§ 3383. Imitation controlled substances. 1. For purposes of this section, the following terms shall have the following meanings:

a. "Manufacture" means the production, preparation, compounding, tableting, processing, encapsulating, packaging, repackaging, labeling or relabeling of an imitation controlled substance.

b. "Markings" means a simulated trademark, trade name, imprinting or other mark, or likeness thereof, of the manufacturer, distributor or dispenser of a controlled substance or a simulated code number or symbol or likeness thereof identifying a controlled substance or combination of such substances.

c. "Imitation controlled substance" means a substance, other than a drug for which a prescription is required pursuant to article one hundred thirty-seven of the education law, that is not a controlled substance, which by dosage unit appearance, including color, shape and size and by a representation is represented to be a controlled substance, as defined in the penal law. Evidence of representations that the substance is a controlled substance may include but is not limited to oral or written representations by the manufacturer or seller, as the case may be, about the substance with regard to:

(i) its price, nature, use or effect as a controlled substance; or

(ii) its packaging in a manner normally used for illicit controlled substances; or

(iii) markings on the substance.

2. It shall be unlawful for any person to manufacture, sell or possess with the intent to sell, an imitation controlled substance.

3. It shall be unlawful for any person to possess or use any punch, die, plate, stone or any other equipment in order to print, imprint, or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any substance or container or labeling thereof with intent to manufacture an imitation controlled substance.

4. No liability shall be imposed by virtue of this section on any person licensed pursuant to article one hundred thirty-one of the education law or licensed under this article who manufactures, distributed, sells, prescribes, dispenses or possesses an imitation controlled substance for use as a placebo or for use in clinical research conducted pursuant to the federal food, drug and cosmetic act.

5. Nothing in this section shall apply to a noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

6. In any prosecution under this section it shall be necessary to prove that the imitation controlled substance was represented to be a controlled substance; however, it shall not be a defense to a prosecution under this section that the accused believed the imitation controlled substance to be a controlled substance.

7. A violation of subdivision two or three of this section shall be a class A misdemeanor. A violation of subdivision two or three of this section by a person previously convicted of a violation of this section within the preceding five years shall be a class E felony.

8. If any provision or part of this section or application thereof is held invalid, the invalidity shall not affect other provisions, parts or applications of this section which can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.