

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, §5(a), inserted “, or a rule or regulation prescribed under section 1194 (c) of this title,” after “section 1192 of this title” and substituted “for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)” for “or in the United States court of any Territory for the district or Territory in which such person resides or transacts business”.

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.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### TRANSFER OF FUNCTIONS

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#### § 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(June 30, 1953, ch. 164, § 9, 67 Stat. 114; Pub. L. 90-189, § 7, Dec. 14, 1967, 81 Stat. 572.)

#### Editorial Notes

##### AMENDMENTS

1967—Pub. L. 90-189 substituted provisions prohibiting the delivery from customs of imported products, fabrics, or related materials to which flammability standards are applicable, except as provided in section 1499 of title 19, and requiring the Secretary of the Treasury to demand redelivery in the event any such imported product, fabric, or related material is delivered from customs custody under bond and fails to conform with an applicable flammability standard, and in the absence of such redelivery to assert a claim for liquidated damages for breach of the bond, which damages shall

not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand by the Secretary for provisions which authorized the Commission to prohibit any person who had exported or who had attempted to export from any foreign country into the United States any wearing apparel or fabric which was so highly flammable as to be dangerous when worn by individuals from further participation in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bonds with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this chapter.

#### Statutory Notes and Related Subsidiaries

##### TRANSFER OF FUNCTIONS

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#### § 1199. Chapter as additional legislation

The provisions of this chapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to any other person or circumstances shall not be affected thereby.

(June 30, 1953, ch. 164, § 10, 67 Stat. 115.)

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 1200. Persons excluded from operation of chapter

The provisions of this chapter shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this chapter: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this chapter contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title.