

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 622

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO GOLD AND SILVER COIN AND ELECTRONIC OUNCES; AMENDING TITLE 73,  
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 5, TITLE 73, IDAHO CODE, TO  
3 DEFINE TERMS, TO PROVIDE FOR APPLICABILITY, TO PROVIDE FOR THE DUTIES  
4 OF THE TREASURER AND OTHER FISCAL OFFICERS, TO PROVIDE QUALIFICATION  
5 REQUIREMENTS FOR ELECTRONIC SPECIE EXCHANGES, TO PROVIDE QUALIFICATION  
6 REQUIREMENTS FOR INDEPENDENT SPECIE VAULTS, TO PROVIDE FOR THE USE OF  
7 GOLD AND SILVER, TO PROVIDE THAT CERTAIN GOLD AND SILVER SHALL NOT BE  
8 SUBJECT TO TAX, TO PROVIDE FOR CERTAIN PAYMENTS WITH GOLD AND SILVER,  
9 TO PROVIDE FOR NOTIFICATION OF CHOICE OF MEDIUM OF PAYMENT, TO PROVIDE  
10 FOR INACCURATE DETERMINATIONS OF EXCHANGE RATES, TO PROVIDE A PROCEDURE  
11 FOR ACTIONS RELATING TO CLAIMS OF INACCURATE DETERMINATIONS OF EXCHANGE  
12 RATES AND TO PROVIDE CERTAIN PENALTIES.  
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Title 73, Idaho Code, be, and the same is hereby amended  
16 by the addition thereto of a NEW CHAPTER, to be known and designated as  
17 Chapter 5, Title 73, Idaho Code, and to read as follows:

18 CHAPTER 5

19 GOLD AND SILVER COIN AND ELECTRONIC OUNCES

20 73-501. DEFINITIONS. For purposes of this act:

21 (1) "Electronic ounces" means a specifically defined amount of gold  
22 or silver, measured in .999 fine troy ounces or fractions thereof, that an  
23 electronic specie exchange makes available to its customers;

24 (2) "Electronic specie account" means a record or credit of gold and  
25 silver ounces deposited by each customer;

26 (3) "Electronic specie exchange" means a person or business that:

27 (a) Provides services and functions which conform to the standards  
28 established by this act;

29 (b) Establishes electronic specie accounts in electronic ounces for  
30 any person, business, state or political subdivision;

31 (c) Transfers specie from the customer to the vault or from the vault to  
32 the customer;

33 (d) May establish branch offices;

34 (4) "First operational day of this act" means the date upon which the  
35 treasurer certifies to the secretary of state and to the governor that  
36 the treasury is ready to operate in conformity with this chapter. Such  
37 certification shall be issued within ninety (90) days after enactment of  
38 this act;

39 (5) "Fiscal officer" means the treasurer of the state of Idaho and any  
40 official or the clerk of the district court, the county treasurer, the city

1 treasurer or the treasurer of a taxing district as that term is enumerated in  
2 section 63-802, Idaho Code;

3 (6) "Independent specie vault" means a person or business that is not  
4 owned, controlled, or directly or indirectly affiliated with, an electronic  
5 specie exchange, but which contractually performs for such exchange  
6 safekeeping functions;

7 (7) "Legal tender" means the coinage act of 1965, specifically section  
8 31 U.S.C. 5103, entitled "legal tender," which states: "United States coins  
9 and currency (including federal reserve notes and circulating notes of  
10 federal reserve banks and national banks) are legal tender for all debts,  
11 public charges, taxes, and dues...";

12 (8) "Person or business" means individuals, joint ventures,  
13 partnerships, corporations, firms, businesses, trusts, trust companies,  
14 fiduciaries, labor unions and other legally recognized entities and  
15 associations howsoever organized or formed;

16 (9) "Specie" means money in the form of gold and silver coins or  
17 bullion, as distinguished from paper money;

18 (10) "State means the state of Idaho and all its political subdivisions;  
19 and

20 (11) "Treasurer" means the treasurer of the state of Idaho unless  
21 otherwise noted.

22 73-502. APPLICABILITY. This act shall not apply to any gold and silver  
23 coin, or to any legal tender of the United States, that has a recognized  
24 numismatic or collectors' character and value above its face or nominal  
25 value.

26 73-503. DUTIES OF THE TREASURER AND OTHER FISCAL OFFICERS. (1) In  
27 addition to other powers and duties granted and imposed by law, the treasurer  
28 shall:

29 (a) In cooperation with the director of the department of finance,  
30 designate as the state of Idaho's purveyors of electronic ounces, one  
31 (1) or more electronic specie exchanges, as may be deemed necessary and  
32 proper for implementation of this act. No state fiscal officer shall  
33 contract with any electronic specie exchange not so designated;

34 (b) Maintain one (1) or more electronic specie accounts with such  
35 designated electronic specie exchange, as may be deemed necessary and  
36 proper for implementation of this act;

37 (c) Conduct all monetary transactions of this state involving gold and  
38 silver in any form by the agency through electronic specie accounts;

39 (d) Require all persons who deal with the state in monetary  
40 transactions, involving gold and silver in any form, to maintain at  
41 least one (1) account with a designated electronic specie exchange;

42 (e) Promulgate such rules as may be necessary and proper to implement  
43 this act;

44 (f) Prepare and distribute all necessary and appropriate forms,  
45 instructions, and other informational materials to educate persons as  
46 to their rights, duties and options, and to enable them to pay to and  
47 receive from this state, gold and silver in any form, as required or  
48 allowed under this act;

1 (g) Report quarterly, or more often if required, to the legislature and  
2 the governor with respect to receipts, deposits, disbursements, audits  
3 and other relevant information pertaining to monetary transactions of  
4 the state involving gold and silver in any form;

5 (h) Propose to the legislature such rules, other than, and in addition  
6 to, those provided in this act, as the treasurer may deem necessary and  
7 proper for its implementation in conformity with law; and

8 (i) Advise fiscal officers of political subdivisions within the state  
9 who request information or assistance with respect to implementation of  
10 this act within their jurisdictions.

11 (2) In addition to other powers and duties granted and imposed by law,  
12 fiscal officers of political subdivisions of the state shall:

13 (a) Maintain one (1) or more electronic specie accounts with a  
14 designated electronic specie exchange as may be deemed necessary and  
15 proper for implementation of this act;

16 (b) Conduct all monetary transactions within their jurisdictions  
17 involving gold and silver in any form through an electronic specie  
18 exchange using electronic specie accounts;

19 (c) Require all persons who deal with such political subdivisions of  
20 the state in monetary transactions involving gold and silver in any form  
21 to maintain at least one (1) account with a designated electronic specie  
22 exchange;

23 (d) Prepare and distribute all necessary and appropriate forms,  
24 instructions and other informational materials to educate persons as  
25 to their rights, duties and options, and to enable them to pay to and  
26 receive from political subdivisions of the state gold and silver in any  
27 form, as required or allowed under this act; and

28 (e) Consult with the treasurer on the most effective and efficient  
29 manner of implementing this act within their jurisdictions.

30 73-504. ELECTRONIC SPECIE EXCHANGE -- QUALIFICATIONS. In order to  
31 qualify for designation by the treasurer, an electronic specie exchange  
32 shall:

33 (1) Employ an electronic ounce, which is the monetary unit of account  
34 and represents a claim of title to, and ownership of, a specifically defined,  
35 fixed weight of specie held in storage for customers in and by an independent  
36 specie vault;

37 (2) Designate receipts and holdings of gold and silver in, and transfer  
38 gold and silver among, exchange customer accounts only in ounces and  
39 decimals thereof;

40 (3) Provide internet accessible separate accounts for each customer,  
41 each with the capability to add electronic ounces thereto and to transfer  
42 such ounces among other customer accounts, or to financial institutions  
43 that associate or maintain accounts with the electronic specie exchanges,  
44 as customers may direct. Provided however, before such changes in customer  
45 accounts become effective, verification that an equivalent amount of  
46 physical specie has been deposited at the independent specie vault shall be  
47 made;

48 (4) Maintain a secure electronic database that records and makes  
49 available for each customer's review, including internet access, all

1 activity in the customer's account upon the completion thereof, and the  
2 number of electronic ounces credited to and available in the customer's  
3 account following each activity;

4 (5) Act as agent on behalf of customers to arrange and maintain  
5 safekeeping of the gold and silver stored in an independent specie vault,  
6 on principles of bailment, such that the customers always retain title  
7 to and ownership of all such gold or silver ounces as may be recorded and  
8 maintained in their accounts, subject only to claims that the electronic  
9 specie exchange, the independent specie vault, or both may bring against  
10 customers for fees owed but not paid;

11 (6) Conduct the business of exchanging, in any combination, and for  
12 fees mutually agreed upon by such exchange and its customers, gold and silver  
13 coin, legal tender of the United States, and the electronic ounces, such  
14 that any person who chooses to deal in gold and silver with the state of  
15 Idaho pursuant to this act may, at such person's option, begin the process  
16 by bringing gold or silver coin to such exchange for the purpose of opening  
17 an electronic specie account and may terminate the account at any time. The  
18 exchange shall honor free-market exchange rates at the time of any exchange  
19 between gold and silver coin or bullion and legal tender of the United  
20 States;

21 (7) Have a mutual, explicit and contractually enforceable policy and  
22 agreement with the independent specie vault with which such electronic  
23 specie exchange associates:

24 (a) Reserving to such electronic specie exchange a right, through such  
25 auditors, accountants or others as it may designate, at any reasonable  
26 time, with or without prior notice, to inspect such vault in order to  
27 verify that the vault in fact maintains in its possession and subject  
28 to its control all of the specie represented by the electronic ounces  
29 recorded in all customers' accounts; and

30 (b) Requiring return by the vault, if for any reason the vault ceases  
31 operations, to a repository designated by the exchange, all the specie  
32 of such exchange customers, in coins or bars of good-delivery specie  
33 of designated weights and fineness, or in an equivalent amount of  
34 legal tender of the United States where the weight of the specie to be  
35 delivered does not reach such designated amount, or in both, as the case  
36 may be;

37 (8) Annually subject all of the exchange policies, systems and  
38 operations to an independent third-party audit, or equivalent review, and  
39 file a certified report of its findings with the treasurer;

40 (9) Certify to the treasurer that none of the electronic specie  
41 exchange directors, officers, partners, trustees or chief executive and  
42 operating personnel have ever been convicted of a felony or crime of moral  
43 turpitude, or have ever been subject to a civil judgment for fraud or deceit;  
44 the employment of such an individual in any such capacity, or a materially  
45 false representation in any of the said particulars, being grounds for  
46 automatic disqualification as one of the state of Idaho's electronic specie  
47 exchanges.

1           73-505. INDEPENDENT SPECIE VAULT -- QUALIFICATIONS. In order to  
2 qualify to perform safekeeping services for an electronic specie exchange as  
3 an independent specie vault, the applicant shall:

4           (1) Hold all specie for each exchange in specifically allocated storage  
5 in a vault or other secure facility;

6           (2) Be adequately insured and bonded;

7           (3) Not be affiliated through common ownership, control, operation  
8 or investments with any exchange for which it performs the function of  
9 safekeeping and storage of specie;

10          (4) For the purpose of increasing or decreasing the amounts of physical  
11 specie held in and by such vault, pursuant to transfers made to or on behalf  
12 of customers of exchanges for which such vault performs the function of  
13 safekeeping and storing specie, shall associate with a specie exchange or  
14 other person or business that:

15           (a) Regularly deals in the physical transfer of specie among private  
16 businesses or governmental agencies;

17           (b) Is suitably insured and bonded;

18          (5) Report at least quarterly to each exchange for which such vault  
19 performs safekeeping and storage services, certifying:

20           (a) The weights of specie and numbers of electronic ounces held in and  
21 by such vault on behalf of each exchange; and

22           (b) That the total weight of specie held in and by such vault on  
23 behalf of each exchange is at least equal to the total weight of specie  
24 represented by each such exchange's electronic ounces in circulation as  
25 media of exchange in all such customer's accounts at the time the report  
26 is prepared;

27          (6) Have a mutual, explicit and contractually enforceable policy and  
28 agreement with each exchange for which such vault performs the function of  
29 safekeeping and storing specie in bailment on behalf of such exchange, for  
30 return of the full free-market value of such specie in coins or bullion of  
31 good-delivery specie of designated weights, in legal tender of the United  
32 States where the weight of the specie to be delivered does not reach such  
33 designated amount, or in both, as the case may be, should the exchange or  
34 vault for any reason cease operations.

35          73-506. USE OF GOLD AND SILVER -- IN GENERAL. Except as otherwise  
36 provided in this chapter, on and after July 1, 2010, the state shall neither  
37 compel nor require any person to recognize, receive, pay out, deliver,  
38 promise to pay or otherwise use or employ any thing but gold and silver  
39 coin, in that form or in the form of a designated electronic ounce defined  
40 as and absolutely payable in a specified weight of specie, and convertible  
41 on demand into gold and silver coin through a specie exchange, as media of  
42 exchange with respect to:

43           (1) The calculation and payment of any tax or other involuntary  
44 contribution, public due, charge, assessment, fee, fine or other monetary  
45 penalty, imposed by this state;

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

48           (3) The purchase or sale by this state of any lands, real estate,  
49 buildings, tangible personal property or any other assets, property, or

1 things of value, or of any legal or equitable rights, easements, or other  
2 interests, of whatsoever types or descriptions;

3 (4) Any monetary award or agreement in respect of expropriation of  
4 private property pursuant to the exercise of the power of eminent domain by  
5 this state or by any person authorized by the laws thereof to exercise such  
6 power;

7 (5) Any judgment, decree, or order of any court, administrative agency,  
8 or other tribunal of this state, unless the court, administrative agency  
9 or other tribunal finds otherwise and would cause extreme hardship on the  
10 prevailing party or that some other form of payment has been provided in law  
11 or contract;

12 (6) Contracts, agreements or other arrangements for the payment of  
13 wages, salaries, fees or other monetary compensation to any person who  
14 or which shall have provided, or shall provide, goods or services to, or  
15 otherwise be entitled to payment from this state, either as officers,  
16 employees, agents or contractors of this state or in any other capacity;

17 (7) Provided however, that with respect to any tax, loan, sale or  
18 purchase, award in eminent domain, judgment, contract or other agreement  
19 that was imposed, was made, or became payable in, or that designated  
20 explicitly or implicitly a specific medium of payment other than gold and  
21 silver coin, in that form or in the form of electronic ounces absolutely  
22 payable in that metal and redeemable in gold and silver coin, before the  
23 first operational day of this act, the medium of exchange for the payment  
24 or other satisfaction thereof shall be the medium designated, required,  
25 specified or reasonably contemplated at the time the tax was imposed, or the  
26 loan or contract or other agreement was made or became payable, the sale or  
27 purchase occurred, or the award or judgment was handed down.

28 73-507. USE OF GOLD AND SILVER -- TAXES AND OTHER PUBLIC CHARGES. (1)  
29 Gold and silver exchanged or electronically transferred in electronic  
30 specie accounts are not subject to any taxes, such as, capital gains and  
31 sales tax.

32 (2) With respect to any other tax or involuntary contribution, public  
33 due, charge, assessment or fee, or any fine or other monetary penalty, other  
34 than those addressed elsewhere in this act, imposed by the state on and after  
35 the first operational day of this act:

36 (a) The monetary amount thereof shall be calculated by the state or by  
37 the person liable, as the applicable law provides, in legal tender of  
38 the United States;

39 (b) The person liable for payment of such amount may deliver to the  
40 state, and the state shall receive therefrom in payment, either:

41 (i) Legal tender of the United States, to such amount; or

42 (ii) Electronic ounces with, at the time of payment, an aggregate  
43 value in legal tender equal to the amount determined.

44 73-508. NOTIFICATION OF CHOICE OF MEDIUM OF PAYMENT. Each person shall  
45 notify the state, in a manner deemed timely according to rules and by use of  
46 forms or other means promulgated by the treasurer, of that person's election  
47 to receive or to pay a designated electronic currency in lieu of legal

1 tender of the United States. Absent such timely notification, the medium of  
2 exchange for any such transaction shall be legal tender of the United States.

3 73-509. JUDICIAL ENFORCEMENT -- INACCURATE DETERMINATION OF EXCHANGE  
4 RATES BETWEEN LEGAL TENDER OF THE UNITED STATES AND ELECTRONIC OUNCES. With  
5 respect to any inaccurate determination of exchange rates between legal  
6 tender of the United States and electronic ounces that affects any right,  
7 power, privilege or immunity secured under this act:

8 (1) Any person aggrieved by such inaccurate determination may bring  
9 a civil action in the state supreme court against each and every person  
10 or persons responsible therefor, in both his, her or their official and  
11 individual capacities, for any and all appropriate forms of relief,  
12 including monetary damages, and in such an action no defense of official  
13 immunity shall be allowed;

14 (2) In any case, civil or criminal, in which any person aggrieved by  
15 any such inaccurate determination is made a defendant, such inaccurate  
16 determination may be raised, where relevant, by way of defense,  
17 counterclaim, set-off, or other pleading;

18 (3) Where the issue of any such inaccurate determination is dismissed  
19 with prejudice, decided by summary judgment, heard and decided on the  
20 merits, or decided on appeal, reasonable attorney's fees shall be awarded to  
21 the prevailing party for litigation of that question; and

22 (4) Any individual who shall knowingly and intentionally make any such  
23 inaccurate determination, or who shall advise or participate in, or combine  
24 or conspire or aid and abet with respect to, or attempt to conceal by the  
25 withholding, destruction or falsification of records, by false statement,  
26 whether made under penalty of perjury or not, or by any other device,  
27 artifice or means, any such inaccurate determination shall be subject to  
28 a fine as determined by the court and imprisonment for a period of six (6)  
29 months.