

**§ 862a. Denial of assistance and benefits for certain drug-related convictions**

**(a) In general**

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or

(2) benefits under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) or any State program carried out under that Act [7 U.S.C. 2011 et seq.].

**(b) Effects on assistance and benefits for others**

**(1) Program of temporary assistance for needy families**

The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] to the family members of an individual to whom subsection (a) applies shall be reduced by the amount which would have otherwise been made available to the individual under such part.

**(2) Benefits under the Food and Nutrition Act of 2008**

The amount of benefits otherwise required to be provided to a household under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)), or any State program carried out under that Act [7 U.S.C. 2011 et seq.], shall be determined by considering the individual to whom subsection (a) applies not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

**(c) Enforcement**

A State that has not exercised its authority under subsection (d)(1)(A) shall require each individual applying for assistance or benefits referred to in subsection (a), during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime described in subsection (a).

**(d) Limitations**

**(1) State elections**

**(A) Opt out**

A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a).

**(B) Limit period of prohibition**

A State may, by law enacted after August 22, 1996, limit the period for which subsection (a) shall apply to any or all individuals domiciled in the State.

**(2) Inapplicability to convictions occurring on or before August 22, 1996**

Subsection (a) shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996.

**(e) “State” defined**

For purposes of this section, the term “State” has the meaning given it—

(1) in section 419(5) of the Social Security Act [42 U.S.C. 619(5)], when referring to assistance provided under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], and

(2) in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), when referring to the supplemental nutrition assistance program (as defined in that section) or any State program carried out under that Act [7 U.S.C. 2011 et seq.].

**(f) Rule of interpretation**

Nothing in this section shall be construed to deny the following Federal benefits:

(1) Emergency medical services under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(2) Short-term, noncash, in-kind emergency disaster relief.

(3)(A) Public health assistance for immunizations.

(B) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(4) Prenatal care.

(5) Job training programs.

(6) Drug treatment programs.

(Pub. L. 104–193, title I, § 115, Aug. 22, 1996, 110 Stat. 2180; Pub. L. 105–33, title V, § 5516(a), Aug. 5, 1997, 111 Stat. 620; Pub. L. 110–234, title IV, § 4115(c)(2)(C), May 22, 2008, 122 Stat. 1109; Pub. L. 110–246, § 4(a), title IV, § 4115(c)(2)(C), June 18, 2008, 122 Stat. 1664, 1871; Pub. L. 113–79, title IV, § 4030(n), Feb. 7, 2014, 128 Stat. 814.)

**Editorial Notes**

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (b)(1), (e)(1), and (f)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food and Nutrition Act of 2008, referred to in subsecs. (a)(2), (b)(2), and (e)(2), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

and not as part of the Controlled Substances Act which comprises this subchapter.

#### AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113-79, § 4030(n)(1), substituted “supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) or any State program carried out under that Act” for “food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977”.

Subsec. (b)(2). Pub. L. 113-79, § 4030(n)(2), substituted “supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)), or any State program carried out under that Act” for “food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977), or any State program carried out under the Food Stamp Act of 1977”.

Subsec. (e)(2). Pub. L. 113-79, § 4030(n)(3), substituted “section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), when referring to the supplemental nutrition assistance program (as defined in that section) or any State program carried out under that Act” for “section 3(s) of the Food Stamp Act of 1977, when referring to the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977”.

2008—Subsecs. (a)(2), (b)(2). Pub. L. 110-246, § 4115(c)(2)(C)(i), substituted “section 3(l)” for “section 3(h)”.

Subsec. (e)(2). Pub. L. 110-246, § 4115(c)(2)(C), substituted “section 3(s)” for “section 3(m)” and “section 3(l)” for “section 3(h)”.

1997—Subsec. (d)(2). Pub. L. 105-33 substituted “a conviction if the conviction is for conduct” for “convictions”.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

References to the food stamp program established under the Food Stamp Act of 1977, now known as the Food and Nutrition Act of 2008, considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110-246, set out as a note under section 2012 of Title 7, Agriculture.

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4115(c)(2)(C) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

##### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, § 5518(d), Aug. 5, 1997, 111 Stat. 621, provided that: “The amendments made by this chapter to a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193] that have not become part of another statute [chapter 1 (§§ 5501-5518) of subtitle F of title V of Pub. L. 105-33, amending this section, sections 601 to 603, 604 to 608, 609 to 611, and 612 to 617 of Title 42, The Public Health and Welfare, and provisions set out as notes under section 612c of Title 7, Agriculture, and sections 601 and 613 of Title 42] shall take effect as if the amendments had been included in the provision at the time the provision became law.”

##### EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules

relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

#### § 862b. Sanctioning for testing positive for controlled substances

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.

(Pub. L. 104-193, title IX, § 902, Aug. 22, 1996, 110 Stat. 2347.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Controlled Substances Act which comprises this subchapter.

#### § 863. Drug paraphernalia

##### (a) In general

It is unlawful for any person—

- (1) to sell or offer for sale drug paraphernalia;
- (2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or
- (3) to import or export drug paraphernalia.

##### (b) Penalties

Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18.

##### (c) Seizure and forfeiture

Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

##### (d) “Drug paraphernalia” defined

The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana,<sup>1</sup> cocaine,

<sup>1</sup> So in original. Probably should be “marihuana.”