

(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 842 of this title.

(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Pub. L. 91-513, title II, § 403, Oct. 27, 1970, 84 Stat. 1263; Pub. L. 95-633, title II, § 202(b)(3), Nov. 10, 1978, 92 Stat. 3776; Pub. L. 98-473, title II, § 516, Oct. 12, 1984, 98 Stat. 2074; Pub. L. 99-570, title I, § 1866(a), Oct. 27, 1986, 100 Stat. 3207-54; Pub. L. 100-690, title VI, § 6057, Nov. 18, 1988, 102 Stat. 4319; Pub. L. 103-200, § 3(g), Dec. 17, 1993, 107 Stat. 2337; Pub. L. 103-322, title IX, § 90106, Sept. 13, 1994, 108 Stat. 1988; Pub. L. 104-237, title II, § 203(a), 206(b), Oct. 3, 1996, 110 Stat. 3102, 3103.)

REFERENCES IN TEXT

Schedules I and II, referred to in subsecs. (a)(1) and (c), are set out in section 812(c) of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-237, § 203(a), inserted par. (1) designation, substituted “Except as provided in paragraph (2), any person” for “Any person”, and added par. (2).

Subsec. (e). Pub. L. 104-237, § 206(b)(1), inserted “manufacture, exportation,” after “distribution,” and struck out “regulated” after “engaging in any”.

Subsec. (f). Pub. L. 104-237, § 206(b)(2), added subsec. (f).

1994—Subsecs. (c) to (e). Pub. L. 103-322 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Subsec. (a)(6), (7). Pub. L. 103-200, § 3(g)(1), amended pars. (6) and (7) generally. Prior to amendment, pars. (6) and (7) read as follows:

“(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, with intent to manufacture a controlled substance except as authorized by this subchapter;

“(7) to manufacture, distribute, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this subchapter; or”.

Subsec. (a)(9). Pub. L. 103-200, § 3(g)(2), (3), added par. (9).

1988—Subsec. (a)(4)(B). Pub. L. 100-690, § 6057(a)(1), substituted “a listed chemical” for “piperidine”.

Subsec. (a)(6) to (8). Pub. L. 100-690, § 6057(a)(2)-(4), added pars. (6) to (8).

Subsec. (d). Pub. L. 100-690, § 6057(b), added subsec. (d).

1986—Subsec. (a)(2). Pub. L. 99-570 substituted a semicolon for the period at end.

1984—Subsec. (a)(2). Pub. L. 98-473 added applicability to dispensing, acquiring, or obtaining a controlled substance, and applicability to an expired number.

1978—Subsec. (a)(4). Pub. L. 95-633, § 202(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-200 effective on date that is 120 days after Dec. 17, 1993, see section 11 of Pub. L. 103-200, set out as a note under section 802 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, except as otherwise provided, see section 203(a) of Pub. L. 95-633, set out as an Effective Date note under section 830 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. (a)(4)(B) of this section effective Jan. 1, 1981.

§ 844. Penalties for simple possession

(a) Unlawful acts; penalties

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. 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. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$1,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$5,000. 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. 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. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, except that this sentence 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.)

AMENDMENTS

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844a, 885 of this title; title 18 sections 3553, 3607; title 42 section 14052.

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