

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

**(c) Suspension of period of ineligibility**

The period of ineligibility referred to in subsections (a) and (b) of this section shall be suspended if the individual—

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

**(d) Definitions**

As used in this section—

(1) the term “Federal benefit”—

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term “veterans benefit” means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

**(e) Inapplicability of this section to Government witnesses**

The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

**(f) Indian provision**

Nothing in this section shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in this subsection shall exempt any individual Indian from the sanctions provided for in this section, provided that no individual Indian shall be denied any benefit under Federal Indian programs comparable to those described in subsection (d)(1)(B) or (d)(2) of this section.

**(g) Presidential report**

(1) On or before May 1, 1989, the President shall transmit to the Congress a report—

(A) delineating the role of State courts in implementing this section;

(B) describing the manner in which Federal agencies will implement and enforce the requirements of this section;

(C) detailing the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of Federal benefits; and

(D) recommending any modifications to improve the administration of this section or otherwise achieve the goal of discouraging the trafficking and possession of controlled substances.

(2) No later than September 1, 1989, the Congress shall consider the report of the President and enact such changes as it deems appropriate to further the goals of this section.

**(h) Effective date**

The denial of Federal benefits set forth in this section shall take effect for convictions occurring after September 1, 1989.

(Pub. L. 91-513, title II, § 421, formerly Pub. L. 100-690, title V, § 5301, Nov. 18, 1988, 102 Stat. 4310; renumbered § 421 of Pub. L. 91-513 and amended Pub. L. 101-647, title X, § 1002(d), Nov. 29, 1990, 104 Stat. 4827.)

CODIFICATION

Section was classified to section 853a of this title prior to renumbering by Pub. L. 101-647.

AMENDMENTS

1990—Pub. L. 101-647, § 1002(d)(1), renumbered section 853a of this title as this section.

Subsec. (a)(1). Pub. L. 101-647, § 1002(d)(2), struck out “(as such terms are defined for purposes of the Controlled Substances Act)” after “controlled substances” in introductory provisions.

**§ 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 food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977 [7 U.S.C. 2012(l)]) or any State program carried out under the Food Stamp Act of 1977 [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) of this section 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 Stamp Act of 1977**

The amount of benefits otherwise required to be provided to a household under the food

stamp program (as defined in section 3(l) of the Food Stamp Act of 1977 [7 U.S.C. 2012(l)], or any State program carried out under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], shall be determined by considering the individual to whom subsection (a) of this section 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) of this section shall require each individual applying for assistance or benefits referred to in subsection (a) of this section, 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) of this section.

**(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) of this section.

**(B) Limit period of prohibition**

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

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

Subsection (a) of this section 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(s) of the Food Stamp Act of 1977 [7 U.S.C. 2012(s)], when referring to the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977 [7 U.S.C. 2012(l)]) or any State program carried out under the Food Stamp Act of 1977 [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.)

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 Stamp Act of 1977, referred to in subsecs. (a)(2), (b)(2), and (e)(2), subsequently renamed the Food and Nutrition Act of 2008, 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

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”.

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

Section 5518(d) of title V of Pub. L. 105–33 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.)

#### 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, in-

jecting, 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, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongos;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

##### (e) Matters considered in determination of what constitutes drug paraphernalia

In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;
- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

##### (f) Exemptions

This section shall not apply to—

- (1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or
- (2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

(Pub. L. 91-513, title II, §422, as added and amended Pub. L. 101-647, title XXIV, §2401(a)-(c),

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