

# HB0084S01 compared with HB0084

~~{deleted text}~~ shows text that was in HB0084 but was deleted in HB0084S01.

inserted text shows text that was not in HB0084 but was inserted into HB0084S01.

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Representative Michael S. Kennedy proposes the following substitute bill:

## SPECIE LEGAL TENDER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael S. Kennedy**

Senate Sponsor: \_\_\_\_\_

Cosponsors:

Curtis Oda

Brian M. Greene

Douglas V. Sagers

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### LONG TITLE

#### General Description:

This bill modifies the Specie Legal Tender Act and related provisions to address issues related to specie legal tender.

#### Highlighted Provisions:

This bill:

▶ ~~{exempts specie legal tender from certain deposit requirements;~~

▶ ~~exempts the holding of specie legal tender from the Money Management~~

~~Act;~~ amends definitions;

▶ provides that specie legal tender is not property other than money;

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- ▶ addresses private right of actions;
- ~~{~~ ~~—~~ ~~▶~~ ~~permits government entities to hold specie legal tender under certain circumstances;~~
- ~~}~~ ▶ prohibits certain possessory actions against fiduciary specie legal tender holdings;
- ▶ imposes a study requirement for the Revenue and Taxation Interim Committee; and
- ▶ makes technical amendments.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{51-7-2}~~59-1-1501.1, as ~~{last amended}~~enacted by Laws of Utah ~~{2011}~~2012, Chapter ~~{46}~~399

59-1-1502, as last amended by Laws of Utah 2012, Chapter 399

59-1-1505, as enacted by Laws of Utah 2012, Chapter 399

ENACTS:

~~{~~ ~~—~~ ~~51-4-3~~, Utah Code Annotated 1953

~~}~~ 59-1-1507, Utah Code Annotated 1953

59-1-1508, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section ~~{51-4-3}~~59-1-1501.1 is ~~{enacted to read:~~

~~—~~ ~~51-4-3. Specie legal tender exemption from chapter.~~

~~—~~ ~~Specie legal tender held pursuant to Section 59-1-1507 is exempt from this chapter.~~

~~—~~ Section 2. Section 51-7-2 is amended to read:

~~—~~ 51-7-2. Exemptions from chapter.

~~—~~ The following funds are exempt from this chapter:

~~—~~ (1) ~~funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;~~

~~—~~ (2) ~~funds of the Workers' Compensation Fund;~~

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- ~~— (3) funds of the Utah State Retirement Board;~~
- ~~— (4) funds of the Utah Housing Corporation;~~
- ~~— (5) endowment funds of higher education institutions;~~
- ~~— (6) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;~~
- ~~— (7) the State Post-Retirement Benefits Trust Fund; [and]~~
- ~~— (8) the funds of the Utah Educational Savings Plan[.]; and~~
- ~~— (9) specie legal tender held pursuant to Section 59-1-1507.~~

amended to read:

### **59-1-1501.1. Definitions.**

As used in this part:

(1) "Gold dollar" means specie legal tender that is a one fiftieth part of a United States American Eagle or American Buffalo coin, having one troy ounce of fine gold content and a "50 dollar" nominal face value, as described in 31 U.S.C. Sec. 5112(a)(7), (a)(11), (i)(1), and (q).

(2) "Government entity" means:

(a) the state;

(b) an administrative unit of the state;

(c) a political subdivision of the state; or

(d) an administrative unit of a political subdivision of the state.

(3) "Silver dollar" means specie legal tender that is a United States American Liberty coin, having one troy ounce of fine silver content and a "One Dollar" nominal face value, as described in 31 U.S.C. Sec. 5112(e).

(4) Subject to Subsection 59-1-1502(3), [as used in this part,] "specie legal tender" means gold or silver coin that is issued by the United States, not including a particular coin possessing additional numismatic value by virtue of its unique and rare physical characteristics.

Section ~~{3}~~2. Section **59-1-1502** is amended to read:

**59-1-1502. Specie legal tender is legal tender in the state -- Person may not compel another person to tender or accept specie legal tender -- Court or congressional action to authorize gold or silver coin or bullion as legal tender.**

(1) Specie legal tender is legal tender in the state, and is not property other than money.

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(2) Except as expressly provided by contract, a person may not compel any other person to tender or accept specie legal tender.

(3) Gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, is considered to be specie legal tender and is legal tender in the state if:

(a) a court of competent jurisdiction issues a final, unappealable judgment or order determining that the state may recognize the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, as legal tender in the state; or

(b) Congress enacts legislation that:

(i) expressly provides that the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, is legal tender in the state; or

(ii) expressly allows the state to recognize the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, as legal tender in the state.

Section ~~{4}~~3. Section **59-1-1505** is amended to read:

### **59-1-1505. Attorney general to enforce part -- Private right of action.**

(1) The attorney general shall enforce this part.

(2) Subsection (1) does not prejudice any right a person may have to bring a civil action in a court of competent jurisdiction to address issues at law or equity between private parties.

Section ~~{5}~~4. Section **59-1-1507** is enacted to read:

### ~~{~~ **59-1-1507. Government specie legal tender holdings and transactions.**

~~\_\_\_\_\_ (1) As used in this section, "government entity" means:~~

~~\_\_\_\_\_ (a) the state;~~

~~\_\_\_\_\_ (b) an administrative unit of the state;~~

~~\_\_\_\_\_ (c) a political subdivision of the state;~~

~~\_\_\_\_\_ (d) an administrative unit of a political subdivision of the state; or~~

~~\_\_\_\_\_ (e) an officer or employee of an entity described in Subsections (1)(a) through (d).~~

~~\_\_\_\_\_ (2) Subject to the other provisions of this section:~~

~~\_\_\_\_\_ (a) a government entity may conduct transactions denominated in specie legal tender;~~

~~and~~

~~\_\_\_\_\_ (b) a government entity may hold specie legal tender;~~

~~\_\_\_\_\_ (3) A government entity may not accept specie legal tender before obtaining~~

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~~confirmation from the state auditor that the procedures the government entity follows to hold secure, and account for the specie legal tender are sufficient to allow for an audit using generally accepted auditing standards, including at a minimum:~~

~~—— (a) record keeping that complies with generally accepted accounting principles;~~

~~—— (b) secure vaulting of all specie legal tender within one business day of receipt;~~

~~—— (c) requiring physical audits of the holdings, conducted on at least a quarterly basis by an independent auditor approved by the state auditor;~~

~~—— (d) maintaining insurance against damage or loss while vaulted or in transit with limits of liability equal to or greater than the full value of the anticipated specie legal tender holdings; and~~

~~—— (e) maintaining a means by which to verify the weight and fineness of the gold or silver content of any specie legal tender received outside of a documented chain of custody.~~

~~Section 6. Section 59-1-1508 is enacted to read:~~

† ~~59-1-1508~~59-1-1507. **Possessory action against fiduciary specie legal tender holdings.**

(1) Specie legal tender that is legally within the fiduciary care, custody, or control of one person for another person may not be requisitioned, confiscated, garnished, attached, or otherwise taken into possession by a government entity or any person acting under color of law except pursuant to a court order following a hearing at which any person having a beneficial interest in the specie legal tender is given notice and an opportunity to be heard.

(2) Subsection (1) does not prohibit a court from temporarily ordering pursuant to an ex parte attachment petition or similar proceeding that particularly described specie legal tender be held by the fiduciary in possession pending a hearing on the merits as provided in Subsection (1).

(3) This section does not apply when:

(a) the fiduciary exercising care, custody, or control of the specie legal tender is charged in a criminal information or indictment; or

(b) the specie legal tender is subject to criminal forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, as something of value furnished or intended to be furnished in exchange for contraband, as defined in Section 24-1-3.

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### Legislative Review Note

~~as of 1-24-13 2:18 PM~~

~~Office of Legislative Research and General Counsel;~~ Section 5. Section 59-1-1508 is enacted to read:

#### 59-1-1508. Revenue and Taxation Interim Committee study.

(1) During the 2013 interim, the Revenue and Taxation Interim Committee shall study:

(a) means whereby a government entity may:

(i) conduct transactions in specie legal tender;

(ii) transport and vault specie legal tender holdings;

(iii) insure specie legal tender holdings against loss or damage;

(iv) verify the weight and fineness of the gold or silver content of specie legal tender received outside of a documented chain of custody;

(v) physically audit specie legal tender holdings; and

(vi) account for public money held as specie legal tender in conformity with generally accepted accounting principles, as found in 26 C.F.R. Sec. 1.985-0 through 1.985-7, Financial Accounting Standards Board publications, and Governmental Accounting Standards Board publications;

(b) what distinct specie legal tender currencies, including gold dollars and silver dollars, should be authorized for use by a government entity; and

(c) whether Utah should authorize existing financial institutions or one or more new types of financial institutions to offer financial accounts and services denominated in one or more specie legal tender currencies.

(2) (a) The Revenue and Taxation Interim Committee shall solicit and consider input regarding the study items described in Subsection (1) from:

(i) the state treasurer;

(ii) the state auditor;

(iii) the commissioner of financial institutions;

(iv) the State Tax Commission; and

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(v) persons with business, legal, accounting, legislative, or academic expertise relating to multi-currency monetary policy in general, and specie legal tender in particular.

(b) The persons identified in Subsection (2)(a) may collaborate in recommending legislative action, if any, for the Revenue and Taxation Interim Committee to consider.

(3) The Revenue and Taxation Interim Committee may prepare legislation for consideration by the Legislature during the 2014 General Session that the Revenue and Taxation Interim Committee considers warranted after the study described in Subsection (1) and consideration of the recommendations from the persons identified under Subsection (2).