

Subsec. (b). Pub. L. 90-189, §5(b), substituted “product” for “article of wearing apparel”, “product, fabric, or related material” for “article of wearing apparel or fabric” in two places and “products, fabrics, or related materials” for “articles of wearing apparel or fabrics”, and inserted “or related material” before “has been introduced in commerce”.

Subsec. (c). Pub. L. 90-189, §5(b), substituted “product, fabric, or related material” for “article of wearing apparel or fabric”.

Subsec. (d). Pub. L. 90-189, §5(b), substituted “products, fabrics, or related materials” for “articles of wearing apparel or fabrics” wherever appearing and struck out “for wearing apparel purposes” before “until properly and adequately treated or processed” in two places.

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

### § 1196. Penalties

Violation of section 1192 or 1197(b) of this title, or failure to comply with section 1202(c) of this title, is punishable by—

- (1) imprisonment for not more than 5 years for a knowing and willful violation of that section;
- (2) a fine determined under section 3571 of title 18; or
- (3) both.

(June 30, 1953, ch. 164, §7, 67 Stat. 114; Pub. L. 95-631, §8(b), Nov. 10, 1978, 92 Stat. 3747; Pub. L. 110-314, title II, §217(c)(4), Aug. 14, 2008, 122 Stat. 3060.)

#### AMENDMENTS

2008—Pub. L. 110-314 amended section generally. Prior to amendment, text read as follows: “Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter.”

1978—Pub. L. 95-631 authorized penalties for non-compliance with section 1202(c) of this title.

### § 1197. Guaranties

#### (a) Defense to prosecution

No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2)

has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

#### (b) False guaranty

It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §8, 67 Stat. 114; Pub. L. 90-189, §6, Dec. 14, 1967, 81 Stat. 572.)

#### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

#### AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189 substituted “product, fabric, or related material” for “wearing apparel or fabric” wherever appearing and “in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title” for “under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals”, added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90-189 substituted “product, fabric, or related material” for “wearing apparel or fabric” wherever appearing.

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate