

2010 -- S 2590

LC00318

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Perry, Miller, Blais, C Levesque, and Jabour

Date Introduced: February 11, 2010

Referred To: Senate Judiciary

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) A controlled substance classified in schedule I as marijuana in an amount greater  
33 than one ounce is guilty of a misdemeanor and upon conviction may be imprisoned for not more  
34 than one year or fined not less than two hundred dollars (\$200) nor more than five hundred

1 dollars (\$500), or both.

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

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

7 (ii) Be referred to Treatment Alternatives to Street Crime (TASC) to determine the  
8 existence of problems of drug abuse. Should TASC determine the person needs treatment, it will  
9 arrange for the treatment to be provided and after completion of the treatment, the person shall  
10 perform his or her required community service and attend the drug education program;

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

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

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

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

24 (5) Personal possession of marijuana subject to a civil fine.

25 (i) No person shall be criminally prosecuted for possession of one ounce or less of  
26 marijuana.

27 (ii)(A) Notwithstanding any general or special law to the contrary, possession of one  
28 ounce or less of marijuana shall only be a civil offense, subjecting an offender who is eighteen  
29 years of age or older to a civil penalty of one hundred dollars (\$100) and forfeiture of the  
30 marijuana, but not to any other form of criminal or civil punishment or disqualification. An  
31 offender under the age of eighteen shall be subject to the same forfeiture of the marijuana, but a  
32 civil penalty and fine shall be imposed only if he or she fails to complete a drug awareness  
33 program that meets the criteria set forth in paragraph (iii) of this section. The parents or legal  
34 guardian of any offender under the age of eighteen (18) shall be notified in accordance with

1 subparagraph (iv)(B) of this section of the offense and of available drug awareness programs. If  
2 an offender under the age of eighteen (18) fails within one year of such notice of the offense and  
3 available programs to complete a drug awareness program, a civil penalty of up to one thousand  
4 dollars (\$1,000) may be imposed pursuant to subparagraph (iv)(B) of this section, and the  
5 offender and his or her parents shall be jointly and severally liable to pay that amount.

6 (B) Except as specifically provided in paragraphs (ii) to (iv) of this section, neither the  
7 state nor any of its political subdivisions or their respective agencies, authorities, or  
8 instrumentalities may impose any form of penalty, sanction, restriction or disqualification on a  
9 person for possessing one ounce or less of marijuana, nor may any penalties or obligations  
10 exceeding those outlined in subsection (a) be imposed by the state nor any of its political  
11 subdivisions or their respective agencies, authorities, or instrumentalities solely for having  
12 cannabinoids or cannabinoid metabolites in the urine, blood, sweat, hair, fingernails, toenails, or  
13 other tissue or fluid of the human body. By way of illustration rather than limitation, neither  
14 possession of one ounce or less of marijuana, nor the presence of cannabinoids or cannabinoid  
15 metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the  
16 human body may provide a basis to deny a person student financial aid, public housing, or any  
17 form of public financial assistance including unemployment benefits, to deny the right to operate  
18 a motor vehicle, or to disqualify a person from serving as a foster parent or adoptive parent.  
19 However, nothing contained herein shall be construed to repeal or modify existing laws,  
20 ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of  
21 motor vehicles or other actions taken while under the influence of marijuana. Information  
22 concerning the offense of possession of one ounce or less of marijuana shall not be recorded in  
23 any database of criminal offenders.

24 (C) As used herein, "possession of one ounce or less of marijuana" includes possession of  
25 one ounce or less of marijuana, or any mixture or preparation thereof (including, but not limited  
26 to, five (5) grams or less or hashish), and does not include the weight of other ingredients in  
27 marijuana prepared for consumption as food or drink.

28 (D) Nothing contained herein shall be construed to repeal or modify any law concerning  
29 the medical use of marijuana or tetrahydrocannabinol in other form, such as Marinol, or the  
30 possession of more than one ounce of marijuana, or selling, manufacturing, or trafficking in  
31 marijuana.

32 (E) Nothing contained herein shall prohibit a political subdivision of the state from  
33 enacting ordinances or bylaws regulating or prohibiting the consumption of marijuana or  
34 tetrahydrocannabinol in public places and providing for additional penalties for the public use of

1 marijuana, provided that any such additional penalties are no greater than those related to the  
2 public consumption of alcohol.

3 (iii)(A) An offender under the age of eighteen (18) is required to complete a drug  
4 awareness program within one year of his or her parents or legal guardian being given notice of  
5 the offense and available drug awareness programs. Failure of such an offender to complete such  
6 a program may be a basis for imposing a civil penalty of up to one thousand dollars (\$1,000), as  
7 authorized by paragraph (ii) of this section.

8 (B) The drug awareness program must provide at least four (4) hours of classroom  
9 instruction or group discussion. In addition to the programs and curricula it must establish and  
10 maintain, the department of health or any successor to said department shall develop a complaint  
11 drug awareness program. The subject matter of such drug awareness program shall be specific to  
12 the use and abuse of marijuana and other controlled substances. The department of health shall set  
13 fees for the program sufficient to cover all costs of administering the program not already  
14 defrayed by revenue from civil penalties as described in paragraph (iv) of this section. All fees  
15 shall be payable by the offender.

16 (iv)(A) The police department serving each political subdivision of the state and each  
17 sheriff's department shall direct the department's public safety officer or another appropriate  
18 member of the department to function as a liaison with the clerk's office of the district court  
19 serving the political subdivision. Each police department shall also issue books of non-criminal  
20 citation forms to the department's officers which conform with the provisions of this section.

21 (B) A second copy of the notice delivered to an offender under the age of eighteen (18)  
22 shall be mailed or delivered to at least one of that offender's parents having custody of the  
23 offender or, where there is no such person, to that offender's legal guardian at said parent or legal  
24 guardian's last known address. If an offender under the age of eighteen (18), or a parent or legal  
25 guardian, fails to file with the clerk of the appropriate court a certificate that the offender has  
26 completed a drug awareness program in accordance with paragraph (iii) of this section within one  
27 year of the relevant offense, the clerk shall notify the offender, parent or guardian, and the  
28 enforcing person who issued the original notice to the offender of a hearing to show cause why a  
29 civil penalty of up to one thousand dollars (\$1,000) should not be imposed. Factors to be  
30 considered by the court in weighing cause shall be limited to financial capacity to pay any  
31 increase, the offender's ability to participate in a compliant drug awareness program, the  
32 availability of a suitable drug awareness program, and the offender's willingness to complete such  
33 program within a timeframe to be determined by the court.

34 (C) Fifty percent (50%) of the revenue generated from civil penalties imposed under the

1 provisions of this section shall be released to or retained by the city or town where the offense  
2 occurred. The remaining fifty percent (50%) of the revenue generated from civil penalties  
3 imposed under the provisions of this section shall be transmitted to the department of health to  
4 fund drug awareness education, including the drug awareness program set forth in paragraph (ii)  
5 of this section.

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

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

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

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

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1           This act would provide that marijuana must be in an amount greater than one ounce to be  
2 a misdemeanor. This act would make possession of one ounce or less of marijuana a civil rather  
3 than a criminal offense.

4           This act would take effect upon passage.

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