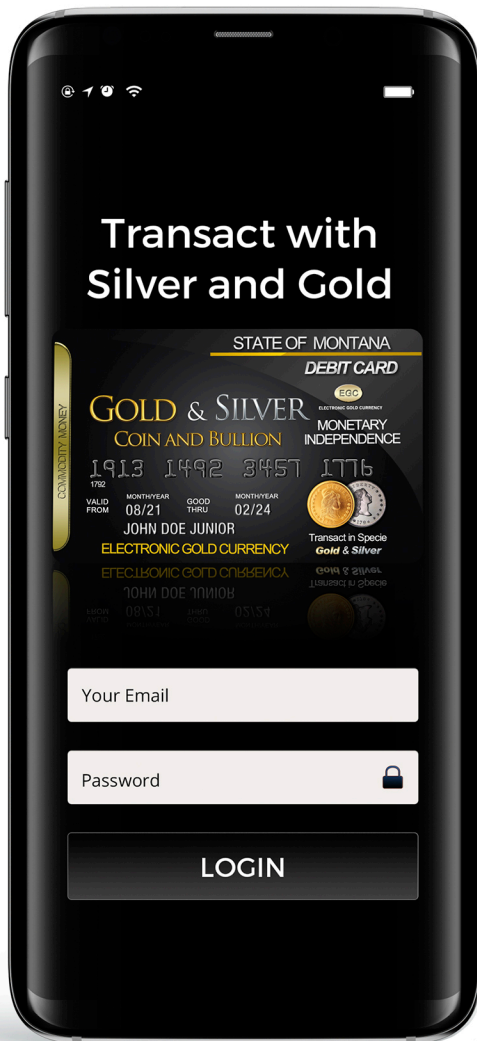




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STATE OF MONTANA HOUSE BILL NO. 639

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HOUSE BILL NO. 639

INTRODUCED BY B. WAGNER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE STATE OF MONTANA AND POLITICAL SUBDIVISIONS TO CONDUCT VARIOUS FINANCIAL TRANSACTIONS IN GOLD, GOLD AND SILVER COIN, ELECTRONIC GOLD CURRENCY, OR LEGAL TENDER OF THE UNITED STATES; ALLOWING CERTAIN PERSONS CONDUCTING VARIOUS FINANCIAL TRANSACTIONS WITH THE STATE OR POLITICAL SUBDIVISIONS TO CONDUCT THE TRANSACTIONS IN GOLD, GOLD AND SILVER COIN, ELECTRONIC GOLD CURRENCY, OR LEGAL TENDER OF THE UNITED STATES; REQUIRING THAT CERTAIN FINANCIAL TRANSACTIONS BETWEEN THE STATE AND OTHER PERSONS INVOLVING CERTAIN TAXES, FEES, AND CHARGES ON CIGARETTES AND TOBACCO PRODUCTS BE CONDUCTED IN ELECTRONIC GOLD CURRENCY; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES FOR THE ADMINISTRATION OF PAYMENT BY AND RECEIPT BY THE STATE AND POLITICAL SUBDIVISIONS IN GOLD, GOLD AND SILVER COIN, OR ELECTRONIC GOLD CURRENCY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 7-6-201, 7-6-2111, 7-6-2603, 7-6-4302, 17-1-111, 17-8-301, 17-8-304, AND 30-2-511, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Findings. The legislature of Montana finds and declares that:

(1) the absence of gold and silver coin, whether in that form or in the form of an electronic gold currency, as media of exchange between the state of Montana and the citizens, inhabitants, and businesses of Montana, in the exercise of the state's essential sovereign prerogatives, functions, rights, powers, privileges, and duties:

(a) abridges, infringes on, and interferes with the sovereignty and independence of this state and the citizens, inhabitants, and businesses of Montana and their rights, powers, privileges, immunities, and prerogatives as a political community recognized and guaranteed to them by the Montana constitution;

(b) exposes this state and Montana citizens, inhabitants, and businesses to chronic problems and potentially serious crises that may arise from the economic and political instability of the present domestic and international systems of coinage, currency, banking, and credit in which gold and silver have no effective role;

(c) exposes this state and Montana citizens, inhabitants, and businesses to the chronic depreciation of

media of exchange other than gold and silver, which losses in purchasing power amount to the incremental confiscation of their property without just compensation or due process as guaranteed by the fifth amendment to the United States constitution; and

(d) restricts the ability of this state and Montana citizens, inhabitants, and businesses to fulfill and enjoy the mandates and guarantees of the Montana constitution, to secure a sound economy, and to maintain a firm fiscal foundation for a policy and program of maintaining security within this state's boundaries and participating effectively in a national program of homeland security;

(2) in order to preserve the sovereignty and independence of this state and Montana citizens, inhabitants, and businesses and their rights, powers, privileges, immunities, and prerogatives as a political community, as well as to protect, provide for, and promote the people's safety, health, welfare, security, and economic prosperity, it is imperatively necessary and proper for the legislature to guarantee to and provide for this state a constitutional and economically sound media of exchange by exercising:

(a) this state's power, privilege, and duty to make "gold and silver coin a tender in payment of debts", as reserved to and required of each state under Article I, section 10, of the United States constitution and confirmed by the 10th amendment to the United States constitution; and

(b) other powers, reserved to this and every state by the 10th amendment to the United States constitution and to this state by the Montana constitution that relate to this state's choice of media of exchange for the fulfillment of Montana's essential sovereign functions.

NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 16], the following definitions apply:

(1) "Electronic gold currency" means a specifically defined amount of gold, measured in an electronic gold currency unit, that an electronic gold currency payment provider makes available to its customers as a medium of exchange.

(2) "Electronic gold currency account" or "account" means an account with an electronic gold currency payment provider in which the provider receives and maintains and from which the provider transfers electronic gold currency units on behalf of a customer.

(3) "Electronic gold currency payment provider" or "provider" means a person that:

(a) deals in an electronic gold currency; and

(b) provides all the services, performs all the functions, and meets all the standards set out in [sections

1 1 through 16].

2 (4) "Electronic gold currency unit" means a unit of monetary account that represents a customer's claim
3 of title and ownership to a specifically defined, fixed weight of gold that may be transferred among customers'
4 accounts maintained by an electronic gold currency payment provider.

5 (5) "Financial institution" means a bank, trust company, credit union, depository institution, and other
6 similar businesses and enterprises. A financial institution may function as an electronic gold currency payment
7 provider, an independent specie vault, or a specie exchange if it meets all the requirements of a provider, specie
8 vault, or specie exchange.

9 (6) "Fiscal officer" means the state treasurer or the chief financial officer of a political subdivision or any
10 official or employee of the state treasurer or of any political subdivision who exercises functionally equivalent
11 authority as the state treasurer or the chief financial officer of the political subdivision, as applicable.

12 (7) (a) "Gold and silver coin" means:

13 (i) gold coins, including:

14 (A) United States American eagle coins, of all denominations, minted pursuant to the Gold Bullion Coin
15 Act of 1985, Public Law 99-185;

16 (B) Austrian 100 and 20 corona, and 4 and 1 ducat;

17 (C) British sovereign;

18 (D) Canadian 1 and 1/10 maple leaf;

19 (E) French 20 franc;

20 (F) Mexican 50, 20, 10, 5, and 2.5 peso;

21 (G) south African 1, 1/2, 1/4, and 1/10 krugerrand; and

22 (H) Swiss 20 franc;

23 (ii) silver coins, including:

24 (A) United States dollars, so denominated and whenever minted, that were or are required by the
25 statutes authorizing their coinage to contain 371.25 grains (troy) of fine silver per dollar, as "dollar" is referred to
26 in Article I, section 9, of the United States constitution and the seventh amendment to the United States
27 constitution, the value of which was established in The Coinage Act of April 2, 1792, 1 Stat. 246;

28 (B) United States half dollars, quarter dollars, and dimes, denominated as half dollars, quarter dollars,
29 or dimes, whenever minted, that were or are required by the statutes authorizing their coinage to contain fine
30 silver in amounts proportionate to the constitutional silver dollar of 371.25 grains (troy) of fine silver per dollar;

(C) United States American eagle or liberty coins minted pursuant to the Liberty Coin Act of July 9, 1985, Public Law 99-61, 99 Stat. 113, 115; and

(D) Canadian maple leaf; and

(iii) any combination of gold and silver coin or of gold coin alone or of silver coin alone, as the context may require, indicate, or allow.

(b) The term does not include any gold or silver coin or any legal tender of the United States that has a recognized numismatic or collectors' character and value above its face or nominal value.

(8) "Independent specie vault", "specie vault", or "vault" means a person that is not affiliated with an electronic gold currency payment provider by common ownership, control, or operation that, pursuant to a contractual arrangement, performs for a provider the functions described in [section 5] and that may also provide the services of a specie exchange if the independent specie vault meets all of the requirements for each operation set out in [sections 1 through 16] for a specie exchange.

(9) (a) "Legal tender of the United States" means:

(i) all coins of the United States, whenever minted, that were or are required by the statutes authorizing their issuance to be composed of fine silver or fine gold to the extent of less than 85% or more, by weight;

(ii) all coins of the United States, whenever minted, that were or are required by the statutes authorizing their issuance to be composed solely of base metals; and

(iii) all paper currencies emitted by the United States or by any person or any other legally recognized entity acting under color of the laws of the United States, whenever issued, that are not in law guaranteed redeemable and in fact being redeemed, dollar for dollar, in gold and silver coin of the United States that were or are required by the statutes authorizing their issuance to be composed of fine silver or fine gold to the extent of 85% or more, by weight.

(b) The term does not include any gold and silver coin described in subsection (7)(b), notwithstanding that the coins may have been or are designated legal tender under the laws of the United States.

(10) "Person" has the meaning provided in 30-1-201.

(11) "Specie exchange" means any person that conducts the business of exchanging, in any combination, gold and silver coin, legal tender of the United States, and the electronic gold currency of an electronic gold currency payment provider for persons within the state of Montana, irrespective of where the exchange is legally organized or domiciled or maintains its principal place of business and recognizing that the same person may provide the services of both an electronic gold currency payment provider and a specie exchange if that person

meets all of the requirements for each operation as required in [sections 1 through 16].

(12) "State" means the state of Montana or a political subdivision, as defined in 7-7-109, whether incorporated or unincorporated, including all legislative, executive, judicial, and administrative branches, departments, tribunals, offices, agencies, and instrumentalities and all elected and appointed officials, employees, agents, and independent contractors acting in their official capacities or under color of law or public contract.

(13) "State treasurer" means the ex officio state treasurer provided for in 2-15-1002.

NEW SECTION. Section 3. Duties -- state treasurer -- fiscal officers. (1) In addition to other powers and duties granted and imposed by law, the state treasurer shall:

(a) designate one or more electronic gold currency payment providers as the state of Montana's electronic gold currency payment providers;

(b) maintain one or more electronic gold currency accounts with the designated electronic gold currency payment providers;

(c) conduct all monetary transactions of this state involving gold and silver in any form through the electronic gold currency accounts;

(d) require each person who deals with the state in monetary transactions involving gold and silver in any form to maintain at least one account with at least one designated electronic gold currency payment provider;

(e) adopt any rules necessary to implement [sections 1 through 16];

(f) prepare and distribute all necessary and appropriate forms, instructions, and other informational materials to educate persons as to their rights, duties, and options and to enable persons to pay to and receive from this state gold and silver in any form as required or allowed under [sections 1 through 16];

(g) report at least quarterly to the legislature and the governor with respect to receipts, deposits, disbursements, and other relevant information pertaining to monetary transactions involving gold and silver in any form;

(h) propose to the legislature any statutory revisions the state treasurer considers to be necessary for the implementation of [sections 1 through 16]; and

(i) advise any fiscal officer of a political subdivision who requests information or assistance with respect to the implementation of [sections 1 through 16] within the fiscal officer's jurisdiction.

(2) In addition to other powers and duties granted and imposed by law, a fiscal officer of a political subdivision shall:

1 (a) maintain one or more electronic gold currency accounts with one or more designated electronic gold
2 currency payment providers as necessary to implement [sections 1 through 16];

3 (b) conduct all monetary transactions within the fiscal officer's jurisdiction involving gold and silver in any
4 form through electronic gold currency accounts;

5 (c) require all persons who engage with political subdivisions in monetary transactions involving gold and
6 silver in any form to maintain at least one account with at least one designated electronic gold currency payment
7 provider;

8 (d) prepare and distribute all necessary and appropriate forms, instructions, and other informational
9 material to educate persons as to the persons' rights, duties, and options and to enable persons to pay to and
10 receive from the political subdivision gold and silver in any form as required or allowed under [sections 1 through
11 16]; and

12 (e) consult with the state treasurer on the most effective and efficient manner of implementing [sections
13 1 through 16] within the fiscal officer's jurisdiction.

14 (3) The state treasurer or a fiscal officer may not transact business with an electronic gold currency
15 payment provider that has not been designated by the state treasurer.
16

17 **NEW SECTION. Section 4. Electronic gold currency payment providers.** In order to qualify for or
18 maintain designation by the state treasurer under [section 3], an electronic gold currency payment provider shall:

19 (1) employ an electronic gold currency unit that constitutes a monetary unit of account and represents
20 a claim of title to and ownership of a specifically defined, fixed weight of gold held in allocated storage for
21 customers in and by an independent specie vault;

22 (2) designate receipts and holdings of gold in and transfer gold among the provider's customers'
23 electronic gold currency accounts only in the provider's electronic gold currency unit;

24 (3) provide one or more separate accounts for each customer. Each customer must be able to add
25 electronic gold currency units to the customer's accounts and to transfer the units among the customer's accounts
26 and other customers' accounts or to a specie exchange or a financial institution that associates or maintains one
27 or more accounts with the provider, as a customer may direct. The accounts must be accessible through the
28 internet, and a customer must be able to transact business involving the accounts through the internet.

29 (4) maintain a secure electronic database that records and makes available for each customer's review
30 the individual and combined transactions made in the customer's accounts upon the completion of each

1 transaction and the number of electronic gold currency units credited to and available for the customer's use in
2 the accounts following each transaction. The database must be managed by a person that is not affiliated by
3 common ownership, control, or operation with the provider but that pursuant to a contractual arrangement
4 performs for the provider data processing services, including a report to be delivered at least quarterly that
5 specifies the number of electronic gold currency units in each customer's accounts and the total number of units
6 in all customers' accounts.

7 (5) act as agent on behalf of the provider's customers to arrange and maintain safekeeping of the gold,
8 represented by the electronic gold currency units recorded in each customer's accounts, in specifically allocated
9 storage in and by an independent specie vault, on principles of bailment. Each of the provider's customers always
10 retains title to and ownership of all the gold that is recorded and maintained in each customer's accounts, subject
11 only to claims that the electronic gold currency payment provider, the independent specie vault, or both, may bring
12 against the customer for fees owed but not paid.

13 (6) have a mutual, explicit, and contractually enforceable policy and agreement with each independent
14 specie vault with which the provider associates:

15 (a) reserving to the provider a right, through auditors, accountants, or others whom the provider
16 designates, to inspect the vault at any reasonable time, with or without prior notice, in order to verify that the vault
17 maintains in its possession and subject to its control all of the gold represented by the electronic gold currency
18 units recorded in all of the accounts of the provider's customers; and

19 (b) requiring return by the vault, if the provider for any reason ceases operations, of the full free market
20 value of all the gold of the provider's customers, in bars of good delivery gold of designated weights, in legal
21 tender of the United States where the weight of gold to be delivered does not reach the designated amount, or
22 in both;

23 (7) associate with or provide the services of a specie exchange so that the provider's customers may,
24 on demand, convert:

25 (a) gold and silver coin into electronic gold currency units or legal tender of the United States;

26 (b) electronic gold currency units into gold and silver coin or legal tender of the United States;

27 (c) legal tender of the United States into the gold and silver coin or electronic gold currency units;

28 (8) annually subject all of the provider's policies, systems, and operations to an independent third-party
29 systems audit or equivalent review and provide a certified copy of the report of the audit to the state treasurer;
30 and

(9) certify to the state treasurer that none of the provider's directors, officers, partners, or trustees or the chief executive or any operating personnel have ever been convicted of a felony, have ever been subject to a civil judgment for fraud or deceit, or have ever declared personal bankruptcy. If a provider employs an individual listed in this subsection (9) in any capacity or makes a materially false representation regarding an individual or an individual's legal history, the provider is subject to automatic disqualification as one of the state's electronic gold currency payment providers.

NEW SECTION. Section 5. Independent specie vault -- qualifications. In order to qualify to perform safekeeping services for an electronic gold currency payment provider designated by the state treasurer pursuant to [section 3], an independent specie vault:

(1) shall hold all gold for each customer of the provider in specifically allocated storage in a secure, bank-like vault or other secure facility;

(2) must be adequately insured, under rules adopted by the state treasurer;

(3) may not be affiliated through common ownership, control, or operation with any provider for which the independent specie vault performs the function of safekeeping and storing gold for the provider's customers;

(4) shall, for the purpose of increasing or decreasing the amounts of gold physically held in and by the independent specie vault, pursuant to transfers made to or on behalf of customers of the providers for which the vault performs the function of safekeeping and storing gold, associate with a specie exchange or other person that:

(a) regularly deals in the physical transfer of gold among private businesses or governmental agencies;

(b) is adequately insured, under rules adopted by the state treasurer; and

(c) is not affiliated through common ownership, control, or operation with the vault or any provider for which the vault performs the function of safekeeping and storing gold for the provider's customers;

(5) shall report at least quarterly to each provider for which the independent specie vault performs the function of safekeeping and storing gold for the provider's customers and certify:

(a) the weight of gold and number of electronic gold currency units held in and by the vault on behalf of each customer of each provider; and

(b) that the total weight of gold held in and by the vault on behalf of all the customers of each provider is at least equal to the total weight of gold represented by each of the provider's electronic gold currency units in circulation as media of exchange in all the customers' accounts at the time the report is prepared; and

(6) must have a mutual, explicit, and contractually enforceable policy and agreement with each provider for which the vault performs the function of safekeeping and storing gold in bailment on behalf of the provider's customers, for return of the full free market value of the customers' gold held in and by the vault, in bars of good delivery gold of designated weights, in legal tender of the United States if the weight of gold to be delivered does not reach the designated amount, or in both, if the customers' provider for any reason ceases operations.

NEW SECTION. Section 6. Specie exchange -- qualifications. (1) A person qualifies as a specie exchange if the person conducts the business of exchanging gold and silver coin, legal tender of the United States, and the electronic gold currency of an electronic gold currency payment provider in a manner that allows another person who chooses to deal in gold and silver with the state pursuant to [sections 1 through 16] to:

(a) bring gold and silver coin or legal tender of the United States, in any combination, to the specie exchange for the purpose of obtaining the free market value of the gold and silver coin or legal tender of the United States in an electronic gold currency;

(b) bring electronic gold currency to the exchange for the purpose of obtaining the free market value of the electronic gold currency in gold and silver coin or legal tender of the United States;

(c) bring electronic gold currency to the exchange for the purpose of obtaining the free market value of the electronic gold currency in an alternate electronic gold currency; or

(d) perform any combination of the exchanges described in subsections (1)(a) through (1)(c) in any of the media of exchange described in subsections (1)(a) through (1)(c).

(2) The person functioning as a specie exchange may charge a fee for performing the function.

(3) In order for a person to be designated by the state treasurer as an electronic gold currency payment provider pursuant to [section 3], the provider shall associate with a specie exchange that meets the requirements of subsection (1) of this section.

NEW SECTION. Section 7. Use of gold and silver -- in general. Except as otherwise provided in [sections 1 through 16], the state may not require but shall allow a person to recognize, receive, pay out, deliver, promise to pay, or otherwise use or employ gold and silver coin or electronic gold currency as media of exchange with respect to:

(1) the calculation and payment of any tax or other involuntary contribution, charge, assessment, fee, fine, or monetary penalty imposed by this state;

(2) the principal and interest of any loan, however denominated or evidenced, made to and on the credit of this state;

(3) the purchase or sale by this state of any land, real estate, building, tangible or intangible personal property, asset, legal or equitable right, easement, interest, or other thing of value, regardless of type or description;

(4) any monetary award or agreement in respect of the taking or transfer of private property pursuant to the exercise of the power of eminent domain by this state or by any person authorized by the laws of this state to exercise the power of eminent domain;

(5) any judgment, decree, or order of any court, administrative agency, or other tribunal of this state unless the court, agency, or tribunal finds, on the basis of clear and convincing evidence, that payment of gold and silver coin or electronic gold currency does not constitute just compensation for the damages or harm suffered by the prevailing party. If the court, agency, or tribunal finds that a payment of gold and silver coin or electronic gold currency is not just compensation, the court, agency, or tribunal shall require:

(a) specific performance of the contract or other agreement then before the court, agency, or tribunal by other than the payment of money;

(b) specific restitution of property other than money;

(c) payment of some medium of exchange other than gold and silver coin, pursuant to a requirement for the payment in a contract or other agreement then before the court, agency, or tribunal; or

(d) other relief, similar to the relief described in subsection (5)(a) through (5)(c).

(6) a contract, agreement, or other arrangement for the payment of wages, salary, fees, or other monetary compensation to any person that has provided or will provide goods or services to this state or that is entitled to payment from this state as an officer, employee, agent, or contractor of this state or in any other capacity;

(7) any tax, loan, sale, purchase, award in eminent domain, judgment, contract, or other agreement that was imposed, made, or became payable before [the applicability date of this section] in a specific medium of payment other than gold and silver coin or electronic gold currency unless the tax, loan, sale, purchase, award in eminent domain, judgment, contract, or other agreement designated or reasonably contemplated, explicitly or implicitly, the medium of exchange to be gold and silver coin or electronic gold currency at the time the tax was imposed, the loan, contract, or other agreement was made or became payable, the sale or purchase occurred, or the award or judgment was handed down.

1
2 **NEW SECTION. Section 8. Use of gold and silver -- cigarette and tobacco products taxes -- other**
3 **taxes or charges.** (1) All payments to the state required under Title 16, chapter 11, must be made in electronic
4 gold currency units at the free market rate of exchange, as of the time of payment, between the electronic gold
5 currency units and the amounts of legal tender of the United States, including license fees on or for cigarettes
6 or other tobacco products, cigarette taxes, taxes on other tobacco products, payments for any type of stamps or
7 insignia on cigarettes or other tobacco products, prepayments or bonds on metering machines for cigarettes or
8 other tobacco products, payments for cigarettes or tobacco products that are unstamped or without insignia, fines
9 with respect to machines that vend cigarettes or other tobacco products, additions to taxes on cigarettes or other
10 tobacco products, and fines for violations of federal requirements regarding cigarettes or other tobacco products.

11 (2) With respect to cigarettes or other tobacco products, redemptions of stamps or refunds may be made
12 only in electronic gold currency units.

13 (3) With respect to any other tax or involuntary contribution, charge, assessment, fee, fine, or other
14 monetary penalty imposed by this state:

15 (a) the monetary amount of a tax or involuntary contribution, charge, assessment, fee, fine, or other
16 monetary penalty must be calculated in legal tender of the United States by the state or by the person liable for
17 the monetary amount;

18 (b) the person liable for payment of the amount may deliver to this state and the state shall accept as
19 payment either:

20 (i) legal tender of the United States in the amount due; or

21 (ii) electronic gold currency plus, at the time of payment, legal tender of the United States that will, when
22 added together, equal the amount due as determined in subsection (3)(a).

23 (4) The state treasurer and every other fiscal officer shall maintain a list of each person who makes a
24 payment and the amounts of the person's payments under subsection (1) for the purpose of allotting preferences
25 pursuant to [section 15].
26

27 **NEW SECTION. Section 9. Use of gold and silver -- loans -- bonds -- notes.** (1) With respect to all
28 loans, whether denominated as bonds, notes, or otherwise and however evidenced, made to and on the credit
29 of this state, the state shall determine and certify the amount to be borrowed in both legal tender of the United
30 States and in the equivalent value in electronic gold currency.

(2) When certifying the amounts determined pursuant to subsection (1), the particular rate or amount of interest to be paid, the premium or discount, if any, to be paid, and the maturity date of the loan, the lender has the option to deliver to the state the certified amount of either legal tender of the United States or electronic gold currency and the delivery designates and fixes the medium of payment of principal and interest, the rate or amount of interest, the premium or discount, if any, and the maturity date on the loan.

(3) The designation of the medium of payment of principal and interest, the rate or amount of interest, the premium or discount, if any, and the maturity date is considered to be a pledge of the full faith and credit of the state and binds the state as a contract, the obligation of which is protected against any impairment by Article I, section 10, of the United States constitution. The designation of the medium of payment requires, upon the loan's maturity, the delivery of the full amount of payment of principal and interest of the loan in the medium specified to the lender. A loan made in legal tender of the United States must be repaid in legal tender of the United States, and a loan made in electronic gold currency must be repaid in electronic gold currency. A loan may be made redeemable before maturity as authorized in law, provided that the terms and conditions for the early redemption specify payment in legal tender of the United States or electronic gold currency, according to the original legal guarantee of the loan.

(4) The requirements and procedures established in this section must be employed with respect to the refunding of bonds as authorized by law.

(5) (a) The requirements and procedures established in this section must be employed with respect to the issuance of revenue bonds as otherwise authorized by law.

(b) A revenue bond payable in electronic gold currency may not be issued unless:

(i) the revenue derived from the facilities to be funded by the revenue bond is to be paid in electronic gold currency; or

(ii) the revenue bond refunds an outstanding bond, the principal of which was used for facilities the revenue from which is paid in electronic gold currency.

NEW SECTION. Section 10. Use of gold and silver -- purchase or sale of property by state. (1)

The provisions of subsections (2) through (4) apply to the purchase or sale by this state of real property, a building, tangible or intangible personal property, any other asset, property, or thing of value, or any legal or equitable right, easement, or other interest of any type or description.

(2) At the time of sale or purchase, the state shall determine and certify the price of the thing to be sold

or purchased in both legal tender of the United States and electronic gold currency.

(3) (a) The purchaser of the thing to be sold by the state may deliver to the state and the state must receive from the purchaser in payment either legal tender of the United States or electronic gold currency.

(b) The seller of the thing to be purchased by the state may receive from the state and the state shall deliver to the seller in payment either legal tender of the United States or electronic gold currency.

(4) The state treasurer and every other fiscal officer shall maintain a list of each person who makes and the amount of the person's payments to the state in electronic gold currency under subsection (3) for the purpose of allotting preferences pursuant to [section 15].

NEW SECTION. Section 11. Use of gold and silver -- taking of private property. (1) Any monetary award or agreement arising out of a taking of private property pursuant to the exercise of the power of eminent domain by this state or by any person or entity authorized by the laws of this state to exercise the power of eminent domain is subject to the provisions of subsections (2) and (3).

(2) The state shall determine and certify the amount of any award or agreement in both legal tender of the United States and electronic gold currency.

(3) The person whose property has been or will be taken has the option to accept in payment for the property either legal tender of the United States or electronic gold currency.

NEW SECTION. Section 12. Use of gold and silver -- damages -- fines -- penalties. (1) Except as otherwise provided in [sections 1 through 16], a judgment, decree, or order of a court, administrative agency, or other tribunal of this state, whether arising in a civil action or proceeding or a criminal prosecution, that specifies, imposes, enforces, or otherwise involves monetary damages or an award or payment or a fine, penalty, or other monetary forfeiture is subject to the provisions of subsection (2).

(2) The state shall determine and certify the amount of the monetary damages, award, payment, fine, penalty, or other monetary forfeiture in both legal tender of the United States and electronic gold currency as follows:

(a) in a civil case, the person in the position of judgment creditor may stipulate with the person in the position of judgment debtor to receive and to pay, respectively, the amount of any monetary damages, award, payment, fine, penalty, or other monetary forfeiture, including any award of attorney fees, in either legal tender of the United States or electronic gold currency. The stipulation must be specifically enforced by the state as a

1 contract, the obligation of which is protected against any impairment by Article I, section 10, of the United States
2 constitution and Article II, section 31, of the Montana constitution. In the absence of a stipulation, the state shall
3 require the person in the position of judgment debtor to pay to the person in the position of judgment creditor the
4 latter's choice of medium of exchange.

5 (b) in a criminal case, in a case involving contempt of court or violation of court rules, and in all other
6 cases in which this state is legally entitled to receive a payment for its own account, the person against whom
7 monetary damages or an award, payment, fine, penalty, or other monetary forfeiture is assessed shall pay the
8 amount of the monetary damages, award, payment, fine, penalty, or other monetary forfeiture in electronic gold
9 currency.

10
11 **NEW SECTION. Section 13. Use of gold and silver -- contracts -- wages -- fees.** (1) A contract,
12 agreement, or other arrangement for the payment of wages, salary, fees, or other monetary compensation to any
13 person that provides goods or services to or is otherwise entitled to payment from this state is subject to the
14 provisions of subsections (2) through (5).

15 (2) The state shall determine and certify the amount of the monetary compensation in both legal tender
16 of the United States and electronic gold currency.

17 (3) If the state is required to withhold from compensation paid pursuant to this section and to pay over
18 to the United States, this state, or any agency or instrumentality of the United States or this state any percentage,
19 portion, fraction, or other amount of the compensation in the form of taxes or other charges, the amounts must
20 be paid in legal tender of the United States unless the person entitled to the payment elects to receive payment
21 in electronic gold currency pursuant to subsection (4).

22 (4) The person entitled to receive the monetary compensation has the option to stipulate for and receive
23 in either legal tender of the United States or electronic gold currency the net amount remaining after any
24 deductions made pursuant to subsection (3). The state shall specifically enforce the stipulation as a contract, the
25 obligation of which is protected against any impairment by Article I, section 10, of the United States constitution
26 and Article II, section 31, of the Montana constitution.

27 (5) In the case of monetary compensation to be paid by the state on a regular schedule as salary, wages,
28 or portions of contractual prices or on any other continuous, routine, or frequent basis, a person entitled to the
29 compensation may stipulate to receive either legal tender of the United States or a designated electronic gold
30 currency for all future payments until that person alters the stipulation.

1
2 **NEW SECTION. Section 14. Medium of payment -- notification of choice -- failure to notify.** With
3 respect to any transaction effected pursuant to [sections 1 through 16], each person shall notify the state or the
4 appropriate political subdivision in a timely manner, pursuant to rules adopted by the state treasurer, of that
5 person's election to receive or to pay a designated electronic gold currency in lieu of legal tender of the United
6 States. If the person does not provide timely notification as required by this section, the medium of exchange for
7 any transaction is legal tender of the United States.

8
9 **NEW SECTION. Section 15. Gold and silver -- limitations-- preferences for payments -- fiscal**
10 **officers' discretion.** (1) Except with respect to loans, bonds, or notes the payment of which is designated in
11 gold pursuant to [section 9], a person may not pay or promise to pay out on behalf of the state any gold in excess
12 of the gold held in the state's accounts with electronic gold currency payment providers at the time of payment.

13 (2) If the amount of gold held in the state's accounts with electronic gold currency payment providers is
14 insufficient for the state to make any payment allowable under [sections 1 through 16], the payment must be
15 made in legal tender of the United States. If the gold necessary for full payment is unavailable at the time a
16 person requests payment to be made in gold, the payment in gold may not be deferred or rescheduled to a future
17 date at which time sufficient gold may be available, but the fiscal officer shall proceed pursuant to subsections
18 (3) through (5).

19 (3) If the amount of gold held in the state's accounts with electronic gold currency payment providers is
20 insufficient for the state treasurer or another fiscal officer to make payments allowable or required under [sections
21 1 through 16] to two or more persons demanding payment in gold, but the amount of gold held in the state's
22 accounts is insufficient to pay one or more payees, the payees have priority on the following bases:

23 (a) each person who has paid gold to the state during the then-current fiscal year, under [section 8(3)
24 or 10(3)(a)], or both, must be paid in preference to persons who have not made the payments in gold;

25 (b) among the persons described in subsection (3)(a) who have paid in gold, those who have paid larger
26 amounts of gold must be paid in preference to those who have paid smaller amounts of gold; and

27 (c) among persons described in subsection (3)(a) who have paid in gold in equal amounts, preference
28 is according to the time of the payments.

29 (4) With respect to loans, bonds, or notes, the payment of which is designated in gold pursuant to
30 [section 9], if the amount of gold held in the state's accounts with electronic gold currency payment providers is

insufficient to pay the indebtedness as it accrues, the state treasurer or fiscal officer responsible for payment may convert any other monetary assets available to the state treasurer or fiscal officer into the required amounts of electronic gold currency.

(5) The state treasurer or a fiscal officer responsible for payment of any public indebtedness in the state in Montana:

(a) may convert any other monetary assets available to the state treasurer or fiscal officer into electronic gold currency:

(i) to be held for reserve or investment purposes;

(ii) to redeem or refund the purchase price of tobacco tax stamps required to be paid in gold, pursuant to [section 8]; or

(iii) to meet any other demands from persons for payment in gold, pursuant to [sections 1 through 16], as the demand arises, whenever the demand exceeds the amount of electronic gold currency paid to and held by the state; and

(b) may convert electronic gold currency into legal tender of the United States, to be used for any lawful purpose, but at all times shall maintain the ability to immediately reacquire the amount of electronic gold currency to meet the demand for payment in gold pursuant to [sections 1 through 16], as the demand arises and to the extent of the amount of electronic gold currency converted.

NEW SECTION. Section 16. Enforcement -- inaccurate exchange rate. (1) If the exchange rate between legal tender of the United States and a designated electronic gold currency that affects any right, power, privilege, or immunity secured under [sections 1 through 16] is determined inaccurately, the provisions of subsections (2) through (5) apply.

(2) A person aggrieved by an alleged inaccurate determination of the exchange rate may bring a civil action in district court against each person allegedly responsible for the inaccurate determination. The action may be brought against each person allegedly responsible in both the person's official and individual capacities, for any and all appropriate forms of relief, including monetary damages. In an action brought under this subsection, a defense of immunity is not allowed.

(3) In a civil or criminal case in which a person aggrieved by an alleged inaccurate determination of the exchange rate is made a defendant, the inaccurate determination may be raised, whenever relevant, by way of defense, counterclaim, setoff, or other pleading.

(4) If the issue of an alleged inaccurate determination of the exchange rate is dismissed with prejudice, decided by summary judgment, heard and decided on the merits, or decided on appeal, reasonable attorney fees must be awarded to the prevailing party for litigation of the issue.

(5) A penalty of 6 months imprisonment and a fine equal to the value of \$1,000, payable in electronic gold currency, is imposed on a person who by a false statement or by any other device, artifice, or means, whether in isolation or in any combination:

(a) knowingly determined inaccurately the rate of exchange between legal tender of the United States and electronic gold currency;

(b) advised or participated in the knowing inaccurate determination of the rate of exchange between legal tender of the United States and electronic gold currency; or

(c) acted in concert to, conspired to, aided to, abetted to, or attempted to conceal, withhold, destroy, or falsify records relating to the knowing inaccurate determination of the rate of exchange between legal tender of the United States and electronic gold currency.

Section 17. Section 7-6-201, MCA, is amended to read:

"7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, and subsection (5) of this section, it shall be the duty of all county and city treasurers and town clerks ~~to shall~~ deposit all public money in their possession and under their control in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in the county, city, or town of which ~~such the~~ treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, ~~and no other~~.

(2) ~~Said Except as provided in subsection (5), the local governing body is hereby authorized to deposit such may deposit~~ public money not necessary for immediate use by ~~such the~~ county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized ~~above in subsection (1)~~ or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from ~~such the~~ bank, building and loan association, savings and loan association, or credit union ~~such security as the local governing body may prescribe, approve, and deem fully sufficient and considers~~ necessary to ~~insure ensure~~ the safety and prompt payment of all ~~such~~ deposits, together with the interest on any time or savings deposits.

(4) All ~~such~~ deposits ~~shall be~~ are subject to withdrawal by the treasurer or town clerk in ~~such amounts~~

1 ~~as may be necessary from time to time the amount considered by the treasurer or town clerk to be necessary and~~
2 ~~timely. No~~ A deposit of funds ~~shall be~~ may not be made or permitted to remain in any bank, building and loan
3 association, savings and loan association, or credit union until the security for ~~such the~~ deposits ~~shall have been~~
4 ~~first~~ has been approved by the local governing body and delivered to the treasurer or town clerk.

5 (5) Public money received in the form of gold and silver coin or electronic gold currency must be
6 deposited with an electronic gold currency payment provider or in an independent specie vault or specie
7 exchange. For the purposes of this section, the terms "gold and silver coin", "electronic gold currency",
8 "electronic gold currency payment provider", "independent specie vault", and "specie exchange" have the
9 meanings provided in [section 2]."

10
11 **Section 18.** Section 7-6-2111, MCA, is amended to read:

12 **"7-6-2111. Duties of county treasurer.** The county treasurer shall:

13 (1) receive all money belonging to the county and all other money directed to be paid to the treasurer
14 by law, safely keep the money, apply and pay the money out, and account for the money as required by law;

15 (2) keep an account of the receipt and expenditures of the money in books provided for the purpose, in
16 which must be entered:

17 (a) the amount and the time when, from whom, and on what account all money was received;

18 (b) the amount and time when, to whom, and on what account all disbursements were made;

19 (3) keep books so that the amounts received and paid out on account of separate funds or specific
20 appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown
21 in one general or cash account;

22 (4) disburse the county money only on county warrants issued by the county clerk, based on orders of
23 the board of county commissioners, or as otherwise provided by law.

24 (5) As used in this section, the term "money" includes gold and silver coin and electronic gold currency
25 as those terms are defined in [section 2]."

26
27 **Section 19.** Section 7-6-2603, MCA, is amended to read:

28 **"7-6-2603. Registration of warrants.** (1) ~~If~~ Except as provided in [section 15], if the fund is insufficient
29 to pay a warrant, ~~it~~ the warrant must be registered and paid in the order of its registration.

30 (2) The county treasurer may not register any county order or warrant in the name of any person other

1 than the payee except at the request of the payee or the payee's agent, assignee, or legal representative, whose
2 authority must be produced to the treasurer in writing."

3
4 **Section 20.** Section 7-6-4302, MCA, is amended to read:

5 **"7-6-4302. Payment of claims by warrant or check.** (1) All accounts and demands against a city or
6 town must be submitted to the council and, if found correct, must be allowed and an order must be made that the
7 demand be paid. The demand must be paid in accordance with one of the following options:

8 ~~(1)~~(a) The mayor may draw a warrant upon the treasury in favor of the owner, specifying for what
9 purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk
10 shall pay the warrant out of the proper fund.

11 ~~(2)~~(b) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds
12 on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the
13 check.

14 (2) Subject to the provisions of [sections 1 through 16], payment may be made by gold and silver coin
15 or electronic gold currency, as those terms are defined in [section 2]."

16
17 **Section 21.** Section 17-1-111, MCA, is amended to read:

18 **"17-1-111. General fiscal duties of state treasurer.** (1) The state treasurer is the custodian of all
19 money and securities of the state unless otherwise expressly provided by law.

20 (2) It is the duty of the state treasurer to:

21 (a) receive and account for all money belonging to the state, not expressly required by law to be received
22 and kept by some other person;

23 (b) pay warrants out of the funds upon which they are drawn;

24 (c) upon payment of any warrant, record the receipt of the person to whom it is paid;

25 (d) keep an account of all money received and disbursed;

26 (e) at the request of either house of the legislature or of any legislative committee, give information in
27 writing as to the condition of the treasury or on any subject relating to the duties of the office of state treasurer;

28 (f) superintend the fiscal concerns of the state;

29 (g) suggest plans for the improvement and management of the public revenue;

30 (h) keep an account of all warrants drawn upon the treasury and of other appropriation records that the

1 treasurer determines to be essential for the support of the accounting records maintained in the department;
2 (i) keep a register of warrants, showing the fund upon which each warrant is drawn, each warrant's
3 number, who received the warrant, and the date issued;
4 (j) require all persons who have received money belonging to the state but who have not accounted for
5 it to settle their accounts;
6 (k) draw warrants on the state treasury for the payment of money directed by law to be paid out of the
7 treasury, except that a warrant may not be drawn unless authorized by law;
8 (l) authenticate with the official seal of the state all warrants drawn and all copies of papers issued from
9 the office of state treasurer;
10 (m) collect and pay into the state treasury all fees received; ~~and~~
11 (n) discharge other duties as may be imposed upon the state treasurer by law; ~~and~~
12 (o) provide information through the state's official internet website detailing how donations can be made
13 to the state general fund or to any function of state government; and
14 (p) designate one or more electronic gold currency payment providers, independent specie vaults, and
15 specie exchanges, as those terms are defined in [section 2]."
16

17 **Section 22.** Section 17-8-301, MCA, is amended to read:

18 **"17-8-301. State money -- how expended by treasurer.** (1) Except as provided in this section, money
19 received by the state treasurer may not be paid out except upon a state warrant issued by the treasurer or on
20 electronic funds transfer authorized by the state treasurer. The state treasurer may not issue a warrant or
21 authorize an electronic funds transfer upon the state treasury except upon a claim approved by the department
22 of administration in accordance with the laws governing the expenditure of state money. However, interest and
23 principal on the public debt may be paid by treasurer's check from the money pledged for payment, and the
24 provisions of this section do not apply to warrants issued upon contingent revolving accounts that are in the
25 custody of the state treasurer.

26 (2) (a) As used in 2-18-405 and this section, "electronic funds transfer" means any transfer of funds,
27 other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an
28 electronic terminal, telephonic instrument, computer, or magnetic tape and that orders, instructs, or authorizes
29 the state treasurer to debit or credit an account.

30 (b) As used in this section, money includes gold and silver coin and electronic gold currency as those

1 terms are defined in [section 2]."

2

3 **Section 23.** Section 17-8-304, MCA, is amended to read:

4 **"17-8-304. Payment and registry.** (1) ~~(a) The~~ Except as provided in subsection (2), the state treasurer
5 shall, on the presentation of state warrants regularly issued, pay the warrants out of any funds available for the
6 payments, ~~and in the event that there are no~~

7 (b) Except as provided in subsection (2), if the amount of funds available for the payment to pay the
8 warrant is insufficient, the treasurer shall register each warrant in a book or register to be kept for that purpose,
9 entering the date of issue, date of registration, name in whose favor of the person for whom the warrant is drawn,
10 and the number and amount of the warrant, and Following registration as provided in this subsection (1)(b), the
11 treasurer shall endorse on the face of each warrant registered, on its face, "presented for payment and not paid
12 for want of funds and registered in this office this day of", inserting the date of registration. The treasurer
13 shall sign the book or register. All warrants must be redeemed and paid in the order of their registration.

14 (2) (a) The treasurer shall pay a regularly issued state warrant that is payable in electronic gold currency
15 as provided for in [section 15].

16 (b) If a registered warrant is payable in electronic gold currency, as defined in [section 2], but the amount
17 of electronic gold currency to which the treasurer has access is insufficient to pay the warrant, the treasurer shall
18 follow the process provided for in [section 15].

19 ~~(2)(3)~~ This Except as provided in [sections 1 through 16], this section does not apply to any warrants
20 issued on account of any land grant fund or by virtue of any special act authorizing the issuance of warrants."

21

22 **Section 24.** Section 30-2-511, MCA, is amended to read:

23 **"30-2-511. Tender of payment by buyer -- payment by check.** (1) Unless otherwise agreed, tender
24 of payment is a condition to the seller's duty to tender and complete any delivery.

25 (2) ~~Tender~~ Except as provided in [sections 1 through 16], tender of payment is sufficient when made by
26 any means or in any manner current in the ordinary course of business unless the seller demands payment in
27 legal tender and gives ~~any~~ an extension of time reasonably necessary to procure it.

28 (3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-310),
29 payment by check is conditional and is defeated as between the parties by dishonor of the check on due
30 presentment."

1
2 **NEW SECTION.** **Section 25. Appropriation.** (1) There is appropriated \$25,000 from the state general
3 fund to the department of administration for the purposes of implementing [sections 1 through 16].

4 (2) The appropriation provided in subsection (1) is a biennial appropriation.
5

6 **NEW SECTION.** **Section 26. Codification instruction.** [Sections 1 through 16] are intended to be
7 codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [sections 1
8 through 16].
9

10 **NEW SECTION.** **Section 27. Effective date.** [This act] is effective July 1, 2009.
11

12 **NEW SECTION.** **Section 28. Applicability.** (1) Except as provided in subsection (2), [this act] applies
13 6 months after the state treasurer first designates an electronic gold currency payment provider as one of the
14 state of Montana's electronic gold currency payment providers pursuant to [section 3(1)(a)]

15 (2) [Sections 1 through 6] apply on [the effective date of this act].
16

- END -