

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

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

Introduced By: Senators Miller, Lynch Prata, Goodwin, McCaffrey, and Archambault

Date Introduced: February 04, 2020

Referred To: Senate 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(20), 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(20).

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

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

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

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

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

10 (b)(1) Except as authorized by this chapter, it is unlawful for any person to create,
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
30 buprenorphine and the substance classified as marijuana, is guilty of a crime and, upon
31 conviction, may be imprisoned for not more than three (3) years, or fined not less than five
32 hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or both;

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

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

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

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

1 times in the eighteen (18) months prior to the third (3rd) offense.

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

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

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

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

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

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

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

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

34 (iii) The court shall not suspend any part or all of the imposition of the fee required by

1 this subsection, unless the court finds an inability to pay;

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

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

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

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

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