

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 749

FISCAL
NOTE

By Senators Rucker, Chapman, Taylor, Karnes, and

Azinger

[Introduced February 12, 2024; referred
to the Committee on Banking and Insurance; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §12-10-1, §12-10-2, §12-10-3, §12-10-4, §12-10-5, §12-10-6, §12-10-7, §12-
 3 10-8, and §12-10-9; and to amend and reenact §47-6-4 of said code, all relating generally
 4 to the use of gold and silver as legal tender in the State of West Virginia; defining terms;
 5 authorizing the State Treasurer to establish the West Virginia Bullion Depository within the
 6 State Treasury; making the State Treasurer the administrator of the depository; providing
 7 that deposits are held in trust for account holders and are not subject to appropriation;
 8 prohibiting payment of interest on deposits; establishing the West Virginia Bullion
 9 Depository administrative account; setting forth the duties of the administrator;
 10 enumerating the powers of the administrator; setting forth requirements for deposits;
 11 authorizing the depository to issue transactional currency; requiring the administrator to
 12 promulgate legislative rules and emergency rules subject to certain requirements;
 13 exempting depository account contents from state taxation; providing for the confidentiality
 14 of depository records; recognizing gold coin issued by the United States as legal tender in
 15 West Virginia; and recognizing bullion, specie, and transaction currency, issued by the
 16 depository, as legal tender in West Virginia.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 10. THE WEST VIRGINIA LEGAL TENDER ACT.

§12-10-1. Short Title.

1 This article and the amendments to §47-6-4 of this code, adopted during the 2024 Regular
 2 Session of the Legislature, shall collectively be known and may be cited as "the West Virginia
 3 Legal Tender Act."

§12-10-2. Definitions.

- 1 (a) "Administrator" means the West Virginia State Treasurer.
- 2 (b) "Account holder" means the original depositor to a depository account, or a successor

3 or assignee of said depositor.

4 (c) "Bullion" means precious metals that are formed into uniform shapes and quantities
5 such as ingots, bars, or plates, with uniform content and purity, as are suitable for or customarily
6 used in the purchase, sale, storage, transfer, and delivery of bulk or wholesale transactions in
7 precious metals.

8 (d) "Deposit" means the establishment of an executory obligation of the depository to
9 deliver to the order of the person establishing with the depository the obligation, on demand, a
10 quantity of a specified precious metal, in bullion, specie, or a combination of bullion and specie,
11 equal to the quantity of the same precious metal delivered by or on behalf of the depositor into the
12 custody of the depository or a depository agent.

13 (e) "Depositor" means a person who makes a deposit.

14 (f) "Depository" means the West Virginia Bullion Depository authorized by this article.

15 (g) "Depository account" means the rights, interests, and entitlements established in favor
16 of a depositor with respect to a deposit in accordance with this article and rules adopted under this
17 article.

18 (h) "Depository agent" means a person licensed in accordance with this article to serve as
19 an intermediary between the depository and an account holder in making a transaction in precious
20 metals bullion or specie.

21 (i) "Precious metal" means a metal, including gold, silver, platinum, palladium, and
22 rhodium, that:

23 (1) Bears a high value-to-weight ratio relative to common industrial metals; and

24 (2) Customarily is formed into bullion or specie.

25 (j) "Specie" means a precious metal stamped into coins of uniform shape, size, design,
26 content, and purity, suitable for or customarily used as currency, as a medium of exchange, or as
27 the medium for purchase, sale, storage, transfer, or delivery of precious metals in retail or
28 wholesale transactions.

29 (k) "Transactional currency" means a representation of actual gold or silver bullion or
30 specie, held in a depository account by a depository account holder, which may be transferred by
31 electronic instruction. Such representation shall reflect the exact units of gold and silver bullion or
32 physical specie in the pooled depository account in its fractional troy ounce measurement as
33 provided by this article.

§12-10-3. West Virginia Bullion Depository authorized.

1 (a) The administrator is hereby authorized to establish a West Virginia Bullion Depository
2 which shall be an agency and instrumentality of this state within the West Virginia State Treasury.

3 (b) Upon the establishment of the depository, the depository shall serve as the custodian,
4 guardian, and administrator of all bullion and specie deposited with the State pursuant to this
5 article. All bullion or specie held in the depository is held in trust for depository account holders and
6 is not subject to legislative appropriation.

7 (c) The accounts established in the depository shall not be interest-bearing accounts. The
8 depository may not pay interest on a depository account or pay any other amount to the account
9 holder in the nature of interest.

10 (d) Upon the establishment of the depository, there shall be created a separate special
11 revenue account within the State Treasury titled the "Bullion Depository Administrative Account",
12 which shall receive all fees, charges, and penalties collected by the depository as well as any
13 appropriations to the depository from the Legislature. The administrator shall make expenditures
14 from the administrative account for the purposes of implementing, operating, and maintaining the
15 depository. Any balance, including accrued interest and other returns, remaining in the
16 administrative account at the end of each fiscal year shall not revert to the General Revenue Fund
17 but shall remain in the fund to be expended as authorized by this article.

§12-10-4. Duties and powers of the administrator.

1 (a) Upon the establishment of the West Virginia Bullion Depository, the administrator shall
2 have the following duties:

3 (1) To administer, supervise, and direct the operations and affairs of the depository and
4 depository agents;

5 (2) To establish and publish the references by which the official exchange rate for pricing
6 bullion and specie transactions in terms of United States dollars or other currency is determined at
7 the time of a depository transaction in reference to fractional troy ounce measurement, and to
8 establish procedures and facilities through which the rates are made discoverable at all
9 reasonable times by system participants, both on a real-time basis and retrospectively;

10 (3) To provide state-of-the-art security measures to prevent theft, fraud, or other
11 unauthorized use or removal of deposits from the depository and to provide for the confidentiality
12 and privacy of account holder information;

13 (4) To maintain insurance coverage sufficient to cover the full value of all deposits in the
14 depository;

15 (5) To maintain adequate records of all depository accounts, and all transactions, deposits,
16 and withdrawals associated with each account;

17 (6) To operate in compliance with all federal and state laws pertaining to bullion storage,
18 management, and transactions; and

19 (7) To enter into a contract with each account holder prior to the opening of an account
20 establishing the respective duties and responsibilities of the depository and the account holder.

21 (b) Upon the establishment of the depository, the administrator shall have the following
22 powers with regard to depository administration:

23 (1) To execute contracts and other instruments for necessary goods and services, employ
24 necessary personnel, and engage the services of private consultants, auditors, counsel,
25 managers, trustees, depository agents, and any other contractor or professional needed for
26 rendering professional and technical assistance and advice to the depository: *Provided*, That
27 selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code;

28 (2) To assess, collect, and expend reasonable administrative fees, charges, and penalties

29 from account holders and to establish the method by which funds in the Bullion Depository
30 Administrative Account shall be allocated to pay for the administrative and operating costs of the
31 depository;

32 (3) To establish physical standards for gold and silver materials that will qualify as bullion or
33 specie accepted as deposits;

34 (4) To place a lien on a depository account when necessary to secure any fees, charges, or
35 other obligations owed to the depository;

36 (5) To investigate and audit depository account activity and to disqualify or suspend an
37 account holder based on a violation of the contract between the account holder and depository,
38 apparent misconduct, or illegal activity;

39 (6) To employ security officers authorized to carry firearms to ensure the physical security
40 of the depository: *Provided*, That said officers must first fulfill the certification requirement for
41 law-enforcement officers under §30-29-5 of this code and take and file an oath of office as required
42 by §6-1-1 *et seq.* of this code;

43 (7) To establish transactional currency, as provided in §12-10-6 of this code;

44 (8) To promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code; and

45 (9) To take all other necessary actions to carry out the requirements of this article subject to
46 the limitations of applicable state and federal law.

§12-10-5. Deposits.

1 Upon the establishment of the West Virginia Bullion Depository, the administrator shall
2 accept from individuals, for deposit into authorized accounts, gold and silver bullion or specie:
3 *Provided*, That the administrator may establish minimum standards for materials that will qualify
4 as bullion or specie accepted by the depository through the administrator’s legislative rulemaking
5 authority.

§12-10-6. Transactional currency authorized.

1 (a) The West Virginia Bullion Depository may establish a transactional currency, backed by

2 gold and silver bullion or specie, for account holders to utilize. Each unit of the transactional
3 currency issued to an account holder must represent a particular fraction of a troy ounce of gold or
4 silver held in the account holder's depository account.

5 (b) The value of a unit of the transactional currency at the time of a transaction must be
6 equal to the value of the appropriate fraction of a troy ounce of gold or silver, respectively at the
7 time of that transaction, as published by the West Virginia Bullion Depository pursuant to
8 §12-10-4(a)(2) of this code.

9 (c) The administrator may establish a reasonable fee for the issuance or redemption of the
10 transactional currency and an industry standard merchant fee for use. The administrator shall
11 deposit all transaction currency fee proceeds into the West Virginia Bullion Administrative Fund.

§12-10-7. Rulemaking.

1 (a) Prior to the establishment of the depository authorized by this article, the administrator
2 shall promulgate emergency rules according to the requirements of §29A-3-15 of this code which
3 shall, at a minimum:

4 (1) Establish a procedure for the administrator to determine and publish valuation of bullion
5 or specie by fractional troy ounce, along with the exchange rates of bullion and specie accepted by
6 the depository;

7 (2) Establish account opening requirements;

8 (3) Establish account ownership rights and requirements for joint account ownership,
9 account beneficiaries, and account transfers;

10 (4) Establish account deposit and withdrawal procedures, including but not limited to,
11 procedures for the delivery of deposits to an account holder on demand;

12 (5) Provide for the physical security of deposits and the privacy of account holder
13 information;

14 (6) Provide for regular third-party auditing of the depository and its procedures; and

15 (7) Establish the method by which deposits may be redeemed for money if said redemption

16 is permitted by the rules.

17 (b) Prior to the establishment of transactional currency authorized by this article, the
18 administrator shall promulgate emergency rules according to the requirements of §29A-3-15 of
19 this code, which shall, at a minimum:

20 (1) Provide for the determination and publication of the value of transactional currency in
21 real-time;

22 (2) Establish the method by which currency may be redeemed with the depository for
23 bullion or specie; and

24 (3) Establish the method by which account holders will transact in the currency, whether by
25 payment card, digital currency, or other method.

§12-10-8. Exemption from taxation.

1 For the purposes of chapter 11 of this code:

2 (1) Bullion and specie held in the West Virginia Bullion Depository do not constitute
3 personal property and shall not be subject to ad valorem personal property taxation;

4 (2) The exchange of one type of legal tender for another type of legal tender recognized in
5 this State shall not give rise to tax liability; and

6 (3) The purchase, sale, or exchange of any type of legal tender recognized by this State
7 shall not give rise to tax liability.

§12-10-9. Confidentiality.

1 All information pertaining to account holders or individual depository accounts is
2 confidential and exempt from disclosure under chapter 29B of this code. Nothing in this section
3 prohibits disclosure or publication of information in a statistical or other form which does not
4 identify the individual accounts or account holders involved or provide other personal information.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-4. Silver coin as legal tender.

1 The ~~gold~~ or silver coin issued by the government of the United States and any bullion unit
2 or specie accepted for deposit by the West Virginia Bullion Depository shall be a legal tender for
3 the payment of all debts heretofore or hereafter contracted by the citizens of this state, and the
4 same shall be received in payment of all debts due to the citizens of this state, and in satisfaction of
5 all taxes levied by the authority of the laws of this state.

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NOTE: The purpose of this bill is to recognize gold and silver bullion and specie as legal tender in West Virginia, to authorize the West Virginia Bullion Depository, and to authorize the depository to issue transactional currency backed by gold and silver.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.