

Kitco Exclusive News

(Kitco News) - Uncertain economic times and distrust of fiat currencies have people around the globe flocking to the safety of hard assets, with gold and silver the primary beneficiaries of that discontent.

Some U.S. state legislators are starting to also look at what they can do to protect their local economies and many are wondering how they can enact a gold standard. It's unlikely, however, that states can go very far without being in conflict with federal law.

Most famously, Congressman Ron Paul (R-Texas) has advocated the abolition of the Federal Reserve and a return to a gold standard.

Lawmakers in several states, including Tennessee, Virginia, New Hampshire and South Carolina, have introduced bills to look into minting their own currencies in the event of a complete breakdown of the U.S. Federal Reserve. In Georgia, a bill to make the state only use gold and silver is in committee.

Utah has received the most media attention on this subject as the House and Senate have passed [HB317](#), which would recognize gold and silver coins as legal tender and exempt them from certain state tax liability. Although the legislative session for Utah is over, Gov. Gary R. Herbert has until March 30 to veto the bill; if he does not, it automatically becomes law.

Republican Utah Sen. Scott Jenkins, a co-sponsor of the bill, told Kitco News the state would take no action now, but that passage would allow an interim study group to further research whether they could or should establish an alternative form of legal tender.

Republican Utah Rep. Brad Galvez, who introduced the bill, said that the state of the U.S. economy is what spurred the bill.

"This is a step in preparedness, a step in security," Galvez said, "It allows us to be able to hold up our economy as the dollar continues to shrink."

Jenkins said he didn't know what the governor's view is on the bill, and calls and emails to the Utah governor's office by Kitco News were not returned.

Galvez said one aspect the committee would examine is how gold and silver coins could be treated.

"If you were to take a gold coin or silver and tender it for a pair of shoes...the face value may be \$1 but the spot price may be \$36. So what the Revenue Taxation Committee would be responsible for is to study the implementation of it. If you have a tendered coin, you would want to get the value of it not just the face value," Galvez told Kitco News.

However, the legislation would not force merchants to accept gold and silver coins as payment, Galvez said.

ALL U.S. MINT COINS ARE LEGAL TENDER

All coins struck by the U.S. Mint are legal tender under the [1965 Coinage Act](#), said David L Ganz, managing partner and principal litigator in the law firm of Ganz & Hollinger, P.C. in New York City. Ganz has edited the book "America's Coinage Laws (1792-1894)" and is a life fellow of the American Numismatic Society.

"I can take my commemorative coins to the bank or the post office and for my \$1 silver coin, which is

worth about \$32, I will get \$1 in stamps or four quarters in change,” Ganz said.

That’s because the term “legal tender” refers to a set price. It doesn’t track the metal inside. “It doesn’t matter how much it weighs. Congress says what the value is,” he said.

Legislators who are seeking a return to the gold standard or to use gold and silver coins according to their weight point to two areas in the U.S. Constitution they believe support their goals. The first is [Article 1, Section 8](#), which deals with Congress’ ability to coin money and regulate its value. The second is the [10th Amendment](#), which sets up states’ rights. Some of these powers include the ability of the states to look out for the welfare and safety of its citizens.

“All of these proposals and laws are a sign of our times. State and local governments are severely under stress and they’re looking down the road at ways to protect themselves. That’s the practical economic view. The legal view is this is another battle between the 10th amendment and Article 1,” said Albert Navarra, author of “The Elements of Constitutional Law” and a practicing lawyer since 1999.

The 10th amendment is not “a blank check” for states to do what they want, he said, and often that amendment bumps into other laws.

“Under the Constitution, states can’t make their own currency, even if they’re concerned about hyper inflation. That’s when the federal government would step in and say it’s prohibited,” Navarra said, referring to [Article 1, Section 10](#), prohibiting states from coining money.

He explained that Article 1 of the Constitution creates a common economic market in the U.S. This is why Congress has the power over interstate commerce and can strike down a state law if it interferes with interstate commerce.

CONSTITUTIONALITY OF PAPER MONEY

Both Navarra and Ganz said even though the Constitution says “to coin” and not “to print” money, the Supreme Court’s rulings on the matter are why paper money is recognized as legal tender.

“The Constitution is written in very general terms; it’s up for the Supreme Court to interpret the specifics. For instance, the Constitution doesn’t have anything in there about credit cards or web points,” Navarra said.

Ganz said the issue regarding paper money dates back to 1862 and the Legal Tender Act which was created during the Civil War. There were several cases about the constitutionality of legal tender brought to the Supreme Court, the final being heard in 1884 in a case called *Juilliard vs. Greenman*, with the court ruling in favor of paper money usage.

Because Congress sets the value of money, states that want to value gold and silver coins by weight rather than the face value could run afoul of federal law. Several of the proposals, such as the one in the Georgia house banking committee, would use the daily fluctuating price of gold and silver. If states were to pursue that, it would be in violation of Article 1, section 8, Navarra said.

Further, Ganz said, calling something “legal tender” is an act of compulsion. “If someone comes to you to pay an obligation, you can decline to accept it, but then you lose any rights to take against the person,” he said.

Ganz also said because values fluctuate daily, accepting gold and silver coins for payment bring up realistic problems. “If you have a silver coin with a face value of \$30 with an ounce of pure silver in it and it trades to \$34, it’s now competing with itself because of the price of the metal,” he said.

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