

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 483
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that demand for the storage of precious metals is high and includes public institutions, private businesses, and individual investors alike, but there are concerns that precious metals owned by the state are currently stored in other states. These parties assert that a state depository would remove much of the uncertainty and safety concerns associated with the storage of precious metals elsewhere by providing dedicated storage of precious metal holdings for state agencies and investment organizations. Interested parties contend that establishment of a Texas bullion depository would allow the state, state agencies, and private individuals to store precious metals utilizing a secure Texas-based depository to reduce reliance on out-of-state facilities and to insulate their assets from unstable market forces. C.S.H.B. 483 seeks to establish a Texas bullion depository.

C.S.H.B. 483 amends current law relating to the establishment and administration of a state bullion depository and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Sections 2116.005, 2116.006, 2116.010, 2116.024, 2116.025, and 2116.052, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 10, Government Code, by adding Chapter 2116, as follows:

CHAPTER 2116. TEXAS BULLION DEPOSITORY

SUBCHAPTER A. ESTABLISHMENT AND ADMINISTRATION OF TEXAS BULLION DEPOSITORY

Sec. 2116.001. DEFINITIONS. Defines "administrator," "bullion," "business day," "deposit," "depositor," "depository," "depository account," "depository account holder," "depository agent," "precious metal," and "specie," in this chapter.

Sec. 2116.002. TEXAS BULLION DEPOSITORY. (a) Provides that the Texas Bullion Depository is established as an agency of this state in the office of the comptroller of public accounts of the State of Texas (comptroller).

(b) Provides that depository is established to serve as the custodian, guardian, and administrator of certain bullion and specie that are authorized to be transferred to or otherwise acquired by this state or an agency, a political subdivision, or another instrumentality of this state.

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR. (a) Provides that the depository is administered as a division of the office of the comptroller and under the direction and supervision of a bullion depository administrator appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.

(b) Requires the administrator to:

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

(2) liaise with the comptroller and other divisions of the office of the comptroller to ensure that each transaction with the depository that involves state money, that involves an agency, a political subdivision, or another instrumentality of this state, or that involves a private person is planned, administered, and executed in a manner to achieve the purposes of this chapter.

(c) Authorizes the administrator to appoint, subject to the approval of the comptroller, a deputy administrator or other subordinate officer as necessary and appropriate to the efficient administration of the depository.

Sec. 2116.004. DEPOSITS AND RELATED ASSETS NOT SUBJECT TO LEGISLATIVE APPROPRIATION; STATUS OF DEPOSITS AND ALLOCATION OF REVENUES. (a) Provides that the following are not available for legislative appropriation:

(1) a deposit to the depository;

(2) bullion or specie held by or on behalf of the depository or a depository agent;

(3) bullion or specie in transit to or from the depository or a depository agent; and

(4) a receivable or other amount owed to the depository in settlement of a transaction in bullion or specie.

(b) Provides that bullion, specie, and other assets described by Subsection (a) are subject to redemption, liquidation, or transfer exclusively to discharge an obligation of the depository to depository account holders, depository agents, bullion banks, financial institutions, or other intermediaries in accordance with this chapter and rules adopted under this chapter.

(c) Requires that revenue the depository realizes from fees, charges, or other payments received in the course of depository operations be deposited to the credit of the general revenue fund.

Sec. 2116.005. DEPOSITS AND DEPOSITORY ACCOUNTS; STANDARDS. (a) Authorizes the depository to receive a deposit of bullion or specie from or on behalf of a person acting in the person's own right, as trustee, or in another fiduciary capacity, in accordance with rules adopted by the comptroller as appropriate to:

(1) ensure compliance with law; and

(2) protect the interests of the depository, depository account holders, this state and the agencies, political subdivisions, and instrumentalities of this state, and the public at large.

(b) Requires the depository to record the amount of precious metals a person deposits, regardless of form, in units of troy ounces pure, and the records must also specify the type and quantity of each precious metal deposited.

(c) Requires the comptroller by rule to adopt standards by which the quantities of precious metals deposited are credited to a depositor's depository account by

reference to the particular form in which the metals were deposited, classified by mint, denomination, weight, assay mark, or other indicator, as applicable. Requires that the standards conform to applicable national and international standards of weights and measures.

(d) Authorizes the comptroller by rule, if the comptroller determines that to do so is in the public interest, to restrict the forms in which deposits of precious metals to be made to those forms that conveniently lend themselves to measurement and accounting in units of troy ounces and standardized fractions of troy ounces.

(e) Requires the depository to adjust each depository account balance to reflect additions to or withdrawals or deliveries from the account.

Sec. 2116.006. DEMAND, PRESENTMENT, WITHDRAWAL, DELIVERY, AND SETTLEMENT. (a) Requires the depository to deliver any precious metal held by or on behalf of the depository in bullion, specie, or a combination of bullion and specie, on the order of a depository account holder in a quantity of that precious metal as is available in the depository account holder's depository account.

(b) Requires the depository to make a delivery described by Subsection (a) on demand by the presentment of a suitable check, draft, or digital electronic instruction to the depository or a depository agent. Requires the comptroller by rule to adopt the forms, standards, and processes through which an order for delivery on demand is authorized to be made, presented, and honored.

(c) Requires the depository to make a delivery at the depository's settlement facility designated by the comptroller, shipping to an address specified by the account holder or, at the depository's discretion, at a facility of a depository agent at which presentment is made, not later than five business days after the date of presentment.

Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a) Authorizes a deposit account holder, in accordance with rules adopted under this chapter, to transfer any portion of the balance of the holder's depository account by check, draft, or digital electronic instruction to another depository account holder or to a person who at the time the transfer is initiated is not a depository account holder.

(b) Requires the depository to adjust the depository account balances of the depository accounts to reflect a transfer transaction between depository account holders on presentment of the check, draft, or other instruction by reducing the payor's depository account balance and increasing the depository account balance of the payee accordingly.

(c) Requires the depository, if a depository account holder transfers to a payee who is not a depository account holder any portion of the balance of the holder's depository account, to allow the payee to establish a depository account by presentment of the payor's check, draft, or instruction to the depository or to a depository agent. Requires the depository to credit a newly established account on behalf of the payee and to debit the payor's account accordingly.

Sec. 2116.008. DEPOSITORY ACCOUNT CONTRACTS. (a) Requires that a depositor, to establish a depository account, contract with the depository for a depository account. Requires that the contract specify the terms applicable to the account, including any special terms, and the conditions on which withdrawals or deliveries with respect to the account are authorized to be made.

(b) Authorizes the execution of a contract for a depository account described by this section to be made, as prescribed by rules adopted under this chapter, by electronic or digital transmission.

(c) Requires the depository or a depository agent to hold the contract for a depository account in the records pertaining to the account.

(d) Provides that a contract for a depository account executed by a depositor and the depository is considered a contract in writing for all purposes, and may be evidenced by one or more agreements, deposit receipts, signature cards, amendment notices, or other documentation as provided by law.

(e) Authorizes the depository and the depository account holder to amend a contract for a depository account by agreement, or authorizes the depository to amend the deposit contract by mailing a written notice of the amendment to the account holder, separately or as an enclosure with or part of the account holder's statement of account or passbook. Requires that, in the case of amendment by notice from the depository, the notice include the text and effective date of the amendment. Prohibits the effective date from being earlier than the 30th day after the date the notice is mailed, unless otherwise provided by rules adopted under this chapter.

Sec. 2116.009. CAUSE OF ACTION FOR DENIAL OF DEPOSIT LIABILITY. (a) Provides that a cause of action for denial of deposit liability on a depository account contract without a maturity date does not accrue until the depository has denied liability and given notice of the denial to the depository account holder.

(b) Provides that the depository's act of furnishing an account statement or passbook, whether in physical, digital, or electronic form, constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook.

(c) Provides that the depository's sovereign immunity from suit is waived for an action brought by a depositor for the denial of deposit liability.

(d) Provides that the depository's liability for a denial of deposit liability is limited to the amount on deposit for which liability was denied. Prohibits a depositor from recovering consequential damages, exemplary damages, pre- or post-judgment interest, costs, or attorney's fees.

(e) Requires that a suit authorized by this section be brought in a district court of Travis County.

(f) Requires that a suit authorized by this section be brought before the expiration of one year after the date the cause of action accrues or the suit is barred.

Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. Authorizes the comptroller by rule to establish fees, service charges, and penalties to be charged a depository account holder for a service or activity regarding a depository account, including a fee for an overdraft, an insufficient fund check or draft, or a stop payment order.

Sec. 2116.011. DEPOSITORY ACCOUNT OWNERSHIP BY OWNER OF RECORD. Authorizes the depository treat the holder of record of the account as the owner of the account for all purposes and without regard to a notice to the contrary, unless the depository acknowledges in writing a pledge of a depository account.

Sec. 2116.012. TRANSFER OF DEPOSITORY ACCOUNT. (a) Authorizes a depository account to be transferred on the books of the depository only on presentation to the depository of evidence of transfer satisfactory to the depository, and an application for the transfer submitted by the person to whom the depository account is to be transferred.

(b) Requires a person to whom a depository account is to be transferred to accept the transferred account subject to the terms of the deposit contract, this chapter, and rules adopted under this chapter.

Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING. Prohibits the depository from paying on a depository account interest, an amount in the nature of interest, or a fee or other payment for the use or forbearance of use of money, bullion, specie, or precious metals deposited to a depository account.

Sec. 2116.014. LIEN ON DEPOSITORY ACCOUNT. (a) Provides that without the need of any further agreement or pledge, the depository has a lien on each depository account owned by a depository account holder to secure any fees, charges, or other obligations owed or that may become owed to the depository in connection with any of the depository account holder's depository accounts as provided by the terms of the depository account holder's applicable depository account contract.

(b) Authorizes the depository, on default in the payment or in the satisfaction of a depository account holder's obligation, without notice to or consent of the depository account holder, to transfer on the depository's books all or part of the balance of a depository account holder's depository account to the extent necessary to pay or satisfy the obligation, as determined by reference to the exchange rates applicable at the time of the transfer.

(c) Authorizes the depository by written instrument to waive wholly or partly the depository's lien on a depository account.

(d) Requires the depository, subject to a lien created as provided by this section, to recognize the lawful pledge to a third party by a depository account holder of the depository account holder's rights, interests, and entitlements in and to a depository account as an intangible asset. Requires the depository, on the satisfaction of other requirements of law in respect of the perfection and enforcement of a pledge of that type, to take all steps reasonably necessary and appropriate to effectuate on the depository's books any transfer of a depository account or of all or part of a depository account balance to the account of the secured party on the successful enforcement of the pledge.

Sec. 2116.015. DEPOSITORY ACCOUNT AS LEGAL INVESTMENT. (a) Authorizes certain persons to invest the person's money in a depository account by purchasing precious metals and depositing the precious metals with the depository or a depository agent, and sets forth a list of those authorized persons.

(b) Provides that an investment by an insurance company in a depository account is eligible to be applied as a credit against taxes payable under Chapters 221 (Property and Casualty Insurance Premium Tax) and 222 (Life, Health, and Accident Insurance Premium Tax), Insurance Code, in accordance with rules adopted by the comptroller after consultation with the commissioner of insurance.

(c) Authorizes an investment by a school district in a depository account to be made instead of an investment as provided by Section 45.102 (Investment of Bond Proceeds in Obligations of United States or Interest-Bearing Secured Time Bank Deposits), Education Code, and the depository to be used by a district instead of a depository bank for the purposes of Subchapter G (School District Depositories), Chapter 45, Education Code.

Sec. 2116.016. APPLICABILITY OF ESTATES CODE. Provides that the applicable provisions of Chapters 111 (Nonprobate Assets in General), 112 (Community Property with Right of Survivorship), and 113 (Multiple-Party Accounts), Estates Code, govern a depository account.

Sec. 2116.017. PLEDGE OF JOINTLY HELD DEPOSITORY ACCOUNT. (a) Authorizes a person on whose signature precious metals may be withdrawn from a depository account that is jointly held in the names of two or more persons, unless a term

of the depository account provides otherwise, by a signed pledge, to pledge and transfer to the depository or to a third party all or part of the account.

(b) Provides that a pledge made as described by Subsection (a) does not sever or terminate the joint and survivorship ownership of the account, to the extent applicable to the account before the pledge.

Sec. 2116.018. DEPOSITORY ACCOUNT HELD BY FIDUCIARY. (a) Authorizes the depository or a depository agent to accept a depository account in the name of a fiduciary, including an administrator, executor, custodian, guardian, or trustee, for a named beneficiary.

(b) Authorizes a fiduciary to open, add to, or withdraw precious metals from an account described by Subsection (a).

(c) Provides that, except as otherwise provided by law, a payment or delivery to a fiduciary or an acquittance signed by the fiduciary to whom a payment or delivery is made is a discharge of the depository for the payment or delivery.

(d) Authorizes the depository, after a person who holds a depository account in a fiduciary capacity dies, to pay or deliver to the beneficiary of the account the quantity of precious metals represented by the balance in the depository account, plus other rights relating to the depository account, wholly or partly, if the depository has no written notice or order of the probate court of a revocation or termination of the fiduciary relationship, or any other disposition of the beneficial estate.

(e) Provides that the depository has no further liability for a payment made or right delivered under Subsection (d).

Sec. 2116.019. DEPOSITORY ACCOUNT HELD IN TRUST; UNDISCLOSED TRUST INSTRUMENT. (a) Provides that, if the depository opens a depository account for a person claiming to be the trustee for another person and the depository has no other notice of the existence or terms of the trust other than a written claim against the account:

(1) the person claiming to be the trustee, on the person's signature, is authorized to withdraw precious metals from the account; and

(2) if the person claiming to be the trustee dies, the depository is authorized to pay or deliver the quantity of precious metals represented by the balance in the account to the person for whom the account was opened.

(b) Provides that, the depository has no further liability for a payment or delivery made as provided by Subsection (a).

Sec. 2116.020. POWER OF ATTORNEY; REVOCATION ON DEATH OR INCOMPETENCY. (a) Requires that the depository recognize the authority of an attorney-in-fact authorized in writing by a depository account holder to manage or withdraw precious metals from the depository account holder's depository account until the depository receives written or actual notice of the revocation of that authority.

(b) Provides that, for purposes of this section, written notice of the death or adjudication of incompetency of a depository account holder is considered to be written notice of revocation of the authority of the account holder's attorney-in-fact.

Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. Requires the depository to enter into transactions and relationships with bullion banks, depositories, dealers, central banks, sovereign wealth funds, financial institutions, international nongovernmental organizations, and other persons, located inside or outside of this state or inside or outside

of the United States, as the comptroller determines to be prudent and suitable to facilitate the operations of the depository and to further the purposes of this chapter.

Sec. 2116.022. CERTAIN ACTIONS PROHIBITED. Prohibits the depository from taking certain actions as set forth and provides that any attempt by the depository to take any of the following actions as set forth is void ab initio and of no force or effect.

Sec. 2116.023. CONFISCATIONS, REQUISITIONS, SEIZURES, AND OTHER ACTIONS VOID. (a) Provides that a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by the balance of a depository account, if effected by a governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, is void ab initio and of no force or effect.

(b) Prohibits the depository from recognizing the governmental or quasi-governmental authority, financial institution, or other person acting as the lawful successor of the registered holder of a depository account in question, in the case of receiving notice of a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by the balance of a depository account, effected by a governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights.

(c) Requires the depository, on receipt of notice of any transaction described by Subsection (a), with respect to all or any portion of the balance of a depository account, suspend withdrawal privileges associated with the balances of the depository account until suitable substitute arrangements may be effected in accordance with rules of the comptroller to enable the registered account holder to take delivery of the precious metals represented by the account balances in question. Requires the depository to recognize to the full extent authorized by this chapter and rules adopted under this chapter, and authorizes a voluntary transfer of a depository account balance or of a depository account among depository account holders to continue to take place unaffected by the suspension.

Sec. 2116.024. OFFICIAL EXCHANGE RATES. Requires the comptroller by rule to establish the references by which the official exchange rate for pricing precious metals transactions in terms of United States dollars or other currency must be established at the time of a depository transaction. Requires the comptroller to establish procedures and facilities through which the rates are made discoverable at all reasonable times by system participants, both on a real-time basis and retrospectively.

Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF TAXABLE GAINS. Requires the comptroller by rule to establish procedures and requirements for the depository and depository agents designed to minimize the burden to system participants of accounting for and reporting taxable gains and losses arising out of depository transactions as denominated in United States dollars or another currency.

Sec. 2116.026. ANNUAL REPORT. Requires the comptroller to submit to the governor and the legislature a report on the status, condition, operations, and prospects for the depository and depository participation each year not later than September 30.

SUBCHAPTER B. DEPOSITORY AGENTS

Sec. 2116.051. USE OF DEPOSITORY AGENTS. Requires the depository to use private, independently managed firms and institutions licensed as depository agents as intermediaries to conduct retail transactions in bullion and specie on behalf of the depository with current and prospective depository account holders.

Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND PROCESSES. Requires the comptroller by rule to require a depository agent to maintain suitable systems and processes for electronic information sharing and communication with the comptroller and the depository to ensure that all transactions effected on behalf of the depository are reported to and integrated into the depository's records not later than 11:59:59 p.m. on the date of each transaction.

Sec. 2116.053. PERIODIC REPORTS. Requires a depository agent to submit monthly, quarterly, and annual reports of all depository transactions not later than the 15th day of the month following the expiration of the period with respect to which such report is submitted. Requires that the report contain information and be in a form and format as rules of the comptroller require.

SECTION 2. Amends Section 151.002(a), Finance Code, as follows:

(a) Provides that this section defines general terms that apply to an applicant for or holder of a money services license issued under this chapter, regardless of whether the license is a money transmission license, a currency exchange license, or a depository agent license. Provides that additional terms that apply specifically to depository agents are defined in Section 151.851.

SECTION 3. Amends Section 151.002(b), Finance Code, by adding Subdivisions (9-a), (9-b), and (9-c) to define "depository agent," "depository agent license," and "depository agent services" and amending Subdivisions (11) and (14) to redefine "license holder" and "money services."

SECTION 4. Amends Section 151.003, Finance Code, as follows:

Sec. 151.003. EXCLUSIONS. Provides that, subject to Subchapter J, certain persons as set forth are not required to be licensed by this chapter, including a person engaged in the business of currency transportation who is both a registered motor carrier under Chapter 643, Transportation Code, and a licensed armored car company or courier company under Chapter 1702, Occupations Code, provided that the person does not engage in the money transmission or currency exchange business or depository agent services business without a license issued under this chapter.

SECTION 5. Amends Section 151.201, Finance Code, as follows:

Sec. 151.201. SCOPE. Provides that this subchapter sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license, a currency exchange license, or a depository agent license. Provides that Subchapter J sets forth the additional qualifications and provisions that apply specifically to a depository agent license.

SECTION 6. Amends Sections 151.207(a), (b), and (d), Finance Code, as follows:

(a) Authorizes the banking commissioner of Texas (commissioner) to suspend or revoke a license holder's license, if a license holder does not continue to meet the qualifications

or satisfy the requirements that apply to an applicant for a new money transmission license, currency exchange license, or depository agent license, as applicable.

(b) Requires a license holder, in addition to complying with Subsection (a), annually to submit a report that is under oath, is in the form and medium required by the commissioner, and contains if the license is a money transmission license or depository agent license, an audited unconsolidated financial statement dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year.

(d) Provides that, if the license holder fails to submit the completed annual report and pay the annual license fee and any late fee due within the time prescribed by Subsection (c)(1), the license expires and the license holder must cease and desist from engaging in the business of money transmission, currency exchange, or depository agent services, as applicable, as of that date. The expiration of a license is not subject to appeal, as of that date.

SECTION 7. Amends Section 151.302(a), Finance Code, to prohibit a person from engaging in the business of money transmission or advertising, soliciting, or holding itself out as a person that engages in the business of money transmission unless the person is licensed as a depository agent under Subchapter J and only engages in the business of money transmission in connection with, and to the extent necessary for, the performance of depository agent activities.

SECTION 8. Amends Section 151.502(a), Finance Code, to prohibit a person from engaging in the business of currency exchange or advertising, soliciting, or holding itself out as providing currency exchange unless the person is licensed as a depository agent under Subchapter J and only engages in the business of currency exchange in connection with, and to the extent necessary for, the performance of depository agent activities.

SECTION 9. Amends Section 151.602(a), Finance Code, to require a license holder to prepare, maintain, and preserve the following books, accounts, and other records for at least five years or another period as may be prescribed by rule of the Finance Commission of Texas (commission) a record of each money transmission transaction, currency exchange transaction, or depository agent services transaction, as applicable.

SECTION 10. Amends Section 151.603, Finance Code, by adding Subsection (c-1), as follows:

(c-1) Requires a depository agent license holder to prepare written reports and statements as follows:

(1) the renewal report required by Section 151.207(b)(2), including an audited unconsolidated financial statement that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(2) a quarterly interim financial statement and report regarding the permissible investments required to be maintained under applicable rules that reflect the license holder's financial condition and permissible investments as of the last day of the calendar quarter to which the statement and report relate and that are prepared not later than the 45th day after the last day of the calendar quarter; and

(3) any other report required by commission rule or reasonably requested by the commissioner to determine compliance with this chapter.

SECTION 11. Amends Section 151.604(b), Finance Code, to require a license holder to file a written report with the commissioner not later than 24 hours after the license holder knows or has reason to know of the institution of a proceeding to revoke or suspend the license holder's license, or to enjoin or otherwise require the license holder to cease and desist from engaging in an activity related to a business activity that, if conducted in this state, would be subject to this chapter, rather than from engaging in an activity related to money transmission, by a state or country in which the license holder engages in business or is licensed.

SECTION 12. Amends Chapter 151, Finance Code, by adding Subchapter J, as follows:

SUBCHAPTER J. DEPOSITORY AGENT LICENSE

Sec. 151.851. DEFINITIONS. Provides that in this subchapter, "bullion," "deposit," "depository," "depository account," "depository account holder," "depository agent," "precious metal," and "specie" have the meanings assigned by Section 2116.001, Government Code.

Sec. 151.852. APPLICABILITY TO DEPOSITORY AGENT SERVICES. (a) Provides that, notwithstanding any other provision of this chapter, a money service that constitutes both a depository agent service and a money transmission service, or both a depository agent service and a currency exchange service, for purposes of this chapter constitutes a depository agent service only.

(b) Provides that a depository agent service described by Subsection (a) is not subject to a provision of this chapter applicable uniquely to money transmission services or currency exchange services.

(c) Provides that a person who renders a service that constitutes a depository agent service, including a depository agent service described by Subsection (a), and renders another service that constitutes money transmission or currency exchange service only, is subject to the requirements of this chapter applicable to each type of service rendered.

Sec. 151.853. LICENSE REQUIRED. (a) Prohibits a person from engaging in the business of rendering depository agent services or advertising, soliciting, or holding itself out as a person that engages in the business of depository agent services unless the person:

(1) is licensed under this subchapter and has received the requisite certifications from the comptroller of its facilities, systems, processes, and procedures as required by Chapter 2116, Government Code, or rules adopted under that chapter; or

(2) is excluded from licensing requirements under Section 151.003.

(b) Provides that, notwithstanding any other provision of this chapter, a person described by Section 151.003(1), (6), (7), (8), or (9) (relating to certain licensing exclusions) is not eligible for a license under this subchapter and is prohibited from engaging in depository agent activities.

(c) Provides that, for purposes of this chapter:

(1) a person engages in the business of depository agent services if the person renders a depository agent service, regardless of whether:

(A) compensation is sought or received for the service, directly or indirectly; and

(B) the service is incidental to any other business in which the person is primarily engaged; and

(2) a person solicits, advertises, or holds the person out as a person that engages in the business of depository agent services if the person represents that the person will conduct depository agent services.

(d) Provides that, notwithstanding Subsection (c), a person does not engage in the business of depository agent services by engaging in a transaction for the person's

own depository account or for the account of another person acting as a fiduciary that would constitute depository agent services if conducted for another person.

(e) Authorizes a depository agent license holder to engage in depository agent services business at one or more locations in this state owned directly or indirectly by the license holder under a single license.

Sec. 151.854. **ADDITIONAL QUALIFICATIONS.** Requires an applicant for a depository agent license, in addition to the general qualifications for licensure set forth in Section 151.202 (Qualifications for License), to demonstrate to the satisfaction of the commissioner that:

(1) the applicant's financial condition will enable the applicant to safely and soundly engage in the business of depository agent services; and

(2) the applicant does not engage in any activity or practice that adversely affects the applicant's safety and soundness.

Sec. 151.855. **APPLICATION AND ACCOMPANYING FEE, STATEMENTS, AND SECURITY.** (a) Requires an applicant for a depository agent license to submit an application in accordance with Section 151.203 (Application for License).

(b) Requires an applicant, at the time an application for a depository agent license is submitted, to file with the Texas Department of Banking (department):

(1) an application fee in the amount established by commission rule;

(2) audited financial statements that are satisfactory to the commissioner for purposes of determining whether the applicant has the minimum net worth required under applicable rules and is likely to maintain the required minimum net worth if a license is issued; and

(3) security in the amount of \$500,000 that meets the requirements of applicable rules and an undertaking or agreement that the applicant will increase or supplement the security to equal the aggregate security required by the commissioner before the issuance of the license and the start of operations.

Sec. 151.856. **INVESTIGATION AND ACTION ON APPLICATION.** Requires the commissioner to investigate the applicant and act on the application in accordance with Sections 151.204 (Processing and Investigation of Application) and 151.205 (Issuance of License).

Sec. 151.857. **TEMPORARY LICENSE.** (a) Authorizes the commissioner issue a temporary depository agent license to a person that is engaging in depository agent services, but has not obtained a license under this subchapter, if the person:

(1) certifies in writing that the person qualifies for the license and will submit a completed license application not later than the 60th day after the date the temporary license is issued;

(2) submits a recent financial statement acceptable to the commissioner that reflects the minimum net worth required under applicable regulations;

(3) provides security that meets the requirements specified by the commissioner, but not less than \$500,000;

(4) agrees in writing that, until a permanent license is issued, the person will engage only in activities being conducted at existing locations; and

(5) pays the application fee and a nonrefundable temporary license fee in the amount established by commission rule.

(b) Prohibits the effective period for a temporary depository agent license from exceeding 90 days after the date the license is issued. Authorizes the commissioner to extend the effective period for not more than 30 days if necessary to complete the processing of a timely filed application for which approval is likely.

Sec. 151.858. LIABILITY OF LICENSE HOLDER. Provides that a depository agent license holder is liable for the delivery to or for the account of the depository or each depositor, as applicable, of all bullion, specie, and money payable or deliverable in connection with the transactions in which the license holder engages on behalf of the depository.

Sec. 151.859. TRUST IMPOSED. (a) Requires a depository agent license holder to hold in trust all cash, bullion, specie, and other assets received in the ordinary course of its business until the time the delivery obligation is discharged. Provides that a trust resulting from the depository agent license holder's actions is in favor of the persons to whom such delivery obligations are owed.

(b) Provides that, if a depository agent license holder commingles any money or other property received for delivery with money or other property owned or controlled by the depository agent license holder, all commingled money and other property are impressed with a trust as provided by this section in an amount equal to the amount of money or property received for delivery, less the amount of fees paid for the delivery.

(c) Provides that, if the commissioner revokes a depository agent license, all money and other property held in trust by the depository agent license holder is assigned to the commissioner for the benefit of the persons to whom the related delivery obligations are owed.

(d) Prohibits money or other property of a depository agent license holder impressed with a trust under this section from being considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to the license holder's obligations under this chapter.

Sec. 151.860. DISCLOSURE REQUIREMENTS. (a) Requires a depository agent license holder's name and mailing address or telephone number to be provided to the purchaser in connection with each depository agent services transaction conducted by the depository agent license holder.

(b) Requires a depository agent license holder receiving currency or an instrument payable in currency for transmission to comply with Chapter 278 (Regulation of Currency Transmissions)

SECTION 13. Effective date: upon passage or September 1, 2015.