

2014 -- S 2379

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO FOOD AND DRUGS

Introduced By: Senators Miller, Nesselbush, Lombardo, Sosnowski, and Crowley

Date Introduced: February 12, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 21 of the General Laws entitled "FOOD AND DRUGS" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 28.9

4 MARIJUANA REGULATION, CONTROL, AND TAXATION ACT

5 **21-28.9-1. Short title. --** This chapter shall be known and maybe cited as the "Marijuana  
6 Regulation, Control, and Taxation Act."

7 **21-28.9-2. Legislative findings. --** The general assembly hereby finds and declares that:

8 (1) More than seven (7) decades of arresting marijuana users has failed to prevent  
9 marijuana use; a study published in the American journal of public health compared marijuana  
10 usage rates in the United States with rates in the Netherlands, where adults' marijuana use and  
11 sales are de facto legal, found "no evidence to support claims that criminalization reduces  
12 [marijuana] use."

13 (2) More than one hundred million (100,000,000) adults in the United States, including  
14 the last three (3) presidents, have used marijuana, and data from the 2012 monitoring the future  
15 survey show that, despite prohibition, more than eighty percent (80%) of twelfth graders find  
16 marijuana "fairly easy" to obtain.

17 (3) Overdose death from prescription drug abuse, opiates, and heroin are at a crisis level  
18 throughout the northeast region. Marijuana has never been shown to cause a fatal overdose, but  
19 relegating sales to the illicit market has resulted in deadly outcomes.

1 (4) More than sixty thousand (60,000) people have been killed by drug cartel and  
2 crackdown-related violence since the beginning of the crackdown on cartels in Mexico in 2006,  
3 and, a significant portion of drug cartel profits come from marijuana sales in the United States.

4 (5) The lack of marijuana market regulation ensures that marijuana production and  
5 distribution are in the hands of unlicensed growers, who are untaxed, unmonitored, and often  
6 cultivate on state or federal lands, and the product is not controlled or regulated for safety  
7 concerns.

8 (6) Over seven thousand six hundred (7,600) suspects were booked by federal law  
9 enforcement in 2010, approximately one percent (1%) of all marijuana arrests, demonstrating that  
10 nearly all marijuana arrests occurs on the state level, and thus, state legislative action has the  
11 capacity to significantly change policy.

12 (7) There is an alarming racial disparity in marijuana arrests in Rhode Island, with  
13 African Americans arrested at over two and one-half (2½) times the rate of whites in 2010,  
14 although their marijuana usage rates were very similar.

15 (8) Removing state criminal penalties for persons aged twenty-one (21) and older who  
16 use or cultivate small amounts of marijuana, and from regulated providers, would allow police to  
17 spend more time preventing and investigating serious crimes like murder, rape, assault, robbery,  
18 burglary, and driving under the influence of alcohol and other drugs and would create substantial  
19 savings.

20 (9) States are not required to enforce federal law or to prosecute people for engaging in  
21 activities prohibited by federal law, and may choose whether or not to impose state criminal  
22 penalties on conduct.

23 (10) The voters of Colorado and Washington have repealed their states' prohibitions on  
24 adults using, possessing, and, in Colorado cultivating, marijuana for personal use. Both states  
25 have set up a system of regulated marijuana retail distribution to adults twenty-one (21) and older  
26 and have imposed taxes at both the wholesale and retail level. Rhode Island joins these states in  
27 replacing marijuana prohibition with regulation and taxation.

28 **21-28.9-3. Definitions.** -- For purposes of this chapter:

29 (1) "Department" means the state of Rhode Island department of business regulation.

30 (2) "Marijuana" means all parts of the plant of the genus cannabis; whether growing or  
31 not; the seeds thereof; the resin extracted from any part of the plant; and every compound,  
32 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not  
33 include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the  
34 seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of

1 the mature stalks (except the resin extracted from it), fiber, oil, or cake, or the sterilized seed of  
2 the plant that is incapable of germination.

3 (3) "Marijuana paraphernalia" means equipment, products, and materials which are used  
4 or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing,  
5 compounding, converting, producing, processing, preparing, testing, analyzing, packaging,  
6 repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing  
7 marijuana into the human body.

8 (4) "Marijuana products" means concentrated marijuana products and marijuana products  
9 that are comprised of marijuana and other ingredients that are intended for use or consumption,  
10 such as, but not limited to, edible products, ointments, and tinctures.

11 (5) "Public place" means any street, alley, park, sidewalk, public building other than  
12 individual dwellings, or any place of business or assembly open to or frequented by the public,  
13 and other place to which the public has access.

14 (6) "Retailer" means an entity that is either:

15 (i) Registered pursuant to § 21-28.10-2, to be exempt from state penalties for purchasing  
16 marijuana from marijuana cultivation facilities, manufacturing marijuana products and marijuana  
17 paraphernalia; and selling marijuana, marijuana products, and marijuana paraphernalia to  
18 customers who are twenty-one (21) years of age or older; or

19 (ii) Exempt from state penalties under the Rhode Island general laws due to the  
20 department not issuing registrations.

21 (7) "Safety compliance facility" means an entity that is either:

22 (i) Registered pursuant to chapter 28.10 of this title to be exempt from state penalties for  
23 providing one or both of the following services: training, including that related to cultivation of  
24 marijuana, safe handling of marijuana, and security and inventory procedures; or testing  
25 marijuana and marijuana products for potency and contaminants; or

26 (ii) Exempt from state penalties under chapter 28.10 of this title due to the department not  
27 issuing registrations.

28 (8) "Smoking" means heating to at least the point of combustion, causing plant material  
29 to burn. It does not include vapping, which means heating below the point of combustion and  
30 resulting in a vapor or mist.

31 (9) "State prosecution" means prosecution initiated or maintained by the state of Rhode  
32 Island or an agency or political subdivision of the state of Rhode Island.

33 (10) "Marijuana cultivation facility" means an entity that is either:

34 (i) Registered pursuant to § 21-28.10-2 to be exempt from state penalties for cultivating,

1 preparing, packaging, and selling marijuana to a retailer or another marijuana cultivation facility,  
2 but not for manufacturing or selling marijuana products or selling marijuana to the general public;  
3 or

4 (ii) Exempt from state penalties under chapter 28.10 of this title due to the department not  
5 issuing registrations.

6 **21-28.9-4. Exempt activities.** -- Except as otherwise provided in this chapter:

7 (1) A person who is twenty-one (21) years of age or older is exempt from arrest, civil or  
8 criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board,  
9 and state prosecution for the following acts:

10 (i) Actually and constructively using, obtaining, purchasing, transporting, or possessing  
11 one ounce (1 oz.) or less of marijuana, not including hashish.

12 (ii) Actually and constructively using, obtaining, purchasing, transporting, or possessing  
13 marijuana products, including up to five (5) grams or less of hashish, sixteen (16) ounces of  
14 marijuana-infused product in solid form and seventy-two (72) ounces of marijuana-infused  
15 product in liquid form.

16 (iii) Controlling any premises or vehicle where persons who are twenty-one (21) years of  
17 age or older possess, process, or store amounts of marijuana and marijuana products that are legal  
18 under state law under paragraphs (i) and (ii);

19 (iv) Using, obtaining, manufacturing, producing, purchasing, transporting, or possessing,  
20 actually or constructively, marijuana paraphernalia;

21 (v) Selling, delivering, or transferring, marijuana seeds to a marijuana establishment or to  
22 a person who is twenty-one (21) years of age or older;

23 (vi) Selling, delivering, or transferring, marijuana paraphernalia to marijuana  
24 establishments or persons who are twenty-one (21) years of age or older;

25 (vii) Giving away without consideration the amounts of marijuana and marijuana  
26 products that are legal under state law under paragraphs (i) and (ii) if the recipient is a person who  
27 is twenty-one (21) years of age or older;

28 (viii) Transferring or delivering marijuana products or up to one ounce (1 oz.) of  
29 marijuana to a safety compliance facility;

30 (ix) Aiding and abetting another person who is twenty-one (21) years of age or older in  
31 the actions allowed under this chapter;

32 (x) Cultivating, possessing, growing, processing, or transporting no more than two (2)  
33 marijuana plants, with one or fewer being a mature, flowering plant;

34 (xi) Controlling any premises where other persons twenty-one (21) years of age or older

1 cultivate marijuana plants, with the total number of mature, flowering plants not exceeding three  
2 (3) in any dwelling unit;

3 (xii) Assisting with the cultivation of marijuana plants that are cultivated at the same  
4 location for persons twenty-one (21) years of age or older, with the total number of mature,  
5 flowering plants not exceeding three (3) in any dwelling unit; and

6 (xiii) Any combination of the acts described within paragraphs (i) to (xii), inclusive.

7 (2) Except as provided in this chapter and chapter 28.10 of this title, a retailer or any  
8 person who is twenty-one (21) years of age or older and acting in his or her capacity as an owner,  
9 principal officer, partner, board member, employee, or agent of a retailer is exempt from arrest,  
10 civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing  
11 board, and state prosecution for the following acts:

12 (i) Transporting or possessing, actually or constructively, marijuana, including seedlings  
13 or cuttings, that was purchased from a marijuana cultivation facility or retailer;

14 (ii) Manufacturing, possessing, or producing marijuana products;

15 (iii) Transporting or possessing, actually or constructively, marijuana products that were  
16 purchased from a retailer;

17 (iv) Obtaining or purchasing marijuana from a marijuana cultivation center or marijuana  
18 and marijuana products from retailer;

19 (v) Selling, delivering, or transferring marijuana or marijuana products to another retailer;

20 (vi) Manufacturing, possessing, producing, obtaining, or purchasing marijuana  
21 paraphernalia;

22 (vii) Selling, transferring, or delivering marijuana, including seedlings or cuttings,  
23 marijuana products, or marijuana paraphernalia to any person who is twenty-one (21) years of age  
24 or older;

25 (viii) Transferring or delivering marijuana or marijuana products to a safety compliance  
26 facility;

27 (ix) Controlling any premises or vehicle where marijuana, marijuana products and  
28 marijuana paraphernalia is possessed, sold, or deposited in a manner that is not in conflict with  
29 this chapter or department regulations; and

30 (x) Any combination of the acts described within paragraphs (i) to (ix), inclusive.

31 (3) Except as provided in this chapter and chapter 28.6 of this title, a marijuana  
32 cultivation facility or any person who is twenty-one (21) years of age or older and acting in his or  
33 her capacity as an owner, principal officer, partner, board member, employee, or agent of a  
34 marijuana cultivation facility is exempt from arrest, civil or criminal penalty, seizure or forfeiture

1 of assets, discipline by any state or local licensing board, and state prosecution for the following  
2 acts:

3 (i) Cultivating, packing, processing, transporting, or manufacturing marijuana, but not  
4 marijuana products;

5 (ii) Transporting or possessing marijuana that was produced by the marijuana cultivation  
6 facility or another marijuana cultivation facility;

7 (iii) Transporting or possessing marijuana seeds;

8 (iv) Possessing, transporting, or producing marijuana paraphernalia;

9 (v) Selling, delivering, or transferring marijuana to a retailer or a marijuana cultivation  
10 facility;

11 (vi) Purchasing marijuana from a marijuana cultivation facility;

12 (vii) Purchasing marijuana seeds from a person who is twenty-one (21) years of age or  
13 older;

14 (viii) Delivering or transferring marijuana to a safety compliance facility;

15 (ix) Controlling any premises or vehicle where marijuana and marijuana paraphernalia is  
16 possessed, manufactured, sold, or deposited; and

17 (x) Any combination of the acts described within paragraphs (i) to (ix), inclusive.

18 (4) Except as provided in this chapter and chapter 28.6 of this title, a safety compliance  
19 facility or any person who is twenty-one (21) years of age or older and acting in his or her  
20 capacity as an owner, principal officer, owner, partner, board member, employee, or agent of a  
21 safety compliance facility shall not be subject to state prosecution; search, except by the  
22 department pursuant to § 21-28.10-17; seizure; or penalty in any manner or be denied any right or  
23 privilege, including, but not limited to, civil penalty or disciplinary action by a court or business  
24 licensing board or entity for the following acts:

25 (i) Acquiring, transporting, storing, or possessing marijuana or marijuana products;

26 (ii) Returning marijuana and marijuana products to marijuana cultivation facilities and  
27 retailers, or, if the quantity is not more than the amounts allowed under § 21-28.9-4, to  
28 individuals twenty-one (21) years of age or older;

29 (iii) Delivering marijuana to other safety compliance facilities;

30 (iv) Receiving compensation for analytical testing, including for contaminants or  
31 potency; and

32 (v) Any combination of the acts described within subdivisions (4)(i) through (4) (iv),  
33 inclusive.

34 (5) The acts listed in subdivisions (1) through (4), when undertaken in compliance with

1 the provisions of this chapter, are lawful under Rhode Island law.

2 (6) Except as otherwise provided in subdivision (7), in a prosecution for selling,  
3 transferring, delivering, giving, or otherwise furnishing marijuana, marijuana products or  
4 marijuana paraphernalia to any person who is under twenty-one (21) years of age, it is a complete  
5 defense if:

6 (i) The person who sold, gave, or otherwise furnished marijuana, marijuana products, or  
7 marijuana paraphernalia to a person who is under twenty-one (21) years of age was a retailer or  
8 was acting in his or her capacity as an owner, employee, or agent of a retailer at the time the  
9 marijuana or marijuana paraphernalia was sold, given, or otherwise furnished to the person; and

10 (ii) Before selling, giving, or otherwise furnishing marijuana, marijuana products or  
11 marijuana paraphernalia to a person who is under twenty-one (21) years of age, the person who  
12 sold, gave, or otherwise furnished the marijuana products or marijuana paraphernalia, or a staffer  
13 or agent of the retailer, was shown a document which appeared to be issued by an agency of a  
14 federal, state, tribal, or foreign sovereign, government and which indicated that the person to  
15 whom the marijuana products or marijuana paraphernalia was sold, given, or otherwise furnished  
16 was twenty-one (21) years of age or older at the time the marijuana products or marijuana  
17 paraphernalia was sold, given, or otherwise furnished to the person.

18 (7) The complete defense set forth in subdivision (6) does not apply if:

19 (i) The document which was shown to the person who sold, gave, or otherwise furnished  
20 the marijuana, marijuana products, or marijuana paraphernalia was counterfeit, forged, altered, or  
21 issued to a person other than the person to whom the marijuana, marijuana products or marijuana  
22 paraphernalia was sold, given, or otherwise furnished; and

23 (ii) Under the circumstances, a reasonable person would have known or suspected that  
24 the document was counterfeit, forged, altered, or issued to a person other than the person to  
25 whom the marijuana, marijuana products, or marijuana paraphernalia was sold, given, or  
26 otherwise furnished.

27 **21-28.9-5. Authorized activities.** -- (a) Any person who is twenty-one (21) years of age  
28 or older is authorized to manufacture, produce, use, obtain, purchase, transport, or possess,  
29 actually or constructively, marijuana paraphernalia.

30 (b) Any person who is twenty-one (21) years of age or older is authorized to distribute or  
31 sell marijuana paraphernalia to marijuana establishments or persons who are twenty-one (21)  
32 years of age or older.

33 **21-28.9-6. Public or unsecured cultivation of marijuana - Penalty.** -- The manufacture  
34 or cultivation of two (2) or fewer marijuana plants by any person who is twenty-one (21) years of

1 age or older in a location that is contrary to this section is a misdemeanor punishable by a fine of  
2 up to one thousand dollars (\$1,000), up to ten (10) days in jail, or both.

3 (1) Cultivation shall not occur in a location where the marijuana plants are subject to  
4 public view without the use of binoculars, aircraft, or other optical aids.

5 (2) Marijuana that is cultivated outdoors must be cultivated in an enclosed, locked,  
6 location, such as a locked fenced-in area.

7 (3) Cultivation may only occur on property lawfully in possession of the cultivator or  
8 with the consent of the person in lawful possession of the real property.

9 (4) If one or more persons under twenty-one (21) years of age live in or are guests at the  
10 property where marijuana is cultivated, reasonable precautions must be taken to prevent their  
11 access to marijuana plants. For purposes of illustration and not limitation, cultivating marijuana in  
12 a locked closet, room, or fully enclosed area to which the person or persons under twenty-one  
13 (21) years of age do not possess a key, constitutes reasonable precautions.

14 **21-28.9-7. Activities not exempt. --** The provisions of this chapter do not exempt any  
15 person from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state  
16 or local licensing board, and state prosecution for, not may he or she establish an affirmative  
17 defense based on this chapter to charges arising from, any of the following acts:

18 (1) Driving, operating, or being in actual physical control of a vehicle or a vessel under  
19 power or sail while impaired by marijuana or marijuana products; or

20 (2) Possessing marijuana or marijuana products if the person is a prisoner; or

21 (3) Possessing marijuana or marijuana products in any local detention facility, county jail,  
22 state prison, reformatory, or other correctional facility, including, without limitation, any facility  
23 for the detention of juvenile offenders.

24 **21-28.9-8. Smoking marijuana shall be prohibited in all public places. --** (a) A person  
25 who smokes marijuana in an indoor public place shall be guilty of a petty misdemeanor, and may  
26 be punished as follows:

27 (1) By a fine of not more than two hundred fifty dollars (\$250), imprisonment for a term  
28 not exceeding ten (10) days, or both, for the first violation;

29 (2) By a fine of not more than five hundred dollars (\$500), imprisonment for a term not  
30 exceeding thirty (30) days, or both, for the second or subsequent violation.

31 (b) A person who smokes marijuana in an outdoor public place shall be liable for a civil  
32 penalty of one hundred fifty dollars (\$150).

33 (c) Municipalities may impose additional fines equivalent to state fines for the  
34 consumption of alcohol in an outdoor public place.





1 or

2 (ii) Exempt from state penalties under this chapter due to the department not issuing  
3 registrations.

4 (3) "Marijuana establishment" means a marijuana cultivation facility, retailer, or safety  
5 compliance facility.

6 (4) "Marijuana products" means concentrated marijuana products and marijuana products  
7 that are comprised of marijuana and other ingredients and are intended for use or consumption,  
8 such as, but not limited to, edible products, ointments, and tinctures.

9 (5) "Retailer" means an entity that is either:

10 (i) Registered pursuant to § 21-28.10-2, to be exempt from state penalties for purchasing  
11 marijuana from marijuana cultivation facilities, manufacturing marijuana products and marijuana  
12 paraphernalia, and selling marijuana, marijuana products, and marijuana paraphernalia to  
13 customers who are twenty-one (21) years of age or older; or

14 (ii) Exempt from state penalties under this chapter due to the department not issuing  
15 registrations.

16 (6) "Safety compliance facility" means an entity that is either:

17 (i) Registered pursuant to this chapter, to be exempt from state penalties for providing  
18 one or both of the following services: training, including that related to cultivation of marijuana,  
19 safe handling of marijuana, and security and inventory procedures; or testing marijuana for  
20 potency and contaminants; or

21 (ii) Exempt from state penalties under this chapter due to the department not issuing  
22 registrations.

23 **21-28.10-2. Retailer registration.** – Except as otherwise provided in § 21-28.10-5:

24 (1) A person or an entity may apply, in accordance with the provisions of this chapter and  
25 the regulations adopted pursuant thereto, for the issuance of a registration exempting the entity  
26 from state prosecution and penalties for operating as a retailer pursuant to the provisions of this  
27 chapter.

28 (2) Each applicant for a retailer registration shall submit application materials required by  
29 the department and a non-refundable fee in an amount determined by the department, not to  
30 exceed five thousand dollars (\$5,000).

31 (3) Six (6) months after the effective date of this chapter, the department shall issue a  
32 retailer registration to any person or entity that is properly registered as a compassion center  
33 pursuant to § 21-28.6-12, is in compliance with all applicable rules and regulations, and that  
34 submits a statement to the department notifying it of its intent to operate as a retailer.

1           (4) Eighteen (18) months after the effective date of this chapter, the department shall  
2 have issued ten (10) retailer registrations, provided a sufficient number of qualified applicants  
3 exist. If more qualifying applicants apply than the department will register, the department shall  
4 implement a competitive scoring process to determine to which applicants to grant registrations,  
5 which may be varied to account for geographic distribution, population density, or both. The  
6 scoring system shall take into account the applicant and managing officers' applicable experience,  
7 training, and expertise; the applicant's plan for security and diversion prevention; and criminal,  
8 civil, or regulatory issues encountered by other entities the applicant and managing officers have  
9 controlled or managed; and the suitability of the proposed location. A compassion center  
10 registered under § 21-28.6-12 of the Rhode Island general laws shall be given priority over the  
11 other applicants in any competitive application process.

12           (5) If at any time after two (2) years after the effective date of this chapter, there are  
13 fewer than ten (10) valid retail registrations, the department shall accept and process applications  
14 for retailer registrations.

15           (6) The fee for the initial issuance of a registration as a retailer is ten thousand dollars  
16 (\$10,000).

17           (7) A registration as a retailer may be renewed annually for a ten thousand dollar  
18 (\$10,000) fee. The renewal application may be submitted up to one hundred twenty (120) days  
19 before the expiration of the retailer registration. If the department fails to approve a valid renewal  
20 application, it shall be deemed granted sixty (60) days after its submission.

21           (8) Nothing in this section shall prohibit an entity registered as a retailer or seeking  
22 retailer registration from also holding a marijuana cultivation facility registration or seeking  
23 registration as a marijuana cultivation facility pursuant to § 21-28.10-3.

24           (9) Nothing in this section shall prohibit an entity registered as a retailer or seeking  
25 retailer registration from also holding a compassion center registration or seeking registration as a  
26 compassion center pursuant to § 21-28.6-12.

27           **21-28.10-3. Marijuana cultivation facility registration.** – Except as otherwise provided  
28 in § 21-28.10-5:

29           (1) An entity may apply, in accordance with the provisions of this chapter and the  
30 regulations adopted pursuant thereto, for the issuance of a registration exempting the entity from  
31 state prosecution and penalties for operating as a marijuana cultivation facility pursuant to the  
32 provisions of this chapter.

33           (2) Each applicant for a marijuana cultivation facility registration shall submit application  
34 materials required by the department and a nonrefundable fee in an amount determined by the

1 department, not to exceed five thousand dollars (\$5,000).

2 (3) Three (3) months after the effective date of this chapter, the department shall issue a  
3 marijuana cultivation facility registration to any person or entity that is properly registered as a  
4 compassion center pursuant to § 21-28.6-12, is in compliance with all applicable rules and  
5 regulations, and that submits a statement to the department notifying it of its intent to operate as a  
6 marijuana cultivator.

7 (4) The department shall accept and process applications for marijuana cultivation facility  
8 registrations at any time after the effective date of this chapter, if it is determined the existing  
9 marijuana cultivation facilities are unlikely to be able to meet demand.

10 (5) If the department decides to accept additional applicants for marijuana cultivation  
11 registrations in order to meet demand, and if more qualifying applicants apply than the  
12 department will register, the department shall implement a competitive scoring process to  
13 determine to which applicants to grant registration. The scoring system shall take into account the  
14 applicant and managing officers' applicable experience, training, and expertise; the applicant's  
15 plan for security and diversion prevention; any criminal, civil, or regulatory issues encountered  
16 by other entities the applicant and managing officers have controlled or managed; and the  
17 suitability of the proposed location. A compassion center that cultivates marijuana and is  
18 registered under § 21-28.6-12 shall be given priority over the applicants in any competitive  
19 application process.

20 (6) Each marijuana cultivation facility shall pay a fee for the initial issuance of a  
21 registration and for annual renewal in an amount determined by the department. The department  
22 shall set a tiered system of fees, which vary depending on the size of the marijuana cultivation  
23 facility. The highest fee may not exceed twenty thousand dollars (\$20,000) per year.

24 (7) A registration as a marijuana cultivation facility may be renewed annually. The  
25 renewal application may be submitted up to one hundred twenty (120) days before the expiration  
26 of the marijuana cultivation facility registration. If the department fails to approve a valid renewal  
27 application, it shall be deemed granted sixty (60) days after its submission.

28 (8) If at any time beginning eighteen (18) months after the effective date of this chapter,  
29 the department has failed to begin issuing marijuana cultivation facility registrations or has  
30 ceased issuing marijuana cultivation facility registrations in accordance with this chapter, a  
31 marijuana cultivation facility registration shall not be required to operate as a marijuana  
32 cultivation facility for any person or entity that is properly registered as a compassion center  
33 pursuant to § 21-28.6-12.

34 (9) Nothing in this section shall prohibit an entity registered as a marijuana cultivation

1 facility or seeking marijuana cultivation facility registration from also holding retailer registration  
2 or seeking registration as a retailer pursuant to § 21-28.10-2.

3 (10) Nothing in this section shall prohibit an entity registered as a marijuana cultivation  
4 facility or seeking marijuana cultivation facility registration from also holding a compassion  
5 center registration or seeking registration as a compassion pursuant to § 21-28.6-12.

6 **21-28.10-4. Safety compliance facility registration.** – Except as otherwise provided in §  
7 21-28.10-6:

8 (1) An entity may apply, in accordance with the provisions of this chapter and the  
9 regulations adopted pursuant thereto, for the issuance of a registration exempting the entity from  
10 state prosecution and penalties for operating as a safety compliance facility pursuant to the  
11 provisions of this chapter.

12 (2) Each applicant for a safety compliance facility registration shall submit application  
13 materials required by the department and a nonrefundable fee in an amount determined by the  
14 department, not to exceed five thousand dollars (\$5,000).

15 (3) If a qualified applicant exists, the department shall grant a two (2) year registration to  
16 at least two (2) safety compliance facilities within one year of the effective date of this chapter,  
17 provided that each facility pays a five thousand dollar (\$5,000) fee. If more qualifying applicants  
18 apply than the department will register, the department shall implement a competitive scoring  
19 process to determine to which applicants to grant registrations, which may be varied for  
20 geographic distribution. The scoring system shall take into account the applicant and managing  
21 officers' applicable experience, training, and expertise; the applicant's plan for security and  
22 diversion prevention; any criminal, civil, or regulatory issues encountered by other entities the  
23 applicant and managing officers controlled or managed; the applicant's plan for services; and the  
24 suitability of the proposed location.

25 (4) If at any time after two (2) years after the effective date of this chapter, there are  
26 fewer than two (2) valid safety compliance facility registrations, the department shall accept and  
27 process applications for safety compliance facility registrations. In addition, the department may,  
28 at its discretion, grant additional safety compliance facility registrations.

29 (5) A safety compliance facility registration may be renewed biennially for a five  
30 thousand dollar (\$5,000) fee. The renewal application may be submitted up to one hundred  
31 twenty (120) days before the expiration of the registration. If the department fails to approve a  
32 valid renewal application, it shall be deemed granted sixty (60) days after its submission.

33 **21-28.10-5. Ineligibility for registration.** – A marijuana establishment may not operate,  
34 and a prospective marijuana establishment may not apply for a registration if any of the following

1 are true:

2 (1) The entity would be located within one thousand feet (1,000 ') of the property line of  
3 a pre-existing public school, private school, or structure used primarily for religious services or  
4 worship; or

5 (2) The entity sells intoxicating liquor for consumption on the premises.

6 **21-28.10-6. Municipalities.** – Nothing shall prohibit municipalities from enacting  
7 ordinances or regulations not in conflict with this section or with department rules regulating the  
8 time, place, and manner of marijuana establishments' operations, provided that no local  
9 government may prohibit any type of marijuana establishments' operation altogether, either  
10 expressly or through the enactment of ordinances or regulations which make any type of  
11 marijuana establishments' operation impracticable. Nothing shall prohibit municipalities from  
12 imposing civil and criminal penalties on the violation of ordinances enacted pursuant to this  
13 section.

14 **21-28.10-7. Advertising and product placement.** (a) No marijuana establishment or  
15 other person may advertise the sale of marijuana in a manner contrary to the regulations  
16 established by the department.

17 (b) Film, television, production, and other entertainment companies are prohibited from  
18 accepting payment for the product placement or marijuana or marijuana products in any  
19 production filmed in Rhode Island.

20 **21-28.10-8. Retailer safety insert.** – A retailer shall:

21 (1) Include a safety insert with all marijuana and marijuana products sold. The safety  
22 insert may, at the department's discretion, be developed and approved by the department and  
23 include, but not be limited to, information on:

24 (i) Methods of administering marijuana;

25 (ii) Any potential dangers stemming from the use of marijuana; and

26 (iii) How to recognize what may be problematic usage of marijuana and obtain  
27 appropriate services or treatment for problematic usage.

28 (2) Sell marijuana in its original marijuana cultivation facility packaging without making  
29 any change or repackaging.

30 (3) Sell marijuana products in its original retail packaging without making any changes or  
31 repackaging.

32 **21-28.10-9. Warning label on marijuana and marijuana products.** – (a) A marijuana  
33 cultivation facility must create a unique package and label for its marijuana identifying itself as  
34 the producer.

1 (b) A marijuana retailer that produces marijuana products must create a unique package  
2 and label for its marijuana products identifying itself as the producer.

3 (1) The name or registration number of the marijuana cultivation facility that produced  
4 the marijuana, and, in the case of marijuana products, the retailer that produced the marijuana  
5 products.

6 (2) If a safety compliance facility is operational, the potency of the marijuana, as  
7 determined by testing by a safety compliance facility, represented by the percentage of  
8 tetrahydrocannabinol by mass.

9 (3) A "produced on" date.

10 (4) Warnings that state: "Consumption of marijuana impairs your ability to drive a car or  
11 operate machinery", "Keep away from children," and, unless federal or state laws have changed,  
12 "Possession of marijuana is illegal outside of Rhode Island and under federal law."

13 **21-28.10-10. Marijuana cultivation facilities.** – (a) All marijuana cultivated by  
14 marijuana cultivation facilities shall be cultivated only in one or more enclosed, locked facilities.  
15 Each of the facilities must have been registered with the department, unless the department has  
16 ceased issuing or failed to begin issuing registrations.

17 (b) An "enclosed, locked facility" may include a building, room, greenhouse, fully  
18 enclosed fenced-in area, or other location enclosed on all sides and equipped with locks or other  
19 security devices that permit access only by:

20 (1) Employees, agents, or owners of the marijuana cultivation facility, all of whom must  
21 be twenty-one (21) years of age or older;

22 (2) Government employees performing their official duties;

23 (3) Contractors performing labor that does not include marijuana cultivation packaging,  
24 or processing; contractors must be accompanied by an employee, agent, or owner of the  
25 marijuana cultivation facility when they are in areas where marijuana is being grown or stored; or

26 (4) Members of the media, elected officials, and individuals over the age of twenty-one  
27 (21) touring the facility, if they are accompanied by an employee, agent, or owner of the  
28 marijuana cultivation facility.

29 **21-28.10-11. Transportation of marijuana.** – A marijuana establishment or any person  
30 who is acting in his or her capacity as an owner, employee, or agent of a marijuana establishment  
31 must have documentation when transporting marijuana on behalf of the marijuana establishment  
32 that specifies the amount of marijuana being transported, the registry identification number of the  
33 marijuana establishment, the date the marijuana is being transported, and, if the marijuana is  
34 being transported to another marijuana establishment, the registry identification number of the

1 intended marijuana establishment the marijuana is being transported to. If the marijuana  
2 establishment does not have a registration number because the department has ceased issuing  
3 registry identification certificates or has failed to begin issuing registry identification certificates,  
4 the marijuana establishment may instead use a number of its choosing that it consistently uses on  
5 documentation in place of registry identification number.

6 **21-28.10-12. Minors on the premises of marijuana establishment.** – (a) A marijuana  
7 establishment shall not allow any person who is under twenty-one (21) years of age to be present  
8 inside any room where marijuana or marijuana products are stored, produced, or sold by the  
9 marijuana establishment unless the person who is under twenty-one (21) years of age is:

10 (1) A government employee performing his or her official duties;

11 (2) An elected official, a member of the media, a contractor performing labor that does  
12 not include marijuana cultivation, manufacturing, packaging, or processing; or

13 (3) If the marijuana establishment is a retailer, a medical marijuana patient registered  
14 pursuant to chapter 21-28.6, if the marijuana establishment is also a compassion center registered  
15 under § 21-28.6-12.

16 (b) Except as otherwise provided in this subsection, in a prosecution for a violation of this  
17 section, it is a complete defense that before allowing a person who is under twenty-one (21) years  
18 of age into the room where marijuana is sold or stored, a staff member for the marijuana  
19 establishment was shown a document which appeared to be issued by an agency of a federal,  
20 state, tribal, or foreign sovereign government and which indicated that the person who was  
21 allowed onto the premises of the marijuana establishment was twenty-one (21) years of age or  
22 older at the time the person was allowed onto the premises. The complete defense set forth in this  
23 subsection does not apply if:

24 (1) The document which was shown to the person who allowed the person who is under  
25 twenty-one (21) years of age onto the premises of the retailer was counterfeit, forged, altered, or  
26 issued to a person other than the person who was allowed onto the premises of the retailer; and

27 (2) Under the circumstances, a reasonable person would have known or suspected that the  
28 document was counterfeit, forged, altered, or issued to a person other than the person who was  
29 allowed onto the premises.

30 **21-28.10-13. Retailer violations.** – (a) A retailer shall not:

31 (1) Sell, give, deliver, or otherwise furnish marijuana, marijuana products, or marijuana  
32 paraphernalia to any person who is under twenty-one (21) years of age unless the retailer is also  
33 registered as a compassion center pursuant to § 21-28.6-12 and the individual under twenty-one  
34 (21) is a qualifying patient registered under chapter 21-28.6.



1 (2) Sell, deliver, give, or otherwise furnish more than the following quantities of  
2 marijuana or marijuana products to a person in a single transaction unless the person is a  
3 qualifying patient or primary caregiver registered under chapter 21-28.6 and the retailer is also  
4 registered as a compassion center pursuant to § 21-28.6-12;

5 (i) More than one ounce (1 oz.) of marijuana, not including hashish;

6 (ii) Two (2) immature marijuana plants;

7 (iii) Five (5) grams of hashish;

8 (iv) Sixteen ounces (16 oz.) of marijuana-infused product in solid form; and

9 (v) Seventy-two ounces (72 oz.) of marijuana-infused product in liquid form.

10 (3) Knowingly and willfully sell, give, or otherwise furnish an amount of marijuana to a  
11 person that would cause that person to possess more than the quantities listed in subdivision (2)  
12 unless the retailer has verified that the person is a qualifying patient or primary caregiver  
13 registered under chapter 21-28.6 and the amount of marijuana dispensed is within the patient's  
14 limits;

15 (4) Purchase marijuana, other than marijuana seeds, from any person other than a  
16 marijuana cultivation facility or retailer;

17 (5) Purchase marijuana products from any person other than a marijuana retailer;

18 (6) Violate regulations issued by the department;

19 (b) In addition to any other penalty provided pursuant to specific statutes, a retailer who  
20 violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than  
21 one thousand dollars (\$1,000).

22 (c) As used in this section, "marijuana paraphernalia" means equipment, products, and  
23 materials, which are used or intended for use in plating, propagating, cultivating, growing,  
24 harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,  
25 analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or  
26 otherwise introducing marijuana into the human body.

27 **21-28.10-14. Marijuana cultivation facility violations.** – (a) A marijuana cultivation  
28 facility shall not:

29 (1) Manufacture, sell, give, or otherwise distribute marijuana products;

30 (2) Sell, deliver, give, or otherwise furnish marijuana to any person other than a  
31 marijuana establishment or an agent or staff member acting on behalf of a marijuana  
32 establishment;

33 (3) Purchase marijuana, other than marijuana seeds, from any person other than a  
34 marijuana cultivation facility; or

1 (4) Purchase or sell, deliver, give, or otherwise furnish marijuana in any manner other  
2 than as is exempted from state penalties pursuant to the provisions of this chapter and any  
3 regulations adopted pursuant thereto.

4 (b) In addition to any other penalty provided pursuant to specific statutes, a person who  
5 violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than  
6 one thousand dollars (\$1,000).

7 **21-28.10-15. Suspension or termination of registration.** – (a) The department may  
8 suspend or terminate the registration of a marijuana establishment that commits multiple or  
9 serious violations of this chapter or reasonable regulations issued pursuant to it.

10 (b) If the department has ceased issuing registrations or has not begun issuing  
11 registrations, and marijuana establishment lacks a registration as a result, any city or town where  
12 the retailer, marijuana cultivation facility, of safety compliance facility is operating may file for  
13 an injunction in district court if the retailer has committed multiple or serious violations of this act  
14 or regulations issued pursuant to it.

15 **21-28.10-16. Excise tax.** – An excise tax is hereby levied upon marijuana cultivation  
16 facilities and must be collected respecting all marijuana sold or transferred to retailers. The dried  
17 flowers of the marijuana plant shall be taxed at the rate of either fifty dollars (\$50.00) per ounce  
18 or proportionate part thereof, or an amount that the department may set that adjusts the initial fifty  
19 dollars (\$50.00) per ounce rate for inflation or deflation based on the consumer price index. All  
20 other parts of the marijuana plant that are sold or transferred by marijuana cultivation facilities to  
21 retailers, including, but not limited to, the dried leaves, shall be taxed at the rate of either ten  
22 dollars (\$10.00) per ounce or proportionate part thereof, or an amount that the department may set  
23 that adjusts the initial ten dollar (\$10.00) per ounce rate for inflation or deflation based on the  
24 consumer price index.

25 **21-28.10-17. Distribution of funds.** – The department shall apportion the money  
26 remitted to the department from registration fees and taxes collected pursuant to this chapter in  
27 the following manner:

28 (1) The department shall retain sufficient money to defray the entire cost of  
29 administration of this chapter.

30 (2) The department shall remit to the department of health an amount sufficient to cover  
31 the costs associated with any health and safety inspections made necessary by this chapter.

32 (3) After retaining sufficient money to defray the entire cost of administration of this  
33 chapter pursuant to subdivision (1) and remitting sufficient money to the department of health  
34 pursuant to subdivision (2), the department shall remit the remaining money to the general fund,

1 forty percent (40%) of which must be distributed to the department of health for use in voluntary  
2 programs for the prevention or treatment of the abuse of alcohol, tobacco, or controlled  
3 substances, and ten percent (10%) of which must be spent on clinical research into the medical  
4 efficacy of marijuana by medical researchers working in Rhode Island.

5 **21-28.10-18. Department regulations.** – (a) The department is responsible for  
6 administering and carrying out the provisions of this chapter.

7 (b) The department may adopt regulations that are necessary and convenient to  
8 administer and carry out the provisions of this chapter.

9 (c) The department shall adopt regulations that:

10 (1) Set forth the procedures for the application for and issuance of registrations to  
11 marijuana establishments, including the content and form for application;

12 (2) Establish qualifications for registration that are directly and demonstrably related to  
13 the operation of a marijuana establishment;

14 (3) Specify the procedures for the collection of taxes levied pursuant to this chapter;

15 (4) Specify the content, form, and timing of reports, which must be completed by each  
16 marijuana establishment and which must be available for inspection by department. The reports  
17 shall include information on sales, expenses, inventory, and taxes and shall be retained for at least  
18 one year after the completion of the forms;

19 (5) Specify the requirements for the packaging and labeling of marijuana, including those  
20 in § 21-28.10-9;

21 (6) Specify the requirements for the safety insert to be included with marijuana by  
22 retailers, including those in § 21-28.10-8, if the department chooses to do so;

23 (7) Establish reasonable security requirements for marijuana establishments;

24 (8) Require the posting or display of marijuana establishments' registrations;

25 (9) Establish restrictions on advertising for the sale of marijuana. The restrictions shall:

26 (i) Be in compliance with the United States Constitution and the Rhode Island  
27 Constitution; and

28 (ii) Include a prohibition on advertising reasonably considered aimed at minors;

29 (iii) Be at least as restrictive as limitations on advertising tobacco products, provided that  
30 the regulations may not prevent appropriate signs on the property of the marijuana establishment,  
31 listings in business directories including phone books, listings in publication focused on  
32 marijuana, or the sponsorship of health or not-for-profit charity or advocacy events;

33 (10) Establish procedures for inspecting and auditing the records or premises of a  
34 marijuana establishment;

1           (11) Set a schedule of civil fines for violations of this chapter and regulations issued  
2 pursuant to this chapter.

3           (12) Set forth the procedures for hearings on civil fines and suspensions and revocation of  
4 a registration as a retailer, marijuana cultivation facility, or safety compliance facility for a  
5 violation of a provision of this chapter or the regulations adopted pursuant to this chapter.

6           (13) Establish reasonable environmental controls to ensure that any registered marijuana  
7 establishment minimizes any harm to the environment, adjoining and nearby landowners, and  
8 persons passing by. This may include restrictions on the use of pesticides;

9           (14) Establish rules requiring marijuana cultivation facilities and retailers to create  
10 identification cards for their employees and providing for the contents of the identification cards;  
11 and

12           (15) Establish rules for the safe transportation of marijuana.

13           (d) The department shall make available free of charge all forms for applications and  
14 reports.

15           (e) The department shall issue all registrations as required by chapter 28.10 of this title  
16 and chapter 49 of title 44.

17           (f) The department shall keep the name and address of each owner, employee, or agent of  
18 a marijuana establishment confidential and refuse to disclose this information to any individual or  
19 public or private entity, except as necessary for authorized employees of the department to  
20 perform official duties of the department pursuant to this chapter.

21           (g) The department shall not require:

22           (1) An individual consumer to provide a retailer with personal information other than  
23 government-issued identification to determine the individual's age; or

24           (2) A retailer to acquire and record personal information about individual customers other  
25 than information typically acquired in a financial transaction conducted at a retail liquor store.

26           **21-28.10-19. Failure of department to adopt regulations.** – (a) The department shall  
27 adopt regulations to implement this chapter. Within three (3) months of the effective date of this  
28 chapter, the department shall begin accepting applications for marijuana establishments from  
29 persons or entities who hold current compassion center registrations pursuant to § 21-28.6-12.

30           (b) Within eighteen (18) months of the effective date of this chapter, the department shall  
31 begin accepting applications for marijuana establishments from persons or entities who do not  
32 hold current compassion center registrations pursuant to § 21-28.6-12.

33           (c) If the department fails to adopt regulations to implement this chapter or fails to begin  
34 processing applications for marijuana establishments within one hundred eighty (180) days of the

1 effective date of this chapter, any citizen may commence an action in a court of competent  
2 jurisdiction to compel the department to perform the actions mandated pursuant to the provisions  
3 of this chapter.

4 **21-28.10-20. Advisory committee.** – (a) A twelve (12) member advisory committee shall  
5 be appointed as follows:

6 (1) The governor shall appoint ten (10) members to the advisory committee comprised of:  
7 one representative of the department; one physician with experience in medical marijuana issues;  
8 one economist; one board member or principal officer of a registered safety compliance facility;  
9 one individual with experience in policy development or implementation in the field of marijuana  
10 policy; one public health professional; one sociologist; one attorney familiar with first  
11 amendment law; one expert in criminal justice; and one researcher.

12 (2) The speaker of the house shall appoint one member to the advisory committee.

13 (3) The senate president shall appoint one member to the advisory committee.

14 (b) The advisory committee shall meet at least two (2) times per year for the purpose of  
15 collecting information, evaluating the effects of this chapter, and making recommendations to the  
16 department, including:

17 (1) The content of safety inserts;

18 (2) Whether additional warning labels should be added;

19 (3) Strategies for educating physicians and the public about research relating to  
20 marijuana's benefits and risks;

21 (4) Any effect on organized crime in the state;

22 (5) Any effect on criminal sales of marijuana in middle and high schools;

23 (6) Quality control and labeling standards;

24 (7) Recommendations on restrictions on advertising;

25 (8) Recommendations for reporting and data monitoring related to beneficial and adverse  
26 effects of marijuana;

27 (9) Recommendations regarding possible adjustments to the excise tax rates that would  
28 further the goals of reducing the use of marijuana, by minors, generating revenues, and  
29 undercutting illegal market prices; and

30 (10) An update on the latest research related to driving under the influence of marijuana,  
31 along with recommendations regarding policies for roadside sobriety tests and any recommended  
32 changes to driving under the influence statutes.

33 (c) The department shall submit to the legislature an annual report by the first Thursday  
34 of every year, which shall include:



1 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,  
2 conditional or otherwise, in any manner or by any means whatsoever, of the property for a  
3 consideration.

4 (7) A transfer for a consideration of the title or possession of tangible personal property,  
5 which has been produced, fabricated, or printed to the special order of the customer, or any  
6 publication.

7 (8) The furnishing and distributing of electricity, natural gas, artificial gas, steam,  
8 refrigeration, and water.

9 (9) The furnishing for consideration of intrastate, interstate and international  
10 telecommunications service sourced in this state in accordance with subsections 44-18.1(15) and  
11 (16) and all ancillary services, any maintenance services of telecommunication equipment other  
12 than as provided for in subdivision 44-18-12(b)(ii). For the purposes of chapters 18 and 19 of this  
13 title only, telecommunication service does not include service rendered using a prepaid telephone  
14 calling arrangement.

15 (ii) Notwithstanding the provisions of paragraph (i) of this subdivision, in accordance  
16 with the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116 – 126), subject to the  
17 specific exemptions described in 4 U.S.C. § 116(c), and the exemptions provided in §§ 44-18-8  
18 and 44-18-12, mobile telecommunications services that are deemed to be provided by the  
19 customer's home service provider are subject to tax under this chapter if the customer's place of  
20 primary use is in this state regardless of where the mobile telecommunications services originate,  
21 terminate or pass through. Mobile telecommunications services provided to a customer, the  
22 charges for which are billed by or for the customer's home service provider, shall be deemed to be  
23 provided by the customer's home service provider.

24 (10) The furnishing of service for transmission of messages by telegraph, cable, or radio  
25 and the furnishing of community antenna television, subscription television, and cable television  
26 services.

27 (11) The rental of living quarters in any hotel, rooming house, or tourist camp.

28 (12) The transfer for consideration of prepaid telephone calling arrangements and the  
29 recharge of prepaid telephone calling arrangements sourced to this state in accordance with §§  
30 44-18.1-11 and 44-18.1-15. "Prepaid telephone calling arrangement" means and includes prepaid  
31 calling service and prepaid wireless calling service.

32 (13) The sale, storage, use or other consumption of over-the-counter drugs as defined in  
33 paragraph 44-18-7.1(h)(ii).

34 (14) The sale, storage, use or other consumption of prewritten computer software

1 delivered electronically or by load and leave as defined in paragraph 44-18-7.1(v).

2 ~~(15) The sale, storage, use or other consumption of medical marijuana as defined in § 21-~~  
3 ~~28.6-3.~~

4 ~~(16)~~ (15) The furnishing of services in this state as defined in § 44-18-7.3.

5 SECTION 5. Sections 21-28-4.01, 21-28-4.01.1, 21-28-4.01.2, 21-28-4.11 and 21-28-  
6 4.14 of the General Laws in Chapter 21-28 entitled "Uniform Controlled Substances Act" are  
7 hereby amended to read as follows:

8 **21-28-4.01. Prohibited acts A – Penalties.** -- (a)(1) Except as authorized by this chapter,  
9 or as exempted from criminal penalties pursuant to chapters 28.9 or 28.10 of this title, or  
10 chapter 49 of title 44. it shall be unlawful for any person to manufacture, deliver, or possess  
11 with intent to manufacture or deliver a controlled substance.

12 (2) Any person who is not a drug addicted person, as defined in § 21-28-1.02(18), who  
13 violates this subsection with respect to a controlled substance classified in schedule I or II, except  
14 the substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned  
15 to a term up to life, or fined not more than five hundred thousand dollars (\$500,000) nor less than  
16 ten thousand dollars (\$10,000), or both.

17 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of  
18 death to the person to whom the controlled substance is delivered, it shall not be a defense that  
19 the person delivering the substance was at the time of delivery, a drug addicted person as defined  
20 in § 21-28-1.02(18).

21 (4) Any person, under twenty-one (21) years of age, except as provided for in  
22 subdivision (2) of this subsection, who violates this subsection with respect to the manufacture of  
23 one mature flowering marijuana plant, or two (2) or fewer total marijuana plants, is guilty of a  
24 crime and upon conviction may be imprisoned for not more than five (5) years, or fined not more  
25 than three thousand dollars (\$3,000), or both.

26 (5) Any person, except as provided for in subdivision (2) of this subsection, who violates  
27 this subsection with respect to:

28 (i) A controlled substance classified in schedule I or II, except the substance classified as  
29 marijuana, is guilty of a crime and upon conviction may be imprisoned for not more than thirty  
30 (30) years, or fined not more than one hundred thousand dollars (\$100,000) nor less than three  
31 thousand dollars (\$3,000), or both;

32 (ii) The manufacture of two (2) or more mature flowering marijuana plants, or  
33 three (3) or more total marijuana plants, is guilty of a crime and upon conviction may be  
34 imprisoned for not more than ten (10) years, or fined not more than one hundred thousand



1 dollars (\$100,000), or both;

2 (iii) The delivery of marijuana is guilty of a crime and upon conviction may be  
3 imprisoned for not more than ten (10) years, or fined not more than one hundred thousand dollars  
4 (\$100,000) nor less than one thousand dollars (\$1,000), or both.

5 ~~(ii)~~ (iv) A controlled substance classified in schedule III or IV, is guilty of a crime and  
6 upon conviction may be imprisoned for not more than twenty (20) years, or fined not more than  
7 forty thousand dollars (\$40,000), or both; provided, with respect to a controlled substance  
8 classified in schedule III(d), upon conviction may be imprisoned for not more than five (5) years,  
9 or fined not more than twenty thousand dollars (\$20,000), or both.

10 ~~(iii)~~ (v) A controlled substance classified in schedule V, is guilty of a crime and upon  
11 conviction may be imprisoned for not more than one year, or fined not more than ten thousand  
12 dollars (\$10,000), or both.

13 (b)(1) Except as authorized by this chapter, it is unlawful for any person to create,  
14 deliver, or possess with intent to deliver, a counterfeit substance.

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

16 (i) A counterfeit substance classified in schedule I or II, is guilty of a crime and upon  
17 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one  
18 hundred thousand dollars (\$100,000), or both;

19 (ii) A counterfeit substance classified in schedule III or IV, is guilty of a crime and upon  
20 conviction may be imprisoned for not more than twenty (20) years, or fined not more than forty  
21 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in  
22 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not  
23 more than twenty thousand dollars (\$20,000) or both.

24 (iii) A counterfeit substance classified in schedule V, is guilty of a crime and upon  
25 conviction may be imprisoned for not more than one year, or fined not more than ten thousand  
26 dollars (\$10,000), or both.

27 (c)(1) It shall be unlawful for any person knowingly or intentionally to possess a  
28 controlled substance, unless the substance was obtained directly from or pursuant to a valid  
29 prescription or order of a practitioner while acting in the course of his or her professional  
30 practice, or except as otherwise authorized by this chapter or exempt from arrest pursuant to  
31 chapters 28.9 or 28.10 of this title or chapter 49 of title 44.

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

33 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the  
34 substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned for

1 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five  
2 thousand dollars (\$5,000), or both;

3 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as  
4 marijuana is guilty of a misdemeanor except for those persons subject to subdivision 21-28-  
5 4.01(a)(1) and upon conviction may be imprisoned for not more than one year or fined not less  
6 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

7 (iii) Notwithstanding any public, special or general law to the contrary, the possession of  
8 one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older, but  
9 who is less than twenty-one (21) years of age, and who is not exempted from penalties pursuant  
10 to chapter 21-28.6 shall constitute a civil offense, rendering the offender liable to a civil penalty  
11 in the amount of one hundred fifty dollars (\$150) and forfeiture of the marijuana, but not to any  
12 other form of criminal or civil punishment or disqualification. Notwithstanding any public,  
13 special or general law to the contrary, this civil penalty of one hundred fifty dollars (\$150) and  
14 forfeiture of the marijuana shall apply if the offense is the first (1st) or second (2nd) violation  
15 within the previous eighteen (18) months.

16 (iv) Notwithstanding any public, special or general law to the contrary, possession of one  
17 ounce (1 oz.) or less of marijuana by a person who is under the age of eighteen (18) years and  
18 who is not exempted from penalties pursuant to chapter 21-28.6 shall constitute a civil offense,  
19 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)  
20 and forfeiture of the marijuana; provided the minor offender completes an approved drug  
21 awareness program and community service as determined by the court. If the person under the  
22 age of eighteen (18) years fails to complete an approved drug awareness program and community  
23 service within one year of the offense, the penalty shall be a three hundred dollar (\$300) civil fine  
24 and forfeiture of the marijuana, except that if no drug awareness program or community service is  
25 available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of the  
26 marijuana. The parents or legal guardian of any offender under the age of eighteen (18) shall be  
27 notified of the offense and the availability of a drug awareness and community service program.  
28 The drug awareness program must be approved by the court, but shall, at a minimum, provide  
29 four (4) hours of instruction or group discussion, and ten (10) hours of community service.  
30 Notwithstanding any other public, special or general law to the contrary, this civil penalty shall  
31 apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen (18)  
32 months.

33 (v) Notwithstanding any public, special, or general law to the contrary, a person not  
34 exempted from penalties pursuant to chapter 21-28.6 found in possession of one ounce (1 oz.) or

1 less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not  
2 more than thirty (30) days or fined not less than two hundred dollars (\$200) nor more than five  
3 hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation for  
4 possession of less than one ounce (1 oz.) of marijuana under subparagraphs 21-28-4.01(c)(2)(iii)  
5 or 21-28-4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.

6 (vi) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
7 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of  
8 the offense. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid  
9 within ninety (90) days.

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

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

22 (ix) Any records collected by any state agency or tribunal that include personally  
23 identifiable information about violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
24 4.01(c)(2)(iv) shall be sealed eighteen (18) months after the payment of said civil fine.

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

32 (4) Additionally every person convicted or who pleads nolo contendere under paragraph  
33 (2)(i) of this subsection or convicted or who pleads nolo contendere a second or subsequent time  
34 under paragraph (2)(ii) of this subsection, who is not sentenced to a term of imprisonment to

1 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 mental health, retardation and hospitals and pay the sum of four  
5 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as  
6 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one  
7 year;

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

14 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall be  
15 deposited as general revenues and shall be collected from the person convicted or who pleads  
16 nolo contendere before 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 which 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 **21-28-4.01.1. Minimum sentence – Certain quantities of controlled substances. --**

32 (a) Except as authorized by this chapter, it shall be unlawful for any person to  
33 manufacture, sell, or possess with intent to manufacture, or sell, a controlled substance classified  
34 in schedules I or II (excluding marijuana) or to possess or deliver the following enumerated

1 quantities of certain controlled substances:

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

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

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

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

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

10 (iv) Any compound, mixture, or preparation which contains any quantity of any of the  
11 substances referred to in paragraphs (i) – (iii) of this subdivision;

12 (3) One gram (1 g.) to ten grams (10 gs.) of phencyclidine (PCP) or one hundred (100) to  
13 one thousand (1,000) tablets of a mixture or substance containing a detectable amount of  
14 phencyclidine (PCP); [or](#)

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

18 ~~(5) One kilogram (1 kg.) to five (5 kgs.) kilograms of a mixture containing a detectable~~  
19 ~~amount of marijuana.~~

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

23 **21-28-4.01.2. Minimum sentence – Certain quantities of controlled substances. --**

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

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

28 (2) More than one kilogram (1 kg.) of a mixture or substance containing a detectable  
29 amount of

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

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

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

34 (iv) Any compound, mixture, or preparation which contains any quantity of any of the

1 substances referred to in paragraphs (i) – (iii) of this subdivision;

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

4 or

5 (4) More than one gram (1 g.) of lysergic acid diethylamide (LSD); or more than one  
6 thousand (1,000) tablets of a mixture or substance containing a detectable amount of lysergic acid  
7 diethylamide (LSD); ~~or.~~

8 ~~(5) More than five kilograms (5 kgs.) of a mixture containing a detectable amount of~~  
9 ~~marijuana.~~

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

12 SECTION 6. Chapter 21-28 of the General Laws entitled "Uniform Controlled  
13 Substances Act" is hereby amended by adding thereto the following section:

14 **21-28-4.23. Marijuana exemption.--** The penalties provided for in this chapter do not  
15 apply to those exempted from criminal penalties pursuant to chapters 28.9 or 28.10 of this title, or  
16 chapter 49 of title 44.

17 SECTION 7. Section 31-27-2 of the General Laws in chapter 31-27 entitled "Motor  
18 Vehicle Offenses" are hereby amended to read as follows:

19 **31-27-2. Driving under influence of liquor or drugs. --** (a) Whoever drives or  
20 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,  
21 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any  
22 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)  
23 and shall be punished as provided in subsection (d) of this section.

24 (b)(1)Any person charged under subsection (a) of this section whose blood alcohol  
25 concentration is eight one-hundredths of one percent (.08%) or more by weight as shown by a  
26 chemical analysis of a blood, breath, or urine sample shall be guilty of violating subsection (a) of  
27 this section. This provision shall not preclude a conviction based on other admissible evidence.  
28 Proof of guilt under this section may also be based on evidence that the person charged was under  
29 the influence of intoxicating liquor, drugs, toluene, or any controlled substance defined in chapter  
30 28 of title 21, or any combination of these, to a degree which rendered the person incapable of  
31 safely operating a vehicle. The fact that any person charged with violating this section is or has  
32 been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of  
33 violating this section.

34 (2) Whoever drives or otherwise operates any vehicle in the state with a blood presence

1 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by  
2 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as  
3 provided in subsection (d) of this section. A person twenty-one (21) years of age or older or a  
4 person exempt from criminal penalties for the medical use of marijuana pursuant to chapter  
5 28.6 of title 21 shall not be considered under the influence of marijuana solely because of the  
6 presence of marijuana metabolites or components of marijuana unless the concentration of  
7 components of marijuana is proven to be sufficient to cause impairment.

8 (c) In any criminal prosecution for a violation of subsection (a) of this section, evidence  
9 as to the amount of intoxicating liquor, toluene, or any controlled substance as defined in chapter  
10 28 of title 21, or any combination of these, in the defendant's blood at the time alleged as shown  
11 by a chemical analysis of the defendant's breath, blood, or urine or other bodily substance shall be  
12 admissible and competent, provided that evidence is presented that the following conditions have  
13 been complied with:

14 (1) The defendant has consented to the taking of the test upon which the analysis is made.  
15 Evidence that the defendant had refused to submit to the test shall not be admissible unless the  
16 defendant elects to testify.

17 (2) A true copy of the report of the test result was mailed within seventy-two (72) hours  
18 of the taking of the test to the person submitting to a breath test.

19 (3) Any person submitting to a chemical test of blood, urine, or other body fluids shall  
20 have a true copy of the report of the test result mailed to him or her within thirty (30) days  
21 following the taking of the test.

22 (4) The test was performed according to methods and with equipment approved by the  
23 director of the department of health of the state of Rhode Island and by an authorized individual.

24 (5) Equipment used for the conduct of the tests by means of breath analysis had been  
25 tested for accuracy within thirty (30) days preceding the test by personnel qualified as  
26 hereinbefore provided, and breathalyzer operators shall be qualified and certified by the  
27 department of health within three hundred sixty-five (365) days of the test.

28 (6) The person arrested and charged with operating a motor vehicle while under the  
29 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of  
30 title 21, or, any combination of these in violation of subsection (a) of this section was afforded the  
31 opportunity to have an additional chemical test. The officer arresting or so charging the person  
32 shall have informed the person of this right and afforded him or her a reasonable opportunity to  
33 exercise this right, and a notation to this effect is made in the official records of the case in the  
34 police department. Refusal to permit an additional chemical test shall render incompetent and

1 inadmissible in evidence the original report.

2 (d)(1) Every person found to have violated subdivision (b)(1) of this section shall be  
3 sentenced as follows: for a first violation whose blood alcohol concentration is eight one-  
4 hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who  
5 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall  
6 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred  
7 dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community  
8 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit  
9 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be  
10 required to attend a special course on driving while intoxicated or under the influence of a  
11 controlled substance; provided, however, that the court may permit a servicemember or veteran to  
12 complete any court-approved counseling program administered or approved by the Veterans'  
13 Administration, and his or her driver's license shall be suspended for thirty (30) days up to one  
14 hundred eighty (180) days.

15 ~~(d)~~(i) Every person convicted of a first violation whose blood alcohol concentration is  
16 one-tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent  
17 (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than  
18 one hundred (\$100) dollars nor more than four hundred dollars (\$400) and shall be required to  
19 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned  
20 for up to one year. The sentence may be served in any unit of the adult correctional institutions in  
21 the discretion of the sentencing judge. The person's driving license shall be suspended for a  
22 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance  
23 at a special course on driving while intoxicated or under the influence of a controlled substance  
24 and/or alcoholic or drug treatment for the individual; provided, however, that the court may  
25 permit a servicemember or veteran to complete any court-approved counseling program  
26 administered or approved by the Veterans' Administration.

27 ~~(d)~~(ii) Every person convicted of a first offense whose blood alcohol concentration is  
28 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,  
29 toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to a fine of  
30 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of  
31 public community restitution and/or shall be imprisoned for up to one year. The sentence may be  
32 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.  
33 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)  
34 months. The sentencing judge shall require attendance at a special course on driving while



1 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for  
2 the individual; provided, however, that the court may permit a servicemember or veteran to  
3 complete any court-approved counseling program administered or approved by the Veterans'  
4 Administration.

5 (2) Every person convicted of a second violation within a five (5) year period with a  
6 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than  
7 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or  
8 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every  
9 person convicted of a second violation within a five (5) year period regardless of whether the  
10 prior violation and subsequent conviction was a violation and subsequent conviction under this  
11 statute or under the driving under the influence of liquor or drugs statute of any other state, shall  
12 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall  
13 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to  
14 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit  
15 of the adult correctional institutions in the discretion of the sentencing judge; however, not less  
16 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge  
17 shall require alcohol or drug treatment for the individual; provided, however, that the court may  
18 permit a servicemember or veteran to complete any court-approved counseling program  
19 administered or approved by the Veterans' Administration and may prohibit that person from  
20 operating a motor vehicle that is not equipped with an ignition interlock system for a period of  
21 one year to two (2) years following the completion of the sentence as provided in § 31-27-2.8.

22 ~~(H)~~(I) Every person convicted of a second violation within a five (5) year period whose  
23 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as  
24 shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of  
25 a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to  
26 mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine  
27 of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of  
28 two (2) years from the date of completion of the sentence imposed under this subsection. The  
29 sentencing judge shall require alcohol or drug treatment for the individual; provided, however,  
30 that the court may permit a servicemember or veteran to complete any court approved counseling  
31 program administered or approved by the Veterans' Administration.

32 (3) Every person convicted of a third or subsequent violation within a five (5) year period  
33 with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but  
34 less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is

1 unknown or who has a blood presence of any scheduled controlled substance as defined in  
2 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a  
3 violation and subsequent conviction under this statute or under the driving under the influence of  
4 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory  
5 fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period  
6 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year  
7 and not more than three (3) years in jail. The sentence may be served in any unit of the adult  
8 correctional institutions in the discretion of the sentencing judge; however, not less than forty-  
9 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall  
10 require alcohol or drug treatment for the individual; provided, however, that the court may permit  
11 a servicemember or veteran to complete any court-approved counseling program administered or  
12 approved by the Veterans' Administration, and may prohibit that person from operating a motor  
13 vehicle that is not equipped with an ignition interlock system for a period of two (2) years  
14 following the completion of the sentence as provided in § 31-27-2.8.

15 ~~(iii)~~(i) Every person convicted of a third or subsequent violation within a five (5) year  
16 period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by  
17 weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the  
18 influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be  
19 subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a  
20 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars  
21 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of  
22 completion of the sentence imposed under this subsection.

23 ~~(iii)~~(ii) In addition to the foregoing penalties, every person convicted of a third or  
24 subsequent violation within a five (5) year period regardless of whether any prior violation and  
25 subsequent conviction was a violation and subsequent conviction under this statute or under the  
26 driving under the influence of liquor or drugs statute of any other state shall be subject, in the  
27 discretion of the sentencing judge, to having the vehicle owned and operated by the violator  
28 seized and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred  
29 to the general fund.

30 (4) Whoever drives or otherwise operates any vehicle in the state while under the  
31 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
32 chapter 28 of title 21, or any combination of these, when his or her license to operate is  
33 suspended, revoked or cancelled for operating under the influence of a narcotic drug or  
34 intoxicating liquor shall be guilty of a felony punishable by imprisonment for not more than three

1 (3) years and by a fine or not more than three thousand dollars (\$3,000). The court shall require  
2 alcohol and/or drug treatment for the individual; provided, the penalties provided for in  
3 subdivision 31-27-2(d)(4) shall not apply to an individual who has surrendered his or her license,  
4 and served the court ordered period of suspension, but who, for any reason, has not had their  
5 license reinstated after the period of suspension, revocation, or suspension has expired; provided,  
6 further the individual shall be subject to the provisions of paragraphs 31-27-2(d)(2)(i) or (ii) or  
7 31-27-22(d)(3)(i), (ii), or (iii) regarding subsequent offenses, and any other applicable provision  
8 of § 31-27-2.

9 (5) For purposes of determining the period of license suspension, a prior violation shall  
10 constitute any charge brought and sustained under the provisions of this section or § 31-27-2.1.

11 ~~(ii)~~(i) Any person over the age of eighteen (18) who is convicted under this section for  
12 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of  
13 these, while a child under the age of thirteen (13) years was present as a passenger in the motor  
14 vehicle when the offense was committed may be sentenced to a term of imprisonment of not more  
15 than one year and further shall not be entitled to the benefit of suspension or deferment of this  
16 sentence. The sentence imposed under this section may be served in any unit of the adult  
17 correctional institutions in the discretion of the sentencing judge.

18 (6) Any person convicted of a violation under this section shall pay a highway assessment  
19 fine of five hundred dollars (\$500) which shall be deposited into the general fund. The assessment  
20 provided for by this subsection shall be collected from a violator before any other fines  
21 authorized by this section.

22 ~~(ii)~~(i) Any person convicted of a violation under this section shall be assessed a fee of  
23 eighty-six dollars (\$86).

24 (7) If the person convicted of violating this section is under the age of eighteen (18)  
25 years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of  
26 public community restitution, and the juvenile's driving license shall be suspended for a period of  
27 six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing  
28 judge shall also require attendance at a special course on driving while intoxicated or under the  
29 influence of a controlled substance and alcohol or drug education and/or treatment for the  
30 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than  
31 five hundred dollars (\$500), and the assessment imposed shall be deposited into the general fund.

32 ~~(ii)~~(i) If the person convicted of violating this section is under the age of eighteen (18)  
33 years, for a second or subsequent violation regardless of whether any prior violation and  
34 subsequent conviction was a violation and subsequent under this statute or under the driving

1 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a  
2 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21)  
3 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode  
4 Island training school for a period of not more than one year and/or a fine of not more than five  
5 hundred dollars (\$500).

6 (8) Any person convicted of a violation under this section may undergo a clinical  
7 assessment at the community college of Rhode Island 's center for workforce and community  
8 education. Should this clinical assessment determine problems of alcohol, drug abuse, or  
9 psychological problems associated with alcoholic or drug abuse, this person shall be referred to  
10 an appropriate facility, licensed or approved by the department of mental health, retardation and  
11 hospitals for treatment placement, case management, and monitoring. In the case of a  
12 servicemember or veteran, the court may order that the person be evaluated through the Veterans'  
13 Administration. Should the clinical assessment determine problems of alcohol, drug abuse, or  
14 psychological problems associated with alcohol or drug abuse, the person may have their  
15 treatment, case management and monitoring administered or approved by the Veterans'  
16 Administration.

17 (e) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol  
18 per one hundred (100) cubic centimeters of blood.

19 (f)(1) There is established an alcohol and drug safety unit within the division of motor  
20 vehicles to administer an alcohol safety action program. The program shall provide for placement  
21 and follow-up for persons who are required to pay the highway safety assessment. The alcohol  
22 and drug safety action program will be administered in conjunction with alcohol and drug  
23 programs licensed by the department of mental health retardation and hospitals.

24 (2) Persons convicted under the provisions of this chapter shall be required to attend a  
25 special course on driving while intoxicated or under the influence of a controlled substance,  
26 and/or participate in an alcohol or drug treatment program; provided, however, that the court may  
27 permit a servicemember or veteran to complete any court-approved counseling program  
28 administered or approved by the Veterans' Administration. The course shall take into  
29 consideration any language barrier which may exist as to any person ordered to attend, and shall  
30 provide for instruction reasonably calculated to communicate the purposes of the course in  
31 accordance with the requirements of the subsection. Any costs reasonably incurred in connection  
32 with the provision of this accommodation shall be borne by the person being retrained. A copy of  
33 any violation under this section shall be forwarded by the court to the alcohol and drug safety  
34 unit. In the event that persons convicted under the provisions of this chapter fail to attend and

1 complete the above course or treatment program, as ordered by the judge, then the person may be  
2 brought before the court, and after a hearing as to why the order of the court was not followed,  
3 may be sentenced to jail for a period not exceeding one year.

4 (3) The alcohol and drug safety action program within the division of motor vehicles  
5 shall be funded by general revenue appropriations.

6 (g) The director of the health department of the state of Rhode Island is empowered to  
7 make and file with the secretary of state regulations which prescribe the techniques and methods  
8 of chemical analysis of the person's body fluids or breath, and the qualifications and certification  
9 of individuals authorized to administer this testing and analysis.

10 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court  
11 for persons eighteen (18) years of age or older and to the family court for persons under the age  
12 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized and  
13 to order the suspension of any license for violations of this section. All trials in the district court  
14 and family court of violations of the section shall be scheduled within thirty (30) days of the  
15 arraignment date. No continuance or postponement shall be granted except for good cause shown.  
16 Any continuances that are necessary shall be granted for the shortest practicable time. Trials in  
17 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

18 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on  
19 driving while intoxicated or under the influence of a controlled substance, public community  
20 restitution, or jail provided for under this section can be suspended.

21 (j) An order to attend a special course on driving while intoxicated that shall be  
22 administered in cooperation with a college or university accredited by the state, shall include a  
23 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars  
24 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
25 the general fund.

26 (k) For the purposes of this section, any test of a sample of blood, breath, or urine for the  
27 presence of alcohol, which relies in whole or in part upon the principle of infrared light  
28 absorption is considered a chemical test.

29 (l) If any provision of this section or the application of any provision shall for any reason  
30 be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of the  
31 section, but shall be confined in this effect to the provision or application directly involved in the  
32 controversy giving rise to the judgment.

33 (m) For the purposes of this section, "servicemember" means a person who is presently  
34 serving in the armed forces of the United States including the Coast Guard, a reserve component

1 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,  
2 including the Coast Guard of the United States, a reserve component thereof, or the National  
3 Guard, and has been discharged under other than dishonorable conditions.

4 SECTION 8. Section 44-11-11 of the General Laws in Chapter 44-11 entitled "Business  
5 Corporation Tax" is hereby amended as follows:

6 **44-11-11. "Net income" defined.** -- (a) "Net income" means, for any taxable year and  
7 for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the laws  
8 of the United States, [except as provided for in § 44-11-11\(j\)](#), plus:

- 9 (i) Any interest not included in the taxable income;
- 10 (ii) Any specific exemptions;
- 11 (iii) For a captive REIT, an amount equal to the amount of the dividends paid deduction  
12 allowed under the Internal Revenue Code for the taxable year;
- 13 (iv) The tax imposed by this chapter;
- 14 (v) Any deductions required to be added back to net income under the provisions of  
15 paragraph (f) of this section, and minus
- 16 (vi) Interest on obligations of the United States or its possessions, and other interest  
17 exempt from taxation by this state; and
- 18 (vii) The federal net operating loss deduction.

19 (2) All binding federal elections made by or on behalf of the taxpayer applicable either  
20 directly or indirectly to the determination of taxable income shall be binding on the taxpayer  
21 except where this chapter or its attendant regulations specifically modify or provide otherwise.  
22 Rhode Island taxable income shall not include the "gross-up of dividends" required by the federal  
23 Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election  
24 of the foreign tax credit.

25 (b) A net operating loss deduction shall be allowed which shall be the same as the net  
26 operating loss deduction allowed under 26 U.S.C. § 172, except that:

27 (1) Any net operating loss included in determining the deduction shall be adjusted to  
28 reflect the inclusions and exclusions from entire net income required by subsection (a) of this  
29 section and § 44-11-11.1;

30 (2) The deduction shall not include any net operating loss sustained during any taxable  
31 year in which the taxpayer was not subject to the tax imposed by this chapter; and

32 (3) The deduction shall not exceed the deduction for the taxable year allowable under 26  
33 U.S.C. § 172; provided, that the deduction for a taxable year may not be carried back to any other  
34 taxable year for Rhode Island purposes but shall only be allowable on a carry forward basis for

1 the five (5) succeeding taxable years.

2 (c) "Domestic international sales corporations" (referred to as DISCs), for the purposes of  
3 this chapter, will be treated as they are under federal income tax law and shall not pay the amount  
4 of the tax computed under § 44-11-2(a). Any income to shareholders of DISCs is to be treated in  
5 the same manner as it is treated under federal income tax law as it exists on December 31, 1984.

6 (d) A corporation which qualifies as a "foreign sales corporation" (FSC) under the  
7 provisions of subchapter N, 26 U.S.C. § 861 et seq., and which has in effect for the entire taxable  
8 year a valid election under federal law to be treated as a FSC, shall not pay the amount of the tax  
9 computed under § 44-11-2(a). Any income to shareholders of FSCs is to be treated in the same  
10 manner as it is treated under federal income tax law as it exists on January 1, 1985.

11 (e) As used in this section:

12 (1) "Affiliated group" has the same meaning as in § 1504 of the Internal Revenue Code.

13 (2) "Intangible expenses and costs" includes: (A) expenses, losses and costs for, related  
14 to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance  
15 or management, ownership, sale, exchange, or any other disposition of intangible property to the  
16 extent such amounts are allowed as deductions or costs in determining taxable income before  
17 operating loss deduction and special deductions for the taxable year under the Internal Revenue  
18 Code; (B) losses related to or incurred in connection directly or indirectly with factoring  
19 transactions or discounting transactions; (C) royalty, patent, technical and copyright fees; (D)  
20 licensing fees; and (E) other similar expenses and costs.

21 (3) "Intangible property" means patents, patent applications, trade names, trademarks,  
22 service marks, copyrights and similar types of intangible assets.

23 (4) "Interest expenses and costs" means amounts directly or indirectly allowed as  
24 deductions under § 163 of the Internal Revenue Code for purposes of determining taxable income  
25 under the Internal Revenue Code to the extent such expenses and costs are directly or indirectly  
26 for, related to, or in connection with the direct or indirect acquisition, maintenance, management,  
27 ownership, sale, exchange or disposition of intangible property.

28 (5) "Related member" means a person that, with respect to the taxpayer during all or any  
29 portion of the taxable year, is a related entity, as defined in this subsection, a component member  
30 as defined in § 1563(b) of the Internal Revenue Code, or is a person to or from whom there is  
31 attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code.

32 (6) "Related entity" means: (A) a stockholder who is an individual, or a member of the  
33 stockholder's family enumerated in § 318 of the Internal Revenue Code, if the stockholder and the  
34 members of the stockholder's family own directly, indirectly, beneficially or constructively, in the

1 aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; (B) a  
2 stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation,  
3 if the stockholder and the stockholder's partnership, limited liability companies, estates, trusts and  
4 corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty  
5 percent (50%) of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party  
6 related to the corporation in a manner that would require an attribution of stock from the  
7 corporation to the party or from the party to the corporation under the attribution rules of section  
8 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or  
9 constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock. The  
10 attribution rules on § 318 of the Internal Revenue Code shall apply for purposes of determining  
11 whether the ownership requirements of this subdivision have been met.

12 (f) For purposes of computing its net income under this section, a corporation shall add  
13 back otherwise deductible interest expenses and costs and intangible expenses and costs directly  
14 or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more  
15 direct or indirect transactions with, one or more related members.

16 (1) The adjustments required in subsection (f) of this section shall not apply if the  
17 corporation establishes by clear and convincing evidence that the adjustments are unreasonable,  
18 as determined by the tax administrator or the corporation and the tax administrator agree in  
19 writing to the application or use of an alternative method of apportionment under § 44-11-15.  
20 Nothing in this subsection shall be construed to the limit or negate the tax administrator's  
21 authority to otherwise enter into agreements and compromises otherwise allowed by law.

22 (2) The adjustments required in subsection (f) of this section shall not apply to such  
23 portion of interest expenses and costs and intangible expenses and costs that the corporation can  
24 establish by the preponderance of the evidence meets both of the following: (A) the related  
25 member during the same income year directly or indirectly paid, accrued or incurred such portion  
26 to a person who is not a related member; and (B) the transaction giving rise to the interest  
27 expenses and costs or the intangible expenses and costs between the corporation and the related  
28 member did not have as a significant purpose the avoidance of any portion of the tax due under  
29 chapter 44-11.

30 (3) The adjustments required in subsection (f) shall not apply if the corporation  
31 establishes by clear and convincing evidence, as determined by the tax administrator, that: (i) a  
32 principal purpose of the transaction giving rise to the payment of interest was not to avoid  
33 payment of taxes due under this chapter; (ii) the interest is paid pursuant to a contract that reflects  
34 an arm's length rate of interest and terms; and (iii) (A) the related member was subject to tax on



1 its net income in this state or another state or possession of the United States or a foreign nation;  
2 (B) a measure of said tax included the interest received from the taxpayer; and (C) the effective  
3 rate of tax applied to the interest received by the related member is no less than the effective rate  
4 of tax applied to the taxpayer under this chapter minus 3 percentage points.

5 (4) *Partial Adjustments.* The add back required in subsection (f) shall not be required in  
6 part if a portion of the add back would be unreasonable. A portion of the add back will be  
7 considered unreasonable to the extent that the taxpayer establishes to the tax administrator by  
8 clear and convincing evidence that interest or intangible expense was paid, accrued or incurred to  
9 a related member that is taxed on the corresponding income by a state, U.S. possession or foreign  
10 jurisdiction. An adjustment to the add back will be allowed based on a factor determined by the  
11 apportioned tax rate of the related member in the other jurisdiction compared to the apportioned  
12 tax rate of the taxpayer in this state. A taxpayer that seeks to claim this adjustment must file a  
13 schedule that sets forth the information required by the tax administrator.

14 (g) Nothing in this section shall require a corporation to add to its net income more than  
15 once any amount of interest expenses and costs or intangible expenses and costs that the  
16 corporation pays, accrues or incurs to a related member described in subsection (b) of this  
17 section.

18 (h) Any taxpayer required to make an adjustment required in subsection (f) for tax years  
19 beginning on or after January 1, 2008, is additionally required to report to the tax administrator,  
20 on forms required by him, the amount of any adjustments that would have been required if the  
21 law applied to tax years beginning on or after January 1, 2007.

22 (i) Nothing in this section shall be construed to limit or negate the tax administrator  
23 authority to make adjustments under § 44-11-15.

24 (j) Notwithstanding any federal tax law to the contrary, in computing net income for  
25 businesses exempted from criminal penalties under §§ 21-28.6.1-4 or 21-28.6-12, there shall be  
26 allowed as a deduction from state taxes all the ordinary and necessary expenses paid or incurred  
27 during the taxable year in carrying on any trade or business, including, but not limited to,  
28 reasonable allowance for salaries or other compensation for personal services actually rendered.

29 SECTION 9. Chapter 44-49 of the General Laws entitled "Taxation of Marijuana and  
30 Controlled Substances" is hereby amended by adding thereto the following section.

31 **44-49-17. No tax stamp required.--** Controlled substance tax payment with a stamp or  
32 other official indicia, as referred to in § 44-49-5, is not required for marijuana establishments  
33 and the penalties provided for in this chapter do not apply to those acting in accordance with the  
34 laws of and regulations enacted through the authority of title 21 of the general laws.

1 SECTION 10. 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

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1           This act would remove the state's prohibition on adults using, possessing, and cultivating  
2 marijuana for personal use. It establishes a system of regulated marijuana retail distribution to  
3 adults twenty-one (21) and older and imposes taxes at both the wholesale and retail level.

4           This act would take effect upon passage.

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