

218A.350 Prohibited practices concerning substances that simulate controlled substances -- Penalties.

- (1) No person shall sell or transfer any substance, other than a controlled substance, with the representation or upon creation of an impression that the substance which is sold or transferred is a controlled substance.
- (2) No person shall possess for sale or transfer any substance designed in any manner, including but not limited to design of the item or its container, markings, or color, to simulate a controlled substance.
- (3) No person shall possess for sale or transfer any substance, not covered by subsection (2) of this section which is not a controlled substance with the representation or upon the creation of an impression that the substance held for sale or transfer is a controlled substance.
- (4) No person shall manufacture, package, repackage, advertise, or mark any substance, which is not a controlled substance, in such a manner as to resemble a controlled substance, for the purpose of creating the impression that the substance is a controlled substance.
- (5) For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following:
 - (a) Whether the noncontrolled substance was packaged in a manner normally used for the illegal sale of controlled substances;
 - (b) Whether the sale or attempted sale included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance.
 - (c) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled substance.
- (6) In any prosecution brought under this section, it is not a defense to a violation of this section that the defendant believed the noncontrolled substance to actually be a controlled substance.
- (7)
 - (a) Any person who violates any of the provisions of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.
 - (b) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
 - (c) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.

Effective: April 11, 2012

History: Amended 2012 Ky. Acts ch. 108, sec. 12, effective April 11, 2012. -- Amended 1992 Ky. Acts ch. 441, sec. 7, effective July 14, 1992. -- Created 1982 Ky. Acts ch. 419, sec. 1, effective July 15, 1982.