

2014 -- S 2660 SUBSTITUTE A

=====
LC004501/SUB A/2
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 04, 2014

Referred To: Senate Judiciary

(Attorney General)

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 sixteen (16) years of age or older, but under
12 the age of eighteen (18) years and who is not exempted from penalties pursuant to chapter 21-
13 28.6 shall constitute a civil offense, rendering the offender liable to a civil penalty in the amount
14 of one hundred fifty dollars (\$150) and forfeiture of the marijuana; provided the minor offender
15 completes an approved drug awareness program and community service as determined by the
16 court. If the person under the age of eighteen (18) years fails to complete an approved drug
17 awareness program and community service within one year of the offense, the penalty shall be a
18 three hundred dollar (\$300) civil fine and forfeiture of the marijuana, except that if no drug
19 awareness program or community service is available, the penalty shall be a fine of one hundred
20 fifty dollars (\$150) and forfeiture of the marijuana. The parents or legal guardian of any offender
21 under the age of eighteen (18) shall be notified of the offense and the availability of a drug
22 awareness and community service program. The drug awareness program must be approved by
23 the court, but shall, at a minimum, provide four (4) hours of instruction or group discussion, and
24 ten (10) hours of community service. Notwithstanding any other public, special or general law to
25 the contrary, this civil penalty shall apply if the offense is the first (1st) or second (2nd) violation
26 within the 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), or 21-28-4.01(c)(2)(x) two (2) times in the eighteen (18) months prior to
34 the third (3rd) offense.

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

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

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

17 (ix) Any records collected by any state agency, ~~or~~ tribunal, or the family court that
18 include personally identifiable information about violations of subparagraphs 21-28-
19 4.01(c)(2)(iii), ~~or~~ 21-28-4.01(c)(2)(iv), or 21-28-4.01(c)(2)(x) shall be sealed eighteen (18)
20 months after the payment of said civil fine.

21 (x) Notwithstanding any public, special or general law to the contrary, possession of one
22 ounce (1 oz.) or less of marijuana by a person who is under the age of sixteen (16) years and who
23 is not exempted from penalties pursuant to chapter 28.6 of title 21 shall constitute a civil offense,
24 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)
25 and forfeiture of the marijuana, provided the minor offender completes an approved drug
26 awareness program and community service as determined by the court. In addition, the court shall
27 order a substance abuse assessment and, if recommended, substance abuse treatment. If the
28 person under the age of sixteen (16) years fails to complete an approved drug awareness program
29 and community service within one year of the offense, the penalty shall be a civil fine of three
30 hundred dollars (\$300) and forfeiture of the marijuana, except that if no drug awareness program
31 or community service is available, the penalty shall be a civil fine of one hundred fifty dollars
32 (\$150) and forfeiture of the marijuana. The parents or legal guardian of any offender under the
33 age of sixteen (16) shall be notified of the offense and the availability of a drug awareness and
34 community service program, and the mandatory substance abuse assessment. The drug awareness

1 program must be approved by the court, but shall, at a minimum, provide four (4) hours of
2 instruction or group discussion, and ten (10) hours of community service. Notwithstanding any
3 other public, special or general law to the contrary, this civil penalty shall apply if the offense is
4 the first (1st) or second (2nd) violation within the previous eighteen (18) months.

5 (3) Jurisdiction. – (i) Any and all violations of subparagraphs 21-28-4.01(c)(2)(iii) and
6 21-28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All
7 money associated with the civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
8 4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
9 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to
10 subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) ~~shall be expended on drug awareness~~
11 ~~and treatment programs for youth~~ shall be deposited with and administered by the department of
12 behavioral healthcare, developmental disabilities and hospitals (BHDDH) to fund prevention and
13 treatment services for youth.

14 (ii) Any and all violations of § 21-28-4.01(c)(2)(x) shall be within the exclusive
15 jurisdiction of the Rhode Island family court. All money associated with the civil fine issued
16 under § 21-28-4.01(c)(2)(x) shall be payable to the Rhode Island family court. Fifty percent
17 (50%) of all fines collected by the Rhode Island family court from civil penalties issued pursuant
18 to § 21-28-4.01(c)(2)(x) shall be deposited with and administered by the department of behavioral
19 healthcare, developmental disabilities and hospitals (BHDDH) to fund prevention and treatment
20 services for youth.

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

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

26 (ii) Attend and complete a drug counseling and education program as prescribed by the
27 director of the ~~department of mental health, retardation and hospitals~~ department of behavioral
28 healthcare, developmental disabilities and hospitals and pay the sum of four hundred dollars
29 (\$400) to help defray the costs of this program which shall be deposited ~~as general revenues~~ with
30 and administered by the department of behavioral healthcare, developmental disabilities and
31 hospitals (BHDDH) to fund prevention and treatment services. Failure to attend may result after
32 hearing by the court in jail sentence up to one year;

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

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

5 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall
6 be deposited ~~as general revenues~~ with and administered by the department of behavioral
7 healthcare, developmental disabilities and hospitals (BHDDH) to fund prevention and treatment
8 services and shall be collected from the person convicted or who pleads nolo contendere before
9 any other fines authorized by this chapter.

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

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

24 SECTION 2. This act shall take effect on September 1, 2014.

=====
LC004501/SUB A/2
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

1 This act would transfer the jurisdiction of possession of one ounce (1 oz.) or less of
2 marijuana by a person who is under the age of eighteen (18) years from the Rhode Island traffic
3 tribunal to the Rhode Island family court. The act would also require the family court to order a
4 substance abuse assessment and, if recommended, substance abuse treatment, for such violations.

5 This act would take effect on September 1, 2014.

=====
LC004501/SUB A/2
=====