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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO FOOD AND DRUGS -- THE 2011 MARIJUANA POLICY ACT

Introduced By: Senators Miller, Perry, Kettle, Jabour, and Sosnowski

Date Introduced: February 10, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. – The general assembly finds and declares that:

2 (1) To date, thirteen (13) states have enacted decriminalization of marijuana laws. The  
3 states are: Alaska, California, Colorado, Maine, Massachusetts, Minnesota, Mississippi,  
4 Nebraska, Nevada, New York, North Carolina, Ohio, and Oregon.

5 (2) In Rhode Island there were two thousand five hundred forty-six (2,546) arrests for  
6 first offense of possession of marijuana from January 1, 2009 to December 31, 2009.

7 (3) The department of corrections incarcerated three hundred thirty-seven (337) people  
8 awaiting trial for possession of marijuana and one hundred fifty-four (154) people sentenced for  
9 possession of marijuana during fiscal year 2009.

10 (4) From 2005 – 2009 the public defender's office represented five thousand two hundred  
11 fifty-nine (5,259) people charged with simple possession of marijuana.

12 (5) State departments and agencies involved in criminal justice are estimated to see  
13 savings or a better allocation of state resources in their respective offices with the  
14 decriminalization of one ounce or less of marijuana for people eighteen (18) years of age and  
15 older.

16 (6) While there are documented health risks associated with marijuana, the risk of  
17 dependence is far lower than the risk of addiction to nicotine or alcohol.

18 SECTION 2. Title 21 of the General Laws entitled "FOOD AND DRUGS" is hereby  
19 amended by adding thereto the following chapter:

1 CHAPTER 28.8

2 THE 2011 MARIJUANA POLICY ACT

3 **21-28.8-1. Short title.** – This chapter shall be known and may be cited as "The 2011  
4 Marijuana Policy Act."

5 **21-28.8-2. Possession of one ounce or less – Individuals eighteen (18) years of age or**  
6 **older.** – Notwithstanding any general or special law to the contrary, possession of one ounce or  
7 less of marijuana by a person who is eighteen (18) years of age or older, shall constitute a civil  
8 offense, subjecting an offender to a fine of one hundred fifty dollars (\$150) and forfeiture of the  
9 marijuana, but not to any other form of criminal or civil punishment or disqualification. The  
10 money associated with the fine shall be payable to the municipality in which the offense occurred.  
11 Unpaid fines shall double if not paid within thirty (30) days of the offense. The fine shall double  
12 again if it has not been paid within ninety (90) days. The fine shall rise to one thousand dollars  
13 (\$1,000) if not paid after an additional ninety (90) days.

14 **21-28.8-3. Possession of one ounce or less – Individuals under the age of eighteen**  
15 **(18).** – (a) Notwithstanding any general or special law to the contrary, possession of one ounce or  
16 less of marijuana by a person who is under the age of eighteen (18) years shall be a civil offense,  
17 subjecting an offender to a fine of one hundred fifty dollars (\$150) and forfeiture of the  
18 marijuana, provided the minor offender completes an approved drug awareness program and  
19 community service as determined by the court or hearing board with jurisdiction. The parents or  
20 legal guardian of any offender under the age of eighteen (18) shall be notified of the offense and  
21 the availability of a drug awareness and community service program. The drug awareness  
22 program must be approved by the court or juvenile hearing board having jurisdiction of the  
23 offense, but shall, at a minimum, provide four (4) hours of instruction or group discussion, and  
24 ten (10) hours of community service.

25 (b) If an offender under the age of eighteen (18) fails, within one year of the offense, to  
26 complete both a drug awareness program and the required community service, as evidenced by  
27 family court or a juvenile hearing board having jurisdiction of the offense, such court or board  
28 may notify the offender, parent or guardian, and the enforcing person who issued the original  
29 notice to the offender, of a hearing to show cause why the civil penalty should not be increased to  
30 one thousand dollars (\$1,000). In addition to the civil penalties authorized by this chapter, the  
31 failure of such an offender to complete such a program may be a basis for delinquency  
32 proceedings for persons under the age of eighteen (18) of the time of offense.

33 (c) Factors to be considered in weighing cause shall be limited to financial capacity to  
34 pay any increase, the offender's ability to participate in a compliant drug awareness program and

1 the availability of a suitable drug awareness program. Any civil penalties imposed under the  
2 provisions of this chapter shall inure to the city or town where the offense occurred.

3 **21-28.8-4. Subsequent offenses of possession of one ounce or less.** -- The second  
4 offense of possession of one ounce or less of marijuana shall not be considered a misdemeanor,  
5 but shall subject the offender to a minimum fine of three hundred dollars (\$300). Any third or  
6 subsequent offense of possession of one ounce or less of marijuana shall be considered a  
7 misdemeanor subject to the jurisdiction of Rhode Island district court. No violation of this  
8 chapter shall be considered a violation of parole or probation.

9 **21-28.8-5. Identification and police searches.** -- Any person in possession of an  
10 identification card, license or other form of identification issued by the state or any state, city or  
11 town, or any college or university, who fails to produce the same upon request of a police officer  
12 who informs the person that he or she has been found in possession of what appears to the officer  
13 to be an ounce or less of marijuana, or any person without any of such forms of identification that  
14 fails or refuses to truthfully provide his or her name, address, and date of birth to a police officer  
15 who has informed such person that the officer intends to provide such individual with a citation  
16 for possession of an ounce or less of marijuana may be arrested. No part of this act shall restrict  
17 law enforcement from conducting searches based on probable cause that marijuana is present in a  
18 motor vehicle, in a container, or on a person.

19 **21-28.8-6. Use of fines.** -- One-half (1/2) of fines collected in each municipality from  
20 civil penalties issued pursuant to sections 21-28.8-2 and 21-28.8-3 of this act shall be expended  
21 on drug awareness and treatment programs for youth. The general assembly encourages and  
22 authorizes municipalities to work collaboratively to establish and maintain drug awareness  
23 programs.

24 **21-28.8-7. Savings clauses.** -- Nothing contained herein shall be construed to repeal or  
25 modify existing laws, ordinances or bylaws, regulations, personnel practices or policies  
26 concerning the operation of motor vehicles or other action taken while under the influence of  
27 marijuana or tetrahydrocannabinol, laws concerning the unlawful possession of prescription  
28 forms or marijuana or tetrahydrocannabinol, possession of more than one ounce of marijuana or  
29 tetrahydrocannabinol, or selling, manufacturing or trafficking in marijuana or  
30 tetrahydrocannabinol. Nothing contained herein shall prohibit a political subdivision of the state  
31 from enacting ordinances or bylaws regulating or prohibiting the consumption of marijuana or  
32 tetrahydrocannabinol in public places and providing for additional penalties for the public use of  
33 marijuana or tetrahydrocannabinol.

34 **21-28.8-8. Scope of chapter.** -- This chapter shall not permit:

1           (1) Any person to undertake any task under the influence of marijuana, when doing so  
2 would constitute negligence or professional malpractice;

3           (2) The smoking of marijuana:

4           (i) In a school bus or other form of public transportation;

5           (ii) On any school grounds;

6           (iii) In any correctional facility;

7           (iv) In any public place;

8           (v) In any licensed drug treatment facility in this state; or

9           (vi) Where exposure to the marijuana smoke significantly adversely affects the health,  
10 safety, or welfare of children.

11           (3) Any person to operate, navigate, or be in actual physical control of any motor  
12 vehicle, aircraft, or motorboat while under the influence of marijuana. However, a registered  
13 qualifying patient shall not be considered to be under the influence solely for having  
14 marijuana metabolites in his or her system.

15           **21-28.8-9. Severability.** – Each section of this chapter and each part of each section is  
16 declared to be a separable and independent section, and the holding of any section or sections or  
17 part or parts of this title to be void, ineffective or unconstitutional for any cause, shall not be  
18 deemed to affect any other section or part of this chapter.

19           SECTION 3. Section 21-28-4.0.1 of the General Laws in Chapter 21-28 entitled  
20 "Uniform Controlled Substances Act" is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) A controlled substance classified in schedule I as marijuana greater than one ounce is  
2 guilty of a misdemeanor and upon conviction may be imprisoned for not more than one year or  
3 fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.  
4 Possession of marijuana of one ounce or less is subject to penalties pursuant to section 21-28.8-1  
5 et. seq.

6 (iii) Any person under the age of eighteen (18) who is convicted of possession of  
7 marijuana of one ounce or less is subject to penalties pursuant to section 21-28.8-1 et. seq.

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

12 (i) Perform no less than one hundred (100) hours of community service;

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

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

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

24 (4) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall  
25 be deposited as general revenues and shall be collected from the person convicted or who pleads  
26 nolo contendere before any other fines authorized by this chapter.

27 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent  
28 to manufacture or distribute, an imitation controlled substance. Any person who violates this  
29 subsection is guilty of a crime, and upon conviction shall be subject to the same term of  
30 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the  
31 controlled substance which the particular imitation controlled substance forming the basis of the  
32 prosecution was designed to resemble and/or represented to be; but in no case shall the  
33 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars  
34 (\$20,000).

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

7           SECTION 4. This act shall take effect on July 1, 2011.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FOOD AND DRUGS -- THE 2011 MARIJUANA POLICY ACT

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1           This act would establish a marijuana policy for the state creating penalties for possession  
2 of one ounce or less.

3           This act would take effect on July 1, 2011.

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