

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 382

(SENATE AUTHORS: SIEBEN, Marty, Goodwin and Latz)

DATE	D-PG	OFFICIAL STATUS
02/11/2013	195	Introduction and first reading Referred to Commerce
03/07/2013	666a	Comm report: To pass as amended and re-refer to Judiciary
03/18/2013		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act
 1.2 relating to commerce; regulating bullion coin dealers; requiring registration;
 1.3 prohibiting certain conduct; providing enforcement authority and criminal
 1.4 penalties; proposing coding for new law as Minnesota Statutes, chapter 80G.
 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[80G.01] DEFINITIONS.**

1.7 Subdivision 1. **Scope.** For purposes of this chapter, the following terms have the
 1.8 meanings given to them in this section.

1.9 Subd. 2. **Bullion coin.** "Bullion coin" means any coin containing more than one
 1.10 percent by weight of silver, gold, platinum, or other precious metal.

1.11 Subd. 3. **Bullion coin dealer.** (a) Subject to the exceptions in paragraph (b), a
 1.12 "bullion coin dealer" means any person who buys, sells, solicits, or markets bullion
 1.13 coins or investments in bullion coins to consumers and is either incorporated, registered,
 1.14 domiciled, or otherwise located in this state, or who does business with a consumer
 1.15 domiciled, residing, or otherwise located in this state.

1.16 (b) A "bullion coin dealer" does not include any of the following persons:

1.17 (1) a person who engages only in wholesale bullion coin transactions with bullion
 1.18 coin dealers who sell at retail and are properly registered under this chapter;

1.19 (2) a person who engages only in transactions at occasional garage or yard sales
 1.20 held at the seller's residence, farm auctions held at the seller's residence, or estate sales
 1.21 held at the decedent's residence;

1.22 (3) a person who is properly registered pursuant to chapter 80A, or the federal
 1.23 Securities Exchange Act of 1934 and rules promulgated thereunder as a securities broker
 1.24 dealer or broker dealer agent; or

2.1 (4) an auctioneer who auctions coins at auction on behalf of an owner, if the
2.2 auctioneer does not take title or ownership of the coins.

2.3 Subd. 4. **Coin dealer representative.** "Coin dealer representative" means any
2.4 natural person acting as an employee, contractor, or agent of a bullion coin dealer and who
2.5 has interactions with consumers in connection with the buying, selling, solicitation, or
2.6 marketing of bullion coins or investments in bullion coins.

2.7 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

2.8 Subd. 6. **Owner.** "Owner" means any person who has an ownership interest in a
2.9 bullion coin dealer, regardless of whether directly or indirectly, of more than one percent.

2.10 Subd. 7. **Person.** "Person" has the same meaning given in section 325F.68,
2.11 subdivision 3.

2.12 Subd. 8. **Precious metal content.** "Precious metal content" means the quantity,
2.13 measured in grams, of gold, silver, platinum, or other precious metal in a coin and the
2.14 percentage that the precious metal constitutes of the total weight of the coin.

2.15 **Sec. 2. [80G.02] REGISTRATION.**

2.16 Subdivision 1. **Registration required.** Beginning July 1, 2014, it shall be unlawful
2.17 for a bullion coin dealer or coin dealer representative to solicit, market, buy, sell, or deliver
2.18 bullion coins or investments in bullion coins to a consumer without being registered by the
2.19 commissioner as provided for in this chapter, if the bullion coin dealer has engaged in a
2.20 bullion coin transaction or transactions with consumers during the 12-month period prior
2.21 to July 1, 2014, that exceed \$5,000 in the aggregate, as determined by the transactions'
2.22 sale prices. If a bullion coin dealer was not required to be registered beginning on July 1,
2.23 2014, the bullion coin dealer must submit an application to register itself and each of its
2.24 coin dealer representatives within 30 days of reaching \$5,000 in the aggregate of bullion
2.25 coin transactions with consumers in any 12-month period prior to July 1 of any calendar
2.26 year, as determined by the transactions' sale prices. Once a bullion coin dealer is required
2.27 to register itself and its coin dealer representatives, the coin dealer must thereafter renew
2.28 its registration and the registration of each of its coin dealer representatives in accordance
2.29 with this chapter, regardless of the aggregate amount of transactions, unless the person
2.30 ceases to be a bullion coin dealer. A coin dealer representative may not buy, sell, solicit,
2.31 or market bullion coins or investments in bullion coins on behalf of a bullion coin dealer
2.32 unless the dealer is properly registered with the commissioner under this section.

2.33 Subd. 2. **Registration obligations.** If a bullion coin dealer must register itself and
2.34 each of its coin dealer representatives with the commissioner, the bullion coin dealer shall
2.35 certify in its application and the application for each of its coin dealer representatives

3.1 that the bullion coin dealer and its coin dealer representatives satisfy the requirements
3.2 of sections 80G.03 to 80G.07 of this chapter. Registrations issued or renewed by the
3.3 commissioner under this chapter shall expire on June 30 and must be renewed.

3.4 Subd. 3. **Registration application and renewal.** The application and renewal
3.5 forms shall include the following information, as applicable, which shall be considered by
3.6 the commissioner in determining whether to issue a registration and whether to thereafter
3.7 renew the registration:

3.8 (1) the name, assumed names, doing business as names, including caller
3.9 identification names, and business addresses of the bullion coin dealer, the name of
3.10 each owner and officer, and the name and primary work location of each coin dealer
3.11 representative. A bullion coin dealer who desires to carry on business in more than one
3.12 location shall identify each address where business is conducted;

3.13 (2) if a bullion coin dealer is doing business under any name other than the dealer's
3.14 legal name, documentation that the assumed name has been properly filed with the
3.15 secretary of state;

3.16 (3) the telephone numbers, including cellular phone numbers, electronic mail
3.17 addresses, and Web site domain names used or intended to be used by the bullion coin
3.18 dealer and its coin dealer representatives to buy, sell, solicit, market, or deliver to
3.19 consumers bullion coin or investments in bullion coin;

3.20 (4) the disclosure of all criminal convictions by any court within the last ten years
3.21 for the bullion coin dealer and each officer and owner of the bullion coin dealer and
3.22 for each of its coin dealer representatives;

3.23 (5) the certification that the bullion coin dealer, its officers and owners, and its coin
3.24 dealer representatives have not engaged in any conduct prohibited by this chapter since
3.25 its effective date, or in any conduct prohibited by sections 45.027; 325D.43 to 325D.48;
3.26 325F.67; 325F.68 to 325F.69; 325F.694; and 325F.73 to 325F.744;

3.27 (6) the disclosure of any civil judgments or government agency orders, including
3.28 but not limited to, conciliation court or equivalent judgments against the bullion coin
3.29 dealer, its officers and owners, or its coin dealer representatives for violation of consumer
3.30 protection laws or unfair trade practice laws or for failure to account to a customer for
3.31 money or property received from the consumer;

3.32 (7) the disclosure of any settlement or other agreement with any person or any
3.33 government entity resolving allegations by the person or government entity that the
3.34 bullion coin dealer, its officers and owners, or its coin dealer representatives violated
3.35 consumer protection or unfair trade practice laws, or for failure to account to a consumer
3.36 for money or property received from the consumer; and

4.1 (8) the certification that the bullion coin dealer, its officers and owners, and its coin
 4.2 dealer representatives were not at any time permanently or temporarily prohibited by any
 4.3 court of competent jurisdiction or ordered to cease and desist as the result of a government
 4.4 agency action from engaging in buying, selling, soliciting, or marketing of bullion coin
 4.5 or investments in bullion coin.

4.6 Subd. 4. **Notice of change in registration information.** A bullion coin dealer must
 4.7 provide the commissioner written notice of a change in the dealer's name, assumed names,
 4.8 doing business as names, business addresses, including all business addresses at which it
 4.9 or its coin dealer representatives conduct business, ownership, electronic mail addresses,
 4.10 Web site domain names, or telephone numbers used by it or its coin dealer representatives
 4.11 to buy, sell, solicit, or market to consumers bullion coin or investments in bullion coin no
 4.12 later than ten days after the change occurs.

4.13 Subd. 5. **Registration fee.** (a) The fee for each registration under this chapter
 4.14 shall be as follows:

4.15 (1) bullion coin dealers: \$25; and

4.16 (2) coin dealer representatives: \$10.

4.17 (b) The commissioner, based on the cost of processing registrations, may adjust the
 4.18 registration fee on an annual basis as needed.

4.19 Sec. 3. **[80G.03] REGISTRATION DENIAL, NONRENEWAL, REVOCATION**
 4.20 **AND SUSPENSION.**

4.21 Subdivision 1. **Authority.** The commissioner may, by order, suspend, revoke, or
 4.22 refuse to issue or renew a bullion coin dealer or coin dealer representative registration for
 4.23 any one or more of the following causes:

4.24 (1) providing incorrect, false, misleading, or incomplete information to the
 4.25 commissioner or refusing to allow a reasonable inspection of information and documents
 4.26 in the possession of the bullion coin dealer, coin dealer representative, or a third party or
 4.27 to allow a reasonable inspection of premises;

4.28 (2) obtaining or attempting to obtain a registration through misrepresentation or fraud;

4.29 (3) having a bullion coin dealer or coin dealer representative registration or its
 4.30 equivalent, including licensure under section 325F.73, denied, suspended, or revoked, or
 4.31 having been the subject of a fine or any other discipline in any locality within the state or
 4.32 other state, province, district, or territory;

4.33 (4) being permanently or temporarily enjoined by any court of competent jurisdiction
 4.34 or being ordered to cease and desist by a government agency from engaging in or

5.1 continuing any conduct or practice involving the buying, selling, soliciting, or marketing
 5.2 of bullion coins, investments in bullion coins, or precious metal to consumers;

5.3 (5) violating any federal, state, or local law or rule related to selling, purchasing,
 5.4 solicitation, or marketing of bullion coin, investments in bullion coin, or precious metal;

5.5 (6) violating the provisions of this chapter or of sections 45.027; 325D.43 to
 5.6 325D.48; 325F.67; 325F.68 to 325F.69; 325F.694; and 325F.73 to 325F.744, or federal
 5.7 or state taxation or labor law; or

5.8 (7) violating a subpoena or order of the commissioner or a court issued pursuant
 5.9 to this chapter or sections 45.027; 325D.43 to 325D.48; 325F.67; 325F.68 to 325F.69;
 5.10 325F.694; 325F.70; and 325F.73 to 325F.744.

5.11 Subd. 2. **Bullion coin dealer responsibility for actions of coin dealer**

5.12 **representatives.** The commissioner may take action against a bullion coin dealer for any
 5.13 violations of this chapter by its coin dealer representatives. The commissioner may also
 5.14 take action against the coin dealer representative.

5.15 Subd. 3. **Other authority of the commissioner.** If a registration lapses, is
 5.16 surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner
 5.17 may institute a proceeding under this subdivision within two years after the registration
 5.18 was last effective and enter a revocation order as of the last date on which the registration
 5.19 was in effect, and impose a civil penalty as provided for in section 45.027, subdivision 6.

5.20 Subd. 4. **Effect of revocation.** A revocation of a registration prohibits the bullion
 5.21 coin dealer or coin dealer representatives from making a new application for a registration
 5.22 for at least two years from the effective date of the revocation.

5.23 Sec. 4. **[80G.04] CRIMINAL CONVICTIONS AND FALSE CERTIFICATIONS.**

5.24 Subdivision 1. **Registration precluded.** The commissioner must deny an
 5.25 application for registration or renewal of a coin dealer representative or a bullion coin
 5.26 dealer, or revoke such registration if the coin dealer representative, the bullion coin dealer,
 5.27 or its owners or officers have:

5.28 (1) within the last ten years been convicted in any court of any financial crime or
 5.29 other crime involving fraud, theft, dishonesty, or moral turpitude;

5.30 (2) been unable to truthfully certify that they have no civil judgments or government
 5.31 agency orders, including but not limited to, conciliation court or equivalent judgments
 5.32 against them for violation of consumer protection or unfair trade practices laws or failure
 5.33 to account to a customer for money or property received from the customer; or

5.34 (3) been unable to truthfully certify that they have not entered into a settlement or
 5.35 other agreement with any person or with any government entity resolving concerns by

6.1 the person or government entity that they had violated consumer protection or unfair
 6.2 trade practices laws.

6.3 Sec. 5. **[80G.05] SCREENING.**

6.4 Subdivision 1. **Screening process required.** Each bullion coin dealer must
 6.5 establish procedures to screen each of its owners and officers and each of its coin
 6.6 dealer representatives prior to submitting the application to the commissioner for initial
 6.7 registration and at each renewal. The results of such screenings shall be provided to the
 6.8 commissioner as part of the initial registration and all renewal registrations if requested by
 6.9 the commissioner.

6.10 Subd. 2. **Initial screening.** The screening process for initial registration must be
 6.11 done no more than 60 days before the submission of an application for registration. The
 6.12 process must include a national criminal history record search, a judgment search, and a
 6.13 county criminal history search for all counties where the owner, officer, or coin dealer
 6.14 representative has resided within the immediately preceding ten years. Each bullion coin
 6.15 dealer shall use a vendor that is a member of the National Association of Professional
 6.16 Background Screeners, or an equivalent vendor, to conduct the background screening
 6.17 process on its owners, officers, and coin dealer representatives.

6.18 Subd. 3. **Renewal screening.** The screening process for the renewal of a
 6.19 registration must include a national criminal history record search, a judgment search, and
 6.20 county criminal history search for all counties where the owner, officer, or coin dealer
 6.21 representative has resided since satisfactorily completing the last screening process
 6.22 conducted pursuant to this section. Screening for renewal of the owner, officer, and coin
 6.23 dealer representative registrations must take place no more than 60 days before the
 6.24 submission of an application for renewal of a registration.

6.25 Sec. 6. **[80G.06] SURETY BOND.**

6.26 Subdivision 1. **Surety bond requirement.** Every bullion coin dealer shall maintain a
 6.27 current, valid surety bond issued by a surety company admitted to do business in Minnesota
 6.28 in an amount based on the transactions (purchases from and sales to consumers at retail)
 6.29 during the 12-month period prior to registration, or renewal, whichever is applicable.

6.30 The amount of the surety bond shall be as specified in the table below:

<u>Transaction Amount in Preceding 12-month</u>	<u>Surety Bond Required</u>
<u>Period</u>	
<u>\$0 to \$200,000</u>	<u>\$25,000</u>
<u>\$200,000.01 to \$500,000</u>	<u>\$50,000</u>
<u>\$500,000.01 to \$1,000,000</u>	<u>\$100,000</u>

7.1	<u>\$1,000,000.01 to \$2,000,000</u>	<u>\$150,000</u>
7.2	<u>Over \$2,000,000</u>	<u>\$200,000</u>

7.3 Subd. 2. **Action on bond permitted.** A consumer injured in money or property by a
 7.4 bullion coin dealer's or coin dealer representative's failure to provide bullion coins that
 7.5 the consumer has paid for or failure to remit money or goods owed to the consumer in
 7.6 connection with the consumer's sale of bullion coins may file a claim with the surety and
 7.7 if the claim is not paid, is authorized to bring an action based on the bond and recover
 7.8 against the surety. The commissioner or attorney general may also file a claim and bring
 7.9 an action on the bond and recover against the surety on behalf of a consumer so injured.

7.10 Sec. 7. **[80G.07] PROHIBITED CONDUCT.**

7.11 Subdivision 1. **Sales practices.** No bullion coin dealer or coin dealer representative
 7.12 shall:

7.13 (1) prior to a transaction regarding bullion coins, fail to provide to the consumer in
 7.14 writing, in a clear and conspicuous manner, the sale or purchase price and the precious
 7.15 metal content of the bullion coins involved in the transaction. The written notice shall
 7.16 also include the bullion coin dealer's registration identification information issued by the
 7.17 commissioner, and the Department of Commerce's e-mail address and telephone number.
 7.18 A copy of the written notice shall be provided to the consumer and a copy retained by
 7.19 the bullion coin dealer;

7.20 (2) fail to deliver bullion coins to a consumer within the time agreed upon with
 7.21 the consumer or, if no such agreement exists, within 30 days after the consumer has
 7.22 paid for the coins;

7.23 (3) fail to pay a consumer for purchased bullion coins within the time agreed upon
 7.24 with the consumer or, if no such agreement exists, within 30 days after the consumer
 7.25 has provided the coins;

7.26 (4) fail to provide a written invoice at the time of the transaction specifically
 7.27 identifying and describing the bullion coins involved in the transaction, the quantity of
 7.28 bullion coins involved in the transaction, and the bullion coins' sale or purchase price and
 7.29 precious metal content. The written invoice shall include the bullion coin dealer registration
 7.30 identification information issued by the commissioner, and the Department of Commerce's
 7.31 e-mail address and telephone number. A copy of the transaction documentation shall be
 7.32 provided to the consumer and a copy retained by the bullion coin dealer;

7.33 (5) misrepresent the value of the bullion coins, the delivery date of bullion coins
 7.34 or payment for bullion coins, or the dealer or representative's professional qualifications,
 7.35 affiliations, or registration;

8.1 (6) misrepresent the manner in which any bullion coins a consumer provides will be
8.2 stored or otherwise handled once received;

8.3 (7) renegotiate the terms of a sale or purchase after receiving a consumer's payment
8.4 or bullion coins without first obtaining the consumer's agreement to renegotiate and
8.5 offering the consumer the option to have the payment fully refunded or the entirety of
8.6 the bullion coins returned;

8.7 (8) fail to respond within three business days to a consumer inquiry about the
8.8 delivery status of bullion coins that the consumer has paid for but not yet received or the
8.9 status of a payment for bullion coins that the consumer has already provided;

8.10 (9) telephone or solicit a consumer, or sell or provide the consumer's name to any
8.11 other bullion coin dealer or coin dealer representative, after the consumer requests not to
8.12 be contacted;

8.13 (10) violate a subpoena or order of the commissioner or a court;

8.14 (11) make any communication to a potential buyer or seller of bullion coins that
8.15 gives the impression that the bullion coin dealer or coin dealer representative is acting on
8.16 behalf of a government agency;

8.17 (12) improperly withhold, misappropriate, or convert any money or properties
8.18 received in the course of buying, selling, soliciting, or marketing bullion coins or
8.19 investments in bullion coins to consumers;

8.20 (13) misrepresent the terms of an actual or proposed purchase or sale of bullion coins
8.21 or investment in bullion coins to a consumer; or

8.22 (14) violate any other federal, state, or local law or rule related to selling, purchasing,
8.23 soliciting, or marketing of bullion coin, investments in bullion coin, or precious metals, or
8.24 any federal, state, or local law related to fraudulent, coercive, or dishonest practices, or
8.25 federal, state, or local law related to taxation or labor standards.

8.26 Subd. 2. **Application.** From August 1, 2013, to June 30, 2014, section 80G.07 shall
8.27 apply to any bullion coin dealer and its coin dealer representatives if the bullion coin
8.28 dealer is engaged in a bullion coin transaction or transactions with consumers which
8.29 exceed \$5,000 in the aggregate, as determined by the transaction sale prices, during the
8.30 12-month period prior to August 1, 2013. On or after July 1, 2014, section 80G.07 shall
8.31 apply to any bullion coin dealer and its coin dealer representatives which is or should be
8.32 registered in accordance with the provisions of this chapter.

8.33 **Sec. 8. [80G.08] CONSUMER FRAUD.**

8.34 A violation of this chapter is a violation of section 325F.69, subdivision 1. The
8.35 provisions of section 8.31 apply to this chapter.

9.1 Sec. 9. **[80G.09] CRIMINAL VIOLATION.**

9.2 A person who conducts business as a bullion coin dealer or as a coin dealer
9.3 representative without having first registered with the commissioner, or who carries on
9.4 such business after the revocation, suspension, or expiration of a registration, or who
9.5 violates section 80G.07, subdivision 1, clauses (2) or (3), is guilty of a misdemeanor.

9.6 Sec. 10. **[80G.10] OTHER ACTION; LOCAL AUTHORITY.**

9.7 Nothing in this chapter precludes an action under chapter 80A or preempts local
9.8 government authority under section 325F.742.

9.9 Sec. 11. **[80G.11] INVESTIGATIONS AND ENFORCEMENT.**

9.10 In addition to authority granted under this chapter, the commissioner has all
9.11 the authority provided under section 45.027 to ensure compliance with this chapter,
9.12 including, but not limited to, the authority to issue an order to deny, suspend, or revoke
9.13 the registration of any bullion coin dealer or coin dealer representative, or impose civil
9.14 penalties for any violation of this chapter, section 45.027, or any other Minnesota law.

9.15 Sec. 12. **EFFECTIVE DATE.**

9.16 This act shall be effective August 1, 2013.