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## Crimes; Imitation Controlled Substances

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## Crimes; imitation controlled substances

NEV. REV. STATS. §453.— (new); 453.091, 453.301 (amended).  
AB 388 (Sedway); 1983 STAT. Ch 383

With the enactment of Chapter 383, it is unlawful for any person in Nevada to manufacture,<sup>1</sup> distribute,<sup>2</sup> or sell an imitation controlled substance.<sup>3</sup> Chapter 383 defines an imitation controlled substance as a substance that is not a controlled substance, and that (1) is shaped, marked, or colored to lead a reasonable person to believe it is a controlled substance<sup>4</sup> or (2) is represented to be a controlled substance.<sup>5</sup> In determining whether a representation has been made that the substance is a controlled substance, the court may consider (1) statements by the defendant regarding the nature, use, or effect of the substance,<sup>6</sup> (2) statements made regarding the recipient's ability to resell the substance at a substantially higher price than is customary for the substance,<sup>7</sup> and (3) whether the substance is packaged in a manner normally used for illicit controlled substances.<sup>8</sup>

A violation of Chapter 383 is treated as a misdemeanor.<sup>9</sup> An increased penalty will be imposed, however, if a person (1) uses or possesses with the intent to use an imitation controlled substance<sup>10</sup> or (2) advertises or solicits an imitation controlled substance with reasonable knowledge that the advertisement or solicitation will promote the distribution of the imitation controlled substance.<sup>11</sup> Under these circumstances, the first and second convictions are treated as gross misdemeanors. Subsequent convictions are punishable by imprisonment in the state prison for not less than one year or more than six years, and further, may be punished by a fine not exceeding \$5000.<sup>12</sup> This fine will be imposed for a first offense, however, if a person eight-

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1. NEV. REV. STAT. §453.091 (amended by 1983 Nev. Stat. c. 383, §2, at 921) (definition of manufacture).

2. 1983 Nev. Stat. c. 383, §1(5)(a), at 921 (definition of distribute).

3. *Id.* c. 383, §1(1), at 921. The manufacture, distribution, sale, and possession of an imitation controlled substance for use as a placebo by practitioners in the course of their professional practice or research is exempt from these provisions. *Id.*

4. *Id.* c. 383, §1(5)(b)(1), at 921.

5. *Id.* c. 383, §1(5)(b)(2), at 921.

6. *Id.* c. 383, §1(5)(2)(b)(I), at 921.

7. *Id.* c. 383, §1(5)(b)(2)(II), at 921.

8. *Id.* c. 383, §1(5)(b)(2)(III), at 921.

9. *Id.* c. 383, §1(2), at 921.

10. *Id.* c. 383, §1(4)(a), at 921.

11. *Id.* c. 383, §1(4)(b), at 921.

12. *Id.* c. 383, §1(4), at 921.

een years of age or older distributes or sells an imitation controlled substance to a person under the age of eighteen.<sup>13</sup> Finally, Chapter 383 provides that all unlawful imitation controlled substances will be subject to forfeiture.<sup>14</sup>

13. *Id.* c. 383, §1(3), at 921.

14. NEV. REV. STAT. §453.301 (amended by 1983 Nev. Stat. c. 383, §3(7), at 921).

## Crimes; trafficking in controlled substances

NEV. REV. STAT. §453.— (new); §§453.336, 453.337 (amended).  
SB 7 (Raggio); 1983 STAT. Ch 111

Existing law imposes penalties for the unlawful possession of controlled substances.<sup>1</sup> Chapter 111 establishes stringent penalties for persons who traffic in controlled substances and provides harsher penalties for offenders who unlawfully possess sizeable quantities of controlled substances.<sup>2</sup>

Under existing law, the State Board of Pharmacy places a substance in schedule I<sup>3</sup> upon a finding that the substance (1) has a high potential for abuse, (2) has no acceptable use in medical treatment in the United States, and (3) lacks accepted safety standards for use in treatment even while under medical supervision.<sup>4</sup> With the enactment of Chapter 111, any person who, without authorization, knowingly, or intentionally sells, manufactures, delivers or brings into Nevada, or who knowingly or intentionally is in actual or constructive possession of at least four but less than fourteen grams of a schedule I substance, will be imprisoned in the state prison for not less than three years or more than twenty years and fined a minimum of \$50,000.<sup>5</sup> If between fourteen and twenty-eight grams are involved, the offender will be imprisoned for life, or for a definite term of not less than ten years, and fined at least \$100,000.<sup>6</sup> If the offenders possess twenty-eight or more grams, they may be imprisoned for life, or for a definite term of not less than twenty-five years, and fined at least \$50,000.<sup>7</sup>

1. See NEV. REV. STAT. §§453.336-.337.

2. See 1983 Nev. Stat. c. 111, §§2-4, at 287-88. See generally *Sheriff v. Williams*, 96 Nev. 22, 604 P.2d 800, 801 (1980) (the legislature is entitled to establish more severe penalties for acts that it believes have greater social impact and consequences).

3. NEV. REV. STAT. §453.166.

4. *Id.*

5. 1983 Nev. Stat. c. 111, §2(1), at 287.

6. *Id.* c. 111, §2(2), at 287.

7. *Id.* c. 111, §2(3), at 287.