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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Slater, and Diaz

Date Introduced: March 18, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.1 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. [As amended by P.L. 2021, ch. 286, § 2 and**  
4 **P.L. 2021, ch. 287, § 2.]**

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

16 (4) Any person, except as provided for in subsection (a)(2), who violates this subsection  
17 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 buprenorphine and the substance classified as marijuana,  
32 is guilty of a misdemeanor and, upon conviction, may be imprisoned for not more than two (2)  
33 years, or fined not more than five hundred dollars (\$500) or both.

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

1 ~~(10 g.), but less~~ than one ounce (1 oz.) of a mixture or substance containing a detectable amount of  
2 a controlled substance classified in schedules I, II and III, IV, and V, except buprenorphine and the  
3 substance classified as marijuana, is guilty of a felony and, upon conviction, may be imprisoned  
4 for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.

5 (iii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as  
6 marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon  
7 conviction, may be imprisoned for not more than one year, or fined not more than five hundred  
8 dollars (\$500), or both.

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

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

34 (vi) Notwithstanding any public, special, or general law to the contrary, a person not

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

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

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

19 (ix) No violation of (c)(2)(iv) or (c)(2)(v) of this subsection shall be considered a violation  
20 of parole or probation.

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

24 (3) Jurisdiction.

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

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

33 (4) Additionally, every person convicted or who pleads nolo contendere under (c)(2)(i) or  
34 (c)(2)(ii) or convicted or who pleads nolo contendere a second or subsequent time under (c)(2)(iii),

1 who is not sentenced to a term of imprisonment to serve for the offense, shall be required to:

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

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

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

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

14 (5) All fees assessed and collected pursuant to (c)(2)(iii) shall be deposited as general  
15 revenues and shall be collected from the person convicted or who pleads nolo contendere before  
16 any other fines authorized by this chapter.

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

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

31 (f) It is unlawful for any person to knowingly or intentionally possess, manufacture,  
32 distribute, or possess with intent to manufacture or distribute, any extract, compound, salt  
33 derivative, or mixture of salvia divinorum or datura stramonium or its extracts unless the person is  
34 exempt pursuant to the provisions of § 21-28-3.30. Notwithstanding any laws to the contrary, any

1 person who violates this section is guilty of a misdemeanor and, upon conviction, may be  
2 imprisoned for not more than one year, or fined not more than one thousand dollars (\$1,000), or  
3 both. The provisions of this section shall not apply to licensed physicians, pharmacists, and  
4 accredited hospitals and teaching facilities engaged in the research or study of salvia divinorum or  
5 datura stramonium and shall not apply to any person participating in clinical trials involving the  
6 use of salvia divinorum or datura stramonium.

7 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

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1           This act would amend the Uniform Controlled Substances Act to reclassify simple  
2 possession of ten (10) grams to one ounce or twenty-eight and thirty-five hundredths grams (28.35  
3 grams) a controlled substance classified in schedules I, II, III, IV, and V, unless otherwise provided  
4 in § 21-28-4.01.1 and § 21-28-4.01.2, as a misdemeanor instead of a felony.

5           This act would take effect upon passage.

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