

HOUSE BILL No. 2729

By Representatives Murphy, Bryce, Buehler, Clifford, Corbet, Eplee, Fairchild, Garber, Helgerson, Hill, Hoffman, Houser, Howe, Jacobs, Mason, Poetter Parshall, Probst, Sanders, Schmoe, C. Smith, Sutton, Tarwater, Thomas, Turk, Waggoner, Wasinger and White

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1 AN ACT concerning precious metals; relating to gold and silver bullion
2 and specie; enacting the Kansas specie legal tender act; providing that
3 gold and silver specie is legal tender; authorizing the state treasurer to
4 adopt rules and regulations allowing the use of approved electronic
5 currencies backed by specie legal tender; enacting the Kansas bullion
6 depository act; authorizing the state treasurer to establish, administer or
7 contract for the administration of bullion depositories; allowing state
8 moneys to be deposited in such bullion depositories and invested in
9 specie legal tender; amending K.S.A. 2023 Supp. 75-4209 and
10 repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. The provisions of sections 1 through 6, and
14 amendments thereto, shall be known and may be cited as the Kansas
15 specie legal tender act.

16 New Sec. 2. As used in the Kansas specie legal tender act:

17 (a) "Act" means the Kansas specie legal tender act.

18 (b) "Approved currency" means an electronic currency approved by
19 the state treasurer for use as a valid form of payment within Kansas in
20 accordance with section 5, and amendments thereto.

21 (c) "Bullion" means refined gold or silver in any shape or form with
22 uniform content and purity, including, but not limited to, coins, rounds,
23 bars, ingots or any other product that is:

24 (1) Stamped or imprinted with the weight and purity of the gold or
25 silver that it contains; and

26 (2) valued primarily based on its metal content and not on its form
27 and function.

28 (d) "Electronic currency" means a representation of actual precious
29 metals, specie or bullion held in a depository account that may be
30 transferred by electronic instruction. Such representation shall reflect the
31 exact units of physical precious metals, specie or bullion in such
32 depository account in its fractional troy ounce measurement as provided in
33 this act.

34 (e) "Specie legal tender" means gold or silver coin or bullion,

1 including, but not limited to, gold or silver coin issued by the United
2 States.

3 New Sec. 3. (a) Specie legal tender shall be legal tender in the state.

4 (b) The exchange of one type of specie legal tender for another type
5 of legal tender shall not give rise to any tax liability except for taxable
6 distributions from any retirement plan account that holds specie.

7 (c) Except as expressly provided by contract, a person shall not
8 compel another person to tender or accept specie as legal tender.

9 (d) Specie legal tender may be recognized to pay private debts, taxes
10 and fees levied by the state or any political subdivision thereof.

11 (e) Nothing shall preclude the use of specie legal tender for the
12 issuance or repayment of any bond, surety or other debt obligation
13 authorized or required by law if permitted by the resolution or agreement
14 securing such bond, surety or other debt obligation.

15 (f) If a valid and enforceable contract expressly designates a type of
16 specie as legal tender, the court that is asked to adjudicate a breach of such
17 contract shall require, as a remedy for a breach, the specific performance
18 of tendering the type of specie specified in such contract.

19 New Sec. 4. (a) No bullion shall be characterized as personal property
20 for taxation or regulatory purposes.

21 (b) The purchase or sale of any type or form of bullion shall not give
22 rise to any tax liability.

23 New Sec. 5. (a) Subject to the requirements of this section, the state
24 treasurer shall adopt rules and regulations to approve and allow the use of
25 one or more electronic currencies as a valid form of payment within the
26 state. Such approved currency shall be legal tender in the state.

27 (b) Such rules and regulations shall:

28 (1) Ensure an approved currency is:

29 (A) Administered by a vendor selected in accordance with the
30 provisions of K.S.A. 75-3739, and amendments thereto; and

31 (B) backed by specie legal tender so that each unit of such approved
32 currency represents a fraction of specie legal tender by weight;

33 (2) ensure that specie legal tender described in paragraph (1)(B) is:

34 (A) Deposited in a secure vault located within the state and approved
35 by the state treasurer; and

36 (B) directly allocated to and held for the benefit of any person
37 holding the approved currency;

38 (3) ensure that a vault described in paragraph (2)(A) is subject to:

39 (A) Security and insurance requirements established by the state
40 treasurer; and

41 (B) audit and inspection requirements to confirm that any specie legal
42 tender deposited in such vault is properly secured and is of a quantity that
43 corresponds to the number of units of approved currency issued;

1 (4) ensure that a holder of an approved currency is able to:

2 (A) Purchase any number of available units of such approved
3 currency from the applicable vendor;

4 (B) transfer such approved currency to another person through
5 electronic means;

6 (C) exchange such approved currency for other forms of legal tender
7 at the appropriate market rate;

8 (D) redeem such approved currency for the corresponding amount of
9 specie legal tender from the applicable vendor, subject to any criteria or
10 qualifications for redemption established by the state treasurer; and

11 (E) use such approved currency for the payment of any tax or fee
12 administered by the department of revenue;

13 (5) establish standards and procedures for:

14 (A) Qualifying an electronic currency as an approved currency;

15 (B) selecting a vendor to administer an approved currency;

16 (C) approving a vault for the deposit of specie legal tender;

17 (D) detecting and preventing fraud in connection with an approved
18 currency; and

19 (E) revoking the status of an electronic currency as an approved
20 currency; and

21 (6) establish any other requirements to implement the provisions of
22 this section.

23 (c) In adopting the rules and regulations required by this section, the
24 state treasurer may:

25 (1) Consult with public or private entities with expertise in the
26 regulation or administration of electronic currencies; and

27 (2) establish and collect fees to pay for the costs associated with
28 adopting rules and regulations and the administration of this section.

29 (d) The state treasurer shall submit a report to the legislature on or
30 before the first day of the regular session of the legislature each year
31 regarding the status of approved currencies under this section, including
32 any recommendations for statutory changes to improve the state treasurer's
33 effectiveness in implementing this section.

34 New Sec. 6. The attorney general shall enforce this act without
35 prejudice to any private right of action.

36 New Sec. 7. The provisions of sections 7 through 16, and
37 amendments thereto, shall be known and may be cited as the Kansas
38 bullion depository act.

39 New Sec. 8. As used in the Kansas bullion depository act:

40 (a) "Act" means the Kansas bullion depository act.

41 (b) "Administrator" means the individual or entity appointed by the
42 state treasurer to oversee the operation and management of the
43 depositories.

1 (c) "Bullion" means refined gold or silver in any shape or form with
2 uniform content and purity, including, but not limited to, coins, rounds,
3 bars, ingots or any other product that is:

4 (1) Stamped or imprinted with the weight and purity of the gold or
5 silver that it contains; and

6 (2) valued primarily based on its metal content and not on its form
7 and function.

8 (d) "Depository" means a bullion depository established by this act.

9 (e) "Depository account" means an account established with a
10 depository to facilitate the storage, transfer and exchange of bullion.

11 (f) "Electronic currency" means a representation of actual precious
12 metals, specie or bullion held in a depository account that may be
13 transferred by electronic instruction. Such representation shall reflect the
14 exact units of physical precious metals, specie or bullion in such
15 depository account in its fractional troy ounce measurement as provided in
16 this act.

17 (g) "Precious metal" means gold or silver.

18 (h) "Specie" means bullion fabricated into products of uniform shape,
19 size, design, content, weight and purity that is suitable for or customarily
20 used as currency, as a medium of exchange or as the medium for purchase,
21 sale, storage, transfer or delivery of precious metals in retail or wholesale
22 transactions.

23 (i) "Specie legal tender" means gold or silver coin or bullion,
24 including, but not limited to, gold or silver coin issued by the United
25 States.

26 New Sec. 9. (a) The state treasurer may:

27 (1) Establish and administer bullion depositories to provide a secure
28 location for the storage of bullion; or

29 (2) contract with a third party to act as the administrator to manage
30 the day-to-day operations of the depositories and implement the
31 depositories' security, storage and transactional and administrative
32 procedures in accordance with this act.

33 (b) As used in this section, "security" means physical, online and
34 logical security standards that meet generally accepted standards within
35 the information assurance industry.

36 New Sec. 10. (a) A person, an individual, a corporation, a partnership,
37 a company, an association, a trust, an estate and a governmental entity,
38 may establish a depository account by entering into a depository
39 agreement with a depository.

40 (b) A depository account holder may purchase, sell, deposit or
41 withdraw bullion through the holder's account in accordance with this
42 section and any rules and regulations adopted thereunder. A depository
43 shall have processes and systems to facilitate timely bullion purchases,

1 sales, deposits and withdrawals, including, but not limited to:

2 (1) Physical deposits and withdrawals to and from the depository's
3 physical location, or a partner organization such as a major mint or refiner
4 capable of providing bullion that meets standards established by the state
5 treasurer; and

6 (2) electronic systems that meet current industry standards for the
7 purchase and sale of bullion for depository account holders that cannot or
8 choose not to travel to the physical location.

9 (c) State agencies, counties, municipalities and other governmental
10 entities may use a depository for storing bullion. The state treasurer may
11 deposit a portion of state moneys into a depository in the form of bullion
12 and such bullion shall be considered part of the state's official financial
13 reserves. The state treasurer shall develop guidelines for the state's use of
14 depositories. All deposits of state moneys into a depository shall be
15 secured by a pledge of securities as provided in K.S.A. 75-4218, and
16 amendments thereto.

17 (d) The administrator shall maintain a record of all depository
18 accounts and all transactions, deposits and withdrawals associated with
19 each account. Such records shall be provided to the state treasurer within
20 five business days after the state treasurer's request. All records shall be
21 kept and maintained, at a minimum, on an approved state computer system
22 for a period of at least seven years.

23 New Sec. 11. (a) The administrator shall ensure that a depository has
24 state-of-the-art security measures to prevent theft, fraud or other
25 unauthorized access or removal of bullion.

26 (b) A depository shall maintain insurance coverage sufficient to cover
27 the full value of all bullion stored at the depository. Such insurance shall
28 be provided by an insurer that is rated "A" or higher by am best company
29 or an equivalent rating by another national rating service acceptable to the
30 administrator.

31 (c) An independent third party shall conduct audits at least twice a
32 year to verify the amount and value of bullion stored in a depository and to
33 inspect the security measures and protocols in place. Such independent
34 third party shall be an established provider with a good history of
35 providing such auditing service. Documentation of audit results shall be
36 made available within a reasonable timeframe to the public upon request.
37 Documentation shall include, at a minimum, summary totals of precious
38 metal amounts assessed, as well as documentation of any discrepancies
39 found during the audit.

40 (d) A depository shall comply all with federal and state laws
41 pertaining to bullion storage, management and transactions. The
42 administrator shall consult regularly with legal counsel to ensure that each
43 depository remains compliant with evolving laws and regulations.

1 New Sec. 12. (a) An employee or official associated with the
2 oversight or operation of a depository shall:

3 (1) Have no financial interests in companies or entities that produce,
4 sell or manage bullion; and

5 (2) disclose any potential conflict of interest to the state treasurer
6 immediately upon discovery.

7 (b) A violation of this section may result in the employee's or
8 official's removal from position, fines or other legal penalties as
9 determined by the state treasurer.

10 New Sec. 13. The state treasurer shall have all authority necessary to
11 enter into contractual agreements with third parties to administer this act.
12 The administrator may enter into contractual agreements with private
13 entities for the provision of services for bullion storage, transportation or
14 security. All contractual agreements shall be reviewed and approved by the
15 state treasurer to ensure that such agreements align with the state's interests
16 and security requirements.

17 New Sec. 14. (a) A depository shall not be terminated or transferred
18 to a private entity unless such termination or transfer is approved by an act
19 of the legislature. A depository termination or transfer shall ensure the
20 security of the bullion, the rights of account holders and the financial
21 interests of the state.

22 (b) The administrator shall provide a quarterly report to the state
23 treasurer detailing the operations, transactions and financial status of each
24 depository.

25 (c) The state treasurer shall provide an annual report to the legislature
26 on or before the first day of the regular session of the legislature regarding
27 the operations and financial status of each depository.

28 New Sec. 15. The state treasurer shall adopt rules and regulations
29 necessary to administer the provisions of this act, including, but not
30 limited to, rules and regulations for the establishment, operation, security
31 and administration of a depository.

32 New Sec. 16. (a) A purported confiscation, requisition, seizure or
33 other attempt to control the ownership, disposition or proceeds of a
34 withdrawal, transfer, liquidation or settlement of a depository account or
35 an electronic currency account, including the precious metals represented
36 by the balance of a depository account or an electronic currency account, if
37 effected by a governmental or quasi-governmental authority other than an
38 authority of this state or by a financial institution or other person acting on
39 behalf of or pursuant to a directive or authorization issued by a
40 governmental or quasi-governmental authority other than an authority of
41 this state, in the course of a generalized declaration of illegality or
42 emergency relating to the ownership, possession or disposition of one or
43 more precious metals, contracts or other rights to the precious metals,

1 contracts or derivatives of the ownership, possession, disposition, contracts
2 or other rights, is hereby declared to be null and void and shall have no
3 force or effect.

4 (b) A depository in the case of receiving notice of a purported
5 confiscation, requisition, seizure or other attempt to control the ownership,
6 disposition or proceeds of a withdrawal, transfer, liquidation or settlement
7 of a depository account or an electronic currency account, including the
8 precious metals represented by the balance of a depository account or an
9 electronic currency account, if effected by a governmental or quasi-
10 governmental authority other than an authority of this state or by a
11 financial institution or other person acting on behalf of or pursuant to a
12 directive or authorization issued by a governmental or quasi-governmental
13 authority other than an authority of this state, in the course of a generalized
14 declaration of illegality or emergency relating to the ownership, possession
15 or disposition of one or more precious metals, contracts or other rights to
16 the precious metals, contracts or derivatives of the ownership, possession,
17 disposition, contracts or other rights, shall not recognize the governmental
18 or quasi-governmental authority, financial institution or other person
19 acting as the lawful successor of the registered holder of the depository
20 account or the electronic currency account in question.

21 (c) Upon receipt of notice of any transaction described in subsection
22 (a), with respect to all or any portion of the balance of a depository
23 account or an electronic currency account, a depository shall suspend
24 withdrawal privileges associated with the balances of the depository
25 account or electronic currency account until suitable substitute
26 arrangements may be effected in accordance with rules and regulations of
27 the state treasurer to enable the registered account holder to take delivery
28 of the precious metals represented by the account balances in question. A
29 voluntary transfer of a depository account or an electronic currency
30 account balance or of a depository account or an electronic currency
31 account among depository account or electronic currency account holders
32 may continue to take place unaffected by the suspension, and the
33 depository shall recognize such voluntary transfer to the full extent
34 authorized by this section and rules and regulations adopted under this act.

35 (d) The state treasurer shall refer any matter relating to an action
36 described in subsection (a) to the attorney general for resolution.

37 Sec. 17. K.S.A. 2023 Supp. 75-4209 is hereby amended to read as
38 follows: 75-4209. (a) The director of investments may invest and reinvest
39 state moneys eligible for investment which are not invested in accordance
40 with K.S.A. 75-4237, and amendments thereto, in the following
41 investments:

42 (1) Direct obligations of, or obligations that are insured as to principal
43 and interest by, the United States of America or any agency thereof and

1 obligations and securities of the United States sponsored enterprises which
2 under federal law may be accepted as security for public funds, on and
3 after the effective date of this act moneys available for investment under
4 this subsection shall not be invested in mortgage-backed securities of such
5 enterprises and of the government national mortgage association, except
6 that any such mortgage-backed securities held prior to the effective date of
7 this act may be held to maturity;

8 (2) repurchase agreements with a bank or a primary government
9 securities dealer which reports to the market reports division of the federal
10 reserve bank of New York for direct obligations of, or obligations that are
11 insured as to principal and interest by, the United States government or any
12 agency thereof and obligations and securities of United States government
13 sponsored enterprises which under federal law may be accepted as security
14 for public funds;

15 (3) commercial paper that does not exceed 270 days to maturity and
16 which has received one of the two highest commercial paper credit ratings
17 by a nationally recognized investment rating firm; ~~and~~

18 (4) corporate bonds which have received one of the two highest
19 ratings by a nationally recognized investment rating firm; *and*

20 (5) *specie legal tender, as defined in section 2, and amendments*
21 *thereto.*

22 (b) When moneys are available for deposit or investments, the
23 director of investments may invest in SKILL act projects and bonds
24 pursuant to K.S.A. 74-8920, and amendments thereto, and in state agency
25 bonds and bond projects.

26 (c) When moneys are available for deposits or investments, the
27 director of investments may invest in preferred stock of Kansas venture
28 capital, inc., under terms and conditions prescribed by K.S.A. 74-8203,
29 and amendments thereto, but such investments shall not in the aggregate
30 exceed a total amount of \$10,000,000.

31 (d) When moneys are available for deposits or investments, the
32 director of investments may invest in loans pursuant to legislative
33 mandates, except that not more than the greater of 10% or \$140,000,000 of
34 the state moneys shall be invested. The provisions of this subsection shall
35 not apply to the provisions of subsection (m).

36 (e) Interest on investment accounts in banks is to be paid at maturity,
37 but not less than annually.

38 (f) Investments made by the director of investments under the
39 provisions of this section shall be made with judgment and care, under
40 circumstances then prevailing, which persons of prudence, discretion and
41 intelligence exercise in the management of their own affairs, not for
42 speculation, but for investment, considering the probable safety of their
43 capital as well as the probable income to be derived.

1 (g) Investments under subsection (a) or (b) or under K.S.A. 75-4237,
2 and amendments thereto, shall be for a period not to exceed four years,
3 except that linked deposits authorized under the provisions of K.S.A. 2-
4 3703 through 2-3707, and amendments thereto, shall not exceed a period
5 of 10 years; agricultural production loan deposits authorized under the
6 provisions of K.S.A. 75-4268 through 75-4274, and amendments thereto,
7 shall not exceed a period of eight years and housing loan deposits
8 authorized under K.S.A. 75-4276 through 75-4282, and amendments
9 thereto, shall not exceed a period of five years or 20 years, as applicable
10 pursuant to K.S.A. 75-4279, and amendments thereto.

11 (h) Investments in securities under subsection (a)(1) shall be limited
12 to securities which do not have any more interest rate risk than do direct
13 United States government obligations of similar maturities. For purposes
14 of this subsection, "interest rate risk" means market value changes due to
15 changes in current interest rates.

16 (i) The director of investments shall not invest state moneys eligible
17 for investment under subsection (a), in the municipal investment pool
18 fund, created under K.S.A. 12-1677a, and amendments thereto.

19 (j) The director of investments shall not invest moneys in the pooled
20 money investment portfolio in derivatives. As used in this subsection,
21 "derivatives" means a financial contract whose value depends on the value
22 of an underlying asset or index of asset values.

23 (k) Moneys and investments in the pooled money investment
24 portfolio shall be invested and reinvested by the director of investments in
25 accordance with investment policies developed, approved, published and
26 updated on an annual basis by the board. Such investment policies shall
27 include at a minimum guidelines which identify credit standards, eligible
28 instruments, allowable maturity ranges, methods for valuing the portfolio,
29 calculating earnings and yields and limits on portfolio concentration for
30 each type of investment. Any changes in such investment policies shall be
31 approved by the pooled money investment board. Such investment policies
32 may specify the contents of reports, methods of crediting funds and
33 accounts and other operating procedures.

34 (l) The board shall adopt rules and regulations to establish an overall
35 percentage limitation on the investment of moneys in investments
36 authorized under subsection (a)(3), and within such authorized investment,
37 the board shall establish a percentage limitation on the investment in any
38 single business entity.

39 ~~(m)(1) During the fiscal year ending June 30, 2017, the director of~~
40 ~~the budget shall estimate on or before June 27, 2017, the amount of the~~
41 ~~unencumbered ending balance in the state general fund for fiscal year~~
42 ~~2017. If the amount of such unencumbered ending balance in the state~~
43 ~~general fund is less than \$50,000,000, the director of the budget shall~~

1 certify the difference between \$50,000,000, and the amount of such
2 unencumbered ending balance to the pooled money investment board.
3 Upon the liquidation of all investments and reinvestments of state moneys
4 pursuant to K.S.A. 75-2263(j), and amendments thereto, and upon receipt
5 of such certification by the director of the budget, during the fiscal year
6 ending June 30, 2017, the pooled money investment board shall authorize
7 the director of accounts and reports to transfer an amount equal to the
8 amount certified by the director of the budget pursuant to this subsection
9 from the pooled money investment portfolio to the state general fund.
10 Upon receipt of such authorization, the director of accounts and reports
11 shall make such transfer. The chairperson of the pooled money investment
12 board shall transmit a copy of such authorization to the director of
13 legislative research and the director of the budget.

14 (2) (A) On or before June 30, 2019, the director of accounts and
15 reports shall transfer an amount equal to $\frac{1}{6}$ of the amount transferred
16 pursuant to subsection (m)(1) from the state general fund to the pooled
17 money investment portfolio.

18 (B) On or before June 30, 2020, the director of accounts and reports
19 shall transfer an amount equal to $\frac{1}{2}$ of the amount transferred pursuant to
20 subsection (m)(1), reduced by the amount transferred pursuant to
21 subsection (m)(2)(A) from the state general fund to the pooled money
22 investment portfolio.

23 (C) On or before June 30, 2021, and June 30, 2022, during each such
24 fiscal year, the director of accounts and reports shall transfer an amount
25 equal to $\frac{1}{2}$ of the amount transferred pursuant to subsection (m)(1),
26 reduced by the amount transferred pursuant to subsection (m)(2)(A) and
27 (m)(2)(B) from the state general fund to the pooled money investment
28 portfolio.

29 (3) During the fiscal year ending June 30, 2018, after any transfer
30 made pursuant to subsection (m)(1), the pooled money investment board
31 shall authorize the director of accounts and reports to transfer the
32 remaining amount of all investments and reinvestments of state moneys
33 liquidated pursuant to K.S.A. 75-2263(j), and amendments thereto, from
34 the pooled money investment portfolio to the state general fund. Upon
35 receipt of such authorization, the director of accounts and reports shall
36 make such transfer. The chairperson of the pooled money investment
37 board shall transmit a copy of such authorization to the director of
38 legislative research and the director of the budget.

39 (4) (A) On or before June 30, 2019, the director of accounts and
40 reports shall transfer an amount equal to $\frac{1}{6}$ of the amount transferred
41 pursuant to subsection (m)(3) from the state general fund to the pooled
42 money investment portfolio.

43 (B) On or before June 30, 2020, the director of accounts and reports

1 shall transfer an amount equal to $\frac{1}{2}$ of the amount transferred pursuant to
2 subsection (m)(3), reduced by the amount transferred pursuant to
3 subsection (m)(4)(A) from the state general fund to the pooled money
4 investment portfolio.

5 ~~(C) On or before June 30, 2021, and June 30, 2022, during each such~~
6 ~~fiscal year, the director of accounts and reports shall transfer an amount~~
7 ~~equal to $\frac{1}{2}$ of the amount transferred pursuant to subsection (m)(3),~~
8 ~~reduced by the amount transferred pursuant to subsection (m)(4)(A) and~~
9 ~~(m)(4)(B) from the state general fund to the pooled money investment~~
10 ~~portfolio. Investments in specie legal tender under subsection (a)(5) shall~~
11 ~~not exceed 20% of the total amount of the pooled money investment~~
12 ~~portfolio at the time such investment is made.~~

13 Sec. 18. K.S.A. 2023 Supp. 75-4209 is hereby repealed.

14 Sec. 19. This act shall take effect and be in force from and after its
15 publication in the statute book.