

“(1) cannot be located upon the exercise of due diligence;

“(2) has been transferred or sold to, or deposited with, a third party;

“(3) has been placed beyond the jurisdiction of the court;

“(4) has been substantially diminished in value; or  
“(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).”

2000—Subsec. (q). Pub. L. 106-310, §3613(a)(1), (2), in introductory provisions, inserted “amphetamine or” before “methamphetamine” and substituted “shall” for “may”.

Subsec. (q)(2). Pub. L. 106-310, §3613(a)(2), (3), inserted “, the State or local government concerned, or both the United States and the State or local government concerned” after “to reimburse the United States”, “or the State or local government concerned, as the case may be,” after “costs incurred by the United States”, and “amphetamine or” before “methamphetamine”.

Subsec. (q)(3). Pub. L. 106-310, §3613(a)(4), substituted “section 3663A of title 18” for “section 3663 of title 18”.

1996—Subsec. (q). Pub. L. 104-237 added subsec. (q).

1986—Subsec. (c). Pub. L. 99-570, §1864(1), substituted “subsection (n)” for “subsection (o)”.

Subsec. (f). Pub. L. 99-570, §1864(2), substituted “subsection (e)” for “subsection (f)”.

Subsec. (i)(1). Pub. L. 99-570, §1864(3), substituted “this subchapter” for “this chapter”.

Subsec. (k). Pub. L. 99-570, §1864(1), (4), which directed the substitution of “subsection (n)” for “subsection (o)” in “the second subsection (h)”, and directed the redesignation of “the second subsection (h)” as subsection (k), were executed to this subsection because the “second subsection (h)” had been editorially redesignated subsec. (k) to reflect the probable intent of Congress. See 1984 Amendment note below.

Subsec. (p). Pub. L. 99-570, §1153(b), which directed that “section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975” be amended “by redesignating subsection ‘(p)’ as subsection ‘(q)’” and adding subsec. (p) was executed to this section, which is section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as the probable intent of Congress, by adding a subsec. (p) in view of the prior redesignation of subsec. (p) as (o) by Pub. L. 98-473, §2301(e)(2). See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98-473, §2301(d), inserted “In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.”

Subsec. (d). Pub. L. 98-473, §2301(e), struck out subsec. (d) which related to forfeiture of property other than that described in subsec. (a) and the conditions therefor, and redesignated former subsec. (e) as (d).

Subsecs. (e) to (p). Pub. L. 98-473, §2301(e)(2), which directed that this section be amended by redesignating subsecs. (e), (f), (g), (h), (i), (l), (m), (n), (o), and (p) as subsecs. (d), (e), (f), (g), (h), (i), (j), (h), (l), (m), (n), and (o), respectively, was executed by redesignating subsecs. (e) to (p) as (d) to (o), respectively, to give effect to the probable intent of Congress.

Subsec. (n)(1). Pub. L. 98-473, §2301(f), struck out “for at least seven successive court days” after “to dispose of the property”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of Title 11, Bankruptcy.

#### SAVINGS CLAUSE

Pub. L. 109-177, title VII, §743(b), Mar. 9, 2006, 120 Stat. 273, provided that: “Nothing in this section [amending this section] shall be interpreted or con-

strued to amend, alter, or otherwise affect the obligations, liabilities and other responsibilities of any person under any Federal or State environmental laws.”

### § 853a. Transferred

#### CODIFICATION

Section, Pub. L. 100-690, title V, §5301, Nov. 18, 1988, 102 Stat. 4310, which related to denial of Federal benefits to drug traffickers and possessors, was renumbered section 421 of the Controlled Substances Act by Pub. L. 101-647, title X, §1002(d)(1), Nov. 29, 1990, 104 Stat. 4827, and is classified to section 862 of this title.

### § 854. Investment of illicit drug profits

#### (a) Prohibition

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this subchapter or subchapter II punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this subchapter or subchapter II after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

#### (b) Penalty

Whoever violates this section shall be fined not more than \$50,000 or imprisoned not more than ten years, or both.

#### (c) “Enterprise” defined

As used in this section, the term “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

#### (d) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(Pub. L. 91-513, title II, §414, as added Pub. L. 98-473, title II, §303, Oct. 12, 1984, 98 Stat. 2049.)

### § 855. Alternative fine

In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(Pub. L. 91-513, title II, §415, as added Pub. L. 98-473, title II, §2302, Oct. 12, 1984, 98 Stat. 2193.)

**§ 856. Maintaining drug-involved premises****(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful to—

(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

**(b) Criminal penalties**

Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$500,000, or both, or a fine of \$2,000,000 for a person other than an individual.

**(c) Violation as offense against property**

A violation of subsection (a) shall be considered an offense against property for purposes of section 3663A(c)(1)(A)(ii) of title 18.

**(d) Civil penalties**

(1) Any person who violates subsection (a) shall be subject to a civil penalty of not more than the greater of—

(A) \$250,000; or

(B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.

(2) If a civil penalty is calculated under paragraph (1)(B), and there is more than 1 defendant, the court may apportion the penalty between multiple violators, but each violator shall be jointly and severally liable for the civil penalty under this subsection.

**(e) Declaratory and injunctive remedies**

Any person who violates subsection (a) shall be subject to declaratory and injunctive remedies as set forth in section 843(f) of this title.

(Pub. L. 91-513, title II, §416, as added Pub. L. 99-570, title I, §1841(a), Oct. 27, 1986, 100 Stat. 3207-52; amended Pub. L. 106-310, div. B, title XXXVI, §3613(e), Oct. 17, 2000, 114 Stat. 1230; Pub. L. 108-21, title VI, §608(b)(1), (2), (c), Apr. 30, 2003, 117 Stat. 691.)

## AMENDMENTS

2003—Pub. L. 108-21, §608(b)(2), substituted “Maintaining drug-involved premises” for “Establishment of manufacturing operations” in section catchline.

Subsec. (a)(1). Pub. L. 108-21, §608(b)(1)(A), substituted “open, lease, rent, use, or maintain any place, whether permanently or temporarily,” for “open or maintain any place”.

Subsec. (a)(2). Pub. L. 108-21, §608(b)(1)(B), added par. (2) and struck out former par. (2) which read as follows: “manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of un-

lawfully manufacturing, storing, distributing, or using a controlled substance.”

Subsecs. (d), (e). Pub. L. 108-21, §608(c), added subsecs. (d) and (e).

2000—Subsec. (c). Pub. L. 106-310 added subsec. (c).

**§ 857. Repealed. Pub. L. 101-647, title XXIV, § 2401(d), Nov. 29, 1990, 104 Stat. 4859**

Section, Pub. L. 99-570, title I, §1822, Oct. 27, 1986, 100 Stat. 3207-51; Pub. L. 100-690, title VI, §6485, Nov. 18, 1988, 102 Stat. 4384; Pub. L. 101-647, title XXIV, §2401(b), Nov. 29, 1990, 104 Stat. 4859, related to interstate and foreign sale and transportation of drug paraphernalia.

Subsec. (a), which related to unlawful acts, was repealed.

Subsecs. (b) to (f) were redesignated as subsecs. (b) to (f) of section 422 of the Controlled Substances Act by section 2401(b) of Pub. L. 101-647 and transferred to section 863(b) to (f) of this title.

## EFFECTIVE DATE

Pub. L. 99-570, title I, §1823, Oct. 27, 1986, 100 Stat. 3207-52, which provided that subtitle O (§§1821-1823) of title I of Pub. L. 99-570, enacting this section and provisions set out as a note under section 801 of this title, was to become effective 90 days after Oct. 27, 1986, was repealed by Pub. L. 101-647, title XXIV, §2401(d), Nov. 29, 1990, 104 Stat. 4859.

**§ 858. Endangering human life while illegally manufacturing controlled substance**

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with title 18 or imprisoned not more than 10 years, or both.

(Pub. L. 91-513, title II, §417, as added Pub. L. 100-690, title VI, §6301(a), Nov. 18, 1988, 102 Stat. 4370.)

**§ 859. Distribution to persons under age twenty-one****(a) First offense**

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title, and (2) at least twice any term of supervised release authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

**(b) Second offense**

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under