~less than five~~
32 ~~hundred dollars (\$500) nor more than five thousand dollars (\$5,000);~~ more than five hundred
33 dollars (\$500) or both; Nothing in this subsection shall be construed to prohibit the charging and
34 prosecution of any applicable felony offense pursuant to this chapter when the facts so warrant.

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

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

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

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

1 possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) two (2) times
2 in the eighteen (18) months prior to the third (3rd) offense.

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

6 (vii) No person may be arrested for a violation of (c)(2)(iii) or (c)(2)(iv) of this subsection
7 except as provided in this subparagraph. Any person in possession of an identification card, license,
8 or other form of identification issued by the state or any state, city, or town, or any college or
9 university, who fails to produce the same upon request of a police officer who informs the person
10 that he or she has been found in possession of what appears to the officer to be one ounce (1 oz.)
11 or less of marijuana, or any person without any such forms of identification who fails or refuses to
12 truthfully provide his or her name, address, and date of birth to a police officer who has informed
13 such person that the officer intends to provide such individual with a citation for possession of one
14 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, tribunal, or the family court that include
18 personally identifiable information about violations of (c)(2)(iii) or (c)(2)(iv) shall not be open to
19 public inspection in accordance with § 8-8.2-21.

20 (3) Jurisdiction.

21 (i) Any and all adjudications of violations of subsection (c)(2)(i) of this section shall fall
22 under the original jurisdiction of the Rhode Island superior court. The attorney general shall
23 prosecute any and all violations of subsection (c)(2)(i) of this section.

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

29 (iii) Any person who violates subsection (c)(2)(i) of this section may be evaluated on an
30 out-patient basis by a licensed clinician with specific expertise in diagnosing and treating substance
31 use disorder, who shall:

32 (A) Advise the person, if appropriate, of voluntary services available to address their
33 substance use disorder; and

34 (B) Report findings to the judiciary as to whether they deem the person to be drug addicted

1 as defined in § 21-28-1.02(20) for the purpose of determining whether the person should be
2 required to attend the program prescribed in subsection (c)(4)(ii) of this section.

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

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

8 (ii) If determined to be a drug addicted person, attend ~~Attend~~ and complete a drug-
9 counseling and education program, as prescribed, by the director of the department of behavioral
10 healthcare, developmental disabilities and hospitals and pay the sum of four hundred dollars (\$400)
11 to help defray the costs of this program which shall be deposited as general revenues. Failure to
12 attend may result, after hearing 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 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) shall be subject to a loss of license for a period of six (6) months for a
18 first offense and one year for each offense after.

19 (5) All fees assessed and collected pursuant to (c)(3)(ii) shall be deposited as general
20 revenues and shall be collected from the person convicted or who pleads nolo contendere before
21 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 **21-28-4.11. Second offenses.**

13 (a) Any person convicted of a second offense under this chapter, except for violations of
14 ~~subparagraphs~~ [§§ 21-28-4.01\(c\)\(2\)\(i\), 21-28-4.01\(c\)\(2\)\(ii\)](#), 21-28-4.01(c)(2)(iii), 21-28-
15 4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), may be imprisoned for a term up to twice the term authorized,
16 fined an amount up to twice that authorized, or both.

17 (b) For purposes of this section, an offense is considered a second offense if, prior to his or
18 her conviction of the offense, the offender has at any time been convicted under this chapter, except
19 for violations of ~~subparagraphs~~ [§§ 21-28-4.01\(c\)\(2\)\(i\), 21-28-4.01\(c\)\(2\)\(ii\)](#), 21-28-4.01(c)(2)(iii),
20 21-28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), or under any statute of the United States or of any state
21 relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

22 **21-28-4.14. Third or subsequent offenses.**

23 (a) Any person convicted of a third or subsequent offense under this chapter, except for
24 violations of ~~subparagraphs~~ [§§ 21-28-4.01\(c\)\(2\)\(i\), 21-28-4.01\(c\)\(2\)\(ii\)](#), 21-28-4.01(c)(2)(iii), 21-
25 28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), may be imprisoned for a term up to three (3) times the
26 term authorized, and fined an amount up to three (3) times that authorized by § 21-28-4.11, or both.

27 (b) For purposes of this section, an offense is considered a third or subsequent offense if,
28 prior to his or her conviction of the offense, the offender has at any time been convicted twice under
29 this chapter, except for violations of ~~subparagraphs~~ [§§ 21-28-4.01\(c\)\(2\)\(i\), 21-28-4.01\(c\)\(2\)\(ii\)](#),
30 21-28-4.01(c)(2)(iii), 21-28-4.01(c)(2)(iv) or 21-28-4.01(c)(2)(v), or twice under any statute of the
31 United States or of any state, or any combination of them, relating to narcotic drugs, marijuana,
32 depressant, stimulant, or hallucinogenic drug.

33 SECTION 2. Chapter 21-28 of the General Laws entitled "Uniform Controlled Substances
34 Act" is hereby amended by adding thereto the following section:

1 **21-28-4.23. Law enforcement reports.**

2 In the first week of January, 2021, and each year thereafter, the attorney general shall, in
3 cooperation with local law enforcement agencies and the state police, submit to the general
4 assembly a report summarizing the impact of § 21-28-4.01(c)(2)(i) on law enforcement. The report
5 shall include the number of people prosecuted under § 21-28-4.01(c)(2)(i), including the
6 breakdown by race and gender of those people prosecuted and the sentence imposed.

7 SECTION 3. 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 amend the Uniform Controlled Substances Act to reclassify simple
2 possession of a controlled substance classified in schedules I, II, III, IV and IV, unless otherwise
3 provided in §§ 21-28-4.01.1 and 21-28-4.01.2, as a misdemeanor instead of a felony and excludes
4 the possession of buprenorphine from those controlled substances that can result in criminal
5 penalties.

6 This act would take effect upon passage.

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