

Public Law 97-395
97th Congress

An Act

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

Dec. 30, 1982

[S. 823]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the United States Claims Court shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, (1) if those losses resulted from the actions taken by the Federal Government under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate, and (2) if such children's sleepwear or such fabric, yarn, or fiber, as the case may be, at the time of its manufacture was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3-71 or FF5-74.

Tris chemical
ban.
Payment of
losses.

15 USC 1261
note.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible or reasonable for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government or other nationally known researchers tested Tris (2,3-dibromopropyl) phosphate for toxicity or other health hazards and disseminated the results of those tests.

(D) The degree of good faith demonstrated by the claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which the claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate.

(G) The degree to which the claimant, in good faith, complied with actions taken by the Federal Government under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which the claimant, in good faith, complied with those provisions relating to exports contained in section 14 of the Federal Hazardous Substances Act and section 18 of the Consumer Product Safety Act.

15 USC 1273.
15 USC 2067.

Determination
of losses.

(2) The court may not enter judgment in favor of a claimant under this Act, nor may the Attorney General agree to any settlement with a claimant under this Act, unless the claimant produces proof, to the satisfaction of the court or the Attorney General, as the case may be, that the claimant lawfully disposed of the apparel, fabric, yarn, or fiber with respect to which the claim was brought.

(3) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any loss suffered by any producer, converter, manufacturer, distributor, or retailer of children's sleepwear, or by any producer or manufacturer of fabric, yarn, or fiber.

(c)(1) The measure of losses for any producer or manufacturer of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such sleepwear, fabric, yarn, or fiber held in stock on the date of the enactment of this Act, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber, less the proceeds from any such sale.

(2) The measure of losses for any producer, converter, or manufacturer of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber, plus the cost of the raw materials used for such production, converting, or manufacturing, or the cost of such fabric, yarn, or fiber held in stock on the date of the enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacturing, less the proceeds from any such sale.

(3) The measure of losses for any distributor or retailer shall be the distributor's or retailer's purchase price for the children's sleepwear, fabric, yarn, or fiber involved, less the fair market value, if any, of such sleepwear, fabric, yarn, or fiber, and less the amount of any reimbursement received for such sleepwear, fabric, yarn, or fiber.

Transportation
compensation.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for (A) unreimbursed costs of transportation paid for the return of the sleepwear garments, fabric, yarn, or fiber involved, and (B) unreimbursed costs of the lawful disposal of such garments, fabric, yarn, or fiber.

Class action.

(d) No claim under this Act may be brought as a class action. No claim under this Act may be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, whether or not such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person relating to the subject matter of such claim paid by the United States. The claimant shall take the necessary steps, as determined by the Attorney General, to

secure such rights in the United States in order to be entitled to the entry of a judgment by the court or payment under this Act, and the failure of the claimant to take such steps shall constitute cause to deny the entry of such judgment or such payment. The failure of the claimant to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of the enactment of this Act.

Claim
commencement.

(g) No person shall have any claim under this Act who, on or after June 14, 1978, (1) exported from the United States any apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate which was produced, converted, manufactured, or sold for use in the United States, or (2) transferred any apparel, fabric, yarn, or fiber described in clause (1) to another person with knowledge that such apparel, fabric, yarn, or fiber would be exported from the United States.

(h) Before payment is made on any claim under this Act, the Attorney General shall notify the Administrator of the Small Business Administration of the claim. The Administrator shall, after receipt of such notification, notify the Attorney General as soon as possible of—

Claim
notification.

(1) any unpaid loans made by the Small Business Administration under the Small Business Act, and

(2) other amounts owing to the Small Business Administration on account of loans made under the Small Business Act, for the purpose of assisting the claimant on account of losses sustained as a result of the actions taken by the United States under the Federal Hazardous Substance Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate. The Attorney General shall offset, from the amount of the payment on the claim under this Act, the amount of any such unpaid loans or other amounts owing to the Small Business Administration. The amount of any offset under this subsection shall be treated as accrued and paid to the claimant in ten equal annual installments beginning with the first year in which payment on the claim under this Act is made.

15 USC 1261
note.

(i) Nothing in this Act shall be construed as an admission of fault or liability on behalf of the United States for any personal injury which may hereafter be claimed to arise from exposure to Tris (2,3-dibromopropyl) phosphate.

Approved December 30, 1982.

(1) Any claim under this Act shall be barred unless commenced within two years after the date of the enactment of this Act. (2) No claim shall have any claim under this Act who on or after June 14, 1978, (i) exported from the United States any apparatus, device, or other containing Tris (2,3-dibromopropyl) phosphate which was produced, constructed, manufactured, or sold for use in the United States, or (ii) transferred any apparatus, device, or other described in clause (1) to another person with knowledge that such apparatus, device, or other would be exported from the United States.

(3) Before payment is made on any claim under this Act, the Attorney General shall notify the Administrator of the Small Business Administration of the claim. The Administrator shall, after receipt of such notification, notify the Attorney General as soon as possible of—

(i) any unpaid loans made by the Small Business Administration under the Small Business Act, and

(ii) other accounts owing to the Small Business Administration on account of loans made under the Small Business Act.

For the purpose of securing the claimant on account of loans guaranteed as a loan or the claims taken by the United States under the Federal National Debtors Act on April 8, 1977, and before the relevant payment year, or other containing Tris (2,3-dibromopropyl) phosphate. The Attorney General shall offset from the amount of the payment on the claim under this Act the amount of any such unpaid loans or other amounts owing to the Small Business Administration. The amount of any offset under this section shall be treated as accrued and paid to the claimant in two equal annual payments beginning with the first year in which payment on the claim under this Act is made.

LEGISLATIVE HISTORY—S. 823:

SENATE REPORT No. 97-130 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 127 (1981): June 18, considered and passed Senate.

Vol. 128 (1982): Dec. 13, considered and passed House, amended.

Dec. 14, Senate concurred in House amendment.