

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 841 and 842 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 25, 2002].

“(2) EXCEPTION.—Notwithstanding any provision of this Act [see Tables for classification], a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act [Nov. 25, 2002], shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.”

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Filing of application for a license or permit prior to the effective date of this section as authorizing any person engaged in a business or operation requiring a license or a permit on Oct. 15, 1970 to continue such business or operation pending final action on such application, see section 1105(c) of Pub. L. 91-452, set out as a note under section 841 of this title.

§ 844. Penalties

(a) Any person who—

(1) violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both; and

(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined under this title or imprisoned not more than one year, or both.

(c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Attorney General may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Attorney General for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Attorney General that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Attorney General shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.

(g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not

more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to—

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Pipeline and Hazardous Materials Safety Administration for the handling of hazardous materials pursuant to chapter 51 of title 49.

(h) Whoever—

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States,

including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 20 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section and section 842(p), the term “explosive” means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any

chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(k) A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(l) A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.

(m) A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.

(p) THEFT REPORTING REQUIREMENT.—

(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary¹ not later than 24 hours after the discovery of the theft.

(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than \$10,000, imprisoned not more than 5 years, or both.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 956; amended Pub. L. 97-298, § 2, Oct. 12, 1982, 96 Stat. 1319; Pub. L. 98-473, title II, § 1014, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title VI, § 6474(a), (b), Nov. 18, 1988, 102 Stat. 4379; Pub. L. 101-647, title XXXV, § 3522, Nov. 29, 1990, 104 Stat. 4924; Pub. L. 103-272, § 5(e)(7), July 5, 1994, 108 Stat. 1374; Pub. L. 103-322, title VI, § 6003(a)(3), title XI, §§ 110504(b), 110509, 110515(b), 110518(b), title XXXII, §§ 320106, 320917(a), title XXXIII, § 330016(1)(H), (K), (L), (N), Sept. 13, 1994, 108 Stat. 1969, 2016, 2018, 2020, 2111, 2129, 2147, 2148; Pub. L. 104-132, title VI, § 604, title VII, §§ 701, 706, 708(a), (c)(3), 724, Apr. 24, 1996, 110 Stat. 1289, 1291, 1295-1297, 1300; Pub. L. 104-294, title VI, § 603(a), Oct. 11, 1996, 110 Stat. 3503; Pub. L. 106-54, § 2(b), Aug. 17, 1999, 113 Stat. 399; Pub. L. 107-296, title XI, §§ 1112(e)(3), 1125, 1127, Nov. 25, 2002, 116 Stat.

¹ So in original. Probably should be “Attorney General”.

2276, 2285; Pub. L. 108-426, §2(c)(6), Nov. 30, 2004, 118 Stat. 2424.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c)(1), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (c)(1), is section 5845(a) of Title 26.

AMENDMENTS

2004—Subsec. (g)(2)(B). Pub. L. 108-426 substituted “Pipeline and Hazardous Materials Safety Administration” for “Research and Special Projects Administration”.

2002—Subsec. (c)(2), (3). Pub. L. 107-296, §1112(e)(3), substituted “Attorney General” for “Secretary” wherever appearing.

Subsec. (f)(1). Pub. L. 107-296, §1125, inserted “or any institution or organization receiving Federal financial assistance,” before “shall”.

Subsec. (p). Pub. L. 107-296, §1127, added subsec. (p).

1999—Subsec. (a). Pub. L. 106-54, §2(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 106-54, §2(b)(2), inserted “and section 842(p)” after “this section”.

1996—Subsec. (a). Pub. L. 104-132, §604, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined under this title or imprisoned not more than ten years, or both.”

Subsec. (e). Pub. L. 104-132, §§708(a)(1), 724, substituted “interstate or foreign commerce, or in or affecting interstate or foreign commerce,” for “commerce” and “10” for “five”.

Subsec. (f). Pub. L. 104-132, §708(a)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.”

Subsec. (h). Pub. L. 104-132, §708(a)(3), in concluding provisions, substituted “10 years” and “20 years” for “5 years but not more than 15 years” and “10 years but not more than 25 years”, respectively.

Subsec. (i). Pub. L. 104-294, which directed substitution of comma for “,” each place appearing, could not be executed because “,” did not appear in text subsequent to amendment by Pub. L. 104-132, §708(a)(4). See below.

Pub. L. 104-132, §708(c)(3), struck out at end “No person shall be prosecuted, tried, or punished for any non-capital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.”

Pub. L. 104-132, §708(a)(4)(B), which directed substitution of “not less than 7 years and not more than 40 years, fined under this title” for “not more than 40 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is dam-

aged or destroyed,” was executed by making the substitution in text which read “not more than 40 years, fined the greater of the fine under this title” to reflect the probable intent of Congress.

Pub. L. 104-132, §708(a)(4)(A), substituted “not less than 5 years and not more than 20 years, fined under this title” for “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed.”

Subsec. (n). Pub. L. 104-132, §701, added subsec. (n).

Subsec. (o). Pub. L. 104-132, §706, added subsec. (o).

1994—Subsec. (a). Pub. L. 103-322, §330016(1)(L), substituted “fined under this title” for “fined not more than \$10,000”.

Subsec. (b). Pub. L. 103-322, §330016(1)(H), substituted “fined under this title” for “fined not more than \$1,000”.

Subsec. (c). Pub. L. 103-322, §110509, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d). Pub. L. 103-322, §330016(1)(L), (N), substituted “fined under this title” for “fined not more than \$10,000” after “ten years, or” and for “fined not more than \$20,000” after “twenty years or”.

Pub. L. 103-322, §60003(a)(3)(A), struck out before period at end “as provided in section 34 of this title”.

Subsec. (e). Pub. L. 103-322, §330016(1)(K), substituted “fined under this title” for “fined not more than \$5,000”.

Subsec. (f). Pub. L. 103-322, §320106(1)(B), which directed the substitution of “not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than twenty years, or fined not more than \$10,000”, was executed by making the substitution for “not more than twenty years, or fined not more than \$20,000”, to reflect the probable intent of Congress.

Pub. L. 103-322, §320106(1)(A), substituted “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than ten years, or fined not more than \$10,000”.

Pub. L. 103-322, §60003(a)(3)(B), struck out before period at end “as provided in section 34 of this title”.

Subsec. (g)(2)(B). Pub. L. 103-272 substituted “chapter 51 of title 49” for “the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)”.

Subsec. (h). Pub. L. 103-322, §320106(2), in concluding provisions, substituted “5 years but not more than 15 years” for “five years” and “10 years but not more than 25 years” for “ten years”.

Subsec. (i). Pub. L. 103-322, §320917(a), inserted at end “No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.”

Pub. L. 103-322, §320106(3), substituted “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than ten years or fined not more than \$10,000” and “not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than twenty years or fined not more than \$20,000”.

Pub. L. 103-322, §60003(a)(3)(C), struck out “as provided in section 34 of this title” after “death penalty or to life imprisonment”.

Subsec. (k). Pub. L. 103-322, §110504(b), added subsec. (k).

Subsec. (l). Pub. L. 103-322, §110515(b), added subsec. (l).

Subsec. (m). Pub. L. 103-322, §110518(b), added subsec. (m).

1990—Subsec. (d). Pub. L. 101-647 substituted “subsection,” for “subsection,” before “shall be subject to imprisonment”.

1988—Subsec. (g). Pub. L. 100-690, §6474(a), designated existing provisions as par. (1), substituted “Except as

provided in paragraph (2), whoever” for “Whoever”, inserted “in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or” after “possess an explosive”, inserted “or airport” after “such building”, substituted “not more than five years, or fined under this title, or both” for “not more than one year, or fined not more than \$1,000, or both”, and added par. (2).

Subsec. (h). Pub. L. 100-690, § 6474(b)(2), which directed the amendment of subsec. (h) by striking “shall be sentenced” through the end and inserting new provisions was executed by striking “shall be sentenced” the first time it appeared through the end of the subsection which resulted in inserting concluding provisions and striking out former concluding provisions which read as follows: “shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.”

Subsec. (h)(2). Pub. L. 100-690, § 6474(b)(1), in par. (2), struck out “unlawfully” after “explosive”.

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1984—Subsecs. (d), (f), (i). Pub. L. 98-473 substituted “personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,” for “personal injury results” and “death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,” for “death results”.

1982—Subsecs. (e), (f). Pub. L. 97-298, § 2(a), inserted “fire or” after “by means of” wherever appearing.

Subsec. (h)(1). Pub. L. 97-298, § 2(b), inserted “fire or” after “uses”.

Subsec. (i). Pub. L. 97-298, § 2(c), inserted “fire or” after “by means of”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604 of Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-322, title XXXII, § 320917(b), Sept. 13, 1994, 108 Stat. 2129, provided that: “The amendment made by subsection (a) [amending this section] shall not apply to any offense described in the amendment that was committed more than 5 years prior to the date of enactment of this Act [Sept. 13, 1994].”

EFFECTIVE DATE

Subsecs. (a) to (c) of this section effective 120 days after Oct. 15, 1970, and subsecs. (d) to (j) of this section effective on Oct. 15, 1970, see section 1105(a), (b), set out as a note under section 841 of this title.

§ 845. Exceptions; relief from disabilities

(a) Except in the case of subsection (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) aspects of the transportation of explosive materials via railroad, water, highway, or air

that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term “destructive device” in section 921(a)(4) of title 18 of the United States Code;

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States¹ and

(7) the transportation, shipment, receipt, or importation of display fireworks materials for delivery to a federally recognized Indian tribe or tribal agency.

(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Attorney General for relief from such prohibition.

(2) The Attorney General may grant the relief requested under paragraph (1) if the Attorney General determines that the circumstances regarding the applicability of section 842(i), and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in law—

¹ So in original. Probably should be followed by a semicolon.