

shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

(b) Repealed. Pub. L. 98-473, title II, § 219(a), Oct. 12, 1984, 98 Stat. 2027

(c) “Drug, narcotic, or chemical offense” defined

As used in this section, the term “drug, narcotic, or chemical offense” means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

(Pub. L. 91-513, title II, § 404, Oct. 27, 1970, 84 Stat. 1264; Pub. L. 98-473, title II, § 219, Oct. 12, 1984, 98 Stat. 2027; Pub. L. 99-570, title I, § 1052, Oct. 27, 1986, 100 Stat. 3207-8; Pub. L. 100-690, title VI, §§ 6371, 6480, Nov. 18, 1988, 102 Stat. 4370, 4382; Pub. L. 101-647, title XII, § 1201, title XIX, § 1907, Nov. 29, 1990, 104 Stat. 4829, 4854; Pub. L. 104-237, title II, § 201(a), Oct. 3, 1996, 110 Stat. 3101; Pub. L. 104-305, § 2(c), Oct. 13, 1996, 110 Stat. 3808; Pub. L. 109-177, title VII, § 711(e)(1), Mar. 9, 2006, 120 Stat. 262; Pub. L. 111-220, § 3, Aug. 3, 2010, 124 Stat. 2372.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-220 struck out “Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram.” after “\$5,000.”

2006—Subsec. (a). Pub. L. 109-177 inserted after second sentence “It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service.”

1996—Subsec. (a). Pub. L. 104-305 inserted “Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both.” after “mixture or substance exceeds 1 gram.”

Pub. L. 104-237, § 201(a)(1), inserted after first sentence “It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.” and substituted “drug, narcotic, or chemical” for “drug or narcotic” in two places.

Subsec. (c). Pub. L. 104-237, § 201(a)(2), substituted “drug, narcotic, or chemical” for “drug or narcotic”.

1990—Subsec. (a). Pub. L. 101-647, § 1907, inserted subsec. (a) designation.

Pub. L. 101-647, § 1201, substituted “shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000” for “shall be fined under title 18 or imprisoned not less than 5 years and not more than 20 years, or both”.

1988—Subsec. (a). Pub. L. 100-690, § 6480(1)(A)-(C), struck out “but not more than \$5,000” after “\$1,000”, “but not more than \$10,000” after “\$2,500”, and “but not more than \$25,000” after “\$5,000” in second sentence.

Pub. L. 100-690, § 6371, inserted provisions relating to increased penalties in cases of certain serious crack possession offenses, making offenders subject to fines under title 18 or imprisonment to terms not less than 5 years nor more than 20 years, or both.

1986—Subsec. (a). Pub. L. 99-570 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000 or both.”

Subsec. (b). Pub. L. 99-570, in amending subsec. (b) generally, substituted “Upon the discharge of such person and dismissal of the proceedings” for “Upon the dismissal of such person and discharge of the proceedings” in par. (2).

Subsec. (c). Pub. L. 99-570, in amending section generally, added subsec. (c).

1984—Pub. L. 98-473 struck out subsec. (a) designation and struck out subsec. (b) which related to probation before judgment and expunging of records for first offense.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-177, title VII, § 711(e)(2), Mar. 9, 2006, 120 Stat. 262, provided that: “The amendment made by paragraph (1) [amending this section] applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act [Mar. 9, 2006].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 844a. Civil penalty for possession of small amounts of certain controlled substances

(a) In general

Any individual who knowingly possesses a controlled substance that is listed in section 841(b)(1)(A) of this title in violation of section 844 of this title in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

(b) Income and net assets

The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a pen-

alty under this section, the income and net assets of an individual shall be considered.

(c) Prior conviction

A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance.

(d) Limitation on number of assessments

A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

(e) Assessment

A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

(f) Compromise

The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(g) Judicial review

If the Attorney General issues an order pursuant to subsection (e) of this section after a hearing described in such subsection, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

(h) Civil action

If an individual does not request a hearing pursuant to subsection (e) of this section and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) of this section seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28. Such interest shall accrue from the expiration of the 30-day period described in subsection (g) of this section. In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(i) Limitation

The Attorney General may not under this section¹ commence proceeding against an indi-

vidual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a) of this section.

(j) Expungement procedures

The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years if—

- (1) the individual has not previously been assessed a civil penalty under this section;
- (2) the individual has paid the assessment;
- (3) the individual has complied with any conditions imposed by the Attorney General;
- (4) the individual has not been convicted of a Federal or State offense relating to a controlled substance; and
- (5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

(Pub. L. 91-513, title II, §405, formerly Pub. L. 100-690, title VI, §6486, Nov. 18, 1988, 102 Stat. 4384, renumbered §405 of Pub. L. 91-513, and amended Pub. L. 101-647, title X, §1002(g)(1), (2), Nov. 29, 1990, 104 Stat. 4828.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 91-513 was renumbered section 418 and is classified to section 859 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, §1002(g)(2)(A), made technical amendments to references to sections 841(b)(1)(A) and 844 of this title to correct references to corresponding provisions of original act.

Subsecs. (c), (j)(4). Pub. L. 101-647, §1002(g)(2)(B), (C), struck out “as defined in section 802 of this title” after “controlled substance”.

§§ 845 to 845b. Transferred

CODIFICATION

Section 845, Pub. L. 91-513, title II, §405, Oct. 27, 1970, 84 Stat. 1265, as amended, which related to distribution of controlled substances to persons under age twenty-one, was renumbered §418 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(a)(1), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 859 of this title.

Section 845a, Pub. L. 91-513, title II, §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069, and amended, which related to distribution or manufacturing of controlled substances in or near schools and colleges, was renumbered §419 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(b), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 860 of this title.

Section 845b, Pub. L. 91-513, title II, §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10, and amended, which related to employment or use of persons under 18 years of age in drug operations,

¹ So in original. Probably should be “section”.