

**21-5714. Unlawful representation that noncontrolled substance is controlled substance.** (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or  
(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) Violation of subsection (a) is a:

(1) Class A nonperson misdemeanor, except as provided in subsection (b)(2); and

(2) nondrug severity level 9, nonperson felony if the distributor is 18 or more years of age, distributing to a minor and at least three years older than the minor to whom the distribution is made.

(c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(d) A person who commits a violation of subsection (a) also may be prosecuted for, convicted of and punished for theft.

**History:** L. 2009, ch. 32, § 14; L. 2012, ch. 150, § 16; July 1.