

CHAPTER 19-03.2 IMITATION CONTROLLED SUBSTANCES

19-03.2-01. Definitions.

1. "Controlled substance" means a substance as defined in section 19-03.1-01.
2. "Distribute" means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.
3. "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance, including color, shape, size, markings, or packaging, or by representations made, would lead a reasonable person to believe that the substance is a controlled substance.
4. "Manufacture" means producing, preparing, compounding, processing, encapsulating, packaging, repackaging, labeling, or relabeling of an imitation controlled substance.

19-03.2-02. Determination of imitation controlled substance. When the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" as in the case of a powder or a liquid substance, the court or authority concerned should consider, in addition to all other logically relevant factors, all of the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

1. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance or its use or effect.
2. Statements made to the recipient that the substance may be resold for inordinate profit.
3. Whether the substance is packaged in a manner normally used for illicit controlled substances.
4. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities.
5. Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances, imitation controlled substances, or fraud.
6. The proximity of the substances to controlled substances.

19-03.2-03. Prohibited acts - Penalties - Exception.

1. It is a class C felony for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance.
2. It is a class C felony for a person to place in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances.
3. It is a class B misdemeanor for a person to use, or to possess with intent to use, an imitation controlled substance.

4. It is not a defense that the defendant believed the substance actually to be a controlled substance.
5. No civil or criminal liability may be imposed by virtue of this chapter on any person registered under chapter 19-03.1 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.