

TITLE 21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT
Part D - Offenses and Penalties

§ 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issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. 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. 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

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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.)

Amendments

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].”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 3, 2007 (see <http://www.law.cornell.edu/uscode/uscpint.html>).

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.