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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO FOOD AND DRUGS - THE UNIFORMED CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Edwards, Canario, Slater, Diaz, and Serpa

Date Introduced: January 18, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-4.1 of the General Laws in Chapter 21-28 entitled "Uniform  
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-4.01. Prohibited acts A -- Penalties.**

4 (a) (1) Except as authorized by this chapter, it shall be unlawful for any person to  
5 manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

6 (2) Any person who is not a drug-addicted person, as defined in § 21-28-1.02(19), who  
7 violates this subsection with respect to a controlled substance classified in schedule I or II, except  
8 the substance classified as marijuana, is guilty of a crime and, upon conviction, may be  
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 § 21-28-1.02(19).

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

17 (i) A controlled substance, classified in schedule I or II, is guilty of a crime and, upon  
18 conviction, may be imprisoned for not more than thirty (30) years, or fined not more than one

1 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

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

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

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

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

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

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

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

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

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

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

33 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as  
34 marijuana is guilty of a misdemeanor, except for those persons subject to (a)(1), and, upon

1 conviction, may be imprisoned for not more than one year, or fined not less than two hundred  
2 dollars (\$200) nor more than five hundred dollars (\$500), or both.

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

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

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

1 for possession of less than one ounce (1 oz.) of marijuana under (c)(2)(iii) or (c)(2)(iv) two (2)  
2 times in the eighteen (18) months prior to the third (3rd) offense.

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

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

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

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

20 (3) Jurisdiction. Any and all violations of (c)(2)(iii) and (c)(2)(iv) shall be the exclusive  
21 jurisdiction of the Rhode Island traffic tribunal. All money associated with the civil fine issued  
22 under (c)(2)(iii) or (c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent  
23 (50%) of all fines collected by the Rhode Island traffic tribunal from civil penalties issued  
24 pursuant to (c)(2)(iii) or (c)(2)(iv) shall be ~~expended on drug awareness and treatment programs~~  
25 ~~for youth~~ deposited as general revenues as determined by the department of behavioral  
26 healthcare, developmental disabilities and hospitals and used to fund substance abuse prevention  
27 programs and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16,  
28 and in accordance with the criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(a).

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

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

33 (ii) Attend and complete a drug-counseling and education program, as prescribed, by the  
34 director of the department of behavioral healthcare, developmental disabilities and hospitals and

1 pay the sum of four hundred dollars (\$400) to help defray the costs of this program which shall be  
2 deposited as general revenues as determined by the department of behavioral healthcare,  
3 developmental disabilities and hospitals and used to fund substance abuse prevention programs  
4 and student assistance programs for youth pursuant to chapters 21.2 and 21.3 of title 16, and in  
5 accordance with the criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(a). Failure to attend may  
6 result, after hearing by the court, in jail sentence up to one year;

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

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

13 (5) All fees assessed and collected pursuant to (c)(3)(ii) shall be deposited as general  
14 revenues as determined by the department of behavioral healthcare, developmental disabilities  
15 and hospitals and used to fund substance abuse prevention programs and student assistance  
16 programs for youth pursuant to chapters 21.2 and 21.3 of title 16, and in accordance with the  
17 criteria set forth in §§ 16-21.2-4(a) and 16-21.3-2(a) and shall be collected from the person  
18 convicted or who pleads nolo contendere before any other fines authorized by this chapter.

19 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent to  
20 manufacture or distribute, an imitation controlled substance. Any person who violates this  
21 subsection is guilty of a crime and, upon conviction, shall be subject to the same term of  
22 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the  
23 controlled substance that the particular imitation controlled substance forming the basis of the  
24 prosecution was designed to resemble and/or represented to be; but in no case shall the  
25 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars  
26 (\$20,000).

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

33 (f) It is unlawful for any person to knowingly or intentionally possess, manufacture,  
34 distribute, or possess with intent to manufacture or distribute, any extract, compound, salt

1 derivative, or mixture of salvia divinorum or datura stramonium or its extracts unless the person  
2 is exempt pursuant to the provisions of § 21-28-3.30. Notwithstanding any laws to the contrary,  
3 any person who violates this section is guilty of a misdemeanor and, upon conviction, may be  
4 imprisoned for not more than one year, or fined not more than one thousand dollars (\$1,000), or  
5 both. The provisions of this section shall not apply to licensed physicians, pharmacists, and  
6 accredited hospitals and teaching facilities engaged in the research or study of salvia divinorum or  
7 datura stramonium and shall not apply to any person participating in clinical trials involving the  
8 use of salvia divinorum or datura stramonium.

9 SECTION 2. Sections 16-21.2-4 and 16-21.2-5 of the General Laws in Chapter 16-21.2  
10 entitled "The Rhode Island Substance Abuse Prevention Act" are hereby amended to read as  
11 follows:

12 **16-21.2-4. Substance abuse prevention program.**

13 (a) The department of behavioral healthcare, developmental disabilities and hospitals  
14 shall be charged with the administration of this chapter and shall:

15 (i) Identify funding distribution criteria;

16 (ii) Identify criteria for effective substance abuse prevention programs; and

17 (iii) ~~provide~~ Provide grants to assist in the planning, establishment, and operation of  
18 substance abuse prevention programs. Grants under this section shall be made to municipal  
19 governments or their designated agents according to the following guidelines:

20 (1) The maximum grant shall be one hundred twenty-five thousand dollars (\$125,000);  
21 provided, however, in the event that available funding exceeds \$1.6 million in a fiscal year, those  
22 surplus funds are to be divided proportionately among the cities and towns on a per capita basis  
23 but in no event shall the city of Providence exceed a maximum grant cap of \$175,000.00.

24 (2) In order to obtain a grant, the municipality or its designated agent must in the first  
25 year:

26 (i) Demonstrate the municipality's need for a comprehensive substance abuse program in  
27 the areas of prevention and education.

28 (ii) Demonstrate that the municipality to be served has established by appropriate  
29 legislative or executive action, a substance abuse prevention council which shall assist in  
30 assessing the needs and resources of the community, developing a three (3) year plan of action  
31 addressing the identified needs, the operation and implementation of the overall substance abuse  
32 prevention program; coordinating existing services such as law enforcement, prevention,  
33 treatment, and education; consisting of representatives of the municipal government,  
34 representatives of the school system, parents, and human service providers.

1 (iii) Demonstrate the municipality's ability to develop a plan of implementation of a  
2 comprehensive three (3) year substance abuse prevention program based on the specific needs of  
3 the community to include high risk populations of adolescents, children of substance abusers, and  
4 primary education school aged children.

5 (iv) Agree to conduct a survey/questionnaire of the student population designed to  
6 establish the extent of the use and abuse of drugs and alcohol in students throughout the local  
7 community's school population.

8 (v) Demonstrate that at least twenty percent (20%) of the cost of the proposed program  
9 will be contributed either in cash or in-kind by public or private resources within the  
10 municipality.

11 (3) Each municipality that receives a grant must demonstrate in an annual written report  
12 submitted to the department of behavioral healthcare, developmental disabilities and hospitals  
13 that the funding issued is expended on substance abuse prevention programs that reflect the  
14 criteria pursuant to subsection (a) of this section.

15 (b) The department of behavioral healthcare, developmental disabilities and hospitals  
16 shall adopt rules and regulations necessary and appropriate to carry out the purposes of this  
17 section.

18 **16-21.2-5. Funding of substance abuse prevention program.**

19 (a)(1) Money to fund the Rhode Island Substance Abuse Prevention Act shall be  
20 appropriated from state general revenues and shall be raised by assessing an additional penalty of  
21 thirty dollars (\$30.00) for all speeding violations as set forth in ~~§ 31-43-5-1~~ § 31-41.1-4.

22 (2) Money to fund the Rhode Island substance abuse prevention program shall also be  
23 appropriated from state general revenues collected by the Rhode Island traffic tribunal from civil  
24 penalties issued pursuant to §§ 21-28-4.01(c)(2)(iii) and 21-28-4.01(c)(2)(iv) in accordance with  
25 the distribution criteria identified by the department of behavioral healthcare, developmental  
26 disabilities and hospitals set forth in § 16-21.2-4(a).

27 (3) The money shall be deposited as general revenues. The department of behavioral  
28 healthcare, developmental disabilities and hospitals ~~may~~ shall utilize up to ten percent (10%) of  
29 the sums appropriated for the purpose of administering the substance abuse prevention program.

30 (b) Grants made under this chapter shall not exceed money available in the substance  
31 abuse prevention program.

32 SECTION 3. Sections 16-21.3-2 and 16-21.3-3 of the General Laws in Chapter 16-21.3  
33 entitled "The Rhode Island Student Assistance Junior High/Middle School Act" are hereby  
34 amended to read as follows:

1            ~~16-21.3-2. Junior high/middle school student assistance program. High~~  
2 ~~school/Junior high/middle school student assistance program.~~

3            (a) The department of behavioral healthcare, developmental disabilities and hospitals  
4 shall be charged with the administration of this chapter and shall:

5            [\(1\) Identify funding distribution criteria;](#)

6            [\(2\) Identify criteria for effective substance abuse prevention programs; and](#)

7            [\(3\) ~~contract~~ Contract](#) with appropriate substance abuse prevention/intervention agencies  
8 to provide student assistance services [that incorporate such criteria](#) in [high/school/junior](#)  
9 [high/middle schools](#).

10           (b) Following the first complete year of operation, school systems receiving [high](#)  
11 [school/junior high/middle school student assistance services](#) will be required to contribute twenty  
12 percent (20%) of the costs of student assistance counselors to the service provider agency in order  
13 to continue the services.

14           ~~16-21.3-3. Funding of junior high/middle school student assistance program.~~  
15 ~~Funding of high school/junior high/middle school student assistance program.~~

16           (a)[\(1\)](#) Money to fund this program shall be raised by assessing an additional substance  
17 abuse prevention assessment of thirty dollars (\$30.00) for all moving motor vehicle violations  
18 handled by the traffic tribunal including, but not limited to, those violations set forth in § 31-41.1-  
19 4, except for speeding. The money shall be deposited in a restricted purpose receipt account  
20 separate from all other accounts within the department of behavioral healthcare, developmental  
21 disabilities and hospitals. The restricted purpose receipt account shall be known as the [high](#)  
22 [school/junior high/middle school student assistance fund](#) and the traffic tribunal shall transfer  
23 money from the junior high/middle school student assistance fund to the department of behavioral  
24 healthcare, developmental disabilities and hospitals for the administration of the Rhode Island  
25 Student Assistance [High School/Junior High/Middle School Act](#).

26           [\(2\) Money to fund the Rhode Island substance abuse prevention program shall also be](#)  
27 [appropriated from state general revenues collected by the Rhode Island traffic tribunal from civil](#)  
28 [penalties issued pursuant to §§ 21-28-4.01\(c\)\(2\)\(iii\) and 21-28-4.01\(c\)\(2\)\(iv\) in accordance with](#)  
29 [the distribution criteria identified by the department of behavioral healthcare, developmental](#)  
30 [disabilities and hospitals set forth in § 16-21.2-4\(a\).](#)

31           (b) The department of behavioral healthcare, developmental disabilities and hospitals  
32 may utilize up to ten percent (10%) of the sums collected from the additional penalty for the  
33 purpose of administering the program.

34

1 SECTION 4. 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 - THE UNIFORMED CONTROLLED SUBSTANCES  
ACT

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1           This act would: (1) Place approval of drug awareness programs for minors up to the high  
2 school level charged with civil marijuana offenses in the discretion of the department of  
3 behavioral healthcare, developmental disabilities and hospitals (BHDDH); (2) Redirect funds  
4 from certain civil fines imposed to the general revenue fund to be expended by BHDDH to fund  
5 substance abuse and student assistance programs for youth; (3) Mandate that BHDDH establish  
6 funding criteria for distribution of funds and require that municipalities receiving funds file  
7 annual reports verifying that the funds are being used for substance abuse prevention programs;  
8 and (4) Make high schools eligible for assistance programs.

9           This act would take effect upon passage.

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