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H.R. 4501, GUARANTEE OF A LEGITIMATE DEAL ACT, AND H.R. 2480, TRUTH IN FUR LABELING ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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H.R. 4501, GUARANTEE OF A LEGITIMATE DEAL ACT, AND H.R. 2480, TRUTH IN FUR LABELING ACT

THURSDAY, MAY 13, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 1:27 p.m., in Room 2322, Rayburn House Office Building, Hon. John Barrow [member of the subcommittee] presiding.

Present: Representatives Weiner, Barrow, Whitfield, Scalise, and Latta.

Also Present: Representative Moran of Virginia.

Staff Present: Michelle Ash, Chief Counsel; Timothy Robinson, Counsel; Will Cusey, Special Assistant; Peter Ketcham-Colwill, Special Assistant; Sarah Fisher, Special Assistant; Daniel Hekier, Intern; Brian McCullough, Minority Senior Professional Staff; Shannon Weinberg, Minority Counsel; Sam Costello, Minority Legislative Assistant; and Robert Frisby, Minority FTC Detailee.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARROW [presiding]. The subcommittee on Commerce, Trade, and Consumer Protection will now come to order.

Today the subcommittee will consider two bills, H.R. 4501, the Guarantee of a Legitimate Deal Act, introduced by Representative Weiner; and H.R. 2480, the Truth in Fur Labeling Act, introduced by Representatives Moran and Bono Mack.

Before I move forward with the hearing, I would like to ask unanimous consent that the record be left open for 10 legislative days so that members may be able to revise and extend their remarks. Without objection, Mr. Moran will sit in as a member of the subcommittee for purposes of this hearing.

Today the subcommittee will hear testimony on two important bills to protect and inform consumers. The first bill we will consider is H.R. 4501, the Guarantee of a Legitimate Deal Act of 2010, introduced by Representative Weiner on January 21, 2009, to acquire certain policies from businesses that purchase precious metals from consumers and solicit such transactions through an Internet Web site.

The bill would require online purchasers of precious metals to wait until receiving an affirmative acceptance of the amount offered before melting down a consumer's jewelry. Online purchasers of precious metals will be required to promptly return jewelry to the consumer if the consumer declines the amount offered.

In addition, the bill will set a standard for the amount of insurance provided by online purchasers of precious metals on shipments of jewelry or precious metals.

With our second panel, we will consider H.R. 2480, the Truth in Fur Labeling Act, introduced by Representatives Moran and Bono Mack, on May 18, 2000. The bill would amend the Fur Products Labeling Act to require all fur apparel to have labels, not just those products valued at over $150. It would also instruct the Federal Trade Commission to update its fur products' name guide. H.R. 2480 is a bipartisan bill and currently has 165 cosponsors. A companion bill, S. 1076, had been introduced in the Senate.

At this time I will recognize the ranking member, Mr. Whitfield, for 5 minutes to make an opening statement.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Mr. Chairman, thank you very much. And I want to thank the witnesses for being with us today.

As has been said, this is a hearing on H.R. 2480, the Truth in Fur Labeling Act. I am one of the cosponsors of that legislation—and I believe there are 165 cosponsors as of today—introduced by Mr. Moran and Mrs. Bono Mack. This legislation would amend the Fur Products Labeling Act to provide the elimination of a current examination; also would call for a review by the Federal Trade Commission of its fur guidelines book and authority to revise such guidelines as appropriate. It also provides authority for the States to enact their own labeling requirements.

I do have some concerns about the effectiveness of a Federal law if the States can require different labeling requirements because of the problems in interstate commerce that that sometimes causes, but I do look forward to the testimony from all the interested parties today.

H.R. 4501, the Guarantee of a Legitimate Deal Act. The intent of this legislation is to protect consumers who sell precious metals to Internet-based purchasers. The most common complaints are usually regarding the amount of cash value the consumer receives and whether or not they have the ability to reject the offer and get their items back if they decide to cancel the transaction, and how easily is that accomplished?

I also have a few questions about whether or not this legislation is broad enough and should it apply only to Internet-based precious metal purchasers or should it go beyond that?

So I look forward to the testimony today on this legislation, and I yield back the balance of my time.

Mr. BARROW. I thank the gentleman from Kentucky for yielding.

[The prepared statement of Mr. Whitfield follows:]

Statement of the Honorable Ed Whitfield
Ranking Member, Subcommittee on Commerce, Trade and Consumer Protection
Hearing on H.R 2480, the Truth in Fur Labeling Act
And H.R. 4501, Guarantee of a Legitimate Deal Act
May 13, 2010

Hearing on H.R 2480, the Truth in Fur Labeling Act

- Thank you Mr. Chairman. I am pleased we are having a hearing on H.R. 2480, the Truth in Fur Labeling Act. I support the legislation and I am a cosponsor.

- The Legislation sponsored by Congressman Moran amends the Fur Products Labeling Act to provide :
    - The elimination of an exemption from fur labeling requirements for small amounts of fur.
    - A review by the FTC of its Fur guidelines book and authority to revise such guidelines, as appropriate.
    - Authority for the states to enact their own labeling requirements
- I support the bill but I do have concerns about the effectiveness of a Federal law if the states can require different labeling requirements of their own. The lack of uniformity in labeling could well confuse consumers depending on the various state requirements.

(Insert Additional material from Mr. Whitfield?)

H.R. 4501, Guarantee of a Legitimate Deal Act – (Weiner)

- Regarding H.R. 4501, I understand the intent is to provide consumers with certain protections regarding sales of their precious metal items to Internet-based purchasers.

- In the economic downturn many consumers are realizing they can exchange their gold jewelry and similar gold items for more than they

paid for the items because of very high gold commodity prices, depending on when they purchased it. This is especially helpful to those struggling to pay their bills if they have lost a job, but also increases the possibility fraudsters will try and take advantage of those who are desperate.

- Some consumers receive local appraisals of their items and are under the mistaken belief they can realize similar cash values by selling them to the businesses that advertise they pay cash for precious metal items.

- Many consumers are experiencing mixed results and alleging they have been taken advantage of. The most common complaints are usually regarding the amount of cash value the consumer receives and the ability to reject the offer and get their items back if they decide to cancel the transaction.

- I support the intent to make sure the Federal Trade Commission has the ability to protect consumers. The transactions that would be subject to the legislation are predominantly interstate commerce transactions and therefore may necessitate an appropriate role for the federal regulator.

- I do have certain questions about the legislation and its scope. Specifically, this legislation only applies to Internet-based precious metals purchasers, yet many of us see advertisements on TV for nationally based business engaged in the same activity regardless of whether they may or may not have an online presence. If it only applies to online businesses, will it incentivize the fraudulent ones to change business models and leave the good actors with new regulations?

- Additionally, I would like to know what the current enforcement regime lacks and how effective state regulators have been in bringing cases affecting their residents. If theft or fraud is involved, it seems a criminal enforcement regime would be more effective.

- I have several other questions regarding provisions in the bill I will address directly with the witnesses.

Thank you Mr. Chairman

Mr. BARROW. And the chair at this time recognizes Mr. Weiner of New York for the purpose of making an opening statement.

OPENING STATEMENT OF HON. ANTHONY D. WEINER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WEINER. Thank you, Mr. Chairman. I appreciate the witnesses and I appreciate my colleagues for being here.

Today we're going to have a hearing that was prompted by the toxic combination of two things; that is, the downturn in the economy and the ignorance of consumers about what their rights are and what they can expect reasonably when they are trying to sell their gold. It was prompted by complaints and concerns about the largest company in the industry, Cash4Gold.

Cash4Gold pays about between 11 and 29 percent of the market price for gold, effectively ripping off consumers. Their return policies are deceptive and put all of the cards in the hands of the business and none in the hands of consumers.

For example, if you don't accept an offer within 12 days, it is considered accepted, the gold is melted down and you lose your right. Obviously, consumers have no way to know when that 12 days begins or ends.

We also know that, for example, their return policies are also stacked against consumers in a way that can only be called fraudulent. A consumer that ensures their gold when it is mailed finds that it is not insured when it is returned. And the United States Postal Service recently conducted an investigation that found over 1,300 losses associated with Cash4Gold, and when they looked at each and every one of them, they concluded that there were no irregularities on the part of the Postal Service, leading them and me and the regular consumer to conclude that losing their customers' gold is part of their business model.

Now, we invited the CEO of the company to come here, and he was told that he could not, because he was speaking at a conference in San Diego. In fact, a brief look at the Internet, which we do have access to here at the Energy and Commerce Committee, showed that he did not speak today; he spoke yesterday. A grand total of 76 different flight options were available to him to be able to get here for as little as $169.

When asked if they would offer anyone else that would explain some of these policies that led to investigations in so many States and so many disgruntled consumers, they said no. There apparently is no one that can speak for that company, even though they have a public relations director who, until recently, was a federally registered lobbyist.

Now, this is not just a random problem that we have. This is an orchestrated effort by some businesses to take advantage, as I said, of consumers. When asked about these complaints—and there have been many of them—the Better Business Bureau gives them a C-minus, which is not very good, Mr. Chairman. They explained that, Oh, these are just our competitors trying to cause problems.

We're going to find out today that, in fact, it's Cash4Gold causing many problems for consumers.

Thank you, Mr. Chairman.

Mr. BARROW. I thank the gentleman.

And at this time the chair would recognize the gentleman from Ohio for purposes of making an opening statement for 3 minutes, Mr. Latta.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTA. Thank you very much, Mr. Chairman and Ranking Member Whitfield. Thanks very much for holding this hearing today to discuss the issues surrounding the fraud with Internet-based companies that appraise and purchase jewelry directly from consumers through the mail.

I also look forward to hearing from our witnesses regarding H.R. 2480, the Truth in Fur Labeling Act.

As with any bills that pass Congress we need to make sure that our small businesses and consumers are protected, but we must also look at the unintended consequences and make the necessary corrections that might occur. The Federal Government cannot continue to force more bureaucratic mandates on businesses and consumers, further hindering economic growth and job creation.

In regards to H.R. 2480, I have spoken with citizens from Ohio who have very great concerns about the fur labeling bill and the intentions behind it. You know, we all have to make sure that we're truthful in our labeling, but we also have to be careful about the consequences that may occur.

Being from Ohio, we've recently passed what was called Issue 2 in 2009, which created the Ohio Livestock Care Standards Board, because agriculture is the number one contributor to Ohio's economy and Ohio farmers have cared for flocks and herds for generations and provided people across this country with safe quality and affordable food.

If Issue 2 had not been passed in the State of Ohio, and again looking at what could happen as we look at these pieces of legislation, what could happen is the amendments that could have come up, if they had been adopted, someone—the State of California would have put great burden on the hardworking farmers across the State of Ohio and would have driven up costs for eggs, meat, and dairy products.

So there are very many unintended consequences that can happen, and we have to take these into consideration when passing this legislation.

With that, I look forward to hearing from both panels this afternoon, Mr. Chairman, and I yield back. Thank you very much.

Mr. BARROW. The chair thanks the gentleman for yielding.

At this time the chair will recognize, for purposes of making an opening statement for not more than 3 minutes, the gentleman from Louisiana, Mr. Scalise.

OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate your holding this hearing.

Today we're examining two bills, H.R. 4501, the Guarantee of a Legitimate Deal Act; and H.R. 2480, the Truth in Fur Labeling Act.

First, I would like to discuss the GOLD Act. I am sure we've all seen the advertisements and commercials for the mail-in-gold industry, which include assurances that consumers will get fairly compensated and will encounter a smooth transaction. Unfortunately, reports have shown that this is not always the case. Some consumers have been taken advantage of and have been outright deceived.

The GOLD Act seeks to address these issues by regulating Internet-based companies that appraise and purchase jewelry directly from consumers through the mail. There are a few issues with the bill that I think need to be discussed today, such as the fact that this bill is only limited to online companies. I hope this and other issues can be sorted out through today's hearing.

The next bill, the Truth in Fur Labeling Act, seeks to improve the accuracy of fur labeling. Current law requires that fur product labels include certain information such as the name of the animal that produced the fur, whether the product is real fur, and the country of origin of any imported fur used in the product.

Unfortunately, we've seen a few bad actors in the industry that have not abided by these rules. I believe that consumers are entitled to accurate and meaningful information regarding the fur products they purchase, and our subcommittee must ensure that transparency and accuracy exist in the marketplace.

Mr. Chairman, I look forward to hearing from our witnesses on these bills, particularly on whether these bills are needed for the goals both to be achieved, or whether the FTC has the necessary authority to implement their provisions.

This subcommittee must continue to ensure that consumers are protected, which means that we must debate and pass quality legislation. But I believe that we must also place our focus on the greater issues at hand. As our unemployment rate hovers near 10 percent and our national debt continues to grow, I think most Americans would much rather us focus this committee's efforts on trying to find ways to improve the job outlook in the private sector; and, instead, all they see is more bad policies that focus on growing the Federal workforce at the expense of our small businesses.

While government jobs and government spending continue to grow exponentially, families and small businesses in our districts are cutting back. While this Congress refuses to pass a balanced budget or, for that matter, any budget, American families are having to tighten their belts and make tough decisions on how to keep their household budgets fiscally responsible and manageable. I hope we finally start focusing on those problems.

Thank you and I yield back.

Mr. BARROW. I thank the gentleman for yielding.

Mr. BARROW. We now move on to the introduction of the witnesses for our first panel, but before I make the introductions I would like to thank all of the witnesses for taking time out of their busy schedules to appear before us today.

First on my left is seated Mr. James Kohm, the Associate Director of the Division of Enforcement with the Bureau of Consumer Protection at the Federal Trade Commission. Next is Mr. Charles

Bell, who is Programs Director at the Consumers Union. And on my right is Ms. Cecilia Gardner, who is the President and CEO of the Jewelers Vigilance Committee.

It's the practice of this subcommittee to swear in all witnesses. So I'd ask you to please stand and raise your right hand.

[Witnesses sworn.]

Mr. BARROW. Please let the record reflect that the witnesses have each answered in the affirmative.

STATEMENTS OF JAMES A. KOHM, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; CHARLES BELL, PROGRAMS DIRECTOR, CONSUMERS UNION; CECILIA L. GARDNER, ESQ., PRESIDENT AND CEO, JEWELERS VIGILANCE COMMITTEE

Mr. BARROW. Mr. Kohm, you're now recognized for 5 minutes for the purposes of making an opening statement.

STATEMENT OF JAMES A. KOHM

Mr. KOHM. Thank you very much. Chairman Barrow, Ranking Member Whitfield, and members of the committee, my names is James Kohm. I am the Director of the Division——

Mr. BARROW. Mr. Kohm, there's a microphone in front of you and what I'd ask you to do is bring it close to you. You can move it around, manipulate it so it comes closer. It's a directional mike. And make sure it's turned on.

Mr. KOHM. OK. It's on. Thank you. I apologize.

Chairman Barrow, Ranking Member Whitfield, and members of the committee, my name is James Kohm. I am the Associate Director of the Division of Enforcement in the Federal Federal Trade Commission's Bureau of Consumer Protection. Let me begin by noting that the views expressed in my written testimony represent those of the Commission, while my oral testimony and responses to your questions reflect only my own views and not necessarily those of the Commission or any particular commissioner.

Unfortunately, an increasing number of fraudulent operators have recently sought to take advantage of the economic downturn by preying on consumers in economic distress. The Commission is meeting this challenge by spearheading multiple law enforcement sweeps against operations that prey on financially strapped consumers.

Most recently, the Federal Trade Commission announced Operation Bottom Dollar, a multiagency crackdown on organizations that fleeced unemployed consumers by taking their money in exchange for jobs or job placement opportunities that simply did not exist.

Additionally, since October of 2008, the Commission has led four other law enforcement sweeps focused on protecting consumers from foreclosure rescue scams, job opportunity scams, deceptive get-rich-quick schemes, bogus government grant schemes, phony debt reduction service schemes, and credit repair scams.

Today I appreciate the opportunity to discuss H.R. 4501, the Guarantee of a Legitimate Deal Act, a bill that also would protect consumers from unscrupulous marketers during this economic

downturn. Most of the Commission's complaints about "cash for gold" companies relate to violations of the do-not-call rule. However, the Commission has received a growing number of complaints from consumers who send their gold jewelry or other items to companies and then were dissatisfied with the payments they received in exchange. When the consumers called to get their gold back, the companies told them that they'd already melted the gold and there was nothing they could do for them.

The Commission has also received several complaints about lost jewelry that was returned without adequate insurance.

The legislation before the committee would address both these concerns. Specifically, the bill would require online purchasers to afford consumers a right to consider and reject a specific monetary offer before a merchant melts or otherwise liquidates their precious metals, and would require purchasers to adequately insure items they ship to consumers who decline their offers.

Additionally, the legislation gives the Commission civil penalty authority to ensure that the FTC can effectively enforce the law.

The Commission, however, has three suggested corrections that should help effectuate the purpose of the legislation:

First, the bill is currently limited to Internet sales. The same practice that led to the legislation, however, could be accomplished through telemarketing, direct mail, or television or radio ads. The committee therefore may want to consider not limiting the coverage to a single marketing avenue.

Second, if the committee decides to limit the bill's coverage to Internet sales, we would suggest a slight amendment to ensure that all such sales are actually covered. Specifically, the bill covers those who maintain an Internet Web site. An unscrupulous marketer may argue that it's not covered because a third-party Web hosting company maintains their site. The committee can resolve this issue by changing the "maintain" language in the manner outlined in the Commission's written testimony.

Finally, the Commission recommends that the committee modify the bill to clarify that purchasers of precious metals must make a firm offer to purchase the items for a specific price. Otherwise an unscrupulous marketer could claim that its vague offer to pay a good price or the best price is accepted when consumers ship their items, thereby avoiding the intent of the law altogether.

Thank you for providing the Commission an opportunity to appear before the committee today to address this important issue. I will be happy to answer any of your questions.

Mr. BARROW. Thank you Mr. Kohm.

[The prepared statement of Mr. Kohm follows:]

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

Legislative Hearing on H.R. 2480 and H.R. 4501

Before the

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.
May 13, 2010

I. Introduction

Chairman Rush, Ranking Member Whitfield, and Members of the Committee, I am James A. Kohm, the Associate Director of the Enforcement Division in the Bureau of Consumer Protection at the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today. The work of the FTC is critical to protecting consumers and preserving competitive markets. As the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy, the FTC's work touches the economic life of every American. The FTC performs its unique mission through the use of a variety of tools, including law enforcement, rulemaking, research, studies of marketplace trends and legal developments, as well as consumer and business education. The FTC is also able, from time to time, to share the information it has gained through these tools by testifying before Congress regarding proposed legislation, including the two bills the Committee is considering today: the Truth in Fur Labeling Act (H.R. 2480) and the Guarantee of a Legitimate Deal Act (H.R. 4501). The Commission supports both of these bills, and has some minor technical suggestions regarding the latter. This testimony will address these proposals, briefly describing the issue that each bill seeks to address, summarizing the legislation, and commenting on the potential benefits of each bill.

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[1] This written statement represents the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

II. The Truth in Fur Labeling Act

The FTC promulgates and enforces regulations pursuant to the Fur Products Labeling Act.[2] The FTC's Rules and Regulations under the Fur Products Labeling Act ("Fur Rules")[3] require manufacturers, importers, and sellers of fur garments to attach accurate labels to their products. These labels must disclose the animal name,[4] the country of origin, information about the treatment of the fur (*e.g.*, bleached or colored), a Registered Identification Number, and other information that is material to purchasing decisions.[5] The Fur Rules also set standards for the size and durability of the labels, the lettering to be used, and the order in which information is presented.[6]

When the FTC first promulgated the Fur Rules in 1952, it exercised its discretion under the Fur Products Labeling Act to exempt garments that contain a relatively small quantity or value of fur.[7] Specifically, the Commission exempted many garments that contained fur with a value of less than five dollars (the "*de minimis* exemption").[8] The Commission subsequently

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[2] 15 U.S.C. §§ 69 *et seq.* (1951).

[3] 16 C.F.R. Part 301, Rules and Regulations under the Fur Products Labeling Act.

[4] Some animal fur is illegal to sell because the animal is on the endangered species list. 16 U.S.C. § 1538. In addition, the Dog and Cat Protection Act of 2000 prohibits importing, exporting, selling, trading, advertising, transporting, or distributing any products made with dog or cat fur. 19 U.S.C. § 1308.

[5] 16 C.F.R. §§ 301.2, 301.5-6, 301.12, and 301.26.

[6] 16 C.F.R. §§ 301.27-30.

[7] 15 U.S.C. § 69(d).

[8] The Commission did not exempt the following garments, even if the value of the fur was less than five dollars: any garment that contained used fur; any garment that was, or purported to be, the whole skin of an animal with the head, ears, paws and tail; and any garment that had marketing or labeling that contained any false, deceptive, or misleading statements about the fur.

increased the amount of the exemption to account for inflation, most recently to $150 in 1998.[9] The Commission determined this increase "would ensure that only items substantially made of fur would be subject to the Fur Rules."[10] No comment opposed the exemption.

Historically, the Fur Rules served to provide valuable information to help consumers compare fur garments. The purchase of a fur garment can require a substantial investment, and the fur of some animals is more valuable than others. However, most consumers lack the expertise to independently assess the relative value of fur garments. Therefore, accurate labeling is needed to help consumers make informed purchasing decisions. To the extent that the value of fur contained in garments is relatively low, consumers do not have the same need to compare these attributes, and the Commission has chosen not to impose fur labeling requirements on such garments through its rulemaking.

In today's market, however, the accurate labeling of fur garments may serve another important purpose. There appear to be an increasing number of consumers who, for a variety of reasons, would prefer not to purchase real fur, or who might object to certain types of fur, even in small amounts. Accurate labeling of all garments containing fur, regardless of the value of the fur component of the garment, would help these consumers distinguish between real and synthetic fur.

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16 C.F.R. § 301.39; 17 Fed. Reg. 6075 (July 8, 1952).

[9] During the FTC's 1998 review of the Fur Rules, the Fur Information Council of America submitted the only comment regarding the exemption, and proposed an increase from $20 to $145 to account for inflation.

[10] 63 Fed. Reg. 7508, 7514 (Feb. 13, 1998). In 2000, the Fur Rules were further amended pursuant to the Dog and Cat Protection Act of 2000, 19 U.S.C. § 1308, to clarify that the exemption does not apply if the garment contains dog or cat fur. 65 Fed.Reg. 82269 (Dec. 28, 2000).

Given these apparent changes in the marketplace, and their impact upon consumers, the Commission plans to explore eliminating the *de minimis* exemption during its currently scheduled 2011 review of the Fur Rules. Of course, the Commission would eliminate the exemption through a rulemaking proceeding only if the record establishes that currently exempted information is material to consumers, and after weighing the benefits of extending the Fur Rules to cover currently exempted garments against any corresponding burden on industry.

The proposed Truth in Fur Labeling Act would revise the statutory definition of "fur product" in the Fur Products Labeling Act by removing the Commission's discretion to exempt garments with a "relatively small quantity of the fur or used fur contained therein."[11] As discussed above, such a provision appears to benefit those consumers who wish to avoid fur products, or certain types of fur products, but currently have no means to distinguish between low-cost fur and synthetics, or between types of fur trim. However, a new labeling requirement might also impose additional burdens on industry. If Congress decides that the benefits outweigh the costs, legislation would be the most efficient and expeditious means to eliminate the exemption. If this legislation is enacted, the Commission would move quickly to revise the Fur Rules to reflect the new law.

III. Guarantee of a Legitimate Deal Act

Recently, an increasing number of fraudulent operators have sought to take advantage of the economic downturn by preying on consumers in economic distress. The Commission is meeting this challenge by spearheading multiple law enforcement sweeps against operations that

[11] H.R. 2480 § 2(a) (which would amend 15 U.S.C. § 69(d)).

target financially-strapped consumers.[12] Most recently, the FTC announced "Operation Bottom Dollar," a multi-agency crackdown on organizations that fleeced unemployed consumers by taking their money in exchange for jobs, or job placement opportunities, that simply did not exist.[13] As part of this multi-agency law enforcement sweep, the FTC filed seven cases against the owners and operators of allegedly deceptive job and money-making scams; the Department of Justice initiated 43 criminal actions; the United States Postal Inspection Service commenced one civil action; and state attorneys general offices filed 18 actions. In each of its cases, the FTC obtained court orders barring the defendants from continuing their deceptive business practices and freezing their assets while the litigation proceeds.[14]

Although the FTC has not yet brought any cases involving the purchase of precious metals from consumers, we have begun to see complaints by consumers who are seeking to make ends meet by selling gold jewelry, watches, and other family heirlooms containing precious metals. The use of the Internet, or other mass-marketing advertising, to induce

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[12] In addition to aggressive law enforcement actions, the Commission also has launched consumer educational campaigns and created new consumer educational materials to provide consumers with the resources necessary to detect and avoid financial scams and other schemes driven by the difficult economic times. *See, e.g.*, FTC Money Matters microsite, available at http://www.ftc.gov/bcp/edu/microsites/moneymatters/.

[13] FTC press release, FTC Cracks Down on Con Artists Who Target Jobless Americans (Feb. 17, 2010), available at http://www.ftc.gov/opa/2010/02/bottomdollar.shtm.

[14] Since October 2008, the Commission led four other law enforcement sweeps focused on protecting consumers affected by the economic downturn: "Operation Stolen Hope" and "Operation Loan Lies," which targeted alleged foreclosure rescue scams; "Operation Short Change," which targeted alleged job opportunity scams, deceptive get-rich-quick schemes, bogus government grants, and phony debt-reduction services; and "Operation Clean Sweep," a multi-agency crackdown on alleged credit repair scams. The FTC's press releases are available at: http://www.ftc.gov/opa/2009/04/hud.shtm, http://www.ftc.gov/opa/2009/07/loanlies.shtm, www.ftc.gov/opa/2009/07/shortchange.shtm, and http://www.ftc.gov/opa/2008/10/opcleansweep.shtm.

consumers to ship jewelry and other items to be melted and sold for its precious metal content is not inherently deceptive or unfair. However, it can be exploited by unscrupulous marketers. In fact, a growing number of consumers have complained about companies that offer these services. The majority of these complaints concern telephone calls to consumers who are on the National Do Not Call Registry, but the FTC also is receiving complaints about problems with shipping and about the amount of money consumers have received in exchange for their jewelry and other items. As a general matter, absent deception, the Commission does not intervene in disputes about price, but the manner in which these sales are conducted raises significant consumer protection concerns.

According to consumer complaints, some online purchasers of precious metals only provide a quote or other indication of the amount that they are willing to pay for consumers' precious metal items if specifically requested to do so by the consumer. In many instances, consumers submit their items and receive payment after the purchasing company has already melted their items into their raw form.[15] In such instances, where the item no longer exists, consumers who are not satisfied with the sales price paid by the online purchasers of their precious metals have limited recourse. Similarly, because it would be difficult for the Commission to determine the actual value of a submitted precious metal item after it has been melted, the Commission might have difficulty proving consumer injury in an enforcement action.

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[15] To the extent that online merchants do not adequately disclose this policy, or misrepresent the price that they will pay consumers, such practices are deceptive and violate Section 5(a) of FTC Act, 15 U.S.C. § 45(a).

The proposed Guarantee of a Fair Deal Act would address these concerns by affording consumers a right to consider and reject a specific monetary offer for their precious metals before the merchant melts or otherwise liquidates the submitted items. The proposed legislation would also require online purchasers to insure adequately items they ship to consumers who decline their offers.[16] This proposal addresses the potential abuses, consumer confusion, and possible deception discussed above without imposing price controls or other burdensome, and possibly counter-productive, regulation. In addition, the legislation would give the FTC authority to seek civil penalties, which is a powerful deterrent, and would also resolve any difficulties the FTC might have proving the amount of consumer injury.

For these reasons, the Commission supports the goals of this bill, but has two suggestions to improve the legislation. First, the bill's definition of "online purchaser of precious metals" limits the applicability of H.R. 4501 to persons who are in the business of purchasing jewelry or other precious metals directly from consumers and who maintain an Internet website to solicit such transactions. The Commission is concerned that this definition might inadvertently curtail the consumer protections the bill is designed to provide. More specifically, by not covering purchasers of jewelry or other precious metals unless they maintain an Internet presence for purposes of soliciting such goods, this exclusion could provide an incentive for some marketers to avoid the law by marketing solely through alternate means such as telemarketing, direct mail, or radio and television advertisements. The Committee can cover non-Internet purchasers of

[16] Some consumers have complained that items shipped to online purchasers of precious metals have been lost in shipment, and that the insurance routinely provided for such shipments is inadequate to compensate for the loss.

precious metals by eliminating the word "online" where it currently appears in the bill, and by eliminating Section 2(b)(1)(B) from the definition of the term "purchaser of precious metals."[17]

Second, the Commission recommends that the Committee modify Section 2(a)(1) to clarify that purchasers of precious metals must make a firm offer to purchase the items for a specific price. Otherwise, the Commission is concerned that an unscrupulous marketer could claim that its vague offer to pay a good price is accepted when consumers ship their items. The Committee can clarify the legislation by modifying Section 2(a)(1) to provide that it is unlawful for purchasers of precious metals to:

> 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 an offer was made.

IV. Conclusion

Thank you for providing the Commission an opportunity to appear before the Committee to present its views on this proposed legislation.

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[17] Should the Committee limit the scope of the legislation to online purchasers, the Commission recommends clarifying the definition of "online purchaser of precious metals." Section 2(b)(1)(B) defines such a purchaser, in part, as one "who maintains an Internet website through which such person transacts such transactions." An unscrupulous marketer may argue that it is not covered because a third party web-hosting company "maintains" the website, or because it uses affiliate marketing and does not directly maintain the websites that promote its services. The Committee can resolve this issue by changing § 2(b)(1)(B) to read: "whose services are advertised, marketed, or otherwise solicited, in whole or in part, through one or more Internet websites."

Mr. BARROW Mr. Bell, you're now recognized for purposes of making an opening statement.

STATEMENT OF CHARLES BELL

Mr. BELL. Chairman Barrow, Ranking Member Whitfield and members of the committee, my name is Charles Bell. I am Programs Director for Consumers Union, based in Yonkers, New York. Thank you so much for the opportunity to testify today on ways to protect consumers who respond to Internet and TV offers to exchange precious metals for cash payments through the mail. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

Consumers Union is the independent nonprofit publisher of Consumer Reports, ConsumerReports.org, and the Consumerist.com blog, which empower consumers by informing and entertaining them about the top consumer issues of the day. And as part of our work, we regularly research and report on deceptive practices and misleading practices that affect consumers. We report on scams and frauds, both to alert consumers so they can protect themselves, and to alert law enforcement agencies and policymakers so they take action to directly curtail and stop these unethical, deceptive, or fraudulent practices.

Over the last several years, Consumer Reports has researched and reported about consumer problems related to cash for precious metals services which we think are worthy of your attention by your subcommittee.

Beginning in 2008, the Consumerist.com blog published a series of articles and blog posts regarding cash for precious metals services, including an in-depth investigative article entitled "The Article that Cash4Gold Doesn't Want You to Read," on September 2, 2009, which is attached to our testimony. And through research and investigative reporting, the Consumerist uncovered a range of questionable practices that raised concerns that consumers are being misled or shortchanged by such services, many of which are heavily promoted through TV ads and Internet.

Our overriding concern is that when financial circumstances lead consumers to make the difficult decision to part with their gold, silver, or other precious metals, items that may have both economic and sentimental value, they should be guaranteed a fair process.

A 2009 study by Consumer Reports, which we discuss in our testimony, found that cash for precious metals services paid between 11 percent and 29 percent of the day's market price for gold, while local jewelers and pawn shops offered significantly higher amounts. Based upon our research and the negative experiences of a significant number of consumers, we believe that additional consumer protections are very much needed to create fair rules of the road for online cash-for-metal services.

We generally do not recommend that consumers use such heavily advertised services because the high expenses that these companies spend for marketing make it unlikely that consumers will receive fair economic value for their jewelry or other items, and in general we think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal

and to solicit competing offers from reputable companies or third-party buyers.

At the same time, however, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance if they decline that offer.

And so we would emphasize that consumers who choose to use heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a prescribed period after submitting the items for appraisal.

H.R. 4501, introduced by Representative Anthony Weiner, contains strong pro-consumer provisions that would strengthen consumer rights IN online cash-for-metals transactions and create fair rules of the road to prevent understandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal before the purchaser has received an affirmative acceptance of the offer from the consumer.

H.R. 4501 would also require a fair return period for consumers who submit precious metals for sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry and proper insurance during shipment.

And as discussed, H.R. 4501 would also give the FTC strong enforcement powers to ensure that these companies act favorably and do not engage in deceptive marketing and sales practices. These commonsense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business.

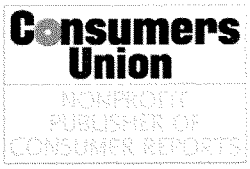
As mentioned above, the remote, relatively anonymous nature of the online mail-in cash-for-metals transaction introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road to help address and minimize these risks and clarify the channels of communication so both the consumer and the purchaser have appropriate rules and protocols to follow to minimize bad outcomes.

For these reasons Consumers Union strongly supports H.R. 4501 and urges its swift passage by the Congress.

Thank you very much for the opportunity to testify here today about this critically important issue, and we thank you for your efforts to protect consumers in these tough economic times and look forward to working with you as you move forward in addressing these issues.

Mr. BARROW. Thank you, Mr. Bell.

[The prepared statement of Mr. Bell follows:]



Testimony of

Charles Bell, Prgrams Director

Consumers Union

Before the

Subcommittee on Commerce, Trade and

Consumer Protection

U.S. House of Representatives

Hearing on

H.R. 4501, the Guarantee of a Legitimate Deal Act of 2009

May 13, 2010

101 Truman Avenue, Yonkers, NY 10703-1057 • (914) 378-2000

Introduction

Mr. Chairman, Members of the Committee:

Thank you very much for the invitation to testify on ways to protect consumers who respond to Internet and television offers to exchange precious metals for cash payments through the mail. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

Consumers Union[1] is the independent, non-profit publisher of *Consumer Reports*, *ConsumerReports.org*, and the *Consumerist.com* blog, which empower consumers by informing and entertaining them about the top consumer issues of the day. We directly reach over 4 million print subscribers and 3 million online subscribers, and many more people through pass-along readership, free online content and television and radio. As part of our work, we regularly research and report on misleading and deceptive practices that affect consumers. We report on scams and fraud both to alert consumers, so they can protect themselves; and to alert law enforcement agencies and policymakers, so they can take action to directly curtail and stop these unethical, deceptive and/or fraudulent practices.

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[1] Consumers Union, the nonprofit publisher of *Consumer Reports*, is an expert, independent organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. To achieve this mission, we test, inform, and protect. To maintain our independence and impartiality, Consumers Union accepts no outside advertising, no free test samples, and has no agenda other than the interests of consumers. Consumers Union supports itself through the sale of our information products and services, individual contributions, and a few noncommercial grants.

Over the last several years, we have researched and reported about consumer problems related to cash-for-precious-metals services which we think are worthy of attention by your Subcommittee. Beginning in 2008, the *Consumerist.com* published a series of articles and blog-posts regarding cash-for-precious-metal services, including an in-depth investigative article entitled "The Article that Cash4Gold Doesn't Want You to Read," on September 2, 2009, which is attached to our testimony. Through research and investigative reporting, Ben Popken and Meg Marco of the *Consumerist.com* uncovered a range of questionable practices that raise concerns that consumers are being misled and/or short-changed by such services, many of which are heavily promoted through TV ads and the internet. Our overriding concern is that when financial circumstances lead consumers to make the difficult decision to part with their gold, silver or other precious metals -- items that may have both economic and sentimental value -- they should be guaranteed a fair process.

Consumers Need Fair Rules of the Road for Online Cash-For-Metal Transactions

Based upon our research, and the negative experiences of a significant number of customers, we believe that additional consumer protections are needed to create fair rules of the road for online cash-for-metal services. As described below, we generally do not recommend that consumers use such heavily advertised services, because high expenses for marketing make it unlikely that consumers will receive fair economic value for their jewelry or other items. In general, we think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal, and solicit competing offers from reputable companies or third-party buyers.

At the same time, however, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer, and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance, if they decline that offer. We would emphasize that consumers who choose to use such heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a proscribed period after submitting the items for appraisal.

H.R. 4501, introduced by Rep. Anthony Weiner, contains strong, pro-consumer provisions that would strengthen consumer rights in online cash-for-metals transactions, and create fairer rules of the road to prevent misunderstandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal, before the purchaser has received an affirmative acceptance of the offer from the consumer. HR 4501 would also require a fair return period for consumers who submit precious metals for appraisal and sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry, and proper insurance during shipment. HR 4501 would also give the Federal Trade Commission strong enforcement powers to ensure that these companies act fairly, and do not engage in deceptive marketing and sales practices.

These common-sense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business. As mentioned above, the remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road that help to address and minimize these risks, and clarify channels of communication so both the consumer and the purchaser have appropriate rules and protocols to

minimize bad outcomes. For these reasons, Consumers Union strongly supports H.R. 4501, and urges its swift passage by the Congress.

Online Cash-For-Metal Transactions: Consumer Protection Issues

Based upon our research, we believe that a significant number of consumers are patronizing online services that offer to purchase gold or other precious metals, to help pay bills or make ends meet. Such services offer to quickly "turn your jewelry into cash," and invite the consumer to mail or ship their jewelry or other precious metals to a servicing center, and receive a check for its purported value in just a few days.

The precious metals that consumers send in are often gold or silver jewelry, wedding rings, heirlooms, or other items that are dear to the holder. These items were not necessarily purchased in the first instance for investment value. Indeed, the consumer may have little idea how much the items were worth when they were purchased, or what they are worth at current market prices.

Online, mail-in cash-for-precious-metals services are a relatively recent development in the consumer marketplace. The creation and development of this industry has been facilitated by the growth of the Internet, and the ability of the cash-for-metals firms to broadly market their services through print and electronic advertising.

Prior to the advent of online services, consumers would have been more likely to sell such items in person to local jewelers or pawn shops or other local third-party purchasers. The fact that such transactions take place in person is no guarantee that the consumer will get a fair deal, but the consumer can interact directly with a local company or third-party buyer who can

tell them what their items are worth, on the spot, in person. Further, they can retain physical possession of the items until they chose to accept an offer for purchase.

The remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions -- and the relative lag time in imputing value and receiving payment for the customer's gold or precious metal -- introduces new types of risks or uncertainty for the consumer.

A second challenging aspect of the cash-for-precious-metals business is that the prospective sale may be an impulsive decision for the consumer, who may be responding to well-placed Internet or TV ad. The consumer may be in a hurry to convert his personal assets to cash, and may not have systematically thought through his options to secure alternative offers for the sale of their jewelry or precious metals. While this does not excuse consumers from the responsibility to look out for their own economic interests, it does raise the possibility that large numbers of consumers, particularly in times of high gold prices or economic distress, may be enticed through slick advertisements to sell their items for less than fair market value.

With respect to this point, in general, Consumers Union does not recommend that consumers patronize heavily advertised online precious metals dealers, because these companies tend to pay very little. The large amount of money these companies spend on advertising cuts into their profit margin, which reduces the amount they are able to pay to consumers. Instead, we recommend that consumers have their gold independently appraised and consider comparable local offers before submitting it through the mail, so they will have a good idea how much their gold or precious metals are worth, and what an acceptable offer would be.

However, this still leaves us the question of what baseline protections consumers who use online, mail-in cash-for-precious-metal services should be entitled to. The primary concerns that were raised by our investigations into these services include the following:

1. Cash-for-precious-metal services appear to routinely "lowball" their customers

Company whistleblowers and consumers have reported that the initial offer to purchase the consumers' jewelry or previous metal items is often very low, as little as one-third of the actual value of the item, or less. This leads to a situation where consumers need to negotiate with the vendor to obtain a fair or mutually agreeable price for their assets -- but such negotiations are not always successful. Company staff representatives may also receive financial incentives to limit payouts to customers, so that even if the offer to the consumer is raised several times, it may still be significantly less than the item is worth.

A 2009 study by *Consumer Reports* found that cash-for-precious-metal services paid between 11% and 29% of the day's market price for gold, while local jewelers and pawn shops offered significantly higher amounts.[2] To evaluate the cash-for-precious metal services, *Consumer Reports*' "mystery shoppers" sent 24 identical gold pendants and chains to industry leader Cash4Gold and some of its national competitors. The necklaces were purchased for $175 each. We calculated their "melt value," which is how much the raw gold was worth, as about $70 each, based on the market price for gold when the necklaces were received by the companies (during the test period, the price of gold fluctuated, but never dropped below $900 an ounce).

[2] Popken, Ben and Marco, Meg. "The Article Cash4Gold Doesn't Want You to Read," The Consumerist.com, September 2, 2009.

Our tests, which lasted from May through early July, 2009, found that Cash4Gold and its competitors offered simple and relatively transparent service. Online tracking systems were updated promptly, the companies generally mailed out checks within a day or two, and customer service reps were courteous and professional. The actual offers, however, were miserly. Cash4Gold sent back checks ranging from $7.60 to $12.72 (or 11% to 18% of melt value), the lowest amounts of any firm. But others weren't far behind: GoldKit offered $7.81 to $20.59, and GoldPaq $8.22 to $13.11. Each of those deals was worse than what our mystery shoppers could get at local jewelers and pawn shops, which offered anywhere from $25 to $50 (or 36% to 71% of melt value).

Other news reports, by ABC's Good Morning America and the Boston Globe, suggest lowball checks are typical.[3] These results reinforce our advice that consumers should not use these highly marketed services because the payments they offer are too low. Consumers should also be aware that operators of the cash-for-precious metals services admit that they don't offer the best prices.

> 1) Cash4Gold CEO Jeff Aronson has said the company pays from as little as 20% to as much as 80% of the gold's value. And in an interview with Good Morning America, he suggested that customers who want more money should take their business elsewhere. "If all you care about is the net dollar, and you're willing to go to the seedy part of town, and you're willing to travel around ... I want you to go there," Aronson said.
>
> 2) "We're bridging the gap between couch and consumers," said Daniel Brauser, Chief Financial Officer of Money4Gold. "...We're not going to go out there are say we give you the biggest payout. But you [as consumers] incur zero cost and zero usage of your time."[4]

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[3] Leamy, Elisabeth and Weber, Vanessa. "All That Glitters Isn't A Good Deal," ABC News Good Morning America, Tuesday, May 11, 2010; and Woolhouse, Megan, "All That Glitters May Not Be Cash," The Boston Glober, March 5, 2010.

[4] Shah, Nirvi. "Broward Businesses cash in on gold buy-back craze," Miami Herald, March 21, 2010, Page 1.

However, such statements may stand in stark contrast to company marketing claims. For example, one Cash4Gold TV ad boasts that ""With gold, silver and platinum at their highest value in decades, Cash4Gold.com is able to give you top dollar for your unwanted jewelry." The same ad goes on: "Because we own our refinery, we can cut out the middleman, which means more cash in your pocket."[5]

There are also issues related to making payouts based on "melt value."

"The ads generally do not talk about how melt value is defined, or list company prices or pricing methodology. A consumer who is new to selling their gold or other precious metals has little or no idea of the vast difference between the retail price of gold (marked up 200-300% already) and melt value," according to Ben Popken, co-managing editor of the *Consumerist.com.* "In addition, cash-for-metal firms do not make payouts for the large amounts of copper, tin and silver and other alloys found in the jewelry. All that gets melted down and resold as well for pure profit."

2. <u>Consumers may receive late payments</u>

Our *Consumer Reports* mystery shopper test turned up no problems with mailing time for payments, at least for the period of our study. However, many consumers have complained about this late checks or non-receipt of payment.

In our report on this issue, Brodie White, President of the Better Business Bureau of Southeast Florida and the Caribbean, told the *Consumerist.com* that delayed checks, low payments and lost packages are among the most common complaints he's received about industry leader Cash4Gold. Why were late checks a particular problem? "When [the customer] got the check, the time to execute the refund policy was either over or about to expire."

[5] Op. cit. #2.

The BBB currently rates Cash4Gold a C- on its A+ -to-F rating scale, but White said the company has been rated as low as a D-, and that the BBB revoked its membership. Complaints about late checks have also been received by the Florida Attorney General, who opened a civil investigation into Cash4Gold.[6] According to the Attorney General's web site:

> "There is a pattern of complaints from consumers who allege that they are not paid nearly enough for the gold they send to Cash 4 Gold, some checks are as small as .07 cents. Consumers also state that they have contacted the company within the 10/12 day period and were not satisfied with their checks and wanted their gold returned, only to be told it was already melted. Others allege that when they send the check back to the company for the return of their gold, the gold never arrives back. Numerous complaints allege that the company says they never received the gold or that the envelope was empty when it arrived. There are many complaints that the "Insurance" offered is totally inadequate."[7]

Finally, in a report by an ABC affiliate in November 2008, a reporter said she waited two weeks to get a Cash4Gold check, and then got the company to nearly triple its original offer. The final offer was still less than half of what the reporter said a local pawn shop offered her.

3. Consumers may not be able to obtain the secure return of their proffered items.

Related to the above, if the consumer is unwilling to accept the offered price for their jewelry or precious metal items, because he believes it is too low, the consumer may not be able to get his items back because a) the items have been "lost" in shipment to the cash-for-metals company b) the purchaser has already melted them down, or c) the purchaser did not send them back in a secure way, with an appropriate level of insurance.

In some cases, there may also be a lag time in payment or the company's response to the consumer, which contributes to the premature melting and destruction of the jewelry or precious

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[6] Attorney General, State of Florida, announcement of civil investigation at: http://www.myfloridalegal.com/lit_ec.nsf/investigations/A0CC38A2D52881B585257674007087DA

[7] Op. cit. #6.

metals before the consumer has agreed to the offer. This obviously makes the return of the item impossible, and the consumer also likely has little leverage to improve the offer, as the transaction has been consummated and is now a fait accompli.

Also, company return policies may make it difficult or impossible for the consumer to get their items back before the transaction is effectively consummated. As one example, Cash4Gold's has a 12-day return policy for consumers to return the payment check if they choose to decline the company's offer, but the clock starts ticking *on the issue date of the check.* If the check is delayed in the mail, this means that consumers may have relatively few days to decline the offer if they determine they do not want to accept it. Also, consumers who opt for direct deposit of the funds may in effect waive their rights to retrieve their items, if they later determine the offer was too low.

"There are definitely some tragic stories I encountered while reporting this story," said Ben Popken, co-managing editor of the *Consumerist.com.* " In one, an elderly Idaho woman on a fixed income was telling me how, after fighting for a fairer payout for months, she finally accepted one that was only a few bucks more. I asked her why she gave in. 'Because I needed to buy groceries,' she said. Another was a quadriplegic who had a trove of silver and gold antiques, some from the Civil War. Thinking that Cash4Gold service was a convenience, she sent them in, only to get back pennies on the dollar."

Consumers Need Fair Rules of The Road

As mentioned above, Consumers Union believes that additional consumer protections are needed to create fair rules of the road for online cash-for-metal services. Again, we generally do not recommend that consumers use such heavily advertised services, because their business

model makes it unlikely that consumers will receive fair economic value for their jewelry or other items. We think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal, and solicit competing offers from trusted companies or third-party buyers.

At the same time, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer, and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance, if they decline that offer. Consumers who choose to use such heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a proscribed period after submitting the items for appraisal.

H.R. 4501, the GOLD Act, introduced by Rep. Anthony Weiner, contains strong, pro-consumer provisions that would strengthen consumer rights in online cash-for-metals transactions, and create fairer rules of the road to prevent misunderstandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal, before the purchaser has received an affirmative acceptance of the offer from the consumer. HR 4501 would also require a fair return period for consumers who submit precious metals for appraisal and sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry, and proper insurance during shipment. HR 4501 would also give the Federal Trade Commission strong enforcement powers to ensure that these companies act fairly, and do not engage in deceptive marketing and sales practices.

These common-sense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business. As mentioned

above, the remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road that help to address and minimize these risks, and clarify channels of communication so both the consumer and the purchaser have appropriate rules and protocols to minimize bad outcomes. For these reasons, Consumers Union strongly supports H.R. 4501, and urges its swift passage by the Congress.

Conclusion

Mr. Chairman, Members of the Committee, thank you very much for the opportunity to testify here today about this critically important consumer protection issue. We thank you for your efforts to protect consumers in these tough economic times, and we look forward to working with you as you move forward in addressing these issues.

Mr. BARROW. The chair now recognizes Ms. Gardner for up to 5 minutes for purposes of making an opening statement.

STATEMENT OF CECILIA L. GARDNER

Ms. GARDNER. Thank you, Mr. Chairman, and thank you to both yourself and to Ranking Member Whitfield for inviting me here today. It's a pleasure to be here with you.

My name is Cecilia Gardner and I am the President, CEO and General Counsel of the Jewelers Vigilance Committee, known as the JVC, not the electronics company. I am here today representing the organization and its members. It is a not-for-profit trade association in the national jewelry industry.

We were formed in 1912 to provide self-regulation within the industry and to facilitate compliance with the laws that affect the jewelry trade through supplying information on our Web site, presenting seminars, publications, newsletters, articles and trade publications; and we also serve the industry by receiving complaints regarding jewelry transactions and mediating disputes between consumers and jewelers that arise and—or between businesses.

Our members include retailers, suppliers, manufacturers, wholesalers and gold-buying companies. I raise this because I want to remind the committee—the subcommittee—that this is an industry of small business. These are family—for the most part, family-owned small businesses who of late have been struggling with the economic downturn.

You can imagine how it has impacted the economic life of a retail jewelry store. Jewelers at all levels of the industry have been hurt by the economic crisis of the last years, and that same crisis has driven up the cost of precious metals, creating a consumer interest in selling gold primarily in the form of unwanted jewelry.

Many companies have weathered the drop in jewelry demand and managed to stay in business by buying gold from their customers and then selling it to refiners. New companies and business models have arisen, including gold-buying parties in homes and Web sites, that invite consumers to mail in their gold in exchange for money. For the most part, the purchase and sale of gold has been a benefit both to the industry and to consumers alike.

We have had in our organization since 2008 a special category of membership for gold buyers, and we advise the industry on the laws and regulations that govern the practice of buying gold from consumers. This includes anti-money laundering requirements pursuant to the USA PATRIOT Act, as well as State and local laws regarding permits for second-hand dealers, and, finally, regulations that address antifencing laws which vary from jurisdiction to jurisdiction, but generally require that gold buyers obtain identification from sellers, keep purchased gold on their premises for a specific length of time, and maintain accurate records.

We have received various complaints regarding the function of gold, the activity of gold buying. And the most frequent complaint that we get is that the amount of money paid for the gold is insufficient. It's too low. Since these prices and the offer is not regulated, it's a free, open market, there is really very little we can do if the complaint just centers around the price that was paid for the gold.

Another complaint that we often receive, frankly, is that consumers mail in the gold to a company that they found online, and then the company simply disappears. This is an outright theft, a fraud, and we very often turn those complaints over to law enforcement for action.

The JVC supports the goal of appropriate consumer protection in all aspects of the jewelry industry, and our interests are completely aligned with any effort to maintain a fair marketplace and to prevent consumer exploitation.

To that end, we have reviewed the Guarantee of a Legitimate Deal Act of 2009, and our members fully support it. I also heard here today some suggested broadening of the coverage of the bill and we would agree—we would support the broadening in the sense that it would apply to purchasers who receive mailed-in gold.

I also should note for the committee that there are places in the United States where there is simply no alternative to—to mailing in the gold. There are places in the United States where there just is no easily accessible bricks-and-mortar pawn shop or jewelry store or refiner that is willing to purchase the gold from a consumer. So the mail-in function is something that probably will still find a market in the United States.

Consumers should be presented with a good-faith offer and not a fait accompli in the nature of a check for jewelry that has already been destroyed. All of the provisions of the bill that we read, the legislation that we see in this bill, seems equally fair and sensible. Consumers should be ensured that they are not going to be delayed in their efforts to further shop their jewelry or harmed by inadequate insurance on a lost return, and this legislation requires that care be taken in the online purchase of gold, without creating an undue burden on the buyer. One of our main——

Mr. BARROW. Ms. Gardner, in the interest of the time of the other witnesses and the committee, can you please bring your statement to a close so we can move on to the examination of——

Ms. GARDNER. I will. I just want to mention that many of our members who buy gold online or in the mail often wait until their check is negotiated before they melt the gold, therefore protecting the consumer in that way.

So thank you for the opportunity and I am sorry to have gone over my time.

Mr. BARROW. Not at all. Thank you, Ms. Gardner.

[The prepared statement of Ms. Gardner follows:]

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Suna Bros. Inc.

JVC JEWELERS VIGILANCE COMMITTEE

The Industry's Guardian of Ethics and Integrity

United States House of Representatives
Subcommittee on Commerce, Trade and Consumer Protection

TESTIMONY OF CECILIA L. GARDNER

Chairman Bobby Rush, Ranking Member Ed Whitfield, members of the subcommittee. My name is Cecilia Gardner and I am the President, CEO and General Counsel of the Jewelers Vigilance Committee, known as JVC.

I am here today representing JVC, a non-profit trade association for the jewelry industry. The organization was formed in 1912 to provide self-regulation within the industry. Our mission today is to facilitate compliance with the laws that affect the jewelry trade by supplying information through our website, seminars, publications, newsletters and articles in trade publications. We also serve the industry by reviewing complaints regarding jewelry transactions, and mediating disputes that arise between consumers and jewelers, or that arise between businesses. JVC members include retailers, suppliers, manufacturers, wholesalers and gold-buying companies. We currently have approximately 1,000 member companies, operating at almost 9,000 locations.

JVC is the liaison with many of the government agencies that regulate the jewelry business. In that capacity, I have met with officials of various federal agencies, such as the Treasury Department and the Federal Trade Commission, to describe how the industry operates, and to discuss enforcement efforts. JVC provides opportunities for government officials to present regulatory information to the industry, by hosting panel discussions at trade shows and other events.

Jewelers at all levels of the industry have been hurt by the economic crisis of the last few years. That same crisis has driven up the cost of precious metals, creating a consumer interest in selling gold, primarily in the form of unwanted jewelry. Many companies have weathered the drop in jewelry demand, and thus managed to stay in business, by buying gold from their customers and then selling it to refiners. New companies and business models have arisen, including gold-buying parties in homes, and websites that invite consumers to mail-in their gold in exchange for money. For the most part, the purchase and sale of gold has been a benefit to the industry and to consumers alike.

(over)

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Since 2008, JVC has had a special category of membership for gold buyers. We also advise the industry on the laws and regulations that govern the practice of buying gold from consumers. These include the anti-money laundering requirements of the U.S. Patriot Act, as well as state and local laws regarding permits for second-hand dealers. The regulations also include "anti-fencing" laws which vary from jurisdiction to jurisdiction, but generally require that gold buyers obtain identification from sellers, keep purchased goods on their premises for a specified length of time, and maintain accurate transaction records.

The JVC has not received many complaints regarding the sale of gold by consumers, but those we have received tend to fall into two categories. The most frequent is that the amount paid for the gold is too low. Since gold prices are not regulated there is no minimum price that a seller must pay, and for that reason there is no assistance we can offer these consumers. Another frequent complaint is that a consumer mailed in gold pursuant to instructions in an online advertisement, that no money was ever received, and that the company is no longer reachable at the advertised location. These complaints are in the nature of outright fraud, suitable for criminal investigation and not for JVC mediation.

JVC supports the goal of appropriate consumer protection in all aspects of the jewelry industry. Our interests are aligned completely with every effort to maintain a fair marketplace and prevent consumer exploitation. To that end, we have reviewed the "Guarantee of a Legitimate Deal Act of 2009," H.R. 4501. This legislation addresses the following circumstances where protection is needed for consumers who transact with on-line purchasers of gold:

- The consumer rejects the gold buyer's offer for his or her gold jewelry – only to find out that the gold has already been melted.
- The gold purchaser fails to promptly return the gold jewelry sent by the consumer after the consumer declines an offer.
- The gold buyer fails to adequately insure the gold jewelry when returning it to the consumer following a rejected offer.

While JVC has not received complaints of the nature addressed by the legislation, we nonetheless support its passage. Consumers should be presented with a good-faith offer, and not a *fait accompli* in the nature of a check for jewelry that has already been destroyed. The remaining provisions of the legislation are equally fair and sensible. They should ensure that consumers are not delayed in their efforts to further shop their jewelry, or harmed by inadequate insurance on a lost return. The legislation requires that care be taken in the online purchase of gold – without creating an undue burden on the buyer.

JVC appreciates the opportunity to testify today in favor of the "Guarantee of a Legitimate Deal Act." Thank you for your consideration of our comments.

Mr. BARROW. The committee now proceeds to an examination of the witnesses by members of the committee. The chair recognizes himself for 5 minutes for purposes of questioning the witnesses. In the interest of a more thorough and sifting examination of all of the issues raised by the legislation, the chair is happy to yield his 5 minutes to the sponsor and the author of this legislation, Mr. Weiner. Mr. Weiner, you're recognized for 5 minutes.

Mr. WEINER. Thank you, Mr. Chairman. I thank all the witnesses for their testimony, particularly Ms. Gardner, with whom I have some history. We got to know each other some years ago as our paths crossed in political life, and I am a big fan of her husband as well, and I thank her for her service to the citizens of New York.

Let me understand a little bit about the role that you're here in, Ms. Gardner. The Jewelers Vigilant Committee, does it include as a member—does it have as a member Green Bullion, the company Green Bullion, or Cash4Gold, the business—the active name of Cash4Gold, which is Green Bullion? Is that a member organization of yours?

Ms. GARDNER. Cash4Gold is in fact a member of the JVC, yes.

Mr. WEINER. What does it take to be kicked out? Is there a standard—are there standards of conduct that are insisted upon? I mean, I see some of your members are Movado Group and GE Money and Patek Phillipe and Rolex, and in there is Cash4Gold, a company that the post office says is stealing people's stuff; that a review of the witnesses to your right say is giving people as little as 11 percent of the market price for gold. Is there a code of conduct that members of JVC agree to comply with?

Ms. GARDNER. Yes, there is. There is a 4-page document of due process procedural steps in order to institute and succeed to remove a member from the rolls of membership at the JVC.

Mr. WEINER. If you would provide the committee with that document——

Ms. GARDNER. Certainly.

Mr. WEINER [continuing]. It would be very helpful to us.

Can I ask, in your experience in representing the organization as its general counsel, has there been another—is there another entity that has 300-some-odd complaints against it from the Better Business Bureau?

Ms. GARDNER. Yes.

Mr. WEINER. Could you tell me which ones?

Ms. GARDNER. No.

Mr. WEINER. For the purpose of future hearings, please provide that for me.

Are there other members of your organization that have lost their accreditation of the Better Business Bureau and told they can't use their indicia in their advertising anymore?

Ms. GARDNER. I am not aware of that.

Mr. WEINER. Are there any other organizations, to your knowledge, that are members of your organization that have behaved in the general way that Cash4Gold has, melting down gold or with an arbitrary amount of time—you said in your testimony, most of your members don't do that. Do you know of others that do? Is that a

common practice in your industry to melt down gold before there has been an affirmative acceptance of an offer by a customer?

Ms. GARDNER. In the industry we have not received very many complaints of that nature. In fact, we haven't received any.

Mr. WEINER. So Cash4Gold would be the only one?

Ms. GARDNER. To be honest, Congressman, we haven't received any complaints about Cash4Gold on that basis.

Mr. WEINER. On what basis have you received the most complaints about Cash4Gold?

Ms. GARDNER. That they don't pay very much for the gold.

Mr. WEINER. And do your other members who are—many of whom I see don't engage in mail order. They are actual physical places where you can go and take your gold. If you were going to give advice to consumers on where they can get the best service, where they can get the most accurate reflection, would you recommend—would your organization recommend that it's either/or; that you get an equal value if you mail it in than if you bring it into a pawn shop or bring it into a jeweler?

Ms. GARDNER. We don't recommend to consumers anything other than go to a reputable jeweler. We—we recognize that, given the complex marketplace for gold in the United States, that there are outlets where a consumer can get better prices than if they mail it into a mail-in buyer of gold. But not everybody has access to those better outlets. Certainly a refiner, a direct refiner, would give you a better deal.

Mr. WEINER. When you have access to a deal or not, when you have access to alternatives or not, sometimes, Ms. Gardner, a bad deal and a rip-off is just a rip-off? Like sometimes if it's the only place you choose or you have five other options and you choose that one, a rip-off is a rip-off.

When someone is getting 11 percent, which is what Consumer Reports found in its research, it's hard to interpret that absence of choice being a justification for a rip-off like that, wouldn't you agree?

Ms. GARDNER. I don't know how you're defining "rip-off." I mean——

Mr. WEINER. Well, let's start with 11 percent. Is that a rip-off, 11 percent——

Ms. GARDNER. It's a lousy deal.

Mr. WEINER [continuing]. Eleven percent of the day's market price for gold, a lousy deal——

Ms. GARDNER. That is a lousy offer.

Mr. WEINER [continuing]. Or as we might say in Brooklyn, a rip-off. So the question is——

Ms. GARDNER. I am not from Brooklyn.

Mr. WEINER. We can't have everything, Ms. Gardner. But the point is——

Ms. GARDNER. I lived there for a while.

Mr. WEINER. But the point is the same; is that whether or not there are many choices, no choices, one choice, a rip-off is a rip-off. And Cash4Gold is engaged in systematic ripping off of consumers. And what troubles me is your organization seems to be giving them a cloak of legitimacy. And I am going to take a look at the docu-

ment that you suggested that you have, to see if they—if they don't qualify for being kicked out, I don't know who does.

Thank you, Mr. Chairman.

Mr. BARROW. I thank the gentleman for yielding.

I am pleased to recognize the gentleman from Kentucky for purposes of questioning for up to 5 minutes. Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman.

Thank you all for your testimony. It's my understanding that all of you support the concept of this legislation; is that correct?

Mr. KOHM. That's correct.

Mr. BELL. Yes, that's correct.

Ms. GARDNER. Yes, that's correct.

Mr. WHITFIELD. OK. And all of you would agree that it could be improved by, one, making it a little bit more broad than just an entity that hosts a Web site in order to take care of direct mail and marketing and so forth; is that correct?

Mr. KOHM. That's correct for the FTC, Congressman.

Mr. BELL. Yes. We would support the measures discussed by Mr. Kohm as well. We think that would be a good enlargement of the scope of the legislation.

Ms. GARDNER. I have not discussed this particular concept of broadening, since I've only heard it here today in this room. You know, obviously I speak for the board of the JVC and its members. I would have to go back, but I don't see why that wouldn't make sense.

Mr. WHITFIELD. Well, I think all of us agree that this is good legislation, and working with Mr. Weiner to make it even more effective, I am sure he would be supportive of that as well.

And all of you also want to require a step that the seller would have to affirm the offer from the purchaser before the meltdown; is that correct?

Mr. KOHM. That's correct. We think that there should be an offer for a specific price that's accepted before there's any meltdown.

Mr. WHITFIELD. And all of you agree with that?

Mr. BELL. Yes.

Mr. WHITFIELD. And then all of you do believe that the insurance issue is something that needs to be addressed; if the material is mailed back that there must be adequate insurance in case it's lost?

Mr. KOHM. That's correct.

Mr. BELL. Yes.

Mr. WHITFIELD. Now, do we—I am sorry, Ms. Gardner.

Ms. GARDNER. Yes.

Mr. WHITFIELD. OK. Do we need to be concerned about the definition of "precious metals," or does that need to be addressed?

Mr. KOHM. Congressman, that doesn't seem to us to need to be addressed. We'd have to see how that played out in the marketplace.

Mr. WHITFIELD. Well, I want to thank you. You all have given us some very good suggestions and I think it's a good piece of legislation.

I yield back the balance of my time.

Mr. BARROW. I thank the gentleman for yielding.

The chair now recognizes Mr. Weiner of New York for purposes of asking his allotted 5 minutes of questioning.

Mr. WEINER. Thank you, Mr. Chairman. I don't think I'll use the full 5 minutes. The fact is most of the questions that remain to be addressed should be addressed to Cash4Gold directly. They've made a decision not to attend this hearing. They've made a decision not to attend this hearing under the pretense of something better to do. And I probably, if I were they, would choose to avoid this hearing as well, because I think it's further attention being called to the fact that the way they function is truly exploitive of consumers.

I think that we are in a circular kind of situation that consumers can find themselves caught up in. First, you've got many advertisements tied to many news reports that now this is the moment to buy gold, gold is going up. They then—those news reports get mated with TV commercials very often, right after those same news reports that say, find your gold, send it to us, and we will give you a good price. Once they do that, the experience of the consumer goes downhill from there.

Imagine that. They are finding that in large numbers, the gold is being—they're getting paltry offers, and then if they have the wherewithal to ask for that gold back, they're finding, lo and behold, that it's already been melted down because the 12-day limit that they had started ticking the moment that their gold arrived, or the time it was mailed. No one really knows. It's not very clear from the literature.

Then if they're lucky enough to have reached someone and they said, OK, we will send it back to you, shockingly we're finding that the Postal Service is getting all kinds of complaints about lost gold coming from Cash4Gold, 1,300 loss claims, so many so that the Postal Service does an investigation and finds that—they draw the conclusion that Cash4Gold didn't send it back. It didn't get lost. They just chose not to. They find if they insure it sending it to Cash4Gold, they happen to not insure it coming back, so then suddenly the consumer is out.

When asked about these things, their defenders, and Ms. Gardner is among them, say, Look, there's lots of different ways to deal with gold. We provide something that others don't. What they provide is a rip-off.

That is why I hope that we have an opportunity to have Cash4Gold come back and answer some of these questions. I have a feeling that barring a subpoena, which is probably something they are going to see visited upon them in Florida and other States around the country that are beginning these investigations, they probably will choose not to.

They operate in that dark shadow, that corner of our economy where people prey upon the most vulnerable. And I think that after this hearing, I believe that some of the legitimate members of the Jewelers Vigilance Committee will say, You know what? We're tired of mopping up for these guys. These guys are an embarrassment. These guys are not doing a service for consumers. They're using our organization to help cleanse their good name, and our skillful, talented witness, who has a history of consumer protection, to help defend what essentially is indefensible.

So we're going to pass this. We're going to try to take the counsel of Mr. Whitfield and others and some of the witnesses and broaden it further, and we're going to continue the investigation. But we're not going to allow a bad economy, people desperate for a few extra dollars, to think that if they put their jewelry in an envelope, it's not effectively the same as putting money in the envelope and just mailing it away.

I want to thank the chairman. I want to thank this committee for holding this hearing. I have received assurances from the chairman of the full committee and the chairman of the subcommittee that we don't take kindly to the idea of witnesses pretending to be hiding somewhere rather than testifying before this committee, and so I am sure we will be revisiting it. Thank you.

Mr. BARROW. I thank the gentleman for yielding. There being no other members of the committee present for purposes of questioning the members of the first panel, the chair will excuse the members of the first panel with the thanks of the chair.

Now I would like to call up the witnesses for our second panel.

All right, I think we're ready to proceed with the witnesses for the second panel.

Since Mr. Kohm has been kind enough to stay with us, I will move on to introduce the rest of the members of this panel. Seated to Mr. Kohm's left is Mr. Michael Markarian, the Chief Operating Officer of the Humane Society of the United States. On Mr. Markarian's left is Mr. Keith Kaplan, who is Executive Director of the Fur Information Council of America.

As stated earlier, it's the practice of this subcommittee to swear all witnesses. Since Mr. Kohm was sworn in on the first panel, he's still under oath and there's no need for him to be sworn again. So I will ask Mr. Markarian and Mr. Kaplan to please rise and raise your right hand.

[Witnesses sworn.]

Mr. BARROW. The record will reflect that each of the witnesses has answered in the affirmative.

STATEMENTS OF JAMES A. KOHM, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; MICHAEL MARKARIAN, CHIEF OPERATING OFFICER, THE HUMANE SOCIETY OF THE UNITED STATES; AND KEITH KAPLAN, EXECUTIVE DIRECTOR, FUR INFORMATION COUNCIL OF AMERICA

Mr. BARROW. Mr. Kohm, you're now recognized for 5 minutes for purposes of making an opening statement.

Mr. KOHM. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the committee. For the record, my name is——

Mr. BARROW. Mr. Kohm, if you'll excuse me, as a courtesy to a member who is sitting by unanimous consent today, I would like to give Mr. Moran the opportunity to make an opening statement, and then I will recognize you for the purposes of making your opening statement and the other witnesses, if that's OK with you.

Mr. KOHM. Absolutely.

Mr. BARROW. Thank you. The gentleman from Virginia is recognized for purposes of making an opening statement not longer than 5 minutes. Mr. Moran.

Mr. MORAN of Virginia. Thank you, Mr. Chairman. I thank Mr. Whitfield as well, the ranking member on this subcommittee. I appreciate the opportunity to make an opening statement on a bill that I think is well deserving of action by this subcommittee.

The Fur Products Labeling Act, enacted in 1951, required labels of fur products that indicated the name of the animal whose fur was being used and the country of origin. The law, however, allowed for the exemption of products containing a de minimis amount of fur. Since 1998 the definition of "de minimis" has been set by the Federal Trade Commission at $150.

In today's marketplace, with fur trim products rivaling full-length fur garments in total sales, this exemption—in fact, this interpretation exempts a significant percentage of fur products. More than one out of every eight fur products that are purchased create a situation where the consumer must rely exclusively on information provided by sales staff or product displays, neither of which may necessarily be reliable so as to guide the consumer's purchasing decision.

This lack of clear and consistent information poses serious problems for consumers who may have allergies to fur, particularly to fur collars, which is oftentimes where that fur is located on a garment. They may have ethical objections to fur, or they may have concern about the animals, such as dogs and cats that supply that fur.

The Truth in Fur Labeling Act that we are bringing up before the subcommittee today would correct this problem by removing the de minimis exemption and requiring labels on all fur products, regardless of value, Mr. Chairman.

Now, let me head off any anticipated criticism. This is not a solution in search of a problem. That's oftentimes a criticism that is labeled at—that is thrown at much legislation. This is not the case. The Humane Society of the United States, as we know, a very credible national organization, as well as a number of other national organizations and media outlets, have conducted investigations documenting the confusion that has been created by retail personnel and consumers who buy fur products that lack labels.

The Humane Society, in fact, have found that in a number of stores, 100 percent of supposedly faux fur was actually animal fur. Too often retailers don't know what they're selling and consumers don't know what they're buying, and that's what needs to change.

I am pleased that there is a representative of the Fur Manufacturers and Retailers here to testify today. I have read your testimony and I appreciate the fact that the Fur Information Council of America supports the underlying purpose of this bill: to ensure consumers have the requisite knowledge to make informed choices consistent with their medical beliefs and their ethical beliefs as well. I should say, their medical needs and their ethical beliefs.

I understand that FICA does have some concerns about section 4 that simply restates current policy that currently allows States to enact fur-labeling requirements in addition to the FTC standards. I think those concerns are, in fact, legitimate; and I'd be glad

to work with FICA and the committee to address this provision in order to ensure that the larger public interest is served, because it is not intrinsic to the purpose of the legislation. In fact, it simply restates current policy, as I say.

More than anything else, this is a consumer protection issue. I think the testimony will show that the right policy for consumers is to remove the small-value exemption and require all products containing fur to carry an accurate label.

Again I want to thank you, Mr. Chairman, and the entire subcommittee for deciding to hold this hearing, and I look forward to working with all of you to advance what I know you will find to be commonsense legislation that I hope we can advance as expeditiously as possible. And I thank you very much for your indulgence, Mr. Chairman. Thank you.

Mr. BARROW. On the contrary, I thank the gentleman from Virginia for his opening statement and I thank him for his leadership on this issue.

Mr. Kohm, it is again your turn to make an opening statement, this time on the Truth in Fur Labeling Act.

STATEMENT OF JAMES A. KOHM

Mr. KOHM. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the committee. For the record again, my name is James Kohm. I am the Associate Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection.

Let me again note that the views expressed in my written testimony represent those of the Commission, while my oral testimony and responses to your questions reflect only my own views and are not necessarily those of the Commission or any particular commissioner.

I appreciate the opportunity today to discuss H.R. 2480, which would effectively require the Commission to rescind the fur rules exemption for garments with relatively small fur value. Without this de minimis exemption, manufacturers will be required to label all fur products, regardless of the fur's value, with the animal name, country of origin, fur treatment, a registered identification number, as well as other information that is material to consumers' purchasing decisions.

The Commission supports this legislation based on changes in the marketplace. In 1952 the Commission exercised its authority under the Fur Products Labeling Act to exempt products containing a relatively small value of fur. At that time, fur garments generally represented a large investment, and consumers were primarily concerned that they received the value that they were paying for; in other words, that they actually received the type and quality of fur they purchased.

However, when the value—when the value of the fur was small, for example, low-cost fur used in small quantities for trim, consumers' need for this information was greatly reduced. The Commission periodically reviews all its rules and guides to ensure that they remain relevant and appropriate in a changing marketplace.

The fur rules last underwent such a review in 1998. At that time, the Fur Information Council of America submitted the only

comment regarding the de minimis exemption, seeking to increase the amount of the exemption based on inflation. No other commenters suggested—no commenters suggested repealing the exemption at that time.

The marketplace, however, now appears to have changed significantly. Many consumers remain concerned about the quality of the fur products they purchase, but there appears to be an increasing number of consumers who, for a variety of reasons, would prefer not to purchase real fur, or who object to certain types of fur even in small amounts.

Accurate labeling of all garments containing fur, regardless of the fur's value, would help these consumers make informed purchasing decisions. Given this change, the Commission plans to explore rescinding its de minimis exemption for fur labeling during its currently scheduled 2011 fur rule review.

However, the FTC could only effectuate such a change after establishing such a record and weighing the cost and benefits of eliminating the exemption. If enacted, H.R. 2480 would remove the Commission's authority to promulgate a de minimis exemption, thereby providing the most efficient and expeditious means of helping those consumers who wish to avoid fur products or certain types of fur, while maintaining the labeling framework for those consumers concerned about the type and value of their fur purchases.

It goes without saying that if this legislation is enacted, the Commission would move quickly to revise the fur rules to comport with the new legal framework.

Thank you for providing the Commission an opportunity to appear before the committee today to discuss the Truth in Fur Labeling Act. I will be happy to answer any of your questions.

Mr. BARROW. Thank you, Mr. Kohm.

Mr. Markarian, you're now recognized for 5 minutes for purposes of making an opening statement.

STATEMENT OF MICHAEL MARKARIAN

Mr. MARKARIAN. Thank you, Mr. Chairman and Mr. Ranking Member, and members of the subcommittee for holding this hearing on this important issue and for inviting the Humane Society of the United States here to testify. I want to thank Congressman Moran for his tremendous leadership on this issue, as well as Congresswoman Bono Mack and other members of the subcommittee who are cosponsors of H.R. 2480.

We at the Humane Society of the United States strongly support this legislation, which we essentially view as a much-needed upgrading or updating of the Fur Products Labeling Act, which was passed nearly 60 years ago and needs to be updated to reflect the present market realities.

As we heard, when the Fur Products Labeling Act was passed in the early 1950s, there was an exemption in the law for a small quantity or value of fur, and in the last six decades the industry has really changed quite remarkably in a number of ways. There has been an increased use in fur trim where people are no longer just seeking full-length fur coats or other garments, but they're

seeking parka jackets and sweaters and vests and hats and gloves that are trimmed with small amounts of fur.

We've also seen an increase in the quality of the synthetic furs which are closer resembling real fur, and it makes it more difficult for people to distinguish between real fur and fake fur.

We have also seen manufacturing techniques where real animal fur is dyed or sheared. If people see the fur trim on a jacket that is pink or blue or orange, they may not associate it with an animal, and they may not understand whether it's real animal fur or faux fur.

And as the exemption is currently set at $150, which applies to the value of the fur material on the jacket, it allows for massive quantities of animal fur to be used without being labeled. And based on approximate pelt prices after tanning and dressing, the fur from 30 rabbits could be used at $5 each per pelt, without requiring labeling; 25 ermines at $6 each; 15 muskrats at $10 each. The list goes on and on and on. And many animals—the pelts from many animals could be used and fall under that $150 threshold.

So we believe that this is creating major confusion in the marketplace because people simply don't know what they are getting. And the Humane Society of the United States has tested dozens of jackets, many of which were advertised as fake fur, and we found that they contained real animal fur.

We brought two posters to show the committee just two of these examples. I wanted to point them out to you. The one on the left is a Rocawear jacket, which was purchased at a store called Demo. You can see the blowup of the label. It says that it's polyester material; it says that it was made in China, but it does not say anything about the fur trim. We had that fur tested in a laboratory and concluded that it was fur from a raccoon dog species.

The second example is a Burberry jacket which was purchased online from the saks.com Web site. It was advertised online as faux fur. And you can see when the consumer receives the jacket in the mail, they look at the label. It talks about cotton, it talks about polyester, it talks about some of the other materials, but it does not say anything about the fur material. We had that jacket tested and concluded that the fur trim was rabbit fur. And when we disassembled the trim, it looked like it was two individual rabbit pelts—and you can see a little bit how they're sewn together in the middle of the garment.

But if those rabbit pelts were valued at $5 each and there's $10 worth of fur trim on that jacket—a jacket which costs hundreds of dollars—it fell below the exemption and did not require labeling.

So we believe that if you don't have a label on the individual garment, there is so much room for consumers to be confused, and even for sales clerks in department stores to be confused, because they're not furriers, they're not experts in the material. But these are folks who work at department stores, they have inventory cycling through, they have customers trying on jackets and returning them to the wrong racks, and it's very easy for people not to know what the garments are made of unless there is a label attached to the individual garment.

And we've, frankly, found sales clerks guessing in department stores. When they don't have a label on the jacket and consumers

ask, What do you think this is made of, they say, It's not real fur, it's fake. If it's real fur, they would say real fur. Another clerk said I really don't think it's real fur. Another said it's goose down, so it's warm; it would say raccoon or rabbit, whatever. It doesn't say, I believe it's acrylic, fake fur; I believe it's fake.

There is too much room for confusion, Mr. Chairman. We believe this is a limited bill which gives consumers the opportunity to make informed choices. It doesn't restrict the trade in any fur, it doesn't restrict the methods of producing fur, it gives consumers the information that they need.

We thank you for your time and look forward to working with the committee on this bill.

Mr. BARROW. Thank you, Mr. Markarian.

[The prepared statement of Mr. Markarian follows:]

Hearing on H.R. 2480
Truth in Fur Labeling Act
A bill to improve the accuracy of fur product labeling, and for other purposes

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection

Testimony of Michael Markarian
Chief Operating Officer
The Humane Society of the United States

May 13, 2010

I am Michael Markarian, chief operating officer of The Humane Society of the United States, and I want to thank you, Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee for the opportunity to testify in support to H.R. 2480, the Truth in Fur Labeling Act, a bill to improve the accuracy of fur product labeling, and for other purposes. We are grateful to Representatives Moran and Bono Mack for their leadership on this important issue. On behalf of The HSUS, the nation's largest animal protection organization, and our more than 11 million supporters nationwide, we strongly support this legislation, which would give consumers the information they need to make informed purchasing decisions.

This common-sense legislation would simply provide consumers with important product information on the fur garments they are buying. It would not restrict the trade in any species of fur or any methods of producing fur. H.R. 2480 is supported by retailers, fashion designers, animal welfare groups, and consumer protection groups, and we urge the Subcommittee to report it favorably for swift action by the full Congress.

History of the Fur Products Labeling Act

In response to rampant false advertising and false labeling of animal fur garments, Congress passed the Fur Products Labeling Act in 1951, with the law taking effect in 1952, requiring that animal fur garments be labeled with the name of the species used, manufacturer, country of origin, and other information. The law was intended to prevent unfair competition in the marketplace and to protect consumers by providing product information and letting them know whether the product is made from real animal fur, and if so, what type of fur. A *New York Times* article published in 1952 noted that the new law was "enacted to eliminate unfair trade practices and deceptive merchandising and advertising of fur coats."[1] At the time, some sellers were using misleading terms such as "mink-dyed muskrat" for muskrat coats, "coney" for rabbit fur, and

"marten dyed skunk" for skunk, and leaders of the fur industry called for strict labeling standards to ensure that consumers had accurate and consistent product information.

When the Fur Products Labeling Act was passed, it exempted products with a "relatively small quantity or value" of fur. At the time, fur was primarily used for full-length coats and stoles, and fur-trimmed and faux fur items were relatively uncommon. More than a half-century later, however, the market has been inverted: Fashions have changed, and the market demand for fur trim is much larger. As many fur-trimmed garments are sold today as full-length fur coats, and the fur industry has predicted that the use of fur for trim in the U.S. could surpass the use of fur for full-length apparel, if it hasn't already. With the improvements in synthetic materials, it is also more difficult today to distinguish between real and faux fur. The existing labeling law has not kept up with the changes in the marketplace, and simply does not reflect the present market realities.

The Federal Trade Commission currently sets the "small quantity or value" exemption at $150, which allows massive quantities of fur to go unlabeled. Based on approximate pelt prices after tanning and dressing, an individual garment using the fur from 30 rabbits ($5 each), 25 ermines ($6 each), fifteen muskrats ($10 each), twelve opossums ($12 each), nine chinchillas ($16 each), eight skunks ($18 each), five raccoons ($28 each), three badgers, beavers, fishers, or minks ($50 each), three Arctic, grey, or red foxes ($50 each), three raccoon dogs ($45 each), two coyotes ($75 each), one sable ($90), one otter ($120), one silver fox or wolverine ($130), one lynx ($135), one bobcat ($140), or one bear or timber wolf ($150) could be sold without a label.

This dollar value exemption constitutes a major loophole in the Fur Products Labeling Act, and it should be eliminated. Laws applying to other garments don't have an exemption like the fur industry: For example, although the Wool Products Labeling Act of 1939 provides exemptions for certain non-clothing items (such as carpets, rugs, and mats), it *does not provide any exemptions for apparel based on value or cost.* The labeling of fur garments should be treated no differently. The result will be a better functioning marketplace.

The Loophole is Causing Consumer Confusion and Deception

Many garments—such as jackets, parkas, sweaters, vests, and accessories like hats, gloves, and shawls—are trimmed with animal fur. If either the manufacturer's selling price of the finished garment *or merely the cost to the manufacturer of the fur pelts* (not including the cost of adding the fur trim to the garment) is $150 or less, the product does not have to be labeled and consumers are left to guess whether the fur is real, and if so, what type of animal it is.

Unlabeled fur-trimmed garments—many of which are also falsely advertised—are a widespread problem for retailers and consumers across the nation. A series of recent investigations by The Humane Society of the United States revealed that dozens of designers and retailers were selling some fur-trimmed jackets described as "faux" or not labeled at all, which turned out to contain animal fur, including some which were made of dog fur.

Of a group of 38 jackets subjected to mass spectrometry testing, every single garment was either unlabeled, contained a label that misidentified the animal, or was falsely advertised. Several of these jackets were sold as "faux" fur when in fact they were raccoon dog, domestic dog, or rabbit fur. Others were advertised as "raccoon" or "rabbit" fur when in fact the fur was from the

raccoon dog, a canine species native to Asia. Three of the jackets advertised as fake fur—two of which had no label—were found to contain fur from domestic dogs.

For example:

- A Burberry jacket sold at SaksFifthAvenue.com was unlabeled and advertised as "faux fur," but testing concluded it was rabbit fur.
- A Marc New York jacket sold at Bluefly.com and a Joie jacket sold at Nordstrom.com both were unlabeled and advertised as "faux fur," but testing concluded they were domestic dog fur.
- An Andrew Marc jacket sold at Neiman Marcus and a Marc New York jacket sold at Lord & Taylor were both labeled "Trim: Polyester" but testing concluded the trim was made from raccoon dog and rabbit fur.
- Two Rocawear jackets, both unlabeled and one advertised as "faux fur," were found to be made from raccoon dog.
- A Tommy Hilfiger jacket sold at ShopTommy.com was labeled "Nylon Coyote" and advertised as "fake fur," but testing concluded it was domestic dog.

A complete list of this group of 38 jackets tested by The HSUS is attached. Some companies voluntarily pulled these jackets from their stores and adopted fur-free policies in response to the investigative findings. Other companies have endorsed legislation to close the fur labeling loophole, presumably because they want their customers to know what they are getting and to have confidence in the products they are buying.

But until this loophole in the Fur Products Labeling Act is closed, designers, retailers, and consumers can have no confidence in what they are getting—whether it is faux fur or real, and if real, from what animal—especially when many of these garments are sourced from China. In 2000, Congress banned the import of fur products made from domestic dogs and cats, but customers are still wary that dog and cat fur is slipping into the U.S. because these garments are imported and sold without labels.

Additionally, many of today's fur manufacturing techniques add to the consumer confusion. The fur industry uses dyeing and shearing today more than ever before, making the absence of a label especially problematic. If customers see pink, orange, blue, or sheared trim, they often assume it is faux or synthetic because it is not labeled and does not resemble an animal's fur.

When the garment itself does not contain a label describing the fur material, it's difficult for retail staff to even know what they are selling to consumers. While this may not pose a problem for furriers in specialty fur salons—they are experts in the materials they are sourcing, and customers go to those venues seeking fur—it's a completely different scenario in mainstream department stores. The retail sales clerks are not experts in fur material, and they are dealing with merchandise that cycles through their departments regularly. A rack of jackets with a sign advertising "fake fur" may include some real fur as well, as inventory changes or as customers and salespeople try on items and then return them to the wrong racks.

Without a label on the individual jacket, consumers have no choice but to trust what they are told by a sales clerk or what they read in advertising materials. Here's what some sales clerks have told undercover investigators posing as customers when asked about unlabeled jackets that were trimmed with animal fur:

Ex. 1 - Grasshoppers (children's clothing), California:

"It's not real fur...It's fake...If it's real fur they say real fur."

Ex. 2 - Bloomingdale's, California:

"I really don't think it's real fur."

Ex. 3 - Bloomingdale's, New York:

Investigator: **"I don't see anything on the label."**
Sales clerk: **"Fur trim—it doesn't mention the fur trim."**
Investigator: **"So what do you think that means?"**
Sales clerk: **"It's goose down so it's warm. It would say raccoon or rabbit, whatever—it doesn't say, I believe it's acrylic—fake fur."**
Investigator: **"So if it doesn't say, you think that means it's fake?"**
Sales clerk: **"I believe it's fake."**

Ex. 4 – Bergdorf Goodman, New York (two sales clerks were asked separately about the same jacket):

Investigator: **"We're just trying to figure out what type of fur this is. Do you know?"**
Sales clerk 1: **"Yeah, rabbit."**
Investigator: **"Rabbit?"**
Sales clerk 1: **"Yeah."**

Sales clerk 2: **"Well, this is fox."**
Investigator: **"Fox?"**
Sales clerk 2: **"Mmm-hmm."**
Investigator: **"Yeah it doesn't...we couldn't find a label saying anything about it."**
Sales clerk 2: **"They often don't and they should, I know...but often they don't...but it is fox."**

While it is difficult to tell one species of fur from another without a label, it has also become increasingly difficult to tell animal fur from fake fur, due to the realistic look of synthetic fur and sometimes the fake look of animal fur. Outside of a laboratory, there are several methods of telling real fur from fake—including cutting the fur material open to see whether it is attached to skin or fabric, or pulling a few of the hairs from the fur and lighting them with a match to determine whether the smell is similar to human hair or plastic when burned. Of course, these types of tests cannot be conducted while browsing the department store racks. Since most consumers and sales clerks cannot tell the difference between animal fur and fake fur simply by visually inspecting the garment, the inclusion of a clear and accurate label is the only answer to this problem.

Broad Support for a Common-Sense Labeling Policy

H.R. 2480 is a bipartisan bill with 166 cosponsors, including many Members from the Energy and Commerce Committee (Markey, Eshoo, Engel, Capps, Doyle, Schakowsky, Inslee, Weiner,

Matsui, Sarbanes, C. Murphy, McNerney, Sutton, Welch, Upton, Whitfield, Bono Mack, Rogers, Myrick). A similar bill in the 110th Congress (H.R. 891), which was broader in scope than the current legislation, had 177 bipartisan cosponsors.

A number of the best-known retailers and designers—including Macy's, Bloomingdale's, Saks Fifth Avenue, Andrew Marc, Overstock.com, VPL/Victoria Bartlett, Buffalo Exchange, Tommy Hilfiger, Burlington Coat Factory, Loehmann's, House of Deréon , Charlotte Ronson, Ed Hardy, and Marc Ecko Enterprises—have publicly endorsed legislation to close the fur labeling loophole so that all animal fur is labeled regardless of dollar value. In fact, labeling all fur products would help simplify and bring consistency to the manufacturing and retailing of fur apparel, and would help protect retailers whose sales staff often don't know about the loophole, or what type of fur is on a product.

Consumer protection organizations and agencies have also weighed in on the need for stronger fur labeling laws. The National Association of Consumer Agency Administrators (NACAA), an organization representing more than 160 government agencies and 50 corporate consumer offices, recently passed a resolution urging "the passage of state and federal legislation to protect consumers by requiring that garment labels strictly prohibit false and deceptive labels and advertising related to fur products." NACAA further urged "that any federal legislation specifically eliminate any loopholes for garments or products below a certain dollar value," and asserted "that truthful, non-misleading advertising is vital regardless of the price of the garment to provide for a fair marketplace."

Consumer Action, a national consumer protection organization, has endorsed H.R. 2480, and wrote in a letter: "Full disclosure of animal fur on wearing apparel is a key decision making factor to many garment buyers, and all consumers should be able to make informed purchasing decisions without falling prey to deceptive labeling. This is a deceptive consumer issue that needs to be addressed. Retailers may sell coats made with rabbit or dog hair without identifying that the trim is animal fur. In some cases these garments are labeled in such a way as to lead consumers to conclude that the fur is man-made, when in fact it is animal fur, even dog fur! To purchase a garment with 'faux fur' trim and never know that it is actually dog fur is an outrage!"

The major fur industry organizations, too, have generally been supportive of labeling, and have expressed pride in their products and in telling customers what garments are made of. Just as the Fur Products Labeling Act of 1951 was applauded by fur manufacturers as a way to bring accuracy and consistency to fur garments and crack down on the outliers in the industry, today the major organizations still highlight the importance of labeling, according to their own published statements:

- The International Fur Trade Federation: "IFTF believes strongly in providing information about fur to the consumer. In August 2002, the Federation's constitution was changed, so that all member organisations must introduce retail labelling if it doesn't already exist in their country."[ii]
- Fur Commission USA: "Consumers have the right to know exactly what they are purchasing, and to expect that purveyors of mislabeled products will be punished."[iii]
- Fur Information Council of America: "We respect the decision of those who choose not to wear fur"[iv]
- AgRights: "We support clear, simple and truthful labeling of our products to facilitate clear communication between producers and consumers."[v]

H.R. 2480

The HSUS believes that Section 2 of the legislation—the elimination of the exemption for products containing small quantities or values of fur—is the critical policy reform that is needed to correct the consumer confusion and deception in the marketplace. In addition to closing the labeling loophole, H.R. 2480 helps to address this problem in two other ways:

First, the legislation also directs the Federal Trade Commission to initiate rulemaking on a review of its Fur Products Name Guide, which has not been revised since 1967—43 years ago—when the agency amended the guide to change the name "Japanese Mink" to "Japanese Weasel" and "Chinese Mink" to "Chinese Weasel."[vi] Some of the species names listed in the guide may be confusing or out of date—for example, the raccoon dog (*Nyctereutes procyonoides*) is currently listed as "Asiatic Raccoon." Allowing public notice and comment on agency review will allow all stakeholders, such as fur industry, consumer protection, animal welfare groups, and retailers to participate in the process and make recommendations for updating the guide.

Second, the legislation confirms that states also have the right to pass their own fur labeling laws, which has been the longstanding practice under the Fur Products Labeling Act since its passage. Five states—Delaware, Massachusetts, New Jersey, New York, and Wisconsin—currently have fur labeling laws that are stronger than the federal law in order to provide their consumers with additional protections, and California is considering a similar bill that has passed the state Assembly and is now pending in the Senate. These state laws essentially require that *all* fur and fur-trimmed garments sold in those states are labeled, while only *most* fur garments require labeling under current federal law.

As a practical matter for retailers and manufacturers selling nationwide, they already have to provide labels for fur-trimmed jackets sold in several states, but not in others. H.R. 2480 would provide a consistent labeling standard nationwide for all fur-trimmed apparel, rather than the current standard which is higher in some states than others.

Labeling Will Not be Costly or Burdensome

Labeling fur trim will not be burdensome for apparel manufacturers or retailers. According to the Federal Trade Commission,[vii] the total number of fur garments, fur-trimmed garments, and fur accessories sold annually in the United States is estimated at 1,019,054. Of that, approximately 886,577 items—or 87 percent—are already required to abide by labeling requirements. It will not present a difficulty to label the additional 13 percent of products using real fur, and it may actually increase the efficiency of the manufacturing process.

The Federal Trade Commission also notes that the current labeling requirements are not a burden on manufacturers: "Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered

firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations."[viii]

There is also evidence that labeling fur-trimmed apparel will help businesses by inspiring more consumer confidence. Where the market fails to supply information adequate to allow consumers to make consumption choices that reflect their preferences—a market failure referred to by economists as "asymmetric information"—labeling may be economically beneficial and therefore an appropriate policy tool.

Product attributes inferred from the origin of and production processes associated with fur production are not apparent to a consumer considering the purchase of a fur-trimmed garment through touching, visually inspecting, or using the product. Consequentially, consumers cannot distinguish between similar products on these bases unless they are provided with explicit disclosure from the manufacturer or retailer. A label that identifies species and country-of-origin attributes signals to consumers that a garment is trimmed with real animal fur. Clear, consistent, and obvious labeling of so-called "credence" characteristics allows the consumer to evaluate the product before deciding whether to buy it.[ix]

The presence or absence of real animal fur on a garment is an attribute that is relevant to and valued by consumers and affects demand for the product. Some consumers are allergic to all animal fur or to the fur from specific animal species. Other consumers make ethical considerations before purchase because of concerns about the morality of wearing animal fur. According to a May 2009 Gallup News Service poll, 35 percent of Americans find "buying and wearing clothes made of animal fur" to be "morally wrong."[x]

Leaving the labeling decision with respect to fur-trimmed garments to manufacturers and retailers has not resulted in sufficient or accurate disclosure of information related to fur products. There is confusion at both the wholesale and retail levels. As a result, presently consumers cannot make informed purchasing decisions about this attribute that would affect their demand for such garments. Certain trends like dyeing animal fur unnatural colors have made it even harder for consumers to distinguish real fur from faux fur.

This asymmetric information problem can be corrected by labeling. In the food industry, economists[xi] have argued that labeling can be preferable to and less market-distorting than other policy tools in markets where:

- Consumers have different preferences.
- The information to be included on the label can be stated clearly and concisely.
- The labeling information may reduce health risks.
- Standards, testing, certification and enforcement services exist or can be established.
- There is a lack of political consensus on other regulatory options.

Each of these criteria is met when it comes to the proposed labeling of fur-trimmed garments to indicate species and country-of-origin. There is a range of consumer preferences related to wearing animal fur. The species and country-of-origin information can be clearly interpreted by consumers and can prevent adverse allergic reactions by some consumers. There are already labeling standards and enforcement mechanisms in place affecting approximately 87 percent of the market for fur garments. And clearly a labeling requirement strikes a compromise between those who favor and oppose the use of animal fur. H.R. 2480 seeks to correct the present failure

of the market for fur-trimmed garments to provide accurate and complete information that would affect consumer purchasing decisions.

Conclusion

The loophole in the current Fur Products Labeling Act should be closed, and all fur apparel should be clearly labeled with the species of animal used and the country of origin, regardless of dollar value. This labeling standard is already applied to seven out of eight fur garments sold in the United States, and that same standard should be applied to the remaining fur-trimmed garments. The changes in the marketplace and in the fashion industry over the last half-century—specifically the increased use of fur trim and the increased quality of synthetics—necessitate a change in the federal law to meet the present market realities. Since consumers, sales clerks, and other non-experts cannot easily tell animal fur from fake fur, a label on the garment is the only way to address this problem.

Many products in the marketplace—including food, medicine, and wool apparel—include labels so that consumers can make informed purchasing decisions, and the labeling requirement is not determined by the dollar value of the product. Consumers who may have allergies to animal fur, ethical objections to fur, or concern about the use of certain species, should have the same opportunity to make informed purchasing choices, regardless of the amount or dollar value of animal fur used on a garment. Consumers who may wish to avoid animal fur can make informed purchasing decisions as long as they are provided with the appropriate product information in the marketplace. A well-informed decision made by a consumer based on complete information is a cornerstone of a functioning market economy.

H.R. 2480 is a narrow bill that will protect consumers, and will not impose new burdens on businesses or the fur industry. This common-sense legislation has broad, bipartisan support, and it does not ban the trade in any species of fur or any method of producing fur. The HSUS urges the Subcommittee to report the bill favorably, and urges the Congress to swiftly pass it.

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[i] "Fur-Labeling Law Starts Tomorrow." The New York Times. August 8, 1952.
[ii] http://www.iftf.com/#/labelling/
[iii] http://www.furcommission.com/news/newsE93.htm
[iv] http://www.fur.org/faqs.cfm
[v] http://www.agrights.com/principles.php
[vi] The current names are listed at: http://www.ftc.gov/os/statutes/textile/rr-fur.htm
[vii] Federal Register. February 12, 2009.
[viii] Federal Register. February 12, 2009.
[ix] Caswell, J.A. 1998. "How labeling of safety and process attributes affects markets for food." Agricultural and Resource Economics Review 27(October): 151-158.
[x] Saad, L., 2009. Gallup News Service. "Republicans Move to the Right on Several Moral Issues." May 20. http://www.gallup.com/poll/118546/republicans-veer-right-several-moral-issues.aspx
[xi] Golan E., F. Kuchler, L. Mitchell, C. Greene, and A. Jessup 2000. "Economics of food labeling." USDA Economic Research Service. AER-793. December. http://ers.usda.gov/publications/aer793/AER793.PDF

THE HUMANE SOCIETY OF THE UNITED STATES

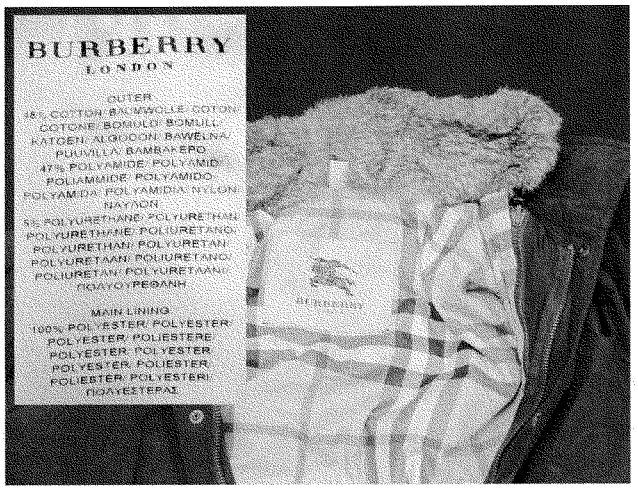
Quick Reference Guide: Fur Investigation Results
2005 Through Fall/Winter 2007 (Updated March 19, 2008)

Sample	Purchase Date	Retailer	Designer / Brand	Advertised-Species	Label-Species	Test Results-Species	Label-Fur Origin	Label-Country of Manu.
1	Dec. 2006	Burlington Coat Factory	Calvin Klein		"Raccoon"	Raccoon Dog	"China"	"China"
2	Dec. 2006	Burlington Coat Factory	Baby Phat		"Coyote"	Raccoon Dog	"China"	"China"
3	Oct. 2006	J.C. Penney	a.n.a		"Raccoon"	Raccoon Dog	"China"	"China"
4	Dec. 2006	Burlington Coat Factory	Baby Phat	"faux fur"	"Racoon"	Raccoon Dog	"China"	"China"
5	Dec. 2006	Burlington Coat Factory	Baby Phat	"faux fur"	"Racoon"	Raccoon Dog	"China"	"China"
6	Dec. 2006	Burlington Coat Factory	Baby Phat	"faux fur"	"Coyote"	Coyote	"China"	"China"
7	Dec. 2006	Macys.com	Sean John	"faux fur"	"Raccoon"	Raccoon Dog	*Not on label*	"China"
8	Oct. 2005	Bloomingdale's	WEEKEND MaxMara		"Finni Raccon"	Raccoon Dog	"CINA"	"China"
9	Oct. 2005	Sak's Fifth Ave	Andrew Marc		"Raccoon"	Raccoon Dog	*Not on label*	"China"
10	Oct. 2005	Macy's	MICHAEL Michael Kors		"Raccoon"	Raccoon Dog	"China"	"China"
11	Dec. 2006	Dereon.com	House of Dereon	"raccoon"	"Raccoon"	Raccoon Dog	*Not on label*	"China"
12	May 2006	D.E.M.O	Rocawear		*No fur label*	Raccoon Dog	*No fur label*	"China"
13	Dec. 2006	Rocawear.com	Rocawear	"faux fur"	*No fur label*	Raccoon Dog	*No fur label*	"Vietnam"
14	Dec. 2006	Rocawear.com	Rocawear	"raccoon"	"Raccoon"	Raccoon Dog	*Not on label*	"China"
15	Dec. 2006	Ross	Calvin Klein		"Canis Latranis"	Raccoon Dog	"USA"	"China"
16	Jan. 2007	Lord & Taylor	DKNY		"Raccoon"	Raccoon Dog	"China"	"China"
17	Jan. 2007	Barneys.com	Spiewak	"fur"	"Coyote"	Wolf	*Not on label*	"USA"
18	Jan. 2007	Shoptommy.com (Tommy Hilfiger)	Tommy Hilfiger	"fake fur"	"Nylon Coyote"	Dog	*Not on label*	"China"
19	Jan. 2007	Nordstrom.com	Joie	"faux-fur"	*No fur label*	Dog	*No fur label*	"China"
20	Jan. 2007	Bluefly.com	MARC New York (Andrew Marc)	"faux fur"	*No fur label*	Dog	*No fur label*	"China"
21	Jan. 2007	BergdorfGoodman.com	Bogner	"rabbit"	"Asian Raccoon"	Raccoon Dog	*Not on label*	"China"
22	Jan. 2007	NeimanMarcus.com	Andrew Marc	"raccoon"	"Raccoon"	Raccoon Dog	"Finland"	"China"
23	Jan. 2007	Footlocker.com	Rocawear	"rabbit"	*No fur label*	Raccoon Dog	*No fur label*	"China"
24	Jan. 2007	Loehmann's (via Smartbargains.com)	OSCAR (Oscar de la Renta)	"raccoon"	*No fur label*	Raccoon Dog	*No fur label*	"China"
25	Jan. 2007	Dillards.com	MICHAEL Michael Kors	"raccoon"	"Raccoon"	Raccoon Dog	"China"	"China"
26	Dec. 2007	SaksFifthAvenue.com	Burberry	"faux fur"	*No fur label*	Rabbit	*No fur label*	"Romania"
27	Nov. 2007	Neiman Marcus	Andrew Marc		"Trim: Polyester"	Raccoon Dog	*Not on label*	"China"
28	Nov. 2007	NeimanMarcus.com	Adam + Eve	"faux fur"	Rabbit	Rabbit	*Not on label*	"China"
29	Dec. 2007	Lord & Taylor	Marc New York		"Trim: Polyester"	Raccoon Dog and Rabbit	*Not on label*	"China"
30	Nov. 2007	Dillards.com	Preston & York	"faux-fur"	"Fox" and "Raccoon"	Raccoon	"USA"	"Guatemala"
31	Nov. 2007	Yoox.com	Ramosport	"ecological ["fake"] fur"	"Raccoon"	Raccoon Dog	*Not on label*	*Not on label*
32	Sept. 2007	Bloomingdales.com	Aqua	"faux fur"	"Rabbit"	Rabbit	*Not on label*	"India"
33	Nov. 2007	Eluxury.com	Juicy Couture	"rabbit"	"Asiatic Raccoon"	Raccoon Dog	"China"	"China"

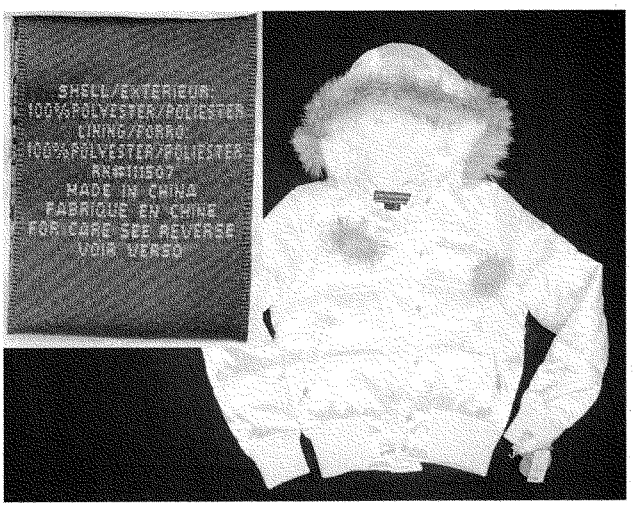
34	Nov. 2007	Dillards.com	Preston & York	"raccoon"	"Racoon"	Raccoon Dog	*Not on label*	"China"
35	Nov. 2007	DrJays.com	Azzuré	"fur"	*No fur label*	Raccoon Dog	*No fur label*	"China"
36	Nov. 2007	Cache.com	Caché	"Raccoon"	"Raccoon"	Raccoon Dog	*Not on label*	"China"
37	Nov. 2007	Bluefly.com	Pasha & Jo	"raccoon"	"Fox" and "Raccoon"	Arctic Fox	"China"	"China"
38	Sept. 2007	Sears.com	Excelled	"Fox"	*No fur label*	Raccoon	*No fur label*	"India"

For more information, including video of how raccoon dogs are skinned alive: www.humanesociety.org/furfree.

(Document updated March 19, 2008)



Above: this Burberry brand jacket was advertised online in 2007 as "faux fur" at Saks.com. The label (inset) indicates nothing about fur. Laboratory test result: rabbit.



Above: this Rocawear brand jacket was sold in a brick-and-mortar D.E.M.O. store in 2006. The label (inset) indicates nothing about fur on the label. Laboratory test result: raccoon dog.

NACAA Policy Resolution
June 19, 2007

RESOLUTION SUPPORTING TRUTHFUL FUR LABELING AND ADVERTISING STATUTES WITHOUT REGARD FOR THE PRICE OF THE GARMENT OR PRODUCT

WHEREAS, many consumers are animal lovers or suffer from allergies associated with fur garments and therefore, elect to not purchase animal fur due to their love of animals, allergies or other personal reasons; and

WHEREAS, according to the Humane Society of the United States's Petition to Enjoin False Advertising and Labeling of Fur Garments and To Impose Civil and Criminal Penalties filed before the Federal Trade Commission, the Humane Society's investigation determined that raccoon dog fur was being sold but either falsely labeled or advertised it as another species or in other cases labeled as "faux fur" when in fact it was fur; and

WHEREAS, according to the Humane Society, federal fur labeling statutes do not regulate the labeling of fur garments or products under $150.00; and

WHEREAS, NACAA supports truthful advertising and full disclosure of information to consumers so they can make informed decisions when considering the purchase of fur or "faux fur."

BE IT RESOLVED BY THE NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS (NACAA) MEMBERS THAT:

1. NACAA urges the passage of state and federal legislation to protect consumers by requiring that garment labels strictly prohibit false and deceptive labels and advertising relating to fur products.

2. NACAA further urges that any federal legislation specifically eliminate any loopholes for garments or products below a certain dollar value. NACAA asserts that truthful, non-misleading advertising is vital regardless of the price of the garment to provide for a fair marketplace.

3. NACAA urges that any federal legislation should also enable state attorneys general to enforce federal legislation in this advertising/labeling area and not preempt states from enacting and enforcing their own consumer protection laws or fur labeling laws.

4. NACAA urges law enforcement authorities to take action using existing laws against those who use false labeling and advertising in the promotion of fur products.

5. Authorizes the Executive Director, the NACAA Board and Officers to transmit this resolution to entities or individuals empowered to draft or enact relevant laws, rules, regulations, or who enforce the same and to encourage NACAA to work with other consumer organizations to promote this policy.

6. Encourages NACAA members to use this resolution in their own efforts to advocate on behalf of consumers in support of this policy.

Date: June 19, 2007

JILL MILES
NACAA President

JEFFREY L. HILL
NACAA Vice President of Public Policy

Consumer Action

www.consumer-action.org

PO Box 70037
Washington, DC 20024
202-544-3088

221 Main St, Suite 480
San Francisco, CA 94105
415-777-9648

523 W. Sixth St., Suite 1105
Los Angeles, CA 90014
213-624-4631

Hon. Henry A. Waxman
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

March 15, 2010

Dear Chairman Waxman:

Consumer Action urges you to pass H. R. 2480, the Truth in Fur Labeling Act of 2009, with all possible dispatch. The bill would amend the Fur Products Labeling Act to:

1. Eliminate the exemption to fur labeling requirements for products containing relatively small amounts of fur; and,
2. Permit states to enforce more restrictive labeling requirements.

The legislation also directs the Federal Trade Commission (FTC) to schedule and publicize a review of the Fur Products Name Guide.

Full disclosure of animal fur on wearing apparel is a key decision making factor to many garment buyers, and all consumers should be able to make informed purchasing decisions without falling prey to deceptive labeling.

This is a deceptive consumer issue that needs to be addressed. Retailers may sell coats made with rabbit or dog hair without identifying that the trim is animal fur. In some cases these garments are labeled in such a way as to lead consumers to conclude that the fur is man-made, when in fact it is animal fur, even dog fur! To purchase a garment with "faux fur" trim and never know that it is actually dog fur is an outrage!

Please support this legislation to require all manufacturers and retailers selling fur or fur-trimmed clothing to identify the species, regardless of the value of these garments.

Sincerely,

Linda Sherry

Linda Sherry
Director of National Priorities

6350 South
3000 East
Salt Lake City, UT
84121

Phone 801.947.3114
Fax 801.947.3144

VIA EMAIL AND U.S. MAIL

March 15, 2010

Mr. Wayne Pacelle
President and Chief Executive Officer
The Humane Society of the United States
2100 L Street, NW
Washington, D.C. 20037

Dear Mr. Pacelle:

Overstock.com, Inc. supports the Truth in Fur Labeling Act of 2009 (H.R. 2480/S. 1076), which requires accurate and consistent labeling of fur-trimmed garments regardless of dollar value, so that consumers can make informed decisions.

Sincerely,

Jonathan E. Johnson III
President

Buffalo EXCHANGE
New & Recycled Fashion

albuquerque
austin
berkeley
boulder
chicago
costa mesa
dallas
denver
eugene
fullerton
houston
las vegas
long beach
los angeles
new orleans
new york city
nogales
philadelphia
phoenix
portland
san diego
san francisco
seattle
sherman oaks
tempe
tucson
westwood

March 3, 2010

Mr. Wayne Pacelle
President and CEO
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Dear Mr. Pacelle:

Buffalo Exchange supports the Truth in Fur Labeling Act of 2009 (H.R. 2480/S. 1076), which requires accurate and consistent labeling of fur-trimmed garments regardless of dollar value, so that consumers can make informed decisions.

Sincerely,

Kerstin Block

Kerstin Block
President
Buffalo Exchange

203 E. Helen St.
PO Box 40468
Tucson, AZ 85717
(ph) 520-622-2711
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Writer's Direct Access
Richard J. Leighton
(202) 434-4220
Leighton@khlaw.com

February 20, 2009

Via Electronic Mail

Wayne Pacelle
Chief Executive Officer
The Humane Society of the United States
2100 L Street, NW
Washington DC 20037

Re: Fur Products Labeling Act and Regulations Thereunder

Dear Mr. Pacelle:

Please be advised that Andrew & Suzanne Company, Inc., which does business as Andrew Marc, endorses amendment of the federal fur labeling law and related regulations to require that all fur-containing garments be labeled with the information required by the Fur Products Labeling Act, 15 U.S.C. § 69, *et seq.*, regardless of the amount or value of the fur in each garment.

Specifically, Andrew Marc endorses the repeal of that part of the definition of "fur product," in Section 2(d) of the Fur Products Labeling Act, 15 U.S.C. § 69(d), that provides as follows: "except that such term shall not include such articles ....as the [Federal Trade] Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein." Andrew Marc also endorses repeal of that part of 16 C.F.R. § 301.39 that implements the referenced statutory exemption.

Sincerely,

Richard J. Leighton
Counsel to
Andrew & Suzanne Company, Inc.,

Dennis J. Broderick
Executive Vice President
General Counsel and Secretary
Macy's, Inc.

April 26, 2010

Via E-Mail

Wayne Pacelle
Chief Executive Officer
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Re: Fur Products Labeling Act and Regulations Thereunder

Dear Mr. Pacelle:

Please be advised that Bloomingdale's, Inc., which does business as "Bloomingdale's" endorses amendment of the federal fur labeling law and related regulations to require that all fur-containing garments be labeled with the information required by the Fur Products Labeling Act, 15 U.S.C. §69, et seq., regardless of the amount or value of the fur in each garment.

Specifically, Bloomingdale's endorses the repeal of that part of the definition of "fur product," in Section 2(d) of the Fur Products Labeling Act, 15 U.S.C. §69(d), that provides as follows: "except that such term shall not include such articles . . . as the [Federal Trade] Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein." Bloomingdale's also endorses repeal of that part of 16 C.F.R. §301.39 that implements the referenced statutory exemption.

Sincerely,

Dennis J. Broderick

7 West Seventh Street, Cincinnati, OH 45202 PHONE 513.579.7560 FAX 513.579.7354 dennis.broderick@macys.com

Dennis J. Broderick
Executive Vice President
General Counsel and Secretary
Macy's, Inc.

April 26, 2010

Via E-Mail

Wayne Pacelle
Chief Executive Officer
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Re: Fur Products Labeling Act and Regulations Thereunder

Dear Mr. Pacelle:

Please be advised that Macy's Retail Holdings, Inc., which does business as "Macy's" endorses amendment of the federal fur labeling law and related regulations to require that all fur-containing garments be labeled with the information required by the Fur Products Labeling Act, 15 U.S.C. §69, et seq., regardless of the amount or value of the fur in each garment.

Specifically, Macy's endorses the repeal of that part of the definition of "fur product," in Section 2(d) of the Fur Products Labeling Act, 15 U.S.C. §69(d), that provides as follows: "except that such term shall not include such articles . . . as the [Federal Trade] Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein." Macy's also endorses repeal of that part of 16 C.F.R. §301.39 that implements the referenced statutory exemption.

Sincerely,

Dennis J. Broderick

7 West Seventh Street, Cincinnati, OH 45202 PHONE 513.579.7560 FAX 513.579.7354 dennis.broderick@macys.com

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www.kelleydrye.com

DIRECT LINE: (202) 342-8412
EMAIL: jheintz@kelleydrye.com

February 3, 2010

VIA E-MAIL

Wayne Pacelle
Chief Executive Officer
The Humane Society of the United States
2100 L Street, NW
Washington DC 20037

Re: *Fur Products Labeling Act and Regulations Thereunder*

Dear Mr. Pacelle:

Please be advised that Saks Incorporated, which does business as Saks Fifth Avenue ("Saks"), endorses amendment of the federal fur labeling law and related regulations to require that all fur-containing garments be labeled with the information required by the Fur Products Labeling Act, 15 U.S.C. § 69, et seq., regardless of the amount or value of the fur in each garment.

Specifically, Saks endorses the repeal of that part of the definition of "fur product," in Section 2(d) of the Fur Products Labeling Act, 15 U.S.C. § 69(d), that provides as follows: "except that such term shall not include such articles . . . as the [Federal Trade] Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein." Saks also endorses repeal of that part of 16 C.F.R. § 301.39 that implements the referenced statutory exemption.

Sincerely,

John E. Heintz

March 2, 2010

Mr. Wayne Pacelle
President and CEO
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Dear Mr. Pacelle:

I support the Truth in Fur Labeling Act of 2009 (H.R. 2480/S. 1076), which requires accurate and consistent labeling of fur-trimmed garments regardless of dollar value, so that consumers can make informed decisions.

Sincerely,

Victoria Bartlett

VPL
39 West 38th Street, 6W
New York, NY 10018

March 29, 2010

Mr. Wayne Pacelle
President and CEO
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Dear Mr. Pacelle:

I support the Truth in Fur Labeling Act of 2009 (H.R. 2480/S. 1076), which requires accurate and consistent labeling of fur-trimmed garments regardless of dollar value, so that consumers can make informed decisions.

Sincerely,

Don Ed Hardy

Don Ed Hardy

Ed Hardy Products

March 15, 2010

Mr. Wayne Pacelle
President and CEO
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Dear Mr. Pacelle:

I support the Truth in Fur Labeling Act of 2009 (H.R. 2480/S. 1076), which requires accurate and consistent labeling of fur-trimmed garments regardless of dollar value, so that consumers can make informed decisions.

Sincerely,

Charlotte Ronson

Charlotte Ronson
1071 Avenue of the Americas
Suite 301
New York, NY 10018

FUR-LABELING LAW STARTS TOMORROW

Better Business Bureau and the Master Furriers Guild *Pledge to Aid Enforcement*

Enforcement of the new fur labeling law, which goes into effect tomorrow, will be materially aided by the Better Business Bureau of New York, Inc., and the Master Furriers Guild. Both of the organizations pledged yesterday that they would take an active part to obtain adherence to the new regulations enacted to eliminate unfair trade practices and deceptive merchandising and advertising of fur coats.

Charles Gold, general counsel of the Master Furriers Guild of New York and the Master Furriers Guild of America, speaking at a meeting of fur retailers under the sponsorship of the Better Business Bureau in the Commodore Hotel, asserted that the Federal Trade Commission would find it difficult to examine and check advertising in all parts of the country. Appropriations for policing the law, he said, had been stricken from the final draft of the act.

Will Examine Advertising

"We will examine advertising of all kinds for truthfulness and compliance with the law," Mr. Gold said, "and we solicit the cooperation of nonmember firms. Where indicated, we will first call attention of the advertiser to the violation in question. Failing to receive cooperation, we shall furnish the information to the F. T. C., with all of the available supporting facts."

Hugh R. Jackson, president of the Better Business Bureau, said that his group would act as a "watchdog" for the commission and would be ready to receive complaints of both consumers and competitors. Offenders, he added, will be given an opportunity to voluntarily desist from illegal practices in selling fur garments, and if they disregard the request, the complaints will be turned over to the Federal Trade Commission.

The law requires labeling of all fur garments with the type of fur and the country of origin if the fur comes from a foreign country. Such terms as mink-dyed muskrat for muskrat coats, or coney for rabbit fur, or marten dyed skunk, for skunk, are prohibited.

The New York Times
Published: August 8, 1952
Copyright © The New York Times

The Newest Faux Fur Is So Real -- Even Fashion Reporters Can't Tell.

Los Angeles Times

"Even as one lavish fur after another came out (Lagerfeld's compassion for the planet apparently does not extend to its four-legged inhabitants -- at least not this season)...."

The New York Times
Expect the World®

"Quite a lot of the fur used in floor-length coats and knitted into tweed jackets, which arrived in a mink-brown and ermine-white palette, looked fake. But then, some of it looked real, blurring the lines between luxury and throwaway fashion. Beaver? Fox? Shag carpeting? It was hard to tell.

"The big surprise, in the end, was that Mr. Lagerfeld said that every bit was fake. He called them "fantasy furs." It was as if, after every other designer showed real fur, he had decided it had become just another commodity, which is kind of modern when you think about it. If just anyone can wear real fur, why bother?"

applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Based on information from the International Trade Commission and the Fur Commission USA, staff estimates a total of 8,333,865 pelts annually. Assuming invoices are prepared for sales of 886,577 garments and 166,67[illegible] groups (derived from an estimated 8,333,865 million pelts ÷ 50) each of imported and domestic pelts, the invoice disclosure requirement entails an estimated total 1,150 domestic fur retailers, or a total of 1,150 hours.

Thus, staff estimates the total disclosure burden to be approximately [illegible]urs for labeling [illegible]es + 1,150 hours

Task	[illegible]bor Cost
Determine label content	[illegible]536,800
Draft and order labels	[illegible]99,247
Attach labels	[illegible]83,091
Invoice disclosures	[illegible]42,802
Prepare advertising disclosures	[illegible]28,750
Recordkeeping	[illegible]20,236
TOTAL	[illegible],910,926

[illegible] Per industry sources, most fur labeling is [illegible]urly wage for such tasks, which is derived from recent BLS statis[illegible]ed herein is mostly performed by foreign labor, as detailed in note [illegible]

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations.

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations.

2. Regulations under the Wool Products Labeling Act, 15 U.S.C. 68 et seq. ("Wool Act"), 16 CFR Part 300 (OMB Control Number: 3084-0100).

The Wool Act prohibits the misbranding of wool products. The [illegible]hing labels is [illegible]d integrated into [illegible] for about 40 [illegible]roducts. For the [illegible]items (60 [illegible] the process is [illegible]quires an average [illegible]conds per item, [illegible]urs per year. [illegible]d annual burden [illegible]0,000 hours [illegible]rmining label [illegible]o draft and [illegible]hours to attach per firm, the total recordkeeping burden is 80,000 hours.

Disclosure: Approximately 8,000 wool firms, producing or importing about 600,000,000 wool products annually, are subject to the Regulations' disclosure requirements. Staff estimates the burden of determining label content to be 15 hours per year per respondent, or a total of 120,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 40,000 hours. Staff believes labels). Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $5,702,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly Rate	Burden Hours	Labor Cost
Determine label content	$22.00	120,000	$2,640,000
Draft and order labels	$16.27	40,000	$650,800
Attach labels	$5.55 [6]	200,000	$1,110,000
Recordkeeping	$16.27	80,000	$1,301,600
TOTAL			$5,702,400

[6] For products that are imported, this work generally is done in the country where they are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 95 % of apparel and other textile products used in the United States is imported. With the remaining 5 % attributable to U.S. production at an approximate domestic hourly wage of $9.50 to attach labels, staff has calculated a weighted average hourly wage of $5.55 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for 2007 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on 2006 data from the U.S. Department of Labor, Bureau of International Labor Affairs. *See* "International Comparisons of Hourly Compensation Costs for Production Workers in Manufacturing," Table 1, available at: *http://www.bls.gov/fls/hcpwsupptabtoc.htm.*

Mr. BARROW. Mr. Kaplan, you are now recognized for 5 minutes for the purpose of making an opening statement.

STATEMENT OF KEITH KAPLAN

Mr. KAPLAN. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the subcommittee. Thank you for inviting me to testify before you today.

My name is Keith Kaplan, and I am the Executive Director of the Fur Information Council of America. We represent the interests of over 1,100 fur retailers, fur manufacturers, fur wholesalers, and fur designers, most of whom are in fact small businesses.

I am pleased to be here today to present our views on H.R. 2480, the Truth in Fur Labeling Act.

As has been stated, the fur industry is already covered by stringent labeling requirements under the Fur Products Labeling Act. Enacted in 1951, this act and the regulations implemented by the FTC require that fur product labeling provide a depth of information about the product, including the correct name of the fur type, whether the fur is bleached, dyed, or naturally colored, and the country of origin, as well as other relevant information. Similar information must be provided in connection with any and all advertising and marketing of fur products. This information provides consumers the detail they need to make educated decisions regarding their purchase of a fur product.

Our industry has supported and continues to support the principles of transparency and dissemination of accurate information that underlie this law, and FICA's members are committed to compliance with the detailed requirements of this regulation. As evidence, I would like to submit labels from both single-unit and multi-unit retailers operating in a number of States, and ask that they be submitted for the record.

Throughout the fur industry, our members understand the consequences of a failure to comply, and have exhibited this through nearly 60 years of practice. In the event of any infraction, the FTC's enforcement authority in this area is far-reaching and the legal tools available to it are significant. Historically, the agency has never shied away from using these tools to protect the consumer, and such has been the case within our industry.

Consistent with our support for the principle of consumer transparency, we support the removal of the small value exemption of the Fur Products Labeling Act, with the result that all fur products would now carry the same comprehensive labeling.

However, Mr. Chairman, we do have significant concerns with section 4 of the bill that's been presented which confers on States, or, for that matter, any political subdivision such as counties or towns, the right to adopt or enforce their own labeling requirements for fur products that would likely differ from or be more restrictive than existing Federal law.

This provision, which would impact the sale of all fur products, would undermine the purpose of the current Federal statutory regime which has protected consumers for almost 60 years. Indeed, the additional information that may result from local requirements opens the door to extensive consumer confusion and the potential for labeling to become a vehicle of harassment in its own right.

Imagine in your own backyard that you visited Macy's in downtown Washington, D.C., where you find or your wife finds a fur garment you would like to purchase. Not having your size, the salesperson locates the same garment in the correct size at the Towson, Maryland store and they send it over to the Washington, D.C. store. When you arrive to pick up your coat, it looks identical, but the descriptive label now reads quite differently. This is the kind of confusion that would be created by section 4.

We're also concerned that the FTC's jurisdiction and expertise will be undermined by local jurisdictions acting at the behest of anti-fur advocates whose only interest is to confuse consumers by disseminating false and misleading information, thereby denying customers the opportunity to really make informed choices.

We have already seen examples of this in recent efforts by the HSUS, to link the use of Asiatic raccoon—a legitimately traded fur product for over a century—to domestic dog in an attempt to destroy the marketability of this product. In New York last year, legislators passed a bill removing the small-value exemption and requiring that all product carrier labels specify it as real or faux fur.

Amidst confusion over the exact requirements and specifications of this label on real fur products, our representatives approached the New York State Attorney General's Office. In the end, the Office informed us they could provide no further direction on this issue. Without further direction, our retailers were forced to create and affix their own real-fur labels, at considerable time and expense without any perceived benefit to the consumer. In fact, consumers are asking retailers today why this real fur designation now appears on an item they already understand as mink.

Allowing States and local jurisdictions to enact their own fur-labeling regulations will likely lead to a significant increase in similar activities across all 50 States by well-funded, anti-fur advocates.

The primary purpose of the Fur Products Labeling Act was to facilitate consumer comparisons among similar products, providing consumers with all the relevant detail they would require to make educated, informed, and confident decisions before purchasing: apples-to-apples across all 50 States. Divergent State requirements might seriously undermine this and could lead to significant confusion among both consumers and retailers.

Mr. Chairman and members of the committee, in your consideration of this bill, I reinforce our support for the removal of the small-value exemption, consistent with our belief that consumers are entitled to complete, accurate, and meaningful information to guide their purchase decisions. But I urge you to please strike section 4 from this bill to ensure that consumers remain protected from misleading, inaccurate, or confusing labeling that may adversely affect their purchasing decision process.

Thank you for your attention. I welcome any questions you might have.

Mr. BARROW. Thank you, Mr. Kaplan.

[The prepared statement of Mr. Kaplan follows:]

WRITTEN STATEMENT OF
KEITH KAPLAN
EXECUTIVE DIRECTOR
FUR INFORMATION COUNCIL OF AMERICA

ON H.R. 2480
"TRUTH IN FUR LABELING ACT"

BEFORE THE SUBCOMMITTEE ON
COMMERCE, TRADE AND CONSUMER PROTECTION
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

MAY 13, 2010

Mr. Chairman. Members of the Subcommittee, my name is Keith Kaplan. I am the Executive Director of the Fur Information Council of America or FICA. FICA was founded in 1987 and is the national trade association representing the interests of fur retailers, fur manufacturers, fur wholesalers and designers. The Association provides background information on industry developments, researches market trends and consumer habits, tracks and reports sales trends, and represents the fur retail sector in dealing with the press, the Executive branch and Congress. FICA monitors legislative, regulatory and judicial developments affecting the industry, and where necessary, advocates for the interests of the industry, through the industry's legislative coalition, Fur wRaps the Hill. I am pleased this afternoon to present our views on H.R. 2480, the Truth in Fur Labeling Act, which would remove the long-standing small value exemption (now $150) from the Fur Products Labeling Act. Of great concern to FICA, the bill would also confer on the states and other local jurisdictions the authority to enact and enforce more restrictive labeling requirements.

Since its enactment in 1951, the Fur Products Labeling Act has provided consumers with important information to guide them in the purchase of fur products. The Act and the regulations implemented by the FTC require that a fur product contain a label that shows the correct name of the animal that produced the fur; whether the product contains or is composed of used fur; whether the fur is bleached, dyed or artificially colored; whether the fur product is composed in whole of in part of any waste fur or components of the animal; and the country of origin of any imported fur used in the fur product. Similar information must be provided in connection with the material utilized in the advertising and marketing of fur products.

Our industry supports the principles of transparency and dissemination of information that underlie the law, and FICA's members are committed to compliance with the detailed

requirements of the regulations. Our members know the consequences of a failure to comply. The FTC's enforcement authority in this area is far reaching, and the legal tools available to it are significant. Historically, the agency has never shied away from using these tools to protect the consumer.

Consistent with our support for the principle that consumers of fur products are entitled to accurate and meaningful information regarding the identity, nature and origin of the articles they purchase, we support the purpose of H.R. 2480, as stated in the bill, "to improve the accuracy of fur product labeling." This would be achieved by the removal of the longstanding small value exemption of the Fur Product Labeling Act. At the time the Fur Products Labeling Act was enacted into law, the small value exemption – mistakenly called a loophole by some -- was intended to prevent harassment of the fur industry in connection with "cheap items." The language was also modified to give the Commission discretion in determining what would constitute a small amount. The Commission still has that discretion.

On the other hand, if Congress finds, on the basis of the record it will accumulate in this hearing, that removal of the small value exemption will provide consumers with more complete information to guide their purchases of these items, we support that objective and do not oppose removal of the longstanding exemption. The fur trim business, which has been the focus of the interest in removing the small value exemption, has grown in recent years, and consumers of fur trim are entitled to have the same information that they would be given if they were purchasing high value fur products.

Mr. Chairman. While we have no objection to removal of the small value exemption from the law, we have significant concerns with section 4 of the bill, which confers on the states -- or for that matter any political subdivision (a county or a town) -- the right to adopt or enforce

more restrictive labeling requirements for fur products than is currently provided by the existing federal law. This provision, which would impact the sale of all fur products, not only those currently covered by the exemption, would undermine the purpose of the federal statutory regime, which has protected consumers for almost 60 years, by providing consistent, correct and meaningful information regarding the origin, identity and nature of fur products through out all 50 states.

Many of our retailers operate stores in multiple states. Many fur articles are also sold over the internet. Under section 4, a national retailer would have to comply not only with a federal labeling program that requires detailed product and origin information, but with multiple state and local labeling obligations, which we suspect will be inconsistent, burdensome, and could become a vehicle of harassment in their own right. These are difficult economic times for our retailers, and we know of no basis upon which a more restrictive state or a local municipality's labeling requirement would provide additional protection or meaningful information to a consumer, beyond that already provided by the Fur Products Labeling Act. Indeed, the additional information resulting from a local requirement is likely to generate extensive consumer confusion.

We have already witnessed this type of situation in the State of New York. In 2007, the New York State legislature enacted a labeling bill, which required that all fur products sold in the state, including those sold for less than $150, include a label that reads either "real fur" or "faux fur." The legislation raised numerous practical problems and resulted in confusion both to retailers and customers. For example, there was no definitions of faux fur, which was a major problem for Department stores. It was unclear from the statute whether a high value fur product that contained a detailed label under the Fur Products Labeling Act, had to include a separate

"real fur" label. In other words, did compliance under the Fur Product Labeling Act constitute compliance with the New York statute or was a meaningless "real fur" label necessary on top of a detailed federal label. The New York Office of Consumer Affairs refused industry requests for guidance. In some instances, our members ended up, the evening before the law went into effect, adding thousands of meaningless stickers on top of the embossed federal labels to ensure they were covered. Others did not. To this day, we do not know if those fur dealers, who have a federal label on their coats that discloses the name, origin and nature of the fur, are in violation of the New York Statute if they do not have a separate "real fur" label. We fear these problems proliferating across the country if section 4 is enacted into law.

We believe that our consumers are well-informed when they purchase our products. The Fur Products Labeling Act ensures that fact. Confusion has, however, occurred as a result of the dissemination of misleading information regarding our products. Over the past several years, for example, anti-fur advocates have attempted to link the use of domestic dog with the Asiatic Raccoon, a popular fur trim product, that is colloquially called – primarily by anti-fur advocates – "raccoon dog." They continue to pursue this strategy despite the fact that Smithsonian Institution has instructed members of Congress that the Asiatic Raccoon and domestic dog are unrelated. Further, the FTC Fur Product Name Guide has used the terminology Asiatic Raccoon to refer to this species for more than fifty years. Still the link between the Asiatic Raccoon and domestic dog has persisted, and the market for the Asiatic Raccoon has suffered immensely. No legitimate fur retailer would ever sell a product comprised of dog or cat fur, and we welcomed and supported legislation – the Dog and Cat Protection Act of 2000, which prohibit the use of dog and cat fur. The FTC implemented the legislation by explicitly stating that the $150 small value exemption would not be available for the importation or sale of dog and cat fur. Yet, the

industry must continue to defend itself against accusations regarding the use of dog fur, even in connection which this legislation, the direct result of the false association of two unrelated species of animals.

The fur industry's labeling practices have been challenged in both administrative and judicial forums. The FTC received two petitions from the Humane Society of the United States containing numerous allegations regarding mislabeling of products by retailers and manufacturers. Those retailers who were accused of mislabeling have defended themselves, and the FTC staff declined to take any enforcement actions against the major retailers, after extensive investigations of the allegations. Retailers have also defended their labeling practices in a lawsuit filed under the DC consumer protection statute. The lawsuit, which resulted in settlements with respect to most of the parties, did not result in any significant findings of liability. The industry has defended itself in the labeling arena against charges that it is using a "loophole" – which was in fact a carefully conceived statutory exemption -- to conceal the use of dog fur. It has also responded to allegations that it is engaged in a wide spread practice of selling real fur, when it in fact it is marketing it as faux fur. Again, these allegations have been overblown, and have involved small numbers of sales, relative to total sales of such products. This being the case, disparate and more restrictive labeling requirements on a state-by-state basis would only add to the confusion likely to result in more errors of this type. With the globalization of the fur trade, the challenges of ensuring that every label is accurate are great, but I assure you that our retailers are continuing to enhance their compliance systems while imposing increased burdens on their vendors, particularly those located overseas.

Fur is controversial. But that controversy should relate to the issue of consumer choice. Consumers must be presented with honest, comprehensive and relevant information on which to

base their decisions and should not be influenced by the dissemination of misleading information, as has taken place in recent years. All sides in this debate should be subject to scrutiny over the veracity of the information they utilize to advocate their positions.

It has been some time since Congress has considered legislation in the area of fur labeling. I ask the members of this Committee not to take any jurisdiction over fur labeling away from the FTC, which has developed substantial technical and practical expertise over the 60 year period the statute has been in effect. We fear the worse if the FTC's jurisdiction and expertise are undermined by local jurisdictions who might impose inconsistent and misleading labeling requirements that will end up confusing consumers and harassing retailers.

If the Committee decides to consider this legislation, we ask that section 4 be stricken from the bill.

Thank you for your attention. I look forward to your questions.

Mr. BARROW. We now proceed to an examination of the witnesses by the members of the committee. The chair recognizes himself for the purpose of questioning for up to 5 minutes.

Mr. Markarian, let's begin with you. I want to get some idea of the scope and size of the universe of items that are covered by this proposed legislation. I want to talk about the significance of this.

With regard to all of the items that would be covered, either those that just have a little fur in them or those that consist entirely of fur, are there any major categories of items that you can think of that would be covered by this proposed change? For example, are they mostly gloves with fur lining, or fur-trim hooded jackets? What are we talking about here?

Mr. MARKARIAN. Mr. Chairman, thank you for the question.

The Fur Products Labeling Act applies to wearing apparel, so any clothing item that's made of fur. According to data that was in the Federal Register last February, the FTC estimated that 1,019,054 fur garments and fur-trimmed garments and fur accessories were sold in the United States. About 87 percent of those already require the labeling standard. Only 13 percent fell below the $150 threshold, so they had fur material that was below a $150 value. Thirteen percent of all fur garments sold in the U.S. did not require the labeling.

So, essentially seven out of eight fur garments that are sold in this country already require the labeling standard, the standard that's been in place for almost 60 years. And this legislation would bring the other one out of eight garments into that same system, so there would be a consistent standard across the board.

And with this one example I showed, the Burberry jacket, the jacket itself cost about $800, but the value of the fur trim we estimate was well below the $150 threshold, so that type of jacket would not require labeling at this current time.

Mr. BARROW. Thank you.

As was the chair's practice in the case of the former panel, I am pleased to yield the balance of my time to the author and sponsor of this legislation, Mr. Moran.

Mr. MORAN of Virginia. Chairman Barrow, I cannot thank you enough. I appreciate your giving me this opportunity.

I understand that of the 13 percent we're talking about of fur products that are either unlabeled or inaccurately labeled, virtually all of them either come from China or Russia; a few, perhaps, from Finland.

What I would like to do, perhaps I could ask the gentleman representing the Fur Information Council, are you aware of any American manufacturers who are attaching this unlabeled or mislabeled fur as trimming on any garments, or is this primarily foreign manufacturers who are shipping them here from China or whatever?

Mr. KAPLAN. I am not aware, sir. The labeling is attached to the garment at the retail level, not at the manufacturing level.

Mr. MORAN of Virginia. I understand that; except that, of those garments, my information is that none of the fur that isn't labeled or inaccurately labeled, none of that is coming from the United States. It doesn't affect any domestic producers of fur.

Mr. KAPLAN. I can't comment on that with certainty.

Mr. MORAN of Virginia. Do any of the witnesses know that, whether we would be affecting any American manufacturer?

Mr. KOHM. I do not, Congressman.

Mr. MORAN of Virginia. Mr. Markarian.

Mr. MARKARIAN. Congressman, any garment that had fur material that was valued at less than $150 would require a label. So whether it's made in the United States or abroad, it would have to meet that same standard.

Our concern is that it's more difficult for consumers to tell what the product might be, especially if it's coming from China, where dogs and cats were killed for their fur. We did an investigation on that in the 1990s, and Congress banned dog and cat fur in 2000. But without a label on the garment, it may be easier for those garments to slip into the country undetected. And with an accurate and consistent label on the garment itself, consumers will have more confidence that they know what they're buying.

Mr. MORAN of Virginia. Well, that's only partially what I was getting at. I appreciate the answer. I know we have mink farms here and we have other fur products that are grown locally, but I'm not aware that any of the fur that is being used for this purpose is actually being supplied by any American suppliers.

I have a couple other questions with regard to section 4, but I don't need to take the subcommittee's time now. I know that the chair and Mr. Whitfield would like to ask questions, too. Thank you very much, Mr. Chairman.

Mr. BARROW. I thank the gentleman. He will have another opportunity to raise questions with the witnesses before the end of the hearing.

The chair is now pleased to recognize the gentleman from Kentucky, the ranking member, for the purpose of questioning the witnesses for up to 5 minutes. Mr. Whitfield.

Mr. WHITFIELD. Thank you all for your testimony.

My understanding, it sounds like from your testimony, is that everyone supports this legislation in concept, right, Mr. Kohm? Right, Mr. Markarian? Right, Mr. Kaplan?

Mr. KOHM. Correct.

Mr. WHITFIELD. And the only area of potential for Mr. Kaplan relates to the preemption issue, correct?

Mr. KAPLAN. Yes, section 4.

Mr. WHITFIELD. OK. Now, Mr. Moran and Ms. Bono Mack are the primary authors of this legislation. And so from my perspective, I think it would be good to have Federal preemption myself, because when you're involved in interstate commerce, it is very difficult to try to meet the different standards from different States. But that's something that we can all explore and go from there on that.

It is sort of disturbing to me—I was looking at some of this material that some of the major companies in the U.S., retailers, are selling things like domestic dog fur as faux fur and wolf as faux fur and raccoon dog as faux fur, and so forth. And of course, we do have a Federal law now that prohibits the use of domestic dogs and cats for fur purposes, it's my understanding. But to help me better understand this, the Fur Products Labeling Act, is it the responsibility of the retailer to put this label in, or is it the manufac-

turer? And if the fur is coming from China, how do you verify what that fur really is? Could someone help me understand that better?

Mr. KOHM. Well, it is the retailers' responsibility to have an accurate label on their fur products.

Mr. WHITFIELD. OK. So under the Fur Products Labeling Act, it is the retailer's responsibility. OK.

So when the manufacturer purchases this fur from China, then what kind of verification do they receive from China as to precisely what it is?

Mr. MARKARIAN. Well, essentially, if it's the 13 percent that do not require labeling under the current law, they're trusting whatever the manufacturer tells them, or they're making their own guesses about what the product might be.

We think it would better protect retailers if there is a labeling requirement, because then they would have more information on the garment itself about what type of fur was used in that jacket.

Mr. WHITFIELD. But if it's the other 87 percent, Mr. Markarian, how do you verify that the fur is what it's supposed to be?

Mr. MARKARIAN. My understanding is the retailers are operating in good faith that the label that's on the garment is accurate. And if they have reason to believe that it's inaccurate, if they get a complaint from a customer they suspect that something that says it is faux fur is really animal fur, then they may look into it further and make corrections. Many of the retailers did make corrections in their stores when we brought these issues to their attention, and they wanted to make sure that they were getting it right.

Mr. WHITFIELD. But the manufacturers would be importing these furs into the country; is that right, Mr. Kaplan?

Mr. KAPLAN. Yes. And I have to make clear, I speak for the 1,100 retailers and manufacturers and designers who primarily are a bit of a different universe. You will find, if you go into our retailer stores, that virtually all the product is labeled. Virtually all of the product is of a value, although some is not. But they have incurred this practice for over 60 years; they're used to the practice, it's not burdensome to them.

Mr. WHITFIELD. And I just want to make sure that you support this legislation, except this preemption is a problem.

Mr. KAPLAN. With the exception of section 4, correct.

Mr. WHITFIELD. And just another question out of curiosity, because I don't know a lot about this. But is there a difference between an Asiatic raccoon and a raccoon dog, or are they one and the same?

Mr. MARKARIAN. It's different terms for the same species. This is a species of animal that's native to Asia. It's a member of the canine family. The Fur Products Name Guide lists the species as Asiatic raccoon. We believe that that name may be out of date. There is more scientific literature that uses the term "raccoon dog," and we hope that that that is something the agency will take a look at.

Mr. WHITFIELD. That is why this legislation asks the agency to revisit this whole issue.

Mr. KOHM. That's correct, Congressman. And this is an issue that the agency would revisit anyway in its 2011 rule review.

Mr. WHITFIELD. Thank you, Mr. Chairman.

Mr. BARROW. I thank the gentleman for yielding.

As an acting member of this subcommittee, under a unanimous consent agreement, I am pleased to recognize Mr. Moran for 5 minutes for questioning.

Mr. MORAN of Virginia. Again, thank you so much, Mr. Chairman.

With regard to section 4 that is under contention, it was our intent simply to restate what we understood to be existing law. If the committee chooses, they may want to consider simply leaving it silent and not addressing that because we're not trying to change State law, we are simply trying to pass this legislation.

But with regard to other State laws, I don't know how they differ. I don't know why the problem—personally, it's probably ignorance on my part—but is it that New York and New Jersey and Massachusetts, Wisconsin, and Delaware have more restrictive labeling requirements?

And if that's the case, I would like to ask the gentleman from the Council, do you comply with that? Is it a problem? I would think if you have to comply in New York, then that's the biggest market, so you would have to comply everyplace consistently.

Mr. KAPLAN. Within the six States that have passed fur-labeling laws in the past 2 years, the focus of those laws, the sole focus has been the removal of the small-value exemption. And once again, as an industry trade association, we were in support of and worked with the legislators, in fact, on the language of those bills.

New York is the exception. They also had the additional caveat of the real-fur label. And as I indicated in my testimony, this had led to some degree of confusion. We've gone to the Attorney General's Office to ask them about compliance. It's an issue that they can't even respond on. And the net effect has been confusion to consumers looking at a product they know to be real fur and not understanding why suddenly this additional label appeared; and it's burdensome to the retailers simply because they don't know really what the label is supposed to look like for compliance purposes. And the Office of the Attorney General has not been able to tell us.

Mr. MORAN of Virginia. Sounds like a New York problem. Maybe Mr. Weiner could clarify that.

But would the FTC be able to clarify that, perhaps?

Mr. KOHM. Well, I'm not able to clarify what the rules are in New York——

Mr. MORAN of Virginia. No, I understand; but in terms of the implementation of this.

Mr. KOHM. Well, with regard to section 4, you are correct, Congressman, that the Fur Labeling Act and the fur rules are silent as to preemption. And what that means as a legal matter is that States can pass laws as long as they don't conflict with the Federal law. So they can pass additional protections. If the provision were stricken, that would be consistent with the rest of the Fur Labeling Act. As it is, it's consistent as well.

Mr. MORAN of Virginia. OK. So we're not necessarily imposing anything additional—any additional requirement. It's simply restating what we understand to be the law.

Could you suggest what the Federal Trade Commission has done to implement the Fur Products Labeling Act, what actions you've taken to identify, correct, or prevent false advertising? I have a

suspicion that FTC, over the last few years, has been less than aggressive, perhaps, particularly with regard to the situation we're talking about with the faux fur being mislabeled.

Mr KOHM. Well, Congressman, the FTC, as you know, is a small agency with a very large mandate, and we have to deploy our resources to get the biggest bang for the buck. In this area we've been able to work with retailers, and we've done so publicly with a number of retailers—Macy's, Neiman Marcus, Saks, and a number of others—and found that they had relatively small problems; in other words, there were small numbers of coats. They were very willing to work with us and improve their supply chain so that they weren't having problems. And we've issued public closing letters to make sure that the industry knows what the problem is. And we have been able to address those concerns in a less resource-intensive way in that manner.

Mr. MORAN of Virginia. Well, that was very articulately put. I think you're suggesting it's largely a matter of prioritization of limited resources, but you've done what you could with the major retailers.

Mr. KOHM. Everything is priority in resources, Congressman.

Mr. MORAN of Virginia. I understand. But just to sum up, obviously Mr. Markarian is aggressively in support of this because it is consistent with an issue that the Humane Society has identified and been working on for some years. The Federal Trade Commission does support it, and the Fur Information Council does not have a problem with it is what I gather.

Mr. KAPLAN. With the exception of section 4.

Mr. MORAN of Virginia. I understand. Which is a restatement of current law.

Well, Mr. Chairman, thank you very much. Thank you for your indulgence, thanks for having the hearing, and thank you for your leadership.

Mr. BARROW. I thank the gentleman.

This concludes the time allowed for questioning the witnesses by members present.

The chair will note that Mr. Kaplan asked to include a letter in the record of these proceedings, and without objection, it is so ordered.

[The information was unavailable at the time of printing.]

Mr. BARROW. The chair also asks unanimous consent to have a letter from Cash4Gold to be inserted into the record.

Without objection, it is so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BARROW. I would like to thank all the witnesses for their testimony and for being here with us today.

There being no further business for the subcommittee, the subcommittee stands adjourned.

[Whereupon, at 2:47 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Opening Statement for CTCP Hearing on
HR 1796 and HR 4805
for Rep. Kathy Castor, FL-11
Thursday, May 13, 2010

- Thank you, Chairman Rush, and good morning to my colleagues.
- I want to say up front that I support these bills because they seek to increase transparency and protect consumers.
- Mr. Weiner's bill, HR 4501, the "Guarantee of a Legitimate Deal Act," is a strong consumer protection bill that gets to the heart of truth in advertising.
- Mail-in gold companies are making a killing off of unsuspecting elderly, minority, and low-income people.
- As I'm sure many of you have seen on TV, these companies make it easy for people struggling with tough economic times to send in their heirlooms, watches, gold jewelry, and any other gold valuables tucked away at home.
- When they send off their gold in the mail, they're hoping to get a fair price for it.
- What they really get is a raw deal.
- They'll usually get a check in the mail for anywhere from about ten to thirty percent of the market value of their gold.
- On top of this, they'll only have a few days to decline this outrageous offer before their precious valuables are melted down into bullion.
- Sadly, some people don't even get a few bucks out of this deal.
- Instead, these unsuspecting sellers have been told that their package was lost in the mail and gone forever.
- We need to end these deceptive practices.
- Consumers deserve better protection from the FTC.
- Mr. Weiner's bill would require cash for gold companies to make an offer and then hold on to the gold until the offer is accepted.

- If the offer is not accepted, they'll be required to send the valuables back to their owners.
- The bill would also require the mail-in companies to include insurance on their shipping packages.
- These are straightforward, common-sense measures to protect consumers from flagrantly misleading practices.
- HR 2480, Mr. Moran and Mr. Bono's bill, would also increase transparency for consumers concerned about what they're buying.
- This bill would require that manufacturers disclose the use of all fur in its products.
- This is important to people with allergies or objections to the use of animal fur.
- This bill would update a law that's been working well since 1951, taking into consideration the health needs and values of people who care about what they buy.
- Again, I support both of these bills, and I look forward to hearing the testimony of the witnesses and learning more about how this legislation will impact consumers and businesses.
- Thank you, Chairman, and I yield the balance of my time.

Questions:

For James Kohm, FTC:

1. Can you talk more about the consequences of NOT taking the FTC's recommendations for updating the definition of "online purchaser of precious metals"? How would the current definition change the marketplace?

2. I also just wanted to say that I agree with the recommendation regarding language to make it unlawful to melt gold items without an acceptance of an offer.

For Cecilia Gardner, Jewelers Vigilance Committee:

1. You say your members have benefitted from the burgeoning "cash for gold" business. Can you tell us how they're benefitting?

2. What do you think of the FTC's recommendation that this bill be expanded to include ALL "cash for gold" enterprises, and not just those with an online presence? Would your members object to this change in the proposed legislation?

For Keith Kaplan, Fur Information Council of America:

1. You mentioned that stricter state laws could pre-empt the proposed changes to the federal labeling law. Can you talk more about some of those state laws? What are their concerns that might not be covered by this legislation?

Statement of the Honorable Joe Barton
Ranking Member, Committee on Energy & Commerce
May 13, 2010
Legislative Hearing
H.R. 4501, the "Guarantee of a Legitimate Deal Act"
H.R. 2480, the "Truth in Fur Labeling Act"

Thank you, Mr. Chairman. We have two FTC bills before us today, and I have some questions about their construction and purpose.

With respect to the "Truth in Fur Labeling Act," (Cosponsored by Ms Bono Mack) the bill covers an area already regulated by the Federal Trade Commission and is, as I understand it, meant to address a perceived loophole for small quantities or a "low value" of fur used in apparel.

I only have two specific concerns with this bill. First, the insufficient preemption provision is problematic. As with so many other labeling provisions, as a practical matter, if we don't allow the FTC to define what is required on labeling in its entirety, we could end up with a FTC disclosure requirement plus over 50 different requirements. In reality, most States will not be inclined to create their own requirements, but at least half a dozen probably will and when the ball begins to roll, no one can know where it will stop.

Manufacturers can reliably be expected to either run out of room if the lists of required labels get too long or end up producing garments sold with a label as big as the garment itself. The latter, it seems to me, only works if labels get so long they reach the floor and drag behind like tails. That seems unlikely to me, but maybe there's a reason that I'm not often asked for fashion advice.

Second, I am concerned about the unintended consequences of this proposal. I think if we move forward with this bill, we should consider a common-sense exemption so that individuals are not ensnared in the requirements that are really meant to address large-scale garment manufacturing.

Turning to the "Guarantee of a Legitimate Deal Act," it's not hard to see that this is an area of commerce in which fraud is easily perpetrated. I know the States have been active in this area and I'm interested to hear what the FTC has to say before I decide my position on this bill. However, at the outset, I do have some concerns about the way the bill is drafted.

First, what constitutes a precious metal? I think I know, but I know for sure that others are going to have other opinions. We don't need opinions, however, we need a definition, and I don't see one anywhere in this documents. Second, this bill is limited to enforcement against an online purchaser. While I imagine fraud of the type at issue here is harder to perpetuate at a bricks-and-mortar store, isn't fraud equally likely through mail order, telephone orders, or other types of solicitation? As with most bills we pass, I think it is best if we follow a policy that does not pick winners and losers based on a business model. If we do, criminals will simply migrate to the business model that we don't cover.
As a general matter of principle, I believe we should avoid burdening legitimate businesses and new market entrants with new regulations because we believe only a few bad actors exist

With that, Mr. Chairman, I'd like to thank our witnesses here today and I look forward to hearing their views on these two bills. I yield back the balance of my time.

May 3, 2010

The Honorable Bobby L. Rush
House of Representatives
Washington, D.C. 20515

Dear Chairman Rush:

I understand that the Subcommittee on Commerce, Trade and Consumer Protection that you chair is considering a bill to regulate the mail-in gold buying industry and may hold a hearing later this month to discuss this legislation. Cash4Gold supports HR 4501, the Guarantee of a Legitimate Deal Act, and the provisions outlined in the bill.

As you may know, Cash4Gold worked closely with Florida officials to create and implement the first law of its kind regulating the mail-in gold buying industry and we welcome this national legislation to help increase transparency and openness.

I regret that I will not be able to be in Washington on May 13 since I have already been committed for several months to appear as a featured speaker in San Diego at Response Expo 2010, which is one of the world's largest direct response marketing conferences.

However, I would like to extend a personal invitation to you and your staff to visit Cash4Gold's high-security, state-of-the-art processing facility in Florida. The invitation is for any time convenient for you, but you may find it useful to tour the facility before the hearing. I believe that it would be invaluable to see our operation first-hand and to learn more about the industry you are interested in regulating.

Regards,

Jeff Aronson
Chief Executive Officer

2800 Gateway Drive • Pompano Beach, FL 33069
(954) 960 7000 • FAX (954) 935 0801

Testimony by the National Trappers Association for H.R.2480

H.R.2480 is an attempt by animal rights extremists, under the guise of consumer protection, to systematically destroy the marketability of fur products with confusing, inflammatory and needless name designations. All portions of this bill and especially the deleted section of the original, point to that goal.

The original version had a section that would require the Federal Trade Commission to rename the Asiatic Raccoon the 'raccoon dog'. This was a blatant attempt to turn customers away from a legal product by associating it with a forbidden fur, the domestic dog. The Asiatic Raccoon is not a dog, nor actually a raccoon, but is in its own Genus, and has been an important part of the international fur trade for centuries. Since FTC rules prevent the naming of one animal after two others, that provision was deleted from the bill, but all other sections would allow that to be circumvented in some way.

Section 4 could be the most damaging, as it would allow any State or political subdivision to adopt or enforce their own labeling laws. Renaming at the local level would not be controlled by FTC guidelines and animal extremists would persuade cities and states to adopt confusing, inflammatory, and contradictory labeling. That would do nothing to protect the consumer and much to destroy the fur industry, which is their stated goal. Consumer protection is best served by clear, consistent information that current FTC rules provide.

Section 3 would require that the FTC review the Fur Products Name Guide. This would be another way that those opposed to the fur trade could cause problems by insisting on new, misleading terminology. The use of the term 'raccoon dog' in the testimony of HSUS, shows the direction that they wish to go with this attack. Also, the recent campaign to call fish "sea kittens', clearly shows what tactics they will use to dissuade animal consumption. The FTC already has authority to review their guidelines and no new mandate to accommodate animal rights extremists is needed.

Section 2 would eliminate the current $150 exemption for fur garment labeling. This exemption, when first enacted was only $5 and has been periodically increased to account for inflation. This exemption allows small business entrepreneurs to sell low cost fur items without the burden of cumbersome and needless federal labeling that would require a label that could be larger than the item. Many trappers elect to market their pelts with the added value that tanning and crafting into simple items such as hats, mittens or ear muffs brings. Total removal of this exemption would negatively impact these people and the craft fairs, festivals and other venues that they support. In supporting testimony of the total removal of this exemption, HSUS failed to show a single example of a consumer driven complaint. They showed several examples of what their 'undercover operatives' found, and many of those allegations are already covered under existing legislation. The FTC has authority to set the level of the exemption. We oppose the total removal of that exemption.

Section 1 cites this Act as the "Truth in Fur Labeling Act of 2009". With their insistence in the use of the term 'raccoon dog' in their testimony, as opposed to the true name, Asiatic Raccoon, HSUS has shown their true agenda. Even the title is purposely misleading.

We, the National Trappers Association, oppose all sections of this bill and urge that it be removed in its present form, from consideration.

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Response to Written Questions

Hearing on H.R. 2480, the Truth in Fur Labeling Act

Michael Markarian

1. **How did you reach your conclusion about mislabeled coats? Did consumers complain to you about being misled or confused by the current labeling regulations?**

For the last several years, HSUS investigators have visited hundreds of retail brick-and-mortar stores and online stores, and examined thousands of items containing real and fake fur. Dozens of garments have been examined and tested in independent laboratories, using different scientific testing methods (microscopy and mass spectrometry), to determine if the fur is animal fur or fake and/or to determine the species of animal. Often, the garments tested will represent many more identical garments that are still on the rack or available online at time of purchase.

Several geographically focused investigations have occurred. HSUS investigated brick-and-mortar stores in New York City in 2009—several times accompanied by New York Assemblymember Linda B. Rosenthal—and documented unlabeled real fur garments being sold by major retailers, including a salesperson describing an unlabeled real fur as fake, and two salespeople describing the same unlabeled real fur jacket as two different animal species. In the Los Angeles area in 2010, an HSUS investigator assisted CBS2/KCAL investigative reporter David Goldstein, where he documented unlabeled real fur being described by salespeople as fake. HSUS investigated the San Francisco Bay area in 2010 with staff of California Assemblymember Fiona Ma, finding unlabeled animal fur items at several major stores.

A number of consumers and members of The HSUS have contacted The HSUS about garments that they own because they were unsure as to whether the fur was real or fake, or whether it was the correct species of animal described on the label. For example, Debbie McMillan of Odessa, Texas, contacted The HSUS about a "raccoon"-labeled fur coat that she was concerned might actually be raccoon dog, after seeing a news story on the subject of mislabeled fur garments. Testing found the garment to indeed be raccoon dog, and thus mislabeled. Ms. McMillan has since become an outspoken advocate for stricter labeling and advertising requirements for fur garments.

A list of several dozen of the tested garments and results was attached to my original written testimony submitted on May 13, 2010.

2. **How do you respond to the concern that Congress should be wary of relying on findings on fur labeling from an organization that aims to make the US fur-free?**

   The HSUS urges consumers to avoid buying animal fur, and urges retailers not to sell animal fur garments—but the only way those individuals and companies can exercise those choices in the marketplace is if the garments are properly and accurately labeled. The HSUS seeks to ensure that our members and other consumers around the country are able to purchase products that do not contain any animal fur, or fur from specific animal species such as raccoon dog, if it is their choice to do so. Further, as the nation's largest animal protection organization, with more than 11 million members and supporters, HSUS is uniquely positioned to offer expertise on the impacts to fur-free and humane-conscious consumers of falsely advertised, mislabeled, or unlabeled fur garments.

   Moreover, there is independent evidence of the validity of the information and findings we have presented in support of the legislation. For example:

   - Staff for the FTC have published in the Federal Register that approximately 1,000,000 products containing animal fur sold in the U.S. over a one-year period are exempt from labeling requirements under the existing loophole in federal law.
   - By accompanying HSUS investigators, a member of the New York Assembly and several staff persons of a member of the California Assembly have witnessed unlabeled jackets with real animal fur for sale by major retailers.
   - Investigative reporter David Goldstein of CBS2/KCAL in California documented coats trimmed with real animal fur being described in stores as fake fur by salespeople.
   - The source of the fur in garments that HSUS has identified as falsely advertised or mislabeled has been confirmed by independent laboratory testing in dozens of cases.
   - HSUS has received multiple letters from retailers over the years acknowledging that advertising or labeling of animal fur garments was incorrect and that they had taken action to correct the problems in their stores.
   - The D.C. Superior Court recently entered a judgment against Neiman Marcus for violation of the D.C. consumer protection statute in a lawsuit alleging false advertising and mislabeling of fur coats.

3. **If Congress eliminates the small value exemption with section 2 of the bill, why do you believe this bill needs the state non-preemption provision in section 4? What else would you need to have labeled?**

   The non-preemption provision in section 4 is a restatement of current law, and it simply makes clear that states will retain their longstanding authority to enact more stringent labeling and advertising requirements for fur garments. The HSUS believes that states should continue to have the discretion to pass laws in the realm of animal welfare and consumer protection that advance the policies and goals that their citizens seek to have implemented, as long as such laws do not conflict with the federal law.

   The existing state laws essentially require that *all* fur and fur-trimmed garments sold in those states are labeled, while only *most* fur garments require labeling under current federal law. As a practical matter for retailers and manufacturers selling nationwide, they already have to provide labels for fur-trimmed jackets sold in several states, but not in others. H.R. 2480

would provide a consistent labeling standard nationwide for all fur-trimmed apparel, rather than the current standard which is higher in some states than others.

4. **Doesn't the purpose of this statutory requirement – to avoid consumer confusion and create a consistent labeling system – suggest that Congress intended this federal program to preempt the potential confusion of multiple state labeling requirements? Would your organization support preemption of state law if the $150 exemption is eliminated?**

It is clear that Congress did not intend to preempt more specific state laws concerning labeling and advertising of fur garments. The federal Fur Products Labeling Act of 1951 has always allowed more stringent state laws to operate alongside, and to supplement, the federal regulatory scheme concerning fur labeling and advertising. In fact, two such state laws—in Massachusetts and Wisconsin—were already in place *before* the FPLA was enacted, and no language expressly preempting these state laws was included in the federal law. At least three other state fur labeling and advertising laws—in Delaware, New Jersey, and New York—are now in place, and the California State Assembly has just passed a fur labeling law that is pending in the State Senate.

Notably, the Massachusetts and Wisconsin state laws were also in place at the time of the Federal Trade Commission's regulatory review of the FPLA reported in 49 Fed Reg 20304-01, which included receipt of comments from the regulated community, and wherein the FTC concluded that there was no reported conflict between the federal and state laws. To the extent that federal regulation of labeling and advertising of fur garments is comprehensive, the opportunity for conflict with state law is minimal. The HSUS believes that existing constitutional limitations on state regulation where federal laws address the same general activity will be sufficient to avoid confusion among retailers and manufacturers, and that a sweeping preemption provision would be an unnecessary infringement of states' rights.

The HSUS believes there is no reason to expressly preempt state fur labeling laws. Elimination of the $150 exemption will establish a more consistent labeling system and protect consumers. Allowing states the opportunity to enact separate and more stringent labeling measures will only help to further protect consumers. At the end of the day, increased consumer protection in an industry where consumers have and continue to be harmed by false or missing information about the products they are purchasing should be the primary goal in amending the FPLA.

If the legislation is simply silent on the issue of preemption, it will not change the relationship between state and federal law which has been in place since Congress passed the Fur Products Labeling Act in 1951. Nevertheless, while The HSUS believes an express preemption provision is unnecessary, we would continue to strongly support the legislation if such a provision is included. If the Committee decides to amend the legislation to preempt state laws, we suggest the following language: "No state or political subdivision of any state may establish any requirement which is different from or in addition to any fur labeling requirement applicable under the provisions of this subchapter."

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