

GUARANTEE OF A LEGITIMATE DEAL ACT OF 2010

DECEMBER 7, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 4501]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4501) to require certain return policies from businesses that purchase precious metals from consumers and solicit such transactions through an Internet website, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Guarantee of a Legitimate Deal Act of 2010”.

SEC. 2. RETURN REQUIREMENTS FOR PURCHASERS PRECIOUS METALS.

(a) **UNLAWFUL CONDUCT.**—It shall be unlawful for any purchaser of precious metals to—

(1) sell, transfer to a third party, or refine through melting or otherwise permanently destroy an item of jewelry or precious metal before the purchaser of precious metals has received an affirmative acceptance of an offer to purchase the item for a specific price from the consumer to whom such offer was made;

(2) fail to promptly return to the consumer any jewelry or other precious metal if the consumer declines the offer to purchase made by the purchaser of precious metals; or

(3) fail to insure any shipment to the consumer of such jewelry or precious metals in an amount equal to—

(A) the amount the consumer insured the shipment of the jewelry or precious metals to the purchaser of precious metals, if the consumer provides the purchaser of precious metals with proof of such insurance; or

(B) 60 percent of the melt-value of the jewelry or precious metals, if the consumer does not provide the purchaser of precious metals with proof of such insurance.

(4) **Law Enforcement Exception.**—Paragraph (1) of this subsection shall not prohibit the sale or transfer of any item of jewelry or precious metal to law enforcement agencies or their personnel.

(b) **DEFINITIONS.**—As used in this Act—

(1) the term “purchaser of precious metals” means a person who is in the business of purchasing jewelry or other precious metals directly from consumers; and

(2) the term “melt-value” means the reasonable estimated value of any item of jewelry or precious metal, as determined by the purchaser of precious metals, if such item were processed and refined by the purchaser of precious metals.

(c) **REGULATIONS.**—The Commission may issue regulations under section 553 of title 5, United States Code, to carry out the purposes of this Act.

SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) **UNFAIR AND DECEPTIVE ACT OR PRACTICE.**—A violation of this Act or a regulation issued pursuant to this Act shall be treated as an unfair or deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(b) **POWERS OF COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates this Act shall be subject to the penalties and entitled to the privileges and immunities provided in that Act.

SEC. 4. EFFECTIVE DATE.

The provisions of this Act shall take effect 60 days after the date of enactment of this Act.

PURPOSE AND SUMMARY

H.R. 4501, the “Guarantee of a Legitimate Deal Act of 2009”, was introduced by Rep. Anthony D. Weiner (D-NY) on January 21, 2010. H.R. 4501 requires certain practices from businesses that purchase precious metals from consumers. The legislation prohibits purchasers of precious metals from melting down or destroying a consumer’s jewelry or precious metals before receiving an affirmative acceptance of an offer to purchase the jewelry for a specific price. The legislation further requires purchasers of precious metals to promptly return a consumer’s jewelry or precious metals if the consumer declines a purchaser’s offer. Finally, H.R. 4501 sets a standard for the amount of insurance provided by online pur-

chasers of precious metals on shipments of jewelry or precious metals to consumers.

BACKGROUND AND NEED FOR LEGISLATION

The industry for mail-in gold (and other precious metals) is a new and rapidly growing branch of the used jewelry buying industry. In a mail-in transaction, customers mail their jewelry to a mail-in gold company, which appraises the value of the precious metals and makes the customer an offer by sending the customer a check by mail. The customer generally has a limited number of days to reject the offer, and if the customer does not reject the request within that number of days, the company will consider the offer accepted.¹ The company then melts down the jewelry for sale as bullion.²

The rapid growth of the mail-in gold industry has been driven in large part by the increasing price of gold. In the past three years, the price of gold has nearly doubled, from just over \$600 per ounce in 2007 to approximately \$1,200 an ounce in 2010.³

The mail-in gold industry has drawn scrutiny over its business practices after widespread complaints from consumers who claimed that they did not receive a fair payment for their jewelry. *The Consumerist* and *Consumer Reports* conducted a test comparing the offers of three mail-in gold companies for identical pieces of jewelry in 2009. The companies offered between 11% and 29% of the jewelry's actual value based on the price of gold.⁴ ABC's *Good Morning America* and CBS's *Inside Edition* each conducted similar tests, receiving offers under 20% of the actual value of the jewelry sent to mail-in gold companies.⁵

In addition to low payments, delayed checks and lost packages have been the basis of numerous consumer complaints. The Better Business Bureau of Southeast Florida and the Caribbean has reported that of the 324 complaints concerning Cash4Gold over the past 36 months, a pattern of allegations is apparent: valuables shipped to Cash4Gold that the company never reported as arriving, offers that consumers said were lower than what the company's advertisements had led them to expect, and checks arriving by mail too late to cancel a transaction.⁶

The United States Postal Service Office of Inspector General conducted an investigation of more than 1,300 loss claims covering 18 months in 2008 and 2009 on mail addressed to Cash4Gold, finding

¹ Cash4Gold.com, Terms and Conditions (online at www.cash4gold.com/wp-content/themes/theme_cash4gold_black/terms-conditions.php) (accessed May 9, 2010); GoldKit.com, Terms and Conditions (www.goldkit.com/terms_and_conditions.asp) (accessed May 9, 2010).

² *Cash4Gold's Rush*, Florida Trend (May 1, 2009) (online at www.floridatrend.com/article.asp?page=2&aID=51067).

³ GoldPrice.com, Gold Price History (www.goldprice.org/gold-price-history.html) (accessed May 7, 2010).

⁴ *Cashing in Gold? Here's the Catch*, Consumer Reports Magazine (Nov. 2009).

⁵ *Cash4Gold's Super Bowl Ad*, Inside Edition (Feb. 4, 2009) (online at <http://www.insideedition.com/news.aspx?storyID=2588>); *Gold Rush: People Rush to Sell Gold Instead of Finding It*, ABCNews.com (Mar. 20, 2009) (online at abcnews.go.com/GMA/story?id=7125707&page=1).

⁶ The Consumerist, *The Article Cash4Gold Doesn't Want You to Read* (Sept. 2, 2009) (online at consumerist.com/2009/09/the-article-cash4gold-doesnt-want-you-to-read.html); Better Business Bureau, *Reliability Report for Cash4Gold* (online at www.seflorida.bbb.org/Business-Report/Cash-4-Gold-16000679) (accessed May 10, 2010).

no irregularities in its Postal Services' mail processing.⁷ Because many consumers have experienced the loss of their jewelry, the mail-in gold companies have been criticized for inadequately insuring the shipping packages provided to consumers. With respect to the delayed checks issue, consumers are advised by the mail-in companies that they have a certain number of days from issuance of the checks to reject the offer and cancel. Consumers have reported delays in receiving their checks. These delays in the delivery of checks have prevented some consumers from rejecting an offer made by a mail-in gold company before the company melted down their jewelry.

LEGISLATIVE HISTORY

H.R. 4501 was introduced by Rep. Weiner of New York and referred to the Committee on Energy and Commerce on January 21, 2010. The bill was referred to the Subcommittee on Commerce, Trade, and Consumer Protection on January 22, 2010, and the Subcommittee held a legislative hearing on H.R. 4501 on May 13, 2010. At the hearing, witnesses representing the Federal Trade Commission (FTC), Consumers Union, and the Jeweler's Vigilance Committee testified in support of the legislation.

COMMITTEE CONSIDERATION

On June 30, 2010, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session to consider H.R. 4501. At the end of consideration, the Subcommittee agreed to favorably forward H.R. 4501 to the full Committee, amended, by a voice vote. During Subcommittee markup, a bipartisan manager's amendment offered by Chairman Rush was adopted by a voice vote. The manager's amendment strengthened the bill's consumer protections by including purchasers of precious metals who do not maintain an Internet website and giving the FTC discretionary rulemaking authority.

On July 15, 2010, the Committee on Energy and Commerce met in open markup session and considered H.R. 4501 as approved by Subcommittee. There were no amendments offered during consideration of the bill. Subsequently, the Committee ordered H.R. 4501 favorably reported to the House, as amended by the Subcommittee, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Mr. Stupak ordering H.R. 4501 reported to the House, as amended, was approved by a voice vote. There were no record votes taken during consideration of this bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected

⁷United States Postal Service Office of Director General, Southeast Area Field Office. Case #09IMI1529IM18IM, *Cash4Gold, South Florida P&DC, Pembroke Pines, FL 33028, Mail Theft*.

in the descriptive portions of this report. These include the finding that the mail-in gold industry has been the subject of widespread complaints from consumers who claimed that they did not receive a fair payment for their jewelry or precious metals.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report, including the goal of prohibiting purchasers of precious metals from melting down or destroying a consumer's jewelry or precious metals before receiving an affirmative acceptance of an offer.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 4501. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grant the Congress the power to enact this law.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4501 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. This bill does not relate to employment or access to public services and accommodations.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE COST ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4501. The Committee adopts as its own the cost estimate on H.R. 4501 prepared by the Director of the Congressional Budget Office included herein.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4501 from the Director of the Congressional Budget Office:

SEPTEMBER 2, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4501, the Guarantee of a Legitimate Deal Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4501—Guarantee of a Legitimate Deal Act of 2010

H.R. 4501 would prohibit purchasers of precious metals from selling or refining an item of jewelry or precious metal until the seller has accepted the purchaser's offer to buy the item for a specific price. The bill also would require purchasers to return the jewelry or precious metal to the seller if the purchaser's offer is declined and to insure the shipment of returned items. The Federal Trade Commission (FTC) would be required to develop regulations to carry out those new requirements.

Based on information from the FTC, CBO expects that developing and enforcing the new regulations would impose a minimal cost on the agency; therefore, CBO estimates that implementing H.R. 4501 would not significantly increase spending subject to appropriation. Enacting H.R. 4501 could increase civil penalties and thus would affect federal revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that such effects would not be significant in any year. Enacting H.R. 4501 would not affect direct spending.

H.R. 4501 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

By establishing new requirements for businesses that purchase jewelry or precious metals from consumers, H.R. 4501 would impose private-sector mandates as defined in UMRA. Based on information from industry sources, CBO estimates that additional costs to meet the insurance requirements would comprise the largest share of the cost to comply with the mandates in the bill. According to industry sources, about 8 percent of customers decline the offer price, and the average value of items that a customer attempts to sell is less than \$150. The insurance rate from the U.S. Postal Service for a package of that value is \$2.75. CBO has no informa-

tion on the total number of packages of jewelry or precious metals handled by the industry each year. However, according to an industry press release, one of the largest companies in the industry in terms of sales volume receives almost 5,000 packages per day for processing. Based on those data, CBO estimates that the aggregate cost of the mandates would probably fall below the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the Act may be cited as the “Guarantee of a Legitimate Deal Act of 2010”.

Section 2. Return requirements for purchasers of precious metals

Section 2(a) requires certain practices of businesses that purchase precious metals from consumers. Purchasers of precious metals are prohibited from selling, transferring to a third party, and refining by melting or otherwise destroying a consumer’s jewelry or precious metals before receiving an affirmative acceptance from the consumer of the purchaser’s offer. The purchaser’s offer must be for a specific price. This requirement is intended to prevent the situation in which a purchaser of precious metals sells, transfers to a third party, or melts down or otherwise destroys a consumer’s jewelry or precious metals before the consumer has a chance to decline the purchaser’s offer. A consumer’s failure to either accept or decline a purchaser’s offer within any limited period of time defined by the purchaser shall not constitute an affirmative acceptance of the purchaser’s offer by the consumer. This requirement does not prohibit the sale or transfer of jewelry or precious metals to law enforcement agencies and their personnel.

This section further requires purchasers of precious metals to promptly return consumers’ jewelry or precious metals if the consumer declines the offer to purchase the item. When returning consumers’ jewelry or precious metals, purchasers are required to insure the shipment to the consumer in an amount equal to the amount the consumer insured the shipment of jewelry or precious metals to the purchaser, if the consumer provides proof of such insurance. If the consumer does not provide proof of such insurance, the purchaser of precious metals is required to insure the return shipment in an amount equal to 60% of the melt-value of the jewelry or precious metals.

Section 2(b) defines the term “purchaser of precious metals” to mean a person who is in the business of purchasing jewelry or other precious metals directly from consumers. The term “melt-value” is defined to mean the reasonable estimated value of any item of jewelry or precious metal, as determined by the purchaser of precious metals.

Section 2(c) provides the FTC with the authority to issue regulations to carry out the purposes of the Act.

Section 3. Enforcement by the Federal Trade Commission

This section makes a violation of the Act or a regulation issued pursuant to the Act an unfair or deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the FTC Act. The FTC is empowered to enforce the provisions of the Act under the authority of the FTC Act.

Section 4. Effective date

This section stipulates that the provisions of the Act shall take effect 60 days after the date of enactment of the Act.

EXPLANATION OF AMENDMENT

No amendments were adopted during full Committee consideration of H.R. 4501.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4501, as reported, does not make any changes in existing law.

