

DIGITAL GOLD LEGISLATION AND MODEL LEGISLATION
JANUARY 2026
LEGISLATIVE BRIEFING
"What Are We Really Legalizing?" *A Legislator's Guide to Digital Gold Systems*

Issues Under ALEC Model Legislation and Arkansas and Texas Gold/Silver Electronic Payment System-Authorizing Laws

- Legal Issues
 - Questionable Constitutionality:
 - Article 1 §10 of the US Constitution prohibits states from “coining money.” The argument that the transactional currency is a “representation” of bullion or specie (as Ohio’s bill states) does not remove it from being a separate currency from specie and bullion.
 - Article 2 §10 prohibits states from making any thing other than silver or gold coin a tender in payment of debts. The state does not have the power to make electronic currency “representing” specie and bullion legal tender.¹
 - There is no requirement for an opinion from the Attorney General or other counsel that this system is constitutional, leaving it open to litigation and accompanying uncertainty as to legality.
 - Status of Issuer: There is no provision stating that the state is the issuer of the electronic “currency,” although that appears to be the case in these statutes. How does the digital precious metals currency created in these statutes fit into the Clarity Act/Responsible Innovation Act and payment stablecoin system (under the GENIUS Act)?
 - A provision like that in the ALEC model act that a depository agent or contracted entity must operate in the interests of the state is insufficient to establish a fiduciary obligation to the depositors or, conceivably, privity of contract between the depositors and vendors on the one hand and the contractors on the other. In addition, the contractors to the state may claim exemption from public records laws.=

¹ Note that a state may be able (barring some state constitutional or other provision expressly prohibiting this), either legislatively or through regulations, to accept the transactional currency, specie or bullion in payment of debts to the state (as a proposed Mississippi bill would provide) or make payments in the form of the transactional currency (note the Utah bill that was vetoed by the governor provided that the state treasurer was to “evaluate the options and implications for allowing state employees to receive compensation through the precious metals-backed electronic payment system.”) Another proposal we reviewed leaves the option to accept metals-based electronic currency in payment of obligations to local governments open to each separate governmental unit.

- Under current law, gold and silver are subject to capital gains taxation when exchanged for Federal Reserve notes (dollars) or when used in barter transactions. Even though the statutes in some states exempt precious metals from state capital gains taxes, states have no power to change the fact that precious metals are subject to federal capital gain taxes.
- Problems with Programmability
 - None of the bills/laws so far prohibit the electronic currency created by the statute from being programmable and therefore being adapted to a social credit system. Programmability feature embedded in the currency itself (as opposed to outside the currency as would be the case, e.g., in a food stamp card that is good only for the purchase of certain goods) is the concern with any digital currency.
 - Social credit system – see Carstens and Britcard videos linked in the main presentation. Digital gold/silver backed electronic payment systems may prove worse than central bank digital currencies in terms of loss of control by users over their financial assets in that central bank systems likely would include safeguards that may not be a characteristic of state systems controlled by private contractors. Control over when, where, and how a user may use money when that money itself is programmable is effectively the same under both systems.
 - The state CFO has no power to ensure that transactional currency is accepted as legal tender or otherwise for the payment of debts by the holders to private parties -- only with respect to debts to the state and state instrumentalities. The hope expressed in some accompanying legislative history in Texas that the creation of a precious-metals electronic “currency” would be open to court interpretation of federal tax laws to exempt such currency from federal capital gain taxes may be unfounded.
- Loss of Control by State
 - With no existing state bullion depository located inside any state other than Texas, creating a state-run system for electronic currency based upon depository holdings of bullion and specie in any state other than Texas is putting the cart before the horse – presuming a government-run transaction system is a prudent idea in the first place (which it is not).
 - Making any other depository in and controlled by another state an approved bullion depository subjects the state’s system to laws of another state (which, in the case of Texas, includes a recent digital ID law) as well as any state-controlled attributes of the out-of-state depository.
 - In all the bills/laws we have reviewed, there are no limits, other than the CFO’s discretion, on the selection and underwriting of the outside contractor/vendor that presumably would control the establishment of an in-state depository or the electronic system generally and any contracts governing the duties of the vendor [Glint/Mastercard?].

- Would AI and blockchain (e.g., including title to in-state real estate) be involved in this system or be built out from this system? One can imagine that these statutes are preparing for such eventualities.
 - What if the state's CFO is not competent, or compromised by powerful commercial interests with conflicts? Should a state contemplating creating a bullion depository and/or precious metals-based digital currency recruit un-conflicted experts in crypto, precious metals, etc. to be employees of the state to make key decisions, assure security and negotiate contracts needed to create a system that is loyal to the state's residents?
- There is no apparent provision to prevent intervention or control by the federal government or, on the other hand, that the state maintains control over the system in the event the state contractor(s) "go rogue" and deny access.
- Potential for Conflicts of Interest; Mr. Global v Small Business
 - Background of lobbying nationwide by Glint/Mastercard
 - It is solely up to the state CFO to ensure that the transactional gold system is not rife with conflicts of interest, which, among other things, leads to increase in costs and control out-of-state in the case of small states
 - There are many issues that arise in the context of public-private partnerships that pick winners and losers, setting up the government as a competitor to private businesses. These statutes may harm in-state private businesses, particularly small businesses, involved in the precious metals arena and potentially the financial arena.
 - The purchase or redemption money held in the depository accounts could be held at a systemically important bank or anywhere else – there is no limit, and no requirement that it be held in the state. Expect that big New York fed-member banks will lobby for funds to be held with them. If held in a single pooled account, this money is not insured by FDIC beyond the \$250,000 per "account" as defined by the FDIC insurance limit.
 - Gold payment apps are already available in the private sector, anyway. What happens in the event of a sudden drop in the market value of gold and/or silver?
- Operational Issues
 - In none of these statutes is there any specific provisions or limits thereon as to insurance, security, auditing, systems requirements or conflicts of interest, among other key protections necessary to protect holders of the transactional currency, leaving the system highly vulnerable to the whims of outside contractors, who in turn may exert political control in obtaining the contractor(s) and selecting attributes and features of the system. [The Solari Papers #2: U.S. State Bullion Depositories](#) for key safety and other issues as they relate to the holding of bullion.

- These statutes do not protect state residents from federal government control and do not provide for any system to verify the identity of the holder upon a request for redemption or transfer to a third party. The logical way to address this is a federal ID (REAL ID) or state-issued digital ID, which we vehemently oppose. See Financial Rebellion episodes dealing with REAL ID issues, e.g., [here](#), [here](#) and [here](#).
- Nothing prevents the specie and bullion from being held in a pooled depository account (and the Ohio proposed legislation introduced in 2025 indicates as much), with all of the risks to the holder that accompany unsegregated accounts. What financial institution will be the custodian of the bullion or coins and what is to prevent it from commingling its own or its customer holdings with those of the state's system?
- The state, presumably, would have to become involved in a system for reporting gains and losses on exchanges between federal reserve currency (dollars) and transactional currency (and bullion and specie) for capital gain purposes as well as complying with anti-money-laundering reporting requirements. This involves a whole new level of complexity, expense and federal oversight (and, potentially, involvement in litigation over rights of depositors, liability for losses, etc.).
- Costs
 - Has anyone determined how much a system of transactional currency would cost the state and where the money would come from in terms of appropriations?
 - Given Gresham's Law (bad money circulates; good money is saved), as well as the tax friction in "spending" gold and silver, why are we confident that many would even use such a system?
 - Particularly if trading in precious metals by consumers slows down, the costs to account holders may make transactions in precious-metals-based currency less attractive.
- Security
 - Digital -- If contractors are used to develop coding and other aspect of the database(s), how is this to be protected from hacking and use by the contractor for nefarious purposes or in its own private business? How does the state maintain control over the data in the event, e.g., that it wishes to change contractors? Would the codes be held in the cloud (through Amazon Cloud Services, e.g.)? How is depositor privacy protected?
 - Physical – holding specie (coins, bullion) subjects the state in these statutes to theft losses, whether by armed thieves or crooked custodians.
 - What is to prevent a political corruption like the "coingate" scandal in Ohio (where a politically-connected gold dealer made off with funds of the Ohio Workmen's Compensation Fund)?