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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO UNIFORM CONTROLLED SUBSTANCES ACT - OFFENSES AND
PENALTIES

Introduced By: Representatives Jacquard, Johnston, Lima, and Nunes

Date Introduced: March 12, 2015

Referred To: House Judiciary

(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 five
32 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 § 21-28-4.01(a)(1) and

1 upon conviction may be imprisoned for not more than one year or fined not less than two hundred
2 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) and forfeiture of the marijuana, but not to any other form of criminal or civil
8 punishment or disqualification. Notwithstanding any public, special, or general law to the
9 contrary, this civil penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana
10 shall apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen
11 (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 ~~offense~~ [disposition](#), the penalty shall be a three hundred
20 dollar (\$300) civil fine and forfeiture of the marijuana, except that if no drug-awareness program
21 or community service is available, the penalty shall be a fine of one hundred fifty dollars (\$150)
22 and 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 (1st) or second (2nd) violation within the
28 previous 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 § 21-28-4.01(c)(2)(iii) or 21-28-

1 4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.

2 (vi) Any unpaid civil fine issued under § 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv)
3 shall double to three hundred dollars (\$300) if not paid within thirty (30) days of the ~~offense~~
4 disposition. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid
5 within ninety (90) days.

6 (vii) No person may be arrested for a violation of § 21-28-4.01(c)(2)(iii) or 21-28-
7 4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an
8 identification card, license, or other form of identification issued by the state or any state, city, or
9 town, or any college or university, who fails to produce the same upon request of a police officer
10 who informs the person that he or she has been found in possession of what appears to the officer
11 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of
12 identification that fails or refuses to truthfully provide his or her name, address, and date of birth
13 to a police officer who has informed such person that the officer intends to provide such
14 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be
15 arrested.

16 (viii) No violation of § 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be considered a
17 violation of parole or probation.

18 (ix) Any records collected by any state agency or tribunal that include personally
19 identifiable information about violations of § 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall
20 not be ~~sealed eighteen (18) months after the payment of said civil fine~~ open to public inspection
21 in accordance with § 8-8.2-21.

22 (3) Jurisdiction. - Any and all violations of § 21-28-4.01(c)(2)(iii) and 21-28-
23 4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All money
24 associated with the civil fine issued under § 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be
25 payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines collected by the
26 Rhode Island traffic tribunal from civil penalties issued pursuant to § 21-28-4.01(c)(2)(iii) or 21-
27 28-4.01(c)(2)(iv) shall be expended on drug awareness and treatment programs for youth.

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

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

33 (ii) Attend and complete a drug counseling and education program as prescribed by the
34 director of the department of mental health, retardation and hospitals and pay the sum of four

1 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as
2 general revenues. Failure to attend may result, after hearing by the court, in jail sentence up to
3 one year;

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

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

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

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

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

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

1 datura stramonium and shall not apply to any person participating in clinical trials involving the
2 use of salvia divinorum or datura stramonium.

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO UNIFORM CONTROLLED SUBSTANCES ACT - OFFENSES AND
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1 This act would provide that records pertaining to marijuana violations under §§ 21-28-
2 4.01(c)(2)(ii) and 21-28-4.01 (c)(2)(iv) would not be open to the public consistent with § 8-8.2-21
3 and would eliminate the provision of law providing for the sealing of records eighteen (18)
4 months after payment of a civil fine. The act would also provide that the time period for the
5 doubling and tripling of fines would start at the time of disposition rather than at the time of the
6 commission of the offense.

7 § 8-8.2-21, for the purpose of explanation, is set forth below:

8 "**8-8.2-21. Abstracts of court records -- Traffic tribunal.** -- A full record shall be kept
9 by the Rhode Island traffic tribunal in this state of every case in which a person is charged with
10 violating subparagraphs 21-28-4.01(c)(2)(iii) and 21-28-4.01(c)(2)(iv). An abstract of the record
11 shall be retained by the court. The abstract shall be made upon forms prepared by the chief
12 magistrate of the Rhode Island traffic tribunal and shall include all necessary information as to
13 the parties to the cause, the nature of the offense, the date of the hearing, the plea, the decision,
14 the judgment, and the result, and every abstract shall be certified by the clerk of the court. The
15 Rhode Island traffic tribunal shall keep the records and they shall not be open to public
16 inspection. The chief magistrate of the traffic tribunal shall make the records available to Rhode
17 Island state and local police departments for their inspection of the details of cases which have
18 been heard before the tribunal."

19 This act would take effect upon passage.

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