

2023 -- H 5582

LC000623

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Batista, Potter, Cruz, Alzate, Felix, and Craven

Date Introduced: February 15, 2023

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. [As amended by P.L. 2021, ch. 286, § 2 and**
4 **P.L. 2021, ch. 287, § 2.]**

5 (a) Except as provided in §§ 21-28-4.01.1 and 21-28-4.01.2, the possession of a controlled
6 substance shall be a civil violation punishable by a fine of one hundred dollars (\$100) for a first
7 offense, and up to three hundred dollars (\$300) for each subsequent offense.

8 ~~(a)(1) Except as authorized by this chapter and chapters 28.6 and 28.11 of title 21, it shall~~
9 ~~be unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver~~
10 ~~a controlled substance.~~

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

16 ~~(3) Where the deliverance as prohibited in this subsection shall be the proximate cause of~~
17 ~~death to the person to whom the controlled substance is delivered, it shall not be a defense that the~~
18 ~~person delivering the substance was, at the time of delivery, a drug-addicted person as defined in §~~
19 ~~21-28-1.02.~~

1 ~~(4) Any person, except as provided for in subsection (a)(2), who violates this subsection~~
2 ~~with respect to:~~

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

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

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

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

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

17 (i) A counterfeit 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), or both;

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

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

28 (c)(1) It shall be unlawful for any person knowingly or intentionally to possess a controlled
29 substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or
30 order of a practitioner while acting in the course of his or her professional practice, or except as
31 otherwise authorized by this chapter or chapters 28.6 and 28.11 of title 21.

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

33 ~~(i) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, ten grams (10 g.) or~~
34 ~~less of a mixture or substance containing a detectable amount of a controlled substance classified~~

1 ~~in schedules I, II, III, IV, and V, except buprenorphine and the substance classified as marijuana,~~
2 ~~is guilty of a misdemeanor and, upon conviction, may be imprisoned for not more than two (2)~~
3 ~~years, or fined not more than five hundred dollars (\$500) or both.~~

4 ~~(ii) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than ten grams~~
5 ~~(10 g.), but less than one ounce (1 oz.) of a mixture or substance containing a detectable amount of~~
6 ~~a controlled substance classified in schedules I, II and III, IV, and V, except buprenorphine and the~~
7 ~~substance classified as marijuana, is guilty of a felony and, upon conviction, may be imprisoned~~
8 ~~for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.~~

9 ~~(iii) Except as otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, more than two~~
10 ~~ounces (2 oz.) or the equivalent amount in the form of cannabis concentrate of a controlled~~
11 ~~substance classified in schedule I as marijuana is guilty of a misdemeanor unless possessed inside~~
12 ~~one's own primary residence, except for those persons subject to (a)(1), and, upon conviction, may~~
13 ~~be imprisoned for not more than one year, or fined not more than five hundred dollars (\$500), or~~
14 ~~both. Exclusive of live marijuana plants, more than ten ounces (10 oz.) of a controlled substance~~
15 ~~classified in schedule I as marijuana or the equivalent amount in the form of cannabis concentrate,~~
16 ~~when possessed within one's personal residence is guilty of a misdemeanor, except for those~~
17 ~~persons subject to (a)(1), and, upon conviction, may be imprisoned for not more than one year, or~~
18 ~~fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.~~
19 ~~Possession of live marijuana plants in excess of the number authorized pursuant to § 21-28-11-22~~
20 ~~but less than twenty five (25) marijuana plants is guilty of a misdemeanor, except for those persons~~
21 ~~subject to (a)(1) and, upon conviction, may be imprisoned for not more than one year, or fined not~~
22 ~~less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.~~

23 ~~Possession of twenty five (25) or more live marijuana plants is guilty of a felony, except~~
24 ~~for those persons subject to (a)(1), and upon conviction, may be imprisoned for not more than three~~
25 ~~(3) years or fined not more than five thousand dollars (\$5,000), or both.~~

26 ~~(iv)~~(2) Notwithstanding any public, special, or general law to the contrary, and except as
27 otherwise provided in §§ 21-28-4.01.1 and 21-28-4.01.2, the possession of more than one ounce (1
28 oz.) but not more than two ounces (2 oz.) of marijuana or the equivalent amount in the form of
29 cannabis concentrate by a person who is at least twenty-one (21) years old, and who is not exempted
30 from penalties pursuant to chapter 28.6 of this title, shall constitute a civil offense, rendering the
31 offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150) and forfeiture of
32 the marijuana, but not to any other form of criminal or civil punishment or disqualification.
33 Notwithstanding any public, special, or general law to the contrary, this civil penalty of one hundred
34 fifty dollars (\$150) and forfeiture of the marijuana shall apply if the offense is the first (1st) or

1 second (2nd) violation within the previous eighteen (18) months.

2 ~~(v)~~(3) Notwithstanding any public, special, or general law to the contrary, possession of
3 two ounces (2 oz.) or less of marijuana or the equivalent amount in the form of cannabis concentrate
4 by a person between seventeen (17) and twenty (20) years old, and who is not exempted from
5 penalties pursuant to chapter 28.6 of this title, shall constitute a civil offense, rendering the offender
6 liable to a civil penalty in the amount of one hundred fifty dollars (\$150) and forfeiture of the
7 marijuana; provided the minor offender completes an approved, drug-awareness program and
8 community service as determined by the court. If the person seventeen (17) years of age or older
9 and under the age of eighteen (18) years fails to complete an approved, drug-awareness program
10 and community service within one year of the disposition, the penalty shall be a three hundred
11 dollar (\$300) civil fine and forfeiture of the marijuana, except that if no drug-awareness program
12 or community service is available, the penalty shall be a fine of one hundred fifty dollars (\$150)
13 and forfeiture of the marijuana. The parents or legal guardian of any offender seventeen (17) years
14 of age or older and under the age of eighteen (18) shall be notified of the offense and the availability
15 of a drug-awareness and community-service program. The drug-awareness program must be
16 approved by the court, but shall, at a minimum, provide four (4) hours of instruction or group
17 discussion and ten (10) hours of community service. Notwithstanding any other public, special, or
18 general law to the contrary, this civil penalty shall apply if the offense is the first or second violation
19 within the previous eighteen (18) months.

20 ~~(vi)~~ [Deleted by P.L. 2022, ch. 31, § 10 and P.L. 2022, ch. 32, § 10.]

21 ~~(vii)~~(4) Any unpaid civil fine issued under ~~(e)(2)(iv) or (e)(2)(v)~~ this subsection shall
22 double ~~to three hundred dollars (\$300)~~ if not paid within thirty (30) days of the disposition. The
23 civil fine shall double again ~~to six hundred dollars (\$600)~~ if it has not been paid within ninety (90)
24 days.

25 ~~(viii)~~(5) No person may be arrested for a violation of ~~(e)(2)(iv) or (e)(2)(v) of~~ this
26 subsection except as provided in this subparagraph. Any person in possession of an identification
27 card, license, or other form of identification issued by the state or any state, city, or town, or any
28 college or university, who fails to produce the same upon request of a police officer who informs
29 the person that he or she has been found in possession of what appears to the officer to be more
30 than one ounce (1 oz.) of marijuana, or the equivalent amount in the form of cannabis concentrate
31 or any person without any such forms of identification who fails or refuses to truthfully provide his
32 or her name, address, and date of birth to a police officer who has informed such person that the
33 officer intends to provide such individual with a citation for possession of more than one ounce (1
34 oz.) but less than two ounces (2 oz.) of marijuana or the equivalent amount in the form of cannabis

1 concentrate, may be arrested.

2 ~~(ix)(6)~~ No violation of ~~(e)(2)(iv) or (e)(2)(v)~~ this subsection shall be considered a violation
3 of parole or probation.

4 ~~(x)(7)~~ Any records collected by any state agency, tribunal, or the family court that include
5 personally identifiable information about violations of ~~(e)(2)(iv) or (e)(2)(v)~~ this subsection shall
6 not be open to public inspection in accordance with § 8-8.2-21.

7 ~~(3)(d)~~ **Jurisdiction.**

8 ~~(i) Any and all adjudications of violations of (e)(2)(i) shall be within the original~~
9 ~~jurisdiction of the Rhode Island superior court. The department of attorney general shall prosecute~~
10 ~~any and all violations of (e)(2)(i).~~

11 ~~(ii)(1)~~ Any and all violations of ~~(e)(2)(iv) and (e)(2)(v)~~ this section shall be the exclusive
12 jurisdiction of the Rhode Island traffic tribunal. All money associated with the civil fine issued
13 under ~~(e)(2)(iv) or (e)(2)(v)~~ this section shall be payable to the Rhode Island traffic tribunal. Fifty
14 percent (50%) of all fines collected by the Rhode Island traffic tribunal from civil penalties issued
15 pursuant to ~~(e)(2)(iv) or (e)(2)(v)~~ this section shall be expended on drug-awareness and treatment
16 programs for youth.

17 ~~(4)(2)~~ Additionally, every person convicted or who pleads nolo contendere ~~under (e)(2)(i)~~
18 ~~or (e)(2)(ii) or convicted or who pleads nolo contendere~~ a second or subsequent time under
19 ~~(e)(2)(iii), who is not sentenced to a term of imprisonment to serve for the offense,~~ this section shall
20 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 behavioral healthcare, developmental disabilities and hospitals
24 (BHDDH) similar to that in § 21-28.11-27.2, and pay the sum of four hundred dollars (\$400) to
25 help defray the costs of this program which shall be deposited as general revenues. ~~Failure to attend~~
26 ~~may result, after hearing by the court, in jail sentence up to one year;~~

27 (iii) The court shall not suspend any part or all of the imposition of the fee required by this
28 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 ~~(e)(2)(i), (e)(2)(ii) or (e)(2)(iii)~~ this section 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.

33 ~~(5)(3)~~ All fees assessed and collected pursuant to ~~(e)(2)(iii)~~ this subsection ~~and~~ shall be
34 ~~deposited as general revenues and shall be collected from the person convicted or who pleads nolo~~

1 ~~contendere before any other fines authorized by this chapter~~ expended pursuant to subsection (d)(1)
2 of this section.

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

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

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

27 (f) Notwithstanding any public, special, or general law to the contrary, the possession of a
28 controlled substance for personal use, shall result in the forfeiture of the controlled substance;
29 provided, however, the possession of a controlled substance for personal use shall not constitute
30 reasonable suspicion or probable cause to conduct a search of a motor vehicle or the premises where
31 the controlled substance is discovered.

32 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

1 This act would make the possession of schedule I through V controlled substances civil
2 violations punishable by a one hundred dollar (\$100) fine for a first offense and up to three hundred
3 dollars (\$300) for subsequent offenses. Repeat offenders would also have to complete drug
4 counseling and community service.

5 This act would take effect upon passage.

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