

2014 -- S 2570

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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 -- UNIFORMED CONTROLLED SUBSTANCE ACT

Introduced By: Senators Lynch, Lombardi, Archambault, and Lombardo

Date Introduced: February 27, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.01 of the General Laws in Chapter 21-28 entitled "Uniform  
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-4.01. Prohibited acts A -- Penalties.** -- (a)(1) Except as authorized by this  
4 chapter, it shall be unlawful for any person to manufacture, deliver, or possess with intent to  
5 manufacture or deliver a controlled substance.

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

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

15 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates  
16 this subsection with respect to:

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

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

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

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

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

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

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

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

23 (c) (1) It shall be unlawful for any person knowingly or intentionally to possess a  
24 controlled substance, unless the substance was obtained directly from or pursuant to a valid  
25 prescription or order of a practitioner while acting in the course of his or her professional  
26 practice, or except as otherwise authorized by this chapter.

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

28 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the  
29 substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned for  
30 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five  
31 thousand dollars (\$5,000), or both;

32 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as  
33 marijuana is guilty of a misdemeanor except for those persons subject to subdivision 21-28-  
34 4.01(a)(1) and upon conviction may be imprisoned for not more than one year or fined not less

1 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

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

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

27 (v) Notwithstanding any public, special, or general law to the contrary, a person not  
28 exempted from penalties pursuant to chapter 21-28.6 found in possession of one ounce (1 oz.) or  
29 less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not  
30 more than thirty (30) days or fined not less than two hundred dollars (\$200) nor more than five  
31 hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation for  
32 possession of less than one ounce (1 oz.) of marijuana under subparagraphs 21-28-4.01(c)(2)(iii)  
33 or 21-28-4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.

34 (vi) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-

1 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of  
2 the ~~offense conviction~~. The civil fine shall double again to six hundred dollars (\$600) if it has not  
3 been paid within ninety (90) days.

4 (vii) No person may be arrested for a violation of subparagraphs 21-28-4.01(c)(2)(iii) or  
5 21-28-4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an  
6 identification card, license, or other form of identification issued by the state or any state, city or  
7 town, or any college or university, who fails to produce the same upon request of a police officer  
8 who informs the person that he or she has been found in possession of what appears to the officer  
9 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of  
10 identification that fails or refuses to truthfully provide his or her name, address, and date of birth  
11 to a police officer who has informed such person that the officer intends to provide such  
12 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be  
13 arrested.

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

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

19 (3) Jurisdiction. - Any and all violations of subparagraphs 21-28-4.01(c)(2)(iii) and 21-  
20 28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All  
21 money associated with the civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
22 4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines  
23 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to  
24 subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be expended on drug awareness  
25 and treatment programs for youth.

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

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

31 (ii) Attend and complete a drug counseling and education program as prescribed by the  
32 director of the department of mental health, retardation and hospitals and pay the sum of four  
33 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as  
34 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one

1 year;

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

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

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

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

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORMED CONTROLLED SUBSTANCE ACT

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1           This act would provide that records pertaining to marijuana violations under §§ 21-28-  
2 4.01(c)(2)(iii) and 21-28-4.01(c)(2)(iv) would not be open to the public consistent with § 8-8.2-21  
3 and would also provide for the doubling and tripling of fines to start at the time of conviction  
4 rather than at the time of the offense.

5           This act would take effect upon passage.

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