

tive Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95-633 set out as an Effective Date note under section 830 of this title.

EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

REPEALS

Pub. L. 96-359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95-633, which had provided for the repeal of subsec. (d) of this section effective Jan. 1, 1981.

APPLICATION OF FAIR SENTENCING ACT

Pub. L. 115-391, title IV, §404, Dec. 21, 2018, 132 Stat. 5222, provided that:

“(a) DEFINITION OF COVERED OFFENSE.—In this section, the term ‘covered offense’ means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) [amending this section and sections 844 and 960 of this title], that was committed before August 3, 2010.

“(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

“(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act [Dec. 21, 2018], denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.”

**§ 842. Prohibited acts B**

**(a) Unlawful acts**

It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 829 of this title;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 825 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 825 of this title;

(5) to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter or subchapter II;

(6) to refuse any entry into any premises or inspection authorized by this subchapter or subchapter II;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 824(f) or 881 of this title or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter II, any information acquired in the course of an inspection authorized by this subchapter concerning any method or process which as a trade secret is entitled to protection, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section;

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 830(a)(3) of this title.<sup>1</sup>

(10) negligently to fail to keep a record or make a report under section 830 of this title or negligently to fail to self-certify as required under section 830 of this title;

(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this subchapter or subchapter II, with reckless disregard for the illegal uses to which such a laboratory supply will be put;

(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 830 of this title—

(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section;

(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 830(e)(1) of this title, information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities;

(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 830(b)(3)(B) of this title, unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 830(e)(1)(B)(v) of this title;

(16) to violate subsection (e) of section 825 of this title;<sup>2</sup> or

<sup>1</sup>So in original. Probably should be “section 830(a)(3) of this title.”

<sup>2</sup>See References in Text note below.

(17) in the case of a registered manufacturer or distributor of opioids, to fail to review the most recent information, directly related to the customers of the manufacturer or distributor, made available by the Attorney General in accordance with section 827(f) of this title.

As used in paragraph (11), the term “laboratory supply” means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer. For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 830(e)(1)(B)(v) of this title, the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 830(e)(1)(B)(v) of this title.

**(b) Manufacture**

It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical, which is—

- (1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 826 of this title; or
- (2) in excess of a quota assigned to him pursuant to section 826 of this title.

**(c) Penalties**

(1)(A) Except as provided in subparagraph (B), (C), or (D) of this paragraph and paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 to enforce this paragraph.

(B)(i) Except as provided in clause (ii), in the case of a violation of paragraph (5), (10), or (17) of subsection (a), the civil penalty shall not exceed \$10,000.

(ii) In the case of a violation described in clause (i) committed by a registered manufacturer or distributor of opioids and related to the

reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 827(f) of this title, the penalty shall not exceed \$100,000.

(C) In the case of a violation of paragraph (16) of subsection (a) of this section by an importer, exporter, manufacturer, or distributor (other than as provided in subparagraph (D)), up to \$500,000 per violation. For purposes of this subparagraph, a violation is defined as each instance of importation, exportation, manufacturing, distribution, or possession with intent to manufacture or distribute, in violation of paragraph (16) of subsection (a).

(D) In the case of a distribution, dispensing, or possession with intent to distribute or dispense in violation of paragraph (16) of subsection (a) of this section at the retail level, up to \$1000 per violation. For purposes of this paragraph, the term “at the retail level” refers to products sold, or held for sale, directly to the consumer for personal use. Each package, container or other separate unit containing an anabolic steroid that is distributed, dispensed, or possessed with intent to distribute or dispense at the retail level in violation of such paragraph (16) of subsection (a) shall be considered a separate violation.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) or (D) of this paragraph, be sentenced to imprisonment of not more than one year or a fine under title 18, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this subchapter or subchapter II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine under title 18, or both.

(C) In addition to the penalties set forth elsewhere in this subchapter or subchapter II, any business that violates paragraph (11) of subsection (a) shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater.

(D) In the case of a violation described in subparagraph (A) that was a violation of paragraph (5), (10), or (17) of subsection (a) committed by a registered manufacturer or distributor of opioids that relates to the reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 827(f) of this title, the

criminal fine under title 18 shall not exceed \$500,000.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(4)(A) If a regulated seller, or a distributor required to submit reports under section 830(b)(3) of this title, violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 824(c) of this title for an order to show cause.

(Pub. L. 91-513, title II, §402, Oct. 27, 1970, 84 Stat. 1262; Pub. L. 95-633, title II, §202(b)(1), (2), Nov. 10, 1978, 92 Stat. 3776; Pub. L. 100-690, title VI, §6056, Nov. 18, 1988, 102 Stat. 4318; Pub. L. 104-237, title II, §205, Oct. 3, 1996, 110 Stat. 3103; Pub. L. 105-277, div. A, §101(b) [title I, §117], Oct. 21, 1998, 112 Stat. 2681-50, 2681-68; Pub. L. 107-273, div. B, title IV, §4002(b)(16), (d)(2)(B), Nov. 2, 2002, 116 Stat. 1808, 1809; Pub. L. 109-177, title VII, §§711(f)(1)(A), (2), 714, Mar. 9, 2006, 120 Stat. 262-264; Pub. L. 111-268, §§4, 5, Oct. 12, 2010, 124 Stat. 2847, 2848; Pub. L. 113-260, §3(c), Dec. 18, 2014, 128 Stat. 2931; Pub. L. 115-271, title III, §3273(c), Oct. 24, 2018, 132 Stat. 3953.)

#### REFERENCES IN TEXT

Section 825 of this title, referred to in subsec. (a)(16), was so in the original, but probably should have been a reference to section 305 of Pub. L. 91-513, which is classified to section 825 of this title.

Schedules I and II, referred to in subsec. (b), are set out in section 812(c) of this title.

#### AMENDMENTS

2018—Subsec. (a)(17). Pub. L. 115-271, §3273(c)(1), added par. (17).

Subsec. (c)(1)(B). Pub. L. 115-271, §3273(c)(2)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “In the case of a violation of paragraph (5) or (10) of subsection (a), the civil penalty shall not exceed \$10,000.”

Subsec. (c)(2)(A). Pub. L. 115-271, §3273(c)(2)(B)(i), inserted “or (D)” after “subparagraph (B)”.

Subsec. (c)(2)(D). Pub. L. 115-271, §3273(c)(2)(B)(ii), added subpar. (D).

2014—Subsec. (a)(16). Pub. L. 113-260, §3(c)(1), added par. (16).

Subsec. (c)(1)(A). Pub. L. 113-260, §3(c)(2)(A), inserted “, (C), or (D)” after “subparagraph (B)”.

Subsec. (c)(1)(C), (D). Pub. L. 113-260, §3(c)(2)(B), added subpars. (C) and (D).

2010—Subsec. (a). Pub. L. 111-268, §4(4), inserted “For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 830(e)(1)(B)(v) of this title, the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the

list referred to under section 830(e)(1)(B)(v) of this title.” at end of concluding provisions.

Subsec. (a)(10). Pub. L. 111-268, §5, inserted “or negligently to fail to self-certify as required under section 830 of this title” before semicolon.

Subsec. (a)(15). Pub. L. 111-268, §4(1)-(3), added par. (15).

2006—Subsec. (a)(12) to (14). Pub. L. 109-177, §711(f)(1)(A), added pars. (12) to (14).

Subsec. (b). Pub. L. 109-177, §714, inserted “, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,” after “manufacture a controlled substance in schedule I or II” in introductory provisions.

Subsec. (c)(4). Pub. L. 109-177, §711(f)(2), added par. (4).  
2002—Subsec. (c)(2)(A). Pub. L. 107-273, §4002(d)(2)(B)(i), substituted “under title 18” for “of not more than \$25,000”.

Subsec. (c)(2)(B). Pub. L. 107-273, §4002(d)(2)(B)(ii), substituted “under title 18” for “of \$50,000”.

Subsec. (c)(2)(C). Pub. L. 107-273, §4002(b)(16), realigned margins.

1998—Subsec. (a)(5). Pub. L. 105-277, §101(b) [title I, §117(1)], inserted “negligently” before “fail”.

Subsec. (a)(10). Pub. L. 105-277, §101(b) [title I, §117(2)], inserted “negligently” before “to fail”.

Subsec. (c)(1). Pub. L. 105-277, §101(b) [title I, §117(3)], designated existing provisions as subpar. (A), inserted “subparagraph (B) of this paragraph and” before “paragraph (2)”, and added subpar. (B).

1996—Subsec. (a). Pub. L. 104-237, §205(a), added par. (1) and closing provisions.

Subsec. (c)(2)(C). Pub. L. 104-237, §205(b), added subpar. (C).

1988—Subsec. (a)(8). Pub. L. 100-690, §6056(a), inserted “, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section” after “protection”.

Subsec. (a)(9). Pub. L. 100-690, §6056(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “to distribute or sell piperidine in violation of regulations established under section 830(a)(2) of this title, respecting presentation of identification.”

Subsec. (a)(10). Pub. L. 100-690, §6056(d), added par. (10).

Subsec. (c)(2)(C). Pub. L. 100-690, §6056(c), struck out subpar. (C) which read as follows: “Subparagraphs (A) and (B) shall not apply to a violation of subsection (a)(5) of this section with respect to a refusal or failure to make a report required under section 830(a) of this title (relating to piperidine reporting).”

1978—Subsec. (a)(9). Pub. L. 95-633, §202(b)(1), added par. (9).

Subsec. (c)(2)(C). Pub. L. 95-633, §202(b)(2), added subpar. (C).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-268 effective 180 days after Oct. 12, 2010, see section 6(a) of Pub. L. 111-268, set out as a note under section 830 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95-633 set out as an Effective Date note under section 830 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### REPEALS

Pub. L. 96-359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95-633, which had pro-

vided for the repeal of subsecs. (a)(9) and (c)(2)(C) of this section effective Jan. 1, 1981.

### § 843. Prohibited acts C

#### (a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II, or (B) to present false or fraudulent identification where the person is receiving or purchasing a listed chemical and the person is required to present identification under section 830(a) of this title;

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed 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 drug or container or labeling thereof so as to render such drug a counterfeit substance;

(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II;

(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II or, in the case of an exportation, in violation of this subchapter or subchapter II or of the laws of the country to which it is exported;

(8) to create a chemical mixture for the purpose of evading a requirement of section 830 of this title or to receive a chemical mixture created for that purpose; or

(9) to distribute, import, or export a list I chemical without the registration required by this subchapter or subchapter II.

#### (b) Communication facility

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

#### (c) Advertisement

(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule<sup>1</sup> I controlled substance. As used in this section the term “advertisement” includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule<sup>1</sup> I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule<sup>1</sup> I controlled substance. The term “advertisement” does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule<sup>1</sup> I controlled substance.

(2)(A) It shall be unlawful for any person to knowingly or intentionally use the Internet, or cause the Internet to be used, to advertise the sale of, or to offer to sell, distribute, or dispense, a controlled substance where such sale, distribution, or dispensing is not authorized by this subchapter or by the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.].

(B) Examples of activities that violate subparagraph (A) include, but are not limited to, knowingly or intentionally causing the placement on the Internet of an advertisement that refers to or directs prospective buyers to Internet sellers of controlled substances who are not registered with a modification under section 823(f) of this title.

(C) Subparagraph (A) does not apply to material that either—

(i) merely advertises the distribution of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter; or

(ii) merely advocates the use of a controlled substance or includes pricing information without attempting to facilitate an actual transaction involving a controlled substance.

#### (d) Penalties

(1) Except as provided in paragraph (2), any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine under title 18, or both; except that if any person commits such a violation

<sup>1</sup> So in original. Probably should not be capitalized.