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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Miller, Jabour, Perry, Metts, and Nesselbush

Date Introduced: January 26, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 21-28-4.01, 21-28-4.11 and 21-28-4.14 of the General Laws in  
2 Chapter 21-28 entitled "Uniform Controlled Substances Act" are hereby amended to read as  
3 follows:

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

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

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

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

18           (i) A controlled substance classified in schedule I or II, is guilty of a crime and upon  
19 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 for  
31 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five  
32 thousand dollars (\$5,000), or both;

33 (ii) ~~A~~ [More than one ounce \(1 oz.\) of a](#) controlled substance classified in schedule I as  
34 marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not more than

1 one year or fined not less than two hundred dollars (\$200) nor more than five hundred dollars  
2 (\$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 21-28.6-1 shall constitute a civil offense,  
6 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)  
7 and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or  
8 disqualification. Notwithstanding any public, special or general law to the contrary, this civil  
9 penalty of one hundred fifty dollars (\$150) and forfeiture of the marijuana shall apply whether the  
10 offense is a first (1<sup>st</sup>) offense or a subsequent offense.

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

28 (v) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
29 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of  
30 the offense. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid  
31 within ninety (90) days.

32 (vi) No person may be arrested for a violation of subparagraphs 21-28-4.01(c)(2)(iii) or  
33 21-28-4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an  
34 identification card, license, or other form of identification issued by the state or any state, city or

1 town, or any college or university, who fails to produce the same upon request of a police officer  
2 who informs the person that he or she has been found in possession of what appears to the officer  
3 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of  
4 identification that fails or refuses to truthfully provide his or her name, address, and date of birth  
5 to a police officer who has informed such person that the officer intends to provide such  
6 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be  
7 arrested.

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

10 (viii) The money associated with the civil fine issued under subparagraphs 21-28-  
11 4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be payable to the municipality in which the offense  
12 occurred. Fifty percent (50%) of all fines collected in each municipality from civil penalties  
13 issued pursuant to subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be expended  
14 on drug awareness and treatment programs for youth. The general assembly encourages and  
15 authorizes municipalities to work collaboratively to establish and maintain drug awareness  
16 programs.

17 (3) Additionally every person convicted or who pleads nolo contendere under paragraph  
18 (2)(i) of this subsection or convicted or who pleads nolo contendere a second or subsequent time  
19 under paragraph (2)(ii) of this subsection, who is not sentenced to a term of imprisonment to  
20 serve for the offense, shall be required to:

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

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

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

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

33 (4) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall  
34 be deposited as general revenues and shall be collected from the person convicted or who pleads

1 nolo contendere before any other fines authorized by this chapter.

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

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

16 **21-28-4.11. Second offenses.** -- ~~(A)~~ (a) Any person convicted of a second offense under  
17 this chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv),  
18 may be imprisoned for a term up to twice the term authorized, fined an amount up to twice that  
19 authorized, or both.

20 ~~(B)~~ (b) For purposes of this section, an offense is considered a second offense if, prior to  
21 his or her conviction of the offense, the offender has at any time been convicted under this  
22 chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv), or  
23 under any statute of the United States or of any state relating to narcotic drugs, marijuana,  
24 depressant, stimulant, or hallucinogenic drugs.

25 **21-28-4.14. Third or subsequent offenses.** -- (a) Any person convicted of a third or  
26 subsequent offense under this chapter, except for violations of subparagraphs 21-28-  
27 4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv), may be imprisoned for a term up to three (3) times the term  
28 authorized, and fined an amount up to three (3) times that authorized by section 21-28-4.11, or  
29 both.

30 (b) For purposes of this section, an offense is considered a third or subsequent offense if,  
31 prior to his or her conviction of the offense, the offender has at any time been convicted twice  
32 under this chapter, except for violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-  
33 4.01(c)(2)(iv), or twice under any statute of the United States or of any state, or any combination  
34 of them, relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drug.

1           SECTION 2. Section 31-27-2.4 of the General Laws in Chapter 31-27 entitled "Motor  
2 Vehicle Offenses" is hereby amended to read as follows:

3           **31-27-2.4. Driving while in possession of controlled substances.** -- (a) In addition to  
4 any other penalty prescribed by law, whoever operates any motor vehicle while knowingly having  
5 in the motor vehicle or in his or her possession, a controlled substance, as defined in section 21-  
6 28-1.02, [except for possession of up to one ounce \(1 oz.\) of marijuana](#), shall have his or her  
7 license suspended for a period of six (6) months.

8           (b) This section shall not apply to any person who lawfully possesses a controlled  
9 substance, as defined in section 21-28-1.02, as a direct result and pursuant to a valid prescription  
10 from a licensed medical practitioner, or as otherwise authorized by chapter 28 of title 21.

11           SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

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1           This act would decriminalize the possession of one ounce (1 oz.) or less of marijuana and  
2           make it a civil offense in most cases, and would impose civil penalties starting at one hundred  
3           fifty dollars (\$150).

4           This act would take effect upon passage.

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