

Public Law 90-189

AN ACT

December 14, 1967
[S. 1003]

To amend the Flammable Fabrics Act to increase the protection afforded consumers against injurious flammable fabrics.

Flammable
Fabrics Act,
amendment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Flammable Fabrics Act (15 U.S.C. 1191; 67 Stat. 111) is amended by—

(1) amending paragraph (b) to read as follows:

"Commerce."

"(b) The term 'commerce' means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia."

(2) amending paragraph (c) to read as follows:

"Territory."

"(c) The term 'territory' includes the insular possessions of the United States and also any territory of the United States."

(3) amending paragraph (d) to read as follows:

"Article of
wearing apparel."

"(d) The term 'article of wearing apparel' means any costume or article of clothing worn or intended to be worn by individuals."

Repeal.

(4) repealing paragraph (f);

(5) redesignating paragraphs (e), (g), and (h) as paragraphs (f), (i), and (j), respectively;

(6) inserting therein, immediately after paragraph (d), the following new paragraph:

"Interior fur-
nishing."

"(e) The term 'interior furnishing' means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation."

(7) amending redesignated paragraph (f) to read as follows:

"Fabric."

"(f) The term 'fabric' means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in subsection (h)."

(8) inserting therein, immediately after redesignated paragraph (f), the following new paragraphs:

"Related mate-
rial."

"(g) The term 'related material' means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subsection (h)."

"Product."

"(h) The term 'product' means any article of wearing apparel or interior furnishing."

67 Stat. 111.
15 USC 1192.

SEC. 2. Section 3 of the Flammable Fabrics Act is amended to read as follows:

"PROHIBITED TRANSACTIONS

"SEC. 3. (a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlaw-

ful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

“(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 4 of this Act, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.”

SEC. 3. Section 4 of the Flammable Fabrics Act is amended to read as follows:

“REGULATION OF FLAMMABLE FABRICS

“SEC. 4. (a) Whenever the Secretary of Commerce finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, he shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

“(b) Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Secretary of Commerce finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics, related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Secretary finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, he may under such conditions as the Secretary may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

“(c) The Secretary of Commerce may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he is required or authorized to make pursuant to this Act. All information reported to or otherwise obtained by the Secretary or his representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceed-

38 Stat. 717.
15 USC 58.

67 Stat. 112.
15 USC 1193.

Post, p. 573.

62 Stat. 791.

ing under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

80 Stat. 381;
Ante, p. 54.

“(d) The provisions of sections 551 through 559 of title 5, United States Code, shall apply to the issuance of all standards or regulations or amendments thereto under this section.

Judicial review.

“(e) (1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the standard or regulation, as provided in section 2112 of title 28 of the United States Code.

72 Stat. 941.

“(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original standard or regulation or amendment thereto, with the return of such additional evidence.

80 Stat. 392.
5 USC 701-706.

“(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter.

62 Stat. 928.

“(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

“(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

“(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

Transcript of
proceedings.

“(f) A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this Act, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).”

Rules and regu-
lations.
67 Stat. 113.
15 USC 1194.

SEC. 4. (a) Subsection (c) of section 5 of the Flammable Fabrics Act is amended to read as follows:

“(c) The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this Act. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.”

(b) Subsection (d) of section 5 of the Act is amended by substituting “product,” for “article of wearing apparel or” and by inserting “or related material” immediately after “fabric” in paragraph (1) thereof; and by striking out “, Territory, or possession or with the District of Columbia” and inserting in lieu thereof “or territory or with the District of Columbia or the Commonwealth of Puerto Rico” in paragraph (2) thereof.

SEC. 5. (a) Subsection (a) of section 6 of the Flammable Fabrics Act is amended by inserting “, or a rule or regulation prescribed under section 5(c),” immediately after “section 3”; and by striking out “or in United States court of any Territory for the district or Territory in which such person resides or transacts business” and inserting in lieu thereof the following: “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)”.

(b) Subsections (b), (c), and (d) of section 6 of the Flammable Fabrics Act are amended to read as follows:

“(b) Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 3 of this Act, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

“(c) In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

“(d) If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated

Records.

38 Stat. 717.
15 USC 58.
67 Stat. 113.
15 USC 1194.

Injunction and
condemnation pro-
ceedings.
15 USC 1195.

Ante, p. 568.

or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States."

67 Stat. 114.
15 USC 1197.

SEC. 6. Section 8 of the Flammable Fabrics Act is amended to read as follows:

"GUARANTY

15 USC 1196.
Ante, p. 568.

"SEC. 8. (a) No person shall be subject to prosecution under section 7 of this Act for a violation of section 3 of this Act 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 4 of this Act 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 4 of this Act, 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.

Ante, p. 569.

"(b) 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."

38 Stat. 717.
15 USC 58.
15 USC 1198.

SEC. 7. Section 9 of the Flammable Fabrics Act is amended to read as follows:

"SHIPMENTS FROM FOREIGN COUNTRIES

"SEC. 9. An imported product, fabric, or related material to which flammability standards under this Act are applicable shall not be delivered from customs custody except as provided in section 499 of the Tariff Act of 1930, as amended. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 499 of the Tariff Act of 1930, as amended,

46 Stat. 728;
52 Stat. 1084.
19 USC 1499.

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."

SEC. 8. Section 11 of the Flammable Fabrics Act is amended to read as follows:

67 Stat. 115.
15 USC 1200.

"EXCLUSIONS

"SEC. 11. The provisions of this Act 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 Act: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this Act 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 4 of this Act."

Ante, p. 569.

SEC. 9. Section 13 of the Flammable Fabrics Act is amended to read as follows:

15 USC 1191
note.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 13. There are hereby authorized to be appropriated \$1,500,000 for the fiscal year ending June 30, 1968, and \$2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, to carry out the provisions of this Act."

SEC. 10. The Flammable Fabrics Act is further amended by adding at the end thereof the following new sections:

15 USC 1191-
1200.

"INVESTIGATIONS

"SEC. 14. (a) The Secretary of Health, Education, and Welfare in cooperation with the Secretary of Commerce shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials. The Secretary of Health, Education, and Welfare shall submit annually a report to the President and to the Congress containing the results of the study and investigation.

Report to President and Congress.

"(b) In cooperation with appropriate public and private agencies, the Secretary of Commerce is authorized to—

"(1) conduct research into the flammability of products, fabrics, and materials;

"(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

"(3) develop flammability test methods and testing devices; and

“(4) offer appropriate training in the use of flammability test methods and testing devices.

Report to Congress.

The Secretary shall annually report the results of these activities to the Congress.

“EXPORTS

“SEC. 15. (a) This Act shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

“(b) This Act shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

“PREEMPTION

“SEC. 16. This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions.

“NATIONAL ADVISORY COMMITTEE FOR THE FLAMMABLE FABRICS ACT

“SEC. 17. (a) The Secretary of Commerce shall appoint a National Advisory Committee for the Flammable Fabrics Act, composed of not less than nine members, fairly representative of manufacturers, distributors, and the consuming public. Each member appointed by the Secretary shall hold office for not more than two years, except that any member may be reappointed.

Compensation, travel expenses.

“(b) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

80 Stat. 499.

“(c) The Secretary shall consult with the National Advisory Committee before prescribing flammability standards or other regulations established under this Act.”

Savings clause.

SEC. 11. Notwithstanding the provisions of this Act, the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended, on the day preceding the date of enactment of this Act, shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act.

67 Stat. 111.
15 USC 1191
note.

Approved December 14, 1967.