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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO CRIMINAL OFFENSES

Introduced By: Senators Lombardi, DiPalma, Jabour, Conley, and Lombardo

Date Introduced: March 25, 2014

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-34.1-2 and 11-34.1-7 of the General Laws in Chapter 11-34.1
2 entitled "Commercial Sexual Activity" are hereby amended to read as follows:

3 **11-34.1-2. Prostitution.** -- (a) A person is guilty of prostitution when such person
4 engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
5 Any person found guilty under this section shall be deemed guilty of a misdemeanor and shall be
6 subject to imprisonment for a term not exceeding six (6) months, or to a fine of not less than two
7 hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or both.

8 (b) Any person found guilty of a subsequent offense under this section shall be subject to
9 imprisonment for a term of not more than one year, or a fine of not less than five hundred dollars
10 (\$500) nor more than one thousand dollars (\$1,000), or both.

11 ~~(c) Any proceeds derived directly from a violation of this section are subject to seizure~~
12 ~~and forfeiture and further proceedings shall be had for their forfeiture as is prescribed by law in~~
13 ~~chapter 21 of title 12.~~

14 (d) In any prosecution for a violation under this section it shall be an affirmative defense
15 if the accused was forced to commit a commercial sexual activity by:

- 16 (1) Being threatened or, subjected to physical harm;
17 (2) Being physically restrained or threatened to be physically restrained;
18 (3) Being subject to threats of abuse of law or legal process;
19 (4) Being subject to destruction, concealment, removal or confiscation, of any passport

1 or other immigration document, or any other actual or purported governmental identification
2 document; or

3 (5) Being subject to intimidation in which the accused's physical well being was
4 perceived as threatened.

5 **11-34.1-7. Pandering or permitting prostitution -- Not allowed. --** (a) It shall be
6 unlawful for any person, by any promise or threat, by abuse of person, or by any other device or
7 scheme, to cause, induce, persuade, or encourage a person to become a prostitute or to come into
8 this state or leave this state for the purpose of prostitution. It shall be unlawful for any person to
9 receive or give, or agree to receive or give, any money or thing of value for procuring or
10 attempting to procure any person to become a prostitute or to come into this state or leave this
11 state for the purpose of prostitution.

12 (b) It shall be unlawful for any person to knowingly permit, allow, transport or offer or
13 agree to receive any person into any place, structure, house, building, room, or business for the
14 purpose of committing any commercial sexual activity, or knowingly permit any person to remain
15 in the premises for those purposes, or to, in any way, aid or abet or participate in any of the acts
16 or things enumerated in this chapter. It shall also be unlawful for any person, knowing a person to
17 be a prostitute, who shall live or derive support or maintenance, in whole or in part, from the
18 earnings or proceeds of commercial sexual activity, from moneys loaned, advanced to, or charged
19 against the prostitute by a landlord, manager, owner of a spa or business or any other place where
20 commercial sexual activity is practiced or allowed, or who shall share in the earnings, proceeds or
21 moneys shall be guilty of the crime of permitting prostitution.

22 (c) Every person who commits any of the offenses described in subsection (a) of this
23 section, or who assists, abets, or aids another to commit any of those offenses, shall be guilty of
24 pandering. For the first offense that person shall be punished by imprisonment for not less than
25 one year and not more than five (5) years and a fine of not less than two thousand dollars
26 (\$2,000), nor more than five thousand dollars (\$5,000). For every subsequent offense that person
27 shall be punished by imprisonment for not less than three (3) years and not more than ten (10)
28 years and a fine of not less than five thousand dollars (\$5,000), nor more than ten thousand
29 dollars (\$10,000).

30 (d) Any proceeds derived directly from a violation of this section are subject to seizure
31 and forfeiture and further proceedings shall be required for their forfeiture as is prescribed by law
32 in chapter 21 of title 12.

33 SECTION 2. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform
34 Controlled Substances Act" is hereby amended to read as follows:

1 **21-28-5.04. Forfeiture of property and money.** -- (a) Any property, real or personal,
2 including, but not limited to, vessels, vehicles, or aircraft, and money or negotiable instruments,
3 securities, or other things of value or any property constituting, or derived from any proceeds,
4 furnished or intended to be furnished by any person for the transportation of or in exchange for a
5 controlled substance and which has been or is being used in violation of section 21-28-4.01(a) or
6 (b) or in, upon or by means of which any violation of section 21-28-4.01(a) or (b) or section 21-
7 28-4.01.1 or 21-28-4.01.2 [or 21-28-4.08](#) has taken or is taking place, and all real property
8 including any right, title, and interest in the whole of any lot or tract of land and any
9 appurtenances or improvements which is used in the commission of a violation of section 21-28-
10 4.01(a) or (b) or section 21-28-4.01.1 or 21-28-4.01.2 [or 21-28-4.08](#), or which was purchased
11 with funds obtained as a result of the commission of a violation of section 21-28-4.01(a) or (b) or
12 section 21-28-4.01.1 or 21-28-4.01.2 [or 21-28-4.08](#), shall be seized and forfeited; provided that
13 no property or money, as enumerated in this subsection, used by any person shall be forfeited
14 under the provisions of this chapter unless it shall appear that the owner of the property or money
15 had knowledge, actual or constructive, and was a consenting party to the alleged illegal act. All
16 moneys, coin and currency, found in close proximity to forfeitable controlled substances, to
17 forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the
18 importation, manufacture, or distribution of controlled substances, are presumed to be unlawfully
19 furnished in exchange for a controlled substance or used in violation of this chapter. The burden
20 of proof is upon claimants of the property to rebut this presumption.

21 (b) Property taken or detained under this section shall not be repleviable, but shall be
22 deemed to be in the custody of the law enforcement agency making the seizure and whenever
23 property or money is forfeited under this chapter it shall be utilized as follows:

24 (1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it
25 may be retained and used by the law enforcement agency that seized the property where the use
26 of the property is reasonably related to the law enforcement duties of the seizing agency. If the
27 seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due
28 to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the
29 trade in value of the vehicle towards the purchase of an appropriate vehicle for use for activities
30 reasonably related to law enforcement duties.

31 (2) The law enforcement agency may sell any forfeited property, which is not required
32 by this chapter to be destroyed and which is not harmful to the public. The proceeds from the sale
33 are to be distributed in accordance with subdivision (3) of this subsection.

34 (3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of

1 this subsection and as to moneys, coin and currency, negotiable instruments, securities, or other
2 things of value as referred to in subsection (a) of this section, the distribution shall be as follows:

3 (i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as
4 follows: All costs of advertising administrative forfeitures shall first be deducted from the amount
5 forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the
6 attorney general's department to be used for further drug-related law enforcement activities
7 including, but not limited to, investigations, prosecutions and the administration of this chapter;
8 seventy percent (70%) of the proceeds shall be divided among the state and local law
9 enforcement agencies proportionately based upon their contribution to the investigation of the
10 criminal activity related to the asset being forfeited; and ten percent (10%) of the proceeds shall
11 be provided to the department of health for distribution to substance abuse treatment programs.

12 (B) The law enforcement agencies involved in the investigation with the assistance of the
13 attorney general shall by agreement determine the respective proportionate share to be received
14 by each agency. If the agencies are unable to reach agreement, application shall be made by one
15 or more of the agencies involved to the presiding justice of the superior court, who shall
16 determine the respective proportionate share attributable to each law enforcement agency. The
17 proceeds from all forfeitures shall be held by the general treasurer in a separate account until such
18 time as an allocation is determined by agreement of the agencies or by the presiding justice. It
19 shall be the duty and responsibility of the general treasurer to disburse the allocated funds from
20 the separate account to the respective law enforcement agencies.

21 (ii) Each state or local law enforcement agency shall be entitled to keep the forfeited
22 money or the proceeds from sales of forfeited property. The funds shall be used for law
23 enforcement purposes and investigations of violations of this chapter. The funds received by a
24 state law enforcement agency shall be maintained in a separate account by the general treasurer.
25 The funds received by a local law enforcement agency shall be maintained in a separate account
26 by the local agency's city or town treasurer.

27 (c) (1) There is established in the state's treasury a special fund to be known as the asset
28 forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of
29 criminal acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug-
30 related law enforcement activity and the treatment and rehabilitation of victims of drug abuse.
31 The fund shall be administered through the office of the general treasurer. The presiding justice of
32 the superior court shall have the authority to determine the feasibility and amount of disbursement
33 to those state or local law enforcement agencies which have made application.

34 (2) Upon the application of any law enforcement agency of the state of Rhode Island

1 when a special need exists concerning the enforcement of the provisions of this chapter, the
2 attorney general or his or her designee may apply to the presiding justice of the superior court for
3 the release from the general treasury of sums of money. When the presiding justice upon
4 consideration of the reasons set forth by that agency deems them to be reasonable and necessary
5 to the accomplishment of a goal within the powers and duties of that law enforcement agency, he
6 or she may issue an order ex parte providing for the release of the funds.

7 (d) Each law enforcement agency making any seizure(s) which result(s) in a forfeiture
8 pursuant to this section shall certify and file with the state treasurer between January 1 and
9 January 30 an annual report detailing the property or money forfeited during the previous
10 calendar year and the use or disposition of the property or money. The report shall be made in the
11 form and manner as may be provided or specified by the treasurer and these annual law
12 enforcement agency reports shall be provided to the local governmental body governing the
13 agency and to the house and senate judiciary committees.

14 (e) Any law enforcement agency whose duty it is to enforce the laws of this state relating
15 to controlled substances is empowered to authorize designated officers or agents to carry out the
16 seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or
17 designated or authorized by law, whenever he or she shall discover any property or monies which
18 have been or are being used in violation of any of the provisions of this chapter, or in, upon or by
19 means of which any violation of this chapter has taken or is taking place, to seize the property or
20 monies and to place it in the custody of the person as may be authorized or designated for that
21 purpose by the respective law enforcement agency pursuant to those provisions.

22 (f) For purposes of this section and section 30-14-2 only, the Rhode Island national
23 guard shall be deemed a law enforcement agency eligible to participate in the forfeiture of money
24 and assets seized through counterdrug operations in which members of the guard support federal,
25 state or municipal efforts.

26 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 CRIMINAL OFFENSES

- 1 This act would subject the proceeds derived from pandering or permitting prostitution
- 2 from conspiracy to violate the uniformed controlled substances act to seizure and forfeiture.
- 3 This act would take effect upon passage.

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