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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 157

01/24/2013 Authored by Hilstrom; Rosenthal; Cornish; Benson, J.; Simon and others
The bill was read for the first time and referred to the Committee on Commerce and Consumer Protection Finance and Policy
02/14/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Government Operations
02/28/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Finance and Policy
03/11/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy
04/19/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Rules and Legislative Administration

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 civil and
1.4 criminal penalties; proposing coding for new law as Minnesota Statutes, chapter
1.5 80G.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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

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

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

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

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

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

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

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

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 (5) a person who engages only in transactions at occasional trade shows where the
2.4 consumer is present and the transaction is made at the trade show; or

2.5 (6) a federally or state-chartered bank, bank and trust, savings bank, savings
2.6 association, or credit union or any operating subsidiary of them.

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

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

2.12 Subd. 6. **Owner.** "Owner" means any person who has an ownership interest in a
2.13 bullion coin dealer, regardless of whether directly or indirectly, of more than ten percent
2.14 and who is actively engaged in the direction, management, oversight, or operation of the
2.15 bullion coin dealer or its business affairs.

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

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

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

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

3.1 ceases to be a bullion coin dealer. A coin dealer representative may not buy, sell, solicit,
3.2 or market bullion coins or investments in bullion coins on behalf of a bullion coin dealer
3.3 unless the dealer is properly registered with the commissioner under this section.

3.4 Subd. 2. **Registration obligations.** Registrations issued or renewed by the
3.5 commissioner under this chapter shall expire on June 30 and must be renewed.

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

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

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

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

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

3.25 (5) the disclosure of any civil judgments in favor of a government entity or
3.26 government entity orders entered, filed, or issued against the bullion coin dealer, its
3.27 officers and owners, or its coin dealer representatives within the last ten years for violation
3.28 of consumer protection laws or unfair trade practice laws or for failure to account to a
3.29 consumer for money or property received from the consumer;

3.30 (6) the disclosure of any settlement or other agreement with any government entity
3.31 within the last ten years resolving concerns that the bullion coin dealer, its officers and
3.32 owners, or its coin dealer representatives violated consumer protection or unfair trade
3.33 practice laws, or for failure to account to a consumer for money or property received
3.34 from the consumer; and

3.35 (7) the disclosure of any instance in which the bullion coin dealer, its officers and
3.36 owners, and its coin dealer representatives were at any time permanently or temporarily

4.1 prohibited by any court of competent jurisdiction or ordered to cease and desist as the
4.2 result of a government agency action from engaging in buying, selling, soliciting, or
4.3 marketing of bullion coin or investments in bullion coin.

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

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

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

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

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

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

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

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

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

4.27 (3) having a bullion coin dealer or coin dealer representative registration or its
4.28 equivalent, including licensure under section 325F.73, denied, suspended, or revoked by
4.29 any locality within the state or other state, province, district, or territory;

4.30 (4) being permanently or temporarily enjoined by any court of competent jurisdiction
4.31 or being ordered to cease and desist by a government agency from engaging in or
4.32 continuing any conduct or practice involving the buying, selling, soliciting, or marketing
4.33 of bullion coins, investments in bullion coins, or precious metal to consumers;

5.1 (5) violating the provisions of this chapter or of sections 45.027; 325D.43 to
5.2 325D.48; 325F.67; 325F.68 to 325F.69; 325F.694; and 325F.73 to 325F.744, or federal
5.3 or state taxation or labor law; or

5.4 (6) violating a subpoena or order of the commissioner or a court issued pursuant
5.5 to this chapter or sections 45.027; 325D.43 to 325D.48; 325F.67; 325F.68 to 325F.69;
5.6 325F.694; 325F.70; and 325F.73 to 325F.744.

5.7 Subd. 2. **Bullion coin dealer responsibility for actions of coin dealer**
5.8 **representatives.** The commissioner may take action against a bullion coin dealer for any
5.9 violations of this chapter by its coin dealer representatives. The commissioner may also
5.10 take action against the coin dealer representative.

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

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

5.19 Sec. 4. **[80G.04] CRIMINAL CONVICTIONS.**

5.20 Subdivision 1. **Bullion coin dealer registration precluded.** The commissioner
5.21 must deny an application for registration or renewal of a bullion coin dealer, or revoke
5.22 such registration, if the bullion coin dealer or its owners or officers have within the last
5.23 ten years been convicted in any court of any financial crime or other crime involving
5.24 fraud, theft, or dishonesty.

5.25 Subd. 2. **Coin dealer representative registration precluded.** The commissioner
5.26 must deny an application for registration or renewal of a coin dealer representative, or
5.27 revoke such registration, if the coin dealer representative has within the last ten years
5.28 been convicted in any court of any financial crime or other crime involving fraud, theft,
5.29 or dishonesty.

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

5.31 Subdivision 1. **Screening process required.** Each bullion coin dealer must
5.32 establish procedures to screen each of its owners and officers and each of its coin
5.33 dealer representatives prior to submitting the application to the commissioner for initial
5.34 registration and at each renewal. The results of such screenings shall be provided to the

6.1 commissioner as part of the initial registration and all renewal registrations if requested by
 6.2 the commissioner.

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

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

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

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

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

<u>Transaction Amount in Preceding 12-month Period</u>	<u>Surety Bond Required</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>
<u>\$1,000,000.01 to \$2,000,000</u>	<u>\$150,000</u>
<u>Over \$2,000,000</u>	<u>\$200,000</u>

6.31 Subd. 2. **Action on bond permitted.** A consumer injured in money or property by a
 6.32 bullion coin dealer's or coin dealer representative's failure to provide bullion coins that
 6.33 the consumer has paid for or failure to remit money or goods owed to the consumer in
 6.34 connection with the consumer's sale of bullion coins may file a claim with the surety and
 6.35 if the claim is not paid, is authorized to bring an action based on the bond and recover

7.1 against the surety. The commissioner or attorney general may also file a claim and bring
7.2 an action on the bond and recover against the surety on behalf of a consumer so injured.

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

7.4 Subdivision 1. **Sales practices.** No bullion coin dealer or coin dealer representative
7.5 shall:

7.6 (1) prior to a transaction regarding bullion coins, or concurrent with the delivery
7.7 thereof, fail to provide to the consumer in writing, in a clear and conspicuous manner,
7.8 the sale or purchase price and the precious metal content of the bullion coins involved in
7.9 the transaction. The written notice shall also include the bullion coin dealer's registration
7.10 identification information issued by the commissioner, and the Department of Commerce's
7.11 e-mail address and telephone number. A copy of the written notice shall be provided to
7.12 the consumer and a copy retained by the bullion coin dealer;

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

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

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

7.26 (5) misrepresent the delivery date of bullion coins or payment for bullion coins, or
7.27 the dealer or representative's professional qualifications, affiliations, or registration;

7.28 (6) misrepresent any material aspect of a bullion coin, including its performance,
7.29 efficacy, nature, investment value, central characteristics, liquidity, earnings potential,
7.30 or profitability;

7.31 (7) misrepresent the manner in which any bullion coins a consumer provides will be
7.32 stored or otherwise handled once received;

7.33 (8) renegotiate the terms of a sale or purchase after receiving a consumer's payment
7.34 or bullion coins without first obtaining the consumer's agreement to renegotiate and

8.1 offering the consumer the option to have the payment fully refunded or the entirety of
8.2 the bullion coins returned;

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

8.6 (10) telephone or solicit a consumer, or sell or provide the consumer's name to
8.7 any other bullion coin dealer or coin dealer representative, after the consumer requests
8.8 not to be contacted;

8.9 (11) violate a subpoena or order of the commissioner or a court;

8.10 (12) make any communication to a potential buyer or seller of bullion coins that
8.11 misrepresents the relationship, if any, between the bullion coin dealer or coin dealer
8.12 representative and any government agency or mint;

8.13 (13) improperly withhold, misappropriate, or convert any money or properties
8.14 received in the course of buying, selling, soliciting, or marketing bullion coins or
8.15 investments in bullion coins to consumers;

8.16 (14) misrepresent the terms of an actual or proposed purchase or sale of bullion coins
8.17 or investment in bullion coins to a consumer; or

8.18 (15) violate any other federal, state, or local law or rule related to selling, purchasing,
8.19 soliciting, or marketing of bullion coin, investments in bullion coin, or precious metals, or
8.20 any federal, state, or local law related to fraudulent, coercive, or dishonest practices, or
8.21 federal, state, or local law related to taxation or labor standards.

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

8.29 **Sec. 8. [80G.08] CRIMINAL VIOLATION.**

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

8.34 **Sec. 9. [80G.09] OTHER ACTION; LOCAL AUTHORITY.**

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

9.3 **Sec. 10. [80G.10] INVESTIGATIONS AND CIVIL ENFORCEMENT.**

9.4 **Subdivision 1. Civil action instituted by commissioner.** If the commissioner
9.5 believes that a person has engaged, is engaging, or is about to engage in an act, practice,
9.6 or course of business constituting a violation of this chapter or a rule adopted or order
9.7 issued under this chapter or that a person has, is, or is about to engage in an act, practice,
9.8 or course of business that materially aids a violation of this chapter or a rule adopted or
9.9 order issued under this chapter, the commissioner may maintain an action in the district
9.10 court to enjoin the act, practice, or course of business and to enforce compliance with this
9.11 chapter or a rule adopted or order issued under this chapter.

9.12 **Subd. 2. Relief available.** In an action under this section and on a proper showing,
9.13 the court may:

9.14 (1) issue a permanent or temporary injunction, restraining order, or declaratory
9.15 judgment;

9.16 (2) order other appropriate or ancillary relief, which may include:

9.17 (i) an asset freeze, accounting, writ of attachment, writ of general or specific
9.18 execution, and appointment of a receiver or conservator, that may be the commissioner,
9.19 for the defendant or the defendant's assets;

9.20 (ii) ordering the commissioner to take charge and control of a defendant's property,
9.21 including investment accounts and accounts in a depository institution, rents, and profits;
9.22 to collect debts; and to acquire and dispose of property;

9.23 (iii) imposing a civil penalty up to \$10,000 for each violation; an order of rescission,
9.24 restitution, or disgorgement directed to a person that has engaged in an act, practice, or
9.25 course of business constituting a violation of this chapter or a rule adopted or order issued
9.26 under this chapter or the predecessor act; and

9.27 (iv) ordering the payment of prejudgment and postjudgment interest; or

9.28 (3) order such other relief as the court considers appropriate.

9.29 **Subd. 3. No bond required.** The commissioner may not be required to post a bond
9.30 in an action or proceeding under this chapter.

9.31 **Subd. 4. Commissioner authority.** (a) If the commissioner determines that a
9.32 person has engaged, is engaged, or is about to engage in an act, practice, or course of
9.33 conduct constituting a violation of this chapter or a rule adopted or order issued under this
9.34 chapter or that a person has materially aided, is materially aiding, or is about to materially

10.1 aid an act, practice, or course of conduct constituting a violation of this chapter or rule
10.2 adopted or order issued under this chapter the commissioner may:

10.3 (1) issue an order directing the person to cease and desist from engaging in the
10.4 act, practice, or conduct or to take other action necessary or appropriate to comply with
10.5 this chapter; or

10.6 (2) issue an order denying, suspending, revoking, or conditioning the registration of
10.7 the bullion coin dealer or coin dealer representative.

10.8 (b) Upon issuance of an order, the commissioner shall promptly serve each person
10.9 subject to the order with a copy of the order and a notice that the order has been
10.10 issued. The order must include a statement of the reasons for the order and whether the
10.11 commissioner will seek a civil penalty or costs of the investigation, and notice that the
10.12 person must within 30 days of being served with the order, request in writing a hearing
10.13 and that within 15 days after receipt of a written hearing request from the person, the
10.14 matter will be scheduled for a hearing. If a person subject to the order does not request a
10.15 hearing within 30 days after the date of service of the order, the order becomes final as to
10.16 that person by operation of law. If a hearing is requested, the commissioner, after notice of
10.17 an opportunity for hearing to each person subject to the order, may modify or vacate the
10.18 order or extend it until final determination.

10.19 (c) If a hearing is requested pursuant to paragraph (b), a hearing must be held under
10.20 chapter 14 and a final order may not be issued unless the commissioner makes findings of
10.21 fact and conclusions of law in a record according to chapter 14. The final order may make
10.22 final, vacate, or modify the order issued under paragraph (a).

10.23 (d) If a petition for judicial review of a final order is not filed in accordance with
10.24 chapter 14, the commissioner may file a certified copy of the final order with the clerk of a
10.25 court of competent jurisdiction. The order so filed has the same effect as a judgment of the
10.26 court and may be recorded, enforced, or satisfied in the same manner as a judgment of
10.27 the court.

10.28 (e) If a person does not comply with an order under this section, the commissioner
10.29 may petition a court of competent jurisdiction to enforce the order. The court may not
10.30 require the commissioner to post a bond in an action or proceeding under this section.
10.31 If the court finds, after service and opportunity for hearing, that the person was not in
10.32 compliance with the order, the court may adjudge the person in civil contempt of the order.
10.33 The court may impose a further civil penalty against the person for contempt in an amount
10.34 up to \$10,000 for each violation and may grant any other relief the court determines is just
10.35 and proper in the circumstances.

11.1 (f) In addition to the authority granted under this chapter, the commissioner has all
11.2 the authority provided under section 45.027 to ensure compliance with this chapter.

11.3 Sec. 11. **EFFECTIVE DATE.**

11.4 This act is effective August 1, 2013.