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SPECIE LEGAL TENDER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

Senate Sponsor: _____

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

and

- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-7-2, as last amended by Laws of Utah 2011, Chapter 46



28 59-1-1502, as last amended by Laws of Utah 2012, Chapter 399

29 59-1-1505, as enacted by Laws of Utah 2012, Chapter 399

30 ENACTS:

31 51-4-3, Utah Code Annotated 1953

32 59-1-1507, Utah Code Annotated 1953

33 59-1-1508, Utah Code Annotated 1953



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

36 Section 1. Section 51-4-3 is enacted to read:

37 **51-4-3. Specie legal tender exemption from chapter.**

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

39 Section 2. Section 51-7-2 is amended to read:

40 **51-7-2. Exemptions from chapter.**

41 The following funds are exempt from this chapter:

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

45 (2) funds of the Workers' Compensation Fund;

46 (3) funds of the Utah State Retirement Board;

47 (4) funds of the Utah Housing Corporation;

48 (5) endowment funds of higher education institutions;

49 (6) permanent and other land grant trust funds established pursuant to the Utah

50 Enabling Act and the Utah Constitution;

51 (7) the State Post-Retirement Benefits Trust Fund; [~~and~~]

52 (8) the funds of the Utah Educational Savings Plan[-]; and

53 (9) specie legal tender held pursuant to Section 59-1-1507.

54 Section 3. Section 59-1-1502 is amended to read:

55 **59-1-1502. Specie legal tender is legal tender in the state -- Person may not**
56 **compel another person to tender or accept specie legal tender -- Court or congressional**
57 **action to authorize gold or silver coin or bullion as legal tender.**

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

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

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

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

66 (b) Congress enacts legislation that:

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

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

71 Section 4. Section **59-1-1505** is amended to read:

72 **59-1-1505. Attorney general to enforce part -- Private right of action.**

73 (1) The attorney general shall enforce this part.

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

77 Section 5. Section **59-1-1507** is enacted to read:

78 **59-1-1507. Government specie legal tender holdings and transactions.**

79 (1) As used in this section, "government entity" means:

80 (a) the state;

81 (b) an administrative unit of the state;

82 (c) a political subdivision of the state;

83 (d) an administrative unit of a political subdivision of the state; or

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

85 (2) Subject to the other provisions of this section:

86 (a) a government entity may conduct transactions denominated in specie legal tender;

87 and

88 (b) a government entity may hold specie legal tender.

89 (3) A government entity may not accept specie legal tender before obtaining

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

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

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

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

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

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

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

103 **59-1-1508. Possessory action against fiduciary specie legal tender holdings.**

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

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

113 (3) This section does not apply when:

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

116 (b) the specie legal tender is subject to criminal forfeiture pursuant to Title 24, Chapter
117 1, Utah Uniform Forfeiture Procedures Act, as something of value furnished or intended to be
118 furnished in exchange for contraband, as defined in Section 24-1-3.

Legislative Review Note
as of 1-24-13 2:18 PM

Office of Legislative Research and General Counsel