

2021 -- S 0065 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

**RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT -
OFFENSES AND PENALTIES**

Introduced By: Senators Miller, Coyne, Quezada, Archambault, Bell, Murray, Valverde,
DiMario, and Acosta

Date Introduced: January 19, 2021

Referred To: Senate 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(20)~~ § 21-28-
7 1.02, who violates this subsection with respect to a controlled substance classified in schedule I or
8 II, except 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) nor
10 less than 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 the
13 person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §
14 21-28-1.02(20).

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, 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
30 [buprenorphine and](#) the substance classified as marijuana, is guilty of a crime and, upon conviction,
31 may be imprisoned for not more than three (3) years, or fined not less than five hundred dollars
32 (\$500) nor more than five 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 (a)(1), and, upon

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

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

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

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

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

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

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

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

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

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

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

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

34 (iv) If the offense involves the use of any automobile to transport the substance or the

1 substance is found within an automobile, then a person convicted or who pleads nolo contendere
2 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
3 first offense and one year for each offense after.

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

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

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

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

1 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 exclude the possession of buprenorphine from those controlled substances
- 2 that can result in criminal penalties.
- 3 This act would take effect upon passage.

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