

# The Utah Sound Money Act

To amend Title 59 of the Utah Code Annotated, relating to revenue and taxation, so as to provide a short title; to provide legislative findings; to authorize Utah Governmental Entities to use Registered Specie in the course and scope of Utah Intrastate Commerce, including the collection and return of taxes and fees; to likewise recognize the right of Utah Taxpayers to do the same; and to provide for the formation, operation and regulation of Utah Intrastate Commerce Cooperatives to facilitate and promote Utah Intrastate Commerce using Registered Specie or other forms of gold and silver coinage as the medium of exchange.

BE IT ENACTED BY THE UTAH STATE LEGISLATURE:

## SECTION 1.

Title 59 of the Utah Code Annotated, relating to revenue and taxation, is amended by adding a new chapter to read as follows:

### CHAPTER 28

#### PART 1. General Provisions.

59-28-101. Title. This chapter is known and may be cited as "The Utah Sound Money Act."

59-28-102. Legislative Findings. The Legislature finds and declares that:

1. Article 1, § 1 of the Utah Constitution expressly recognizes that all people have the inherent and inalienable right to acquire, possess and protect property;
2. Article 1, §§ 7 and 14 of the Utah Constitution as well as the fourth and fifth amendments to the United States Constitution further affirm the right of the people to be secure against warrantless searches and seizures as well as against forfeitures of property absent the due process of law;
3. In exercise of the foregoing rights, Utah Taxpayers have acquired and do possess gold and silver coin, for the protection and security of which they are entitled to reasonably rely upon state and local government as well as upon themselves;
4. Article I, § 10 of the United States Constitution provides that no state shall make anything but gold and silver coin a tender in payment of debts;
5. Pursuant to 12 United States Code § 411 Congress has granted an exclusive franchise to the privately owned Federal Reserve Bank, acting as the central bank of

the nation, to issue Federal Reserve Notes as legal tender of the United States;

6. Since the founding of the Federal Reserve Bank system in 1913, Federal Reserve Notes have lost more than 95% of their purchasing power;
7. During that same time period of time, from 1913 to the present, as well as throughout the entire course of recorded human history, gold and silver coin have reliably retained their purchasing power, although subject to periodic fluctuations in value;
8. Because sound, constitutionally based money, which over time tends to retain its purchasing power is important to the livelihood of the people of this state, to the continued solvency of the state government, as well as to the stability and growth of the Utah economy, the circulation and use of gold and silver coin within the course and scope of Utah Intrastate Commerce vitally affects the public interest; and
9. Pursuant to the limited, enumerated powers granted by the People to Congress under Article I, § 8 of the United States Constitution as well as pursuant to the 10th Amendment thereto, the citizens of the State of Utah acting through this Legislature and other duly elected officers of state government retain primary jurisdiction over the regulation of Utah Intrastate Commerce.

59-28-103. Definitions. As used in this Chapter 28, the following words and phrases, whether in their singular or plural forms, bear the specific meanings expressly set forth below:

- "Base Coinage" means all coins of the United States, wherever minted, that were or are required, by the statutes authorizing their issuance, to be composed solely of base metals.
- "Federal Reserve Note" means paper legal tender issued by the Federal Reserve Bank pursuant to authority granted under 12 U.S.C.A. § 411.
- "London Fix" means the price in United States dollars per Troy ounce of fine gold and silver, respectively, set at approximately 3:00 pm GMT each business day by agreement between London's five largest bullion banks: Bank of Nova Scotia-Scotia Mocatta, Barclays Bank, Deutsche Bank, HSBC Bank USA, and Société Générale.
- "Registered Specie" means all gold and silver coinage listed in the Utah Specie Registry published by the Utah State Treasurer.
- "Utah Governmental Entity" means each branch of the government of the State of Utah, together with each of its political subdivisions, including all of their respective departments, agencies and divisions.

- "Utah Intrastate Commerce" means any exchanges whatsoever conducted entirely between and among Utah Governmental Entities, Utah Intrastate Commerce Cooperatives, or Utah Intrastate Cooperative Members, as well as exchanges by which Utah Taxpayers acquire real, personal or intellectual property, goods, labor or services intended exclusively for consumption, use or performance wholly within the state of Utah from any one or combination of the foregoing entities as well as from other Utah Taxpayers, so long as the items exchanged had been derived entirely from Utah Resources.

- "Utah Intrastate Commerce Cooperative" means a limited liability company formed and existing pursuant to Chapter 2c of Title 48 of the Utah Code Annotated whose articles of organization or operating agreement contains the following provision:

Each member of this company shall be a "Utah Intrastate Cooperative Member" as defined in U.C.A. § 59-28-103, operating within the company as an independent profit center and paying dues or assessments to company management to perform centralized managerial functions on a non-profit basis, including but not limited to the following services: consolidated tax filings, regulatory compliance, legal advice and representation, centralized purchasing and contracting using, as necessary, Federal Reserve Notes or other legal tender of the United States of America as a medium of exchange in either interstate or intrastate commerce, and performing contract obligations to the State of Utah undertaken pursuant to U.C.A. § 59-28-502.

- "Utah Intrastate Cooperative Member" means any legal entity formed and existing under the laws of the State of Utah, which carries on all of its business operations on a debt-free basis as a member of one or more Utah Intrastate Commerce Cooperatives exclusively within the course and scope of Utah Intrastate Commerce, using Registered Specie as its sole medium of exchange.

- "Utah Resources" means resources originating from and continuously located within the State of Utah, or resources which subsequent to their arrival in the Utah were dedicated for exclusive consumption, use or performance within Utah.

- "Utah Specie Registry" means that registry which is maintained and published by the Treasurer of the State of Utah, setting forth the specific types of gold or silver coin that Utah Governmental Entities are authorized to accept from or tender to Utah Taxpayers or other Utah Governmental Entities in the course and scope of Utah Intrastate Commerce.

- "Utah Taxpayer" means any person or entity which has at any time within the preceding twenty-four months paid taxes or fees to, or filed one or more tax returns with, any Utah Governmental Entity, either individually or on a consolidated basis through any Utah Intrastate Commerce Cooperative.

## PART 2. Transactions in Specie.

59-28-201. Standing Specie Offer. All Utah Governmental Entities are hereby deemed to have made a standing offer to each other as well as to each and every Utah Taxpayer to use Registered Specie as a medium of exchange not only with respect to the collection or return of taxes and fees, but also in connection with any other transaction within the course and scope of Utah Intrastate Commerce, such standing offer, however, being at all times subject to all conditions, limitations and provisions of this chapter.

59-28-202. Voluntary Use of Specie. No Utah Governmental Entity shall have the right to compel any Utah Taxpayer to either accept or tender Registered Specie en lieu of Federal Reserve Notes or other legal tender of the United States of America, unless any such Utah Taxpayer has previously and voluntarily committed to do so, including but not limited to Utah Taxpayers which by voluntarily qualifying themselves as Utah Intrastate Cooperative Members have committed to using Registered Specie as their sole medium of exchange.

59-28-203. Mandatory Use of Specie. Every Utah Governmental Entity shall honor any Utah Taxpayer's tender of or demand for payment in Registered Specie in the course and scope of Utah Intrastate Commerce as being a legally binding acceptance of the standing offer made pursuant to § 59-28-201, above, except to the extent that the state's supply of Registered Specie is exhausted, in which case, such Utah Governmental Entity may discharge its obligation to any such taxpayer in Federal Reserve Notes or other legal tender of the United States of America. Any Utah Governmental Entity may, however, require that its transactions in Registered Specie be conducted exclusively through a Utah Intrastate Commerce Cooperative under contract with the State of Utah pursuant to § 59-28-502, below.

59-28-204. Utah Taxpayers' Property Rights. Nothing in this chapter 28 shall be construed so as to abrogate or in any way limit the inherent and inalienable right, as recognized and affirmed in article 1, § 1 of the Utah Constitution, of Utah Taxpayers, residents and citizens to use gold and silver coin as a medium of exchange as well as to acquire, produce, hold, protect and otherwise exchange the same or any other type of property, in any amount whatsoever, within the lawful course and scope of Utah Intrastate Commerce.

## PART 3. Specie Registry.

59-28-301. Registry Content. The Treasurer of the State of Utah shall maintain and publish a Specie Registry listing the gold and silver coinage which Utah Governmental Entities shall accept or may tender in the course and scope of Utah Intrastate Commerce. With respect to each type of coin listed, the Specie Registry shall set forth the mint and/or refiner, years of production, precise gold or silver content in troy grains, obverse and reverse color images, together with any other physical characteristic the Treasurer deems pertinent.

59-28-302. Qualifying Coinage. The Specie Registry shall include all coins drawn from the following list which do not have a recognized numismatic or collectors' character giving them a value well above that attributable to their precious metal content:

1. United States American Eagles, of all denominations, minted by the United States Mint since 1986 pursuant to the Gold Bullion Coin Act of 1985, Public Law 99-185 (31 U.S.C.A. § 5112(a)(7) through (a)(10) and 31 U.S.C.A. § 5112(h));
2. One dollar, half dollar, quarter dollar or dime coins minted by the United States prior to the Coinage Act of 1965 (Pub. L. 89, 81, 79 Stat. 254), having 900 millesimal fineness and containing when minted approximately 0.7234 troy ounces of silver per dollar of face value;
3. Any other United States dollars, half dollars, quarter dollars or dimes, so denominated, whether or not minted pursuant to the Liberty Coin Act of July 9, 1985, Public Law 99-61, 99 Stat. 113, 115 (31 U.S.C.A. § 5112(e) and 31 U.S.C.A. § 5112(h)), that were or are required by the statutes authorizing their coinage to contain 371.25 grains (troy) of fine silver per dollar, as "dollar" is referred to in Article I, § 9, of the United States Constitution and the seventh amendment to the United States Constitution, the value of which was established in The Coinage Act of April 2, 1792, 1 Stat. 246;
4. Coins having a millesimal gold or silver fineness of no less than 750 minted under the authority of the governments of Australia, Austria, Canada, China, France, Israel, Malaysia, Mexico, Poland, Russia, South Africa, Switzerland or the United Kingdom;
5. Coins privately minted in the State of Utah in the course and scope of Utah Intrastate Commerce:
  - A. Having a millesimal gold or silver fineness of no less than 750;
  - B. Showing the precious metal content denoted in Troy grains in clear facial inscriptions;
  - C. Bearing no dollar denomination nor any resemblance whatsoever to the current or prior coin of The United States of America;
  - D. Exhibiting the mint mark of the Utah Taxpayer business entity which stamped the coin and which on the date of stamping was a Utah Intrastate Cooperative Member in good standing existing under the laws of the State of Utah.

#### PART 4. Exchange Rates.

59-28-401. Exchange Rates Set by State Treasurer. For purposes of calculating the appropriate amount of Registered Specie payment with respect to transactions

denominated in Federal Reserve Notes or other legal tender of the United States, the Utah State Treasurer shall periodically set a Specie Exchange Rate for gold as well as one for silver. These rates shall equate a specific quantity of Federal Reserve Notes, or fraction thereof, to one Troy grain of each metal. With respect to any particular transaction within the course and scope of Utah Intrastate Commerce, the Specie Exchange Rate in force as of the date of the tender of Registered Specie shall apply.

59-28-402. Specie Transactions to be Denominated in Troy grains. Registered Specie may be tendered to or by any Utah Governmental Entity in the course and scope of Utah Intrastate Commerce using any type of coin listed in the Specie Registry so long as the total gold or silver content of the Registered Specie tendered as measured in Troy grains corresponds to the Troy grains due as calculated by application of the appropriate Specie Exchange Rate or as otherwise agreed by the parties to the transaction.

59-28-403. Criteria for Setting the Exchange Rates. In setting Specie Exchange Rates the Utah State Treasurer shall consider the following factors:

1. Coin should, and normally does, trade at a premium over the bullion spot and London Fix prices because of the additional costs associated with stamping, insurance, storage, distribution and exchange of coinage as compared to the good delivery bars typically traded in the international bullion market;
2. Specie Exchange Rates should be set so as to achieve the wide use and circulation of gold and silver coin in the course and scope of Utah Intrastate Commerce, especially with respect to the collection of taxes and fees by Utah Governmental Entities.

59-28-404. Frequency of Exchange Rate Changes. The Utah State Treasurer shall set the Specie Exchange Rates no more than once per day, bank holidays and weekends excluded. Newly set Specie Exchange Rates shall not be disclosed to anyone other than the Utah State Treasurer's staff until such new rates take effect at 12:01 a.m. the following day, at which time the new rates shall be published and readily available to Utah Taxpayers, residents and citizens.

59-28-405. Increments of Exchange Rate Changes. No single Specie Exchange Rate change effected by the Utah State Treasurer shall differ by more than one percent from the previously effective rate. Notwithstanding the foregoing, the Utah State Treasurer shall be free to set the initial Specie Exchange Rates when this law first takes effect at whatever level the Treasurer deems appropriate by application of the criteria set forth in section 59-28-403 of this chapter 28. In addition, by a majority vote of the Utah State House of Representatives in general or special session, the Specie Exchange Rates may be reset to whatever level that body deems appropriate.

59-28-406. Specie Exchange Rates Not Binding on Non-Governmental Entities. With respect to transactions within the course and scope of Utah Intrastate Commerce to

which no Utah Governmental Entity is a party, Utah Taxpayers, residents and citizens shall be free to set the amount of gold or silver coin due without regard to the State's Specie Exchange Rates, except to the extent that such rates shall be applied to determine any tax liability arising as a result of any such transaction.

#### PART 5. Security and Privacy

59-28-501. Protection of State Registered Specie Holdings. The Governor shall recruit, form, train and deploy such troops and regiments of the Utah State Defense Force pursuant to U.C.A. § 39-4-1 in conjunction with volunteers recruited from Utah's unorganized militia pursuant to U.C.A. § 39-1-3 as the Governor may deem necessary and appropriate to store, safeguard, protect and transport the Registered Specie holdings of all Utah Governmental Entities, as well as provide a means for the exchange, between and among Utah Governmental Entities and Utah Taxpayers, of Registered Specie, either by transfer of ownership of the same held in a secure storage facility or by physical delivery according to the recipient's preference.

59-28-502. Delegation of Duties to Intrastate Commerce Cooperatives. The Governor is hereby authorized to contract with one or more duly organized Utah Intrastate Commerce Cooperative to perform the services and duties specified in § 59-28-501, above -- the cooperative so contracted acting on behalf and in the name of the State. All defense forces so organized shall at all times be subject to the oversight and command of such superior battalion and division officers as the Governor of Utah, acting in the capacity of commander in chief, may from time to time appoint. In the absence of such appointments, the duly elected county sheriff shall serve as the division commander of all such forces stationed within the county in question.

59-28-503. Protection of Utah Taxpayer Deposits. Any Utah Intrastate Commerce Cooperative under contract with the State of Utah pursuant to the authority granted in § 59-28-502, above, may employ the facilities and personnel designated to store, safeguard, protect, transport and exchange the Registered Specie holdings of Utah Governmental Entities to perform the same services with respect to any tangible personal property, including gold and silver coin, which Utah Taxpayers may elect to deposit with the cooperative for safekeeping. The cooperative providing such services shall be entitled to charge a reasonable fee to those Utah Taxpayers having property on deposit with the cooperative.

59-28-504. Searches and Seizures Prohibited. Utah Taxpayers, residents and citizens shall at all times be entitled to privacy and security with respect to their gold and silver coin holdings as well as with respect to any other of their lawfully acquired property, whether held personally or within the fiduciary care, custody and control of any other Utah Taxpayer. Such holdings shall not be subject to disclosure, search or seizure except upon issuance of a lawful warrant or writ by a judicial officer of this state pursuant to an adequate showing of probable cause with respect to the particular person or entity in question. Such warrant or writ shall be executed only under the authority of the duly elected sheriff for the county within which such property is held.

## PART 6. Taxation.

59-28-601. Capital Gains Tax Inapplicable. In no case shall the acquisition, sale or use of Registered Specie within the course and scope of Utah Intrastate Commerce subject any Utah Taxpayer to any tax liability whatsoever for any actual or alleged gain realized from fluctuations in the exchange rate between Registered Specie and any other currency, medium of exchange or legal tender.

59-28-602. Sales/Use Tax Exemptions. As provided in U.C.A. § 59-12-104(50)-(51), no sales or use taxes shall apply to the the sale or purchase of Registered Specie within the course and scope of Utah Intrastate Commerce. Moreover, no sales tax shall be assessed on transactions between or among Utah Intrastate Commerce Cooperatives and Utah Intrastate Cooperative Members.

59-28-603. Property Tax Exemption. Pursuant to U.C.A. § 59-2-1114(1), all Utah Taxpayer tangible personal property within the fiduciary care, custody and control of any Utah Intrastate Commerce Cooperative shall be exempt from any and all property taxation.

59-28-604. Consolidated Tax Filings by Utah Intrastate Commerce Cooperatives. All Utah Intrastate Commerce Cooperatives shall be entitled pursuant to U.C.A. § 59-7-401 *et seq.* to file a water's edge combined report as well as a federal consolidated report in lieu of separate tax returns filed by any such cooperative's Utah Intrastate Cooperative Members which shall be exempt from obtaining a tax Identification number separate and apart from the tax identification number of the cooperative under which they operate.

## PART 7. Penalties and Awards.

59-28-701. Fraud. Any person or entity which, with the intent to defraud, attempts to utter or pass off as Registered Specie, within the course and scope of Utah Intrastate Commerce, any Base Coinage or coinage with less fine gold or silver content than expressly asserted by such person or entity shall be subject to criminal fine, imprisonment or both.

59-28-702. Mistake. Any person or entity which tenders as Registered Specie, within the course and scope of Utah Intrastate Commerce, any Base Coinage or coinage with less actual fine gold or silver content than what was mutually understood by the parties at the time of tender shall be civilly liable to the recipient of such deficient coinage in an amount equal to the shortfall plus any court costs and attorney fees incurred by the recipient to establish a right of recovery.

59-28-703. Unconstitutional Act Under Color of Law. Any actual or attempted application of any law, statute, regulation, treaty or accord in contravention of the provisions of § 59-28-504, above, by any person claiming to be a governmental officer

or agent shall be punishable by fine levied against each such claimed governmental officer or agent as well as against any governmental entity complicit in any such actual or attempted act under color or law. Moreover, any Utah Taxpayer which suffers injury or loss in consequence of such acts shall be entitled to recover damages, court costs and attorneys fees from the same by means of a civil action at law.

#### PART 8. Constitutionality.

59.28.801. Severability. If any one or more part, provision, section, subsection, sentence, clause, phrase or word of this chapter 28 or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality.

59.28.802. Legislative Intent. The legislature hereby declares that it would have passed this chapter, and each part, provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

59.28.803. Standing. Any and all Utah Intrastate Commerce Cooperatives are hereby granted standing to apply directly to the Utah Supreme Court to obtain a declaration regarding the constitutional applicability of any particular United States federal law, statute, regulation, treaty, or accord with respect to any specific set of circumstances or conditions existing or potentially existing within the course and scope of Utah Intrastate Commerce, even in the absence of any actual case or controversy concerning such actual or potential circumstances or conditions.

#### SECTION 2.

This act shall take effect on the first day of the April, 2011, unless not passed into law by that time, in which case, the effective date shall be the first day of July, 2011.