

By: Capriglione, Fletcher, Flynn, Longoria,
Parker, et al.

H.B. No. 483

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and administration of a state bullion
depository; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 10, Government Code, is
amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. TEXAS BULLION DEPOSITORY

SUBCHAPTER A. ESTABLISHMENT AND ADMINISTRATION OF TEXAS

BULLION DEPOSITORY

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the bullion depository
administrator appointed under Section 2116.003.

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

(3) "Business day" means a day other than a Saturday,
Sunday, or banking holiday for a bank chartered under the laws of
this state.

(4) "Deposit" means the establishment of an executory
obligation of the depository to deliver to the order of the person
establishing with the depository the obligation, on demand, a
quantity of a specified precious metal, in bullion, specie, or a

1 combination of bullion and specie, equal to the quantity of the same
2 precious metal delivered by or on behalf of the depositor into the
3 custody of:

4 (A) the depository; or

5 (B) a depository agent.

6 (5) "Depositor" means a person who makes a deposit.

7 (6) "Depository" means the Texas Bullion Depository
8 created by this chapter.

9 (7) "Depository account" means the rights, interests,
10 and entitlements established in favor of a depositor with respect
11 to a deposit in accordance with this chapter and rules adopted under
12 this chapter.

13 (8) "Depository account holder," regarding a
14 depository account, means the original depositor or a successor or
15 assignee of the depositor respecting the depository account.

16 (9) "Depository agent" means a person licensed in
17 accordance with this chapter to serve as an intermediary between
18 the depository and a retail customer in making a transaction in
19 precious metals bullion or specie.

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

22 (A) bears a high value-to-weight ratio relative
23 to common industrial metals; and

24 (B) customarily is formed into bullion or specie.

25 (11) "Specie" means a precious metal stamped into
26 coins of uniform shape, size, design, content, and purity, suitable
27 for or customarily used as currency, as a medium of exchange, or as

1 the medium for purchase, sale, storage, transfer, or delivery of
2 precious metals in retail or wholesale transactions.

3 Sec. 2116.002. TEXAS BULLION DEPOSITORY. (a) The Texas
4 Bullion Depository is established as an agency of this state in the
5 office of the comptroller.

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

10 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

11 (a) The depository is administered as a division of the office of
12 the comptroller and under the direction and supervision of a
13 bullion depository administrator appointed by the comptroller with
14 the advice and consent of the governor, lieutenant governor, and
15 senate.

16 (b) The administrator shall:

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

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

25 (c) The administrator may appoint, subject to the approval
26 of the comptroller, a deputy administrator or other subordinate
27 officer as necessary and appropriate to the efficient

1 administration of the depository.

2 Sec. 2116.004. DEPOSITS AND RELATED ASSETS NOT SUBJECT TO
3 LEGISLATIVE APPROPRIATION; STATUS OF DEPOSITS AND ALLOCATION OF
4 REVENUES. (a) The following are not available for legislative
5 appropriation:

6 (1) a deposit to the depository;

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

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

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

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

19 (c) Revenue the depository realizes from fees, charges, or
20 other payments received in the course of depository operations
21 shall be deposited to the credit of the general revenue fund.

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

27 (1) ensure compliance with law; and

1 (2) protect the interests of:

2 (A) the depository;

3 (B) depository account holders;

4 (C) this state and the agencies, political
5 subdivisions, and instrumentalities of this state; and

6 (D) the public at large.

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

11 (c) The comptroller by rule shall adopt standards by which
12 the quantities of precious metals deposited are credited to a
13 depositor's depository account by reference to the particular form
14 in which the metals were deposited, classified by mint,
15 denomination, weight, assay mark, or other indicator, as
16 applicable. The standards must conform to applicable national and
17 international standards of weights and measures.

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

24 (e) The depository shall adjust each depository account
25 balance to reflect additions to or withdrawals or deliveries from
26 the account.

27 Sec. 2116.006. DEMAND, PRESENTMENT, WITHDRAWAL, DELIVERY,

1 AND SETTLEMENT. (a) The depository shall deliver any precious
2 metal held by or on behalf of the depository in bullion, specie, or
3 a combination of bullion and specie, on the order of a depository
4 account holder in a quantity of that precious metal as is available
5 in the depository account holder's depository account.

6 (b) The depository shall make a delivery described by
7 Subsection (a) on demand by the presentment of a suitable check,
8 draft, or digital electronic instruction to the depository or a
9 depository agent. The comptroller by rule shall adopt the forms,
10 standards, and processes through which an order for delivery on
11 demand may be made, presented, and honored.

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

18 Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a)
19 In accordance with rules adopted under this chapter, a depository
20 account holder may transfer any portion of the balance of the
21 holder's depository account by check, draft, or digital electronic
22 instruction to another depository account holder or to a person who
23 at the time the transfer is initiated is not a depository account
24 holder.

25 (b) The depository shall adjust the depository account
26 balances of the depository accounts to reflect a transfer
27 transaction between depository account holders on presentment of

1 the check, draft, or other instruction by reducing the payor's
2 depository account balance and increasing the depository account
3 balance of the payee accordingly.

4 (c) If a depository account holder transfers to a payee who
5 is not a depository account holder any portion of the balance of the
6 holder's depository account, the depository shall allow the payee
7 to establish a depository account by presentment of the payor's
8 check, draft, or instruction to the depository or to a depository
9 agent. The depository shall credit a newly established account on
10 behalf of the payee and shall debit the payor's account
11 accordingly.

12 Sec. 2116.008. DEPOSITORY ACCOUNT CONTRACTS. (a) To
13 establish a depository account, a depositor must contract with the
14 depository for a depository account. The contract must specify:

15 (1) the terms applicable to the account, including any
16 special terms; and

17 (2) the conditions on which withdrawals or deliveries
18 with respect to the account may be made.

19 (b) The execution of a contract for a depository account
20 described by this section may be made, as prescribed by rules
21 adopted under this chapter, by electronic or digital transmission.

22 (c) The depository or a depository agent shall hold the
23 contract for a depository account in the records pertaining to the
24 account.

25 (d) A contract for a depository account executed by a
26 depositor and the depository is considered a contract in writing
27 for all purposes, and may be evidenced by one or more agreements,

1 deposit receipts, signature cards, amendment notices, or other
2 documentation as provided by law.

3 (e) The depository and the depository account holder may
4 amend a contract for a depository account by agreement, or the
5 depository may amend the deposit contract by mailing a written
6 notice of the amendment to the account holder, separately or as an
7 enclosure with or part of the account holder's statement of account
8 or passbook. In the case of amendment by notice from the
9 depository, the notice must include the text and effective date of
10 the amendment. The effective date may not be earlier than the 30th
11 day after the date the notice is mailed, unless otherwise provided
12 by rules adopted under this chapter.

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

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

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

25 (d) The depository's liability for a denial of deposit
26 liability is limited to the amount on deposit for which liability
27 was denied. A depositor may not recover consequential damages,

1 exemplary damages, pre- or post-judgment interest, costs, or
2 attorney's fees.

3 (e) A suit authorized by this section must be brought in a
4 district court of Travis County.

5 (f) A suit authorized by this section must be brought before
6 the expiration of one year after the date the cause of action
7 accrues or the suit is barred.

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

14 Sec. 2116.011. DEPOSITORY ACCOUNT OWNERSHIP BY OWNER OF
15 RECORD. Unless the depository acknowledges in writing a pledge of a
16 depository account, the depository may treat the holder of record
17 of the account as the owner of the account for all purposes and
18 without regard to a notice to the contrary.

19 Sec. 2116.012. TRANSFER OF DEPOSITORY ACCOUNT. (a) A
20 depository account may be transferred on the books of the
21 depository only on presentation to the depository of:

22 (1) evidence of transfer satisfactory to the
23 depository; and

24 (2) an application for the transfer submitted by the
25 person to whom the depository account is to be transferred.

26 (b) A person to whom a depository account is to be
27 transferred must accept the transferred account subject to the

1 terms of the deposit contract, this chapter, and rules adopted
2 under this chapter.

3 Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING.

4 The depository may not pay on a depository account:

5 (1) interest;

6 (2) an amount in the nature of interest; or

7 (3) a fee or other payment for the use or forbearance
8 of use of money, bullion, specie, or precious metals deposited to a
9 depository account.

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

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

25 (c) The depository by written instrument may waive wholly or
26 partly the depository's lien on a depository account.

27 (d) Subject to a lien created as provided by this section,

1 the depository shall recognize the lawful pledge to a third party by
2 a depository account holder of the depository account holder's
3 rights, interests, and entitlements in and to a depository account
4 as an intangible asset. On the satisfaction of other requirements
5 of law in respect of the perfection and enforcement of a pledge of
6 that type, the depository shall take all steps reasonably necessary
7 and appropriate to effectuate on the depository's books any
8 transfer of a depository account or of all or part of a depository
9 account balance to the account of the secured party on the
10 successful enforcement of the pledge.

11 Sec. 2116.015. DEPOSITORY ACCOUNT AS LEGAL INVESTMENT. (a)
12 The following persons may invest the person's money in a depository
13 account by purchasing precious metals and depositing the precious
14 metals with the depository or a depository agent:

15 (1) a fiduciary, including an administrator,
16 executor, custodian, guardian, or trustee;

17 (2) a political subdivision of this state or an
18 instrumentality of this state;

19 (3) a business or nonprofit corporation;

20 (4) a charitable or educational corporation or
21 association; or

22 (5) a financial institution, including a bank, savings
23 and loan association, or credit union.

24 (b) An investment by an insurance company in a depository
25 account is eligible to be applied as a credit against taxes payable
26 under Chapters 221 and 222, Insurance Code, in accordance with
27 rules adopted by the comptroller after consultation with the

1 commissioner of insurance.

2 (c) An investment by a school district in a depository
3 account may be made instead of an investment as provided by Section
4 45.102, Education Code, and the depository may be used by a district
5 instead of a depository bank for the purposes of Subchapter G,
6 Chapter 45, Education Code.

7 Sec. 2116.016. APPLICABILITY OF ESTATES CODE. The
8 applicable provisions of Chapters 111, 112, and 113, Estates Code,
9 govern a depository account.

10 Sec. 2116.017. PLEDGE OF JOINTLY HELD DEPOSITORY ACCOUNT.

11 (a) Unless a term of the depository account provides otherwise, a
12 person on whose signature precious metals may be withdrawn from a
13 depository account that is jointly held in the names of two or more
14 persons may, by a signed pledge, pledge and transfer to the
15 depository or to a third party all or part of the account.

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

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

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

25 (c) Except as otherwise provided by law, a payment or
26 delivery to a fiduciary or an acquittance signed by the fiduciary to
27 whom a payment or delivery is made is a discharge of the depository

1 for the payment or delivery.

2 (d) After a person who holds a depository account in a
3 fiduciary capacity dies, the depository may pay or deliver to the
4 beneficiary of the account the quantity of precious metals
5 represented by the balance in the depository account, plus other
6 rights relating to the depository account, wholly or partly, if the
7 depository has no written notice or order of the probate court of:

8 (1) a revocation or termination of the fiduciary
9 relationship; or

10 (2) any other disposition of the beneficial estate.

11 (e) The depository has no further liability for a payment
12 made or right delivered under Subsection (d).

13 Sec. 2116.019. DEPOSITORY ACCOUNT HELD IN TRUST;
14 UNDISCLOSED TRUST INSTRUMENT. (a) If the depository opens a
15 depository account for a person claiming to be the trustee for
16 another person and the depository has no other notice of the
17 existence or terms of the trust other than a written claim against
18 the account:

19 (1) the person claiming to be the trustee, on the
20 person's signature, may withdraw precious metals from the account;
21 and

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

26 (b) The depository has no further liability for a payment or
27 delivery made as provided by Subsection (a).

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

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

11 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The
12 depository shall enter into transactions and relationships with
13 bullion banks, depositories, dealers, central banks, sovereign
14 wealth funds, financial institutions, international
15 nongovernmental organizations, and other persons, located inside
16 or outside of this state or inside or outside of the United States,
17 as the comptroller determines to be prudent and suitable to
18 facilitate the operations of the depository and to further the
19 purposes of this chapter.

20 Sec. 2116.022. CERTAIN ACTIONS PROHIBITED. The depository
21 may not take any of the following actions, and any attempt by the
22 depository to take any of the following actions is void ab initio
23 and of no force or effect:

24 (1) entering into a precious metals leasing,
25 sale-leaseback, forward transaction, swap transaction, future
26 transaction, index transaction, or option on or other derivative of
27 any of those, whether in the nature of a cap transaction, floor

1 transaction, collar transaction, repurchase transaction, reverse
2 repurchase transaction, buy-and-sell-back transaction, securities
3 lending transaction, or other financial instrument or interest
4 intended to or having the effect of hedging or leveraging the
5 depository's holdings of precious metals, including any option
6 with respect to any of these transactions, or any combination of
7 these transactions, except that the limitation provided by this
8 subdivision does not apply to a transaction entered into to limit
9 the depository's exposure to post-signature price risks associated
10 with executory agreements to purchase or sell precious metals in
11 the ordinary course of depository operations and does not apply to
12 policies of insurance purchased to insure against ordinary casualty
13 risks such as theft, damage or destruction, loss during shipment,
14 or similar risks;

15 (2) crediting the depository account balances of a
16 depository account holder, or disposing of any precious metals, if
17 to do so would cause the aggregate depository account balances with
18 respect to any precious metal represented by all depository
19 accounts to exceed the aggregate quantities of such precious metal
20 held by or for the benefit of the depository and the depository's
21 depository agents;

22 (3) entering into or maintaining a deposit, trust, or
23 similar relationship for the custody of precious metals by a third
24 party outside this state, directly or indirectly, for the account
25 or benefit of the depository if the comptroller by rule establishes
26 that:

27 (A) the custody or intermediary arrangements in

1 question do not meet the comptroller's standards of safety,
2 security, and liquidity; or

3 (B) except in those cases where such relationship
4 may be incidental to the performance of or preparation for purchase
5 and sale transactions with counterparties located outside of this
6 state, suitable alternate arrangements for physical custody of the
7 precious metals inside this state have been established and are
8 available;

9 (4) extending credit to a person, including credit
10 secured by a depository account or other assets, except an
11 extension of credit incidental to the performance of the functions
12 and responsibilities otherwise provided by this chapter; or

13 (5) engaging in a business or activity that, if
14 conducted by a private person, would be subject to regulation in
15 this state as a banking or savings and loan function.

16 Sec. 2116.023. CONFISCATIONS, REQUISITIONS, SEIZURES, AND
17 OTHER ACTIONS VOID. (a) A purported confiscation, requisition,
18 seizure, or other attempt to control the ownership, disposition, or
19 proceeds of a withdrawal, transfer, liquidation, or settlement of a
20 depository account, including the precious metals represented by
21 the balance of a depository account, if effected by a governmental
22 or quasi-governmental authority other than an authority of this
23 state or by a financial institution or other person acting on behalf
24 of or pursuant to a directive or authorization issued by a
25 governmental or quasi-governmental authority other than an
26 authority of this state, in the course of a generalized declaration
27 of illegality or emergency relating to the ownership, possession,

1 or disposition of one or more precious metals, contracts, or other
2 rights to the precious metals or contracts or derivatives of the
3 ownership, possession, disposition, contracts, or other rights, is
4 void ab initio and of no force or effect.

5 (b) The depository in the case of receiving notice of a
6 purported confiscation, requisition, seizure, or other attempt to
7 control the ownership, disposition, or proceeds of a withdrawal,
8 transfer, liquidation, or settlement of a depository account,
9 including the precious metals represented by the balance of a
10 depository account, effected by a governmental or
11 quasi-governmental authority other than an authority of this state
12 or by a financial institution or other person acting on behalf of or
13 pursuant to a directive or authorization issued by a governmental
14 or quasi-governmental authority other than an authority of this
15 state, in the course of a generalized declaration of illegality or
16 emergency relating to the ownership, possession, or disposition of
17 one or more precious metals, contracts, or other rights to the
18 precious metals or contracts or derivatives of the ownership,
19 possession, disposition, contracts, or other rights, may not
20 recognize the governmental or quasi-governmental authority,
21 financial institution, or other person acting as the lawful
22 successor of the registered holder of a depository account in
23 question.

24 (c) On receipt of notice of any transaction described by
25 Subsection (a), with respect to all or any portion of the balance of
26 a depository account, the depository shall suspend withdrawal
27 privileges associated with the balances of the depository account

1 until suitable substitute arrangements may be effected in
2 accordance with rules of the comptroller to enable the registered
3 account holder to take delivery of the precious metals represented
4 by the account balances in question. A voluntary transfer of a
5 depository account balance or of a depository account among
6 depository account holders may continue to take place unaffected by
7 the suspension, and the depository shall recognize to the full
8 extent authorized by this chapter and rules adopted under this
9 chapter.

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

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

25 Sec. 2116.026. ANNUAL REPORT. The comptroller shall submit
26 to the governor and the legislature a report on the status,
27 condition, operations, and prospects for the depository and

1 depository participation each year not later than September 30.

2 SUBCHAPTER B. DEPOSITORY AGENTS

3 Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository
4 shall use private, independently managed firms and institutions
5 licensed as depository agents as intermediaries to conduct retail
6 transactions in bullion and specie on behalf of the depository with
7 current and prospective depository account holders. A depository
8 agent used by the depository under this section must have a minimum
9 five years of depository operational experience or ownership,
10 including three years of direct retail transaction experience with
11 public and private entities or individuals.

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

20 Sec. 2116.053. PERIODIC REPORTS. A depository agent shall
21 submit monthly, quarterly, and annual reports of all depository
22 transactions not later than the 15th day of the month following the
23 expiration of the period with respect to which such report is
24 submitted. The report must contain information and be in a form and
25 format as rules of the comptroller require.

26 SECTION 2. Section 151.002(a), Finance Code, is amended to
27 read as follows:

1 (a) This section defines general terms that apply to an
2 applicant for or holder of a money services license issued under
3 this chapter, regardless of whether the license is a money
4 transmission license, ~~[or]~~ a currency exchange license, or a
5 depository agent license. Additional terms that apply specifically
6 to money transmission are defined in Section 151.301. Additional
7 terms that apply specifically to currency exchange are defined in
8 Section 151.501. Additional terms that apply specifically to
9 depository agents are defined in Section 151.851.

10 SECTION 3. Section 151.002(b), Finance Code, is amended by
11 adding Subdivisions (9-a), (9-b), and (9-c) and amending
12 Subdivisions (11) and (14) to read as follows:

13 (9-a) "Depository agent" has the meaning assigned by
14 Section 151.851.

15 (9-b) "Depository agent license" means a license
16 issued under Subchapter J.

17 (9-c) "Depository agent services" means services
18 rendered to the general public for or on behalf of the Texas Bullion
19 Depository in the nature of purchasing, selling, transferring,
20 accepting, transporting, delivering, or otherwise dealing in
21 precious metals bullion or specie in connection with the creation,
22 transfer, clearing, settlement, or liquidation of the rights and
23 interests of a depository account holder and a direct or indirect
24 transferee of a depository account holder, as those terms are
25 defined by Subchapter J. The term "depository agent services" does
26 not include:

27 (A) participation as a party or counterparty to a

1 transaction, including an agreement with respect to a transaction,
2 in or in connection with a contract for the purchase or sale of a
3 person's rights and interests as a depository account holder, as a
4 cash contract for present delivery, a cash contract for deferred
5 shipment or delivery, or a contract for future delivery, where the
6 underlying deliverable consists of the depository account holder's
7 interest in the depository account, rather than the underlying
8 precious metal represented by the depository account balance;

9 (B) the opening, transfer, settlement, or
10 liquidation of any derivative of a contract described by Paragraph
11 (A), including a forward transaction, swap transaction, currency
12 transaction, future transaction, index transaction, or option on or
13 other derivative of a transaction of any of those types, in the
14 nature of a cap transaction, floor transaction, collar transaction,
15 repurchase transaction, reverse repurchase transaction,
16 buy-and-sell-back transaction, securities lending transaction, or
17 other financial instrument or interest, including an option with
18 respect to a transaction, or any combination of these transactions;

19 or

20 (C) the rendition of services exclusively in
21 support of the opening, transfer, settlement, or liquidation of
22 transaction derivatives described by Paragraph (B) through a
23 central counterparty, such as those customarily rendered by a
24 clearinghouse, clearing association, or clearing corporation, or
25 through an interbank payment system, physical or electronic trading
26 facility, broker or brokerage firm, or similar entity, facility,
27 system, or organization.

1 (11) "License holder" means a person that holds a
2 money transmission license, ~~or~~ a currency exchange license, or a
3 depository agent license.

4 (14) "Money services" means money transmission, ~~or~~
5 currency exchange, or depository agent services.

6 SECTION 4. Section 151.003, Finance Code, is amended to
7 read as follows:

8 Sec. 151.003. EXCLUSIONS. Subject to Subchapter J, the
9 ~~The~~ following persons are not required to be licensed under this
10 chapter:

11 (1) the United States or an instrumentality of the
12 United States, including the United States Post Office or a
13 contractor acting on behalf of the United States Post Office;

14 (2) a state or an agency, political subdivision, or
15 other instrumentality of a state;

16 (3) a federally insured financial institution, as that
17 term is defined by Section 201.101, that is organized under the laws
18 of this state, another state, or the United States;

19 (4) a foreign bank branch or agency in the United
20 States established under the federal International Banking Act of
21 1978 (12 U.S.C. Section 3101 et seq.);

22 (5) a person acting as an agent for an entity excluded
23 under Subdivision (3) or (4), to the extent of the person's actions
24 in that capacity, provided that:

25 (A) the entity is liable for satisfying the money
26 services obligation owed to the purchaser on the person's receipt
27 of the purchaser's money; and

1 (B) the entity and person enter into a written
2 contract that appoints the person as the entity's agent and the
3 person acts only within the scope of authority conferred by the
4 contract;

5 (6) a person that, on behalf of the United States or a
6 department, agency, or instrumentality of the United States, or a
7 state or county, city, or any other governmental agency or
8 political subdivision of a state, provides electronic funds
9 transfer services of governmental benefits for a federal, state,
10 county, or local governmental agency;

11 (7) a person that acts as an intermediary on behalf of
12 and at the direction of a license holder in the process by which the
13 license holder, after receiving money or monetary value from a
14 purchaser, either directly or through an authorized delegate,
15 transmits the money or monetary value to the purchaser's designated
16 recipient, provided that the license holder is liable for
17 satisfying the obligation owed to the purchaser;

18 (8) an attorney or title company that in connection
19 with a real property transaction receives and disburses domestic
20 currency or issues an escrow or trust fund check only on behalf of a
21 party to the transaction;

22 (9) a person engaged in the business of currency
23 transportation who is both a registered motor carrier under Chapter
24 643, Transportation Code, and a licensed armored car company or
25 courier company under Chapter 1702, Occupations Code, provided that
26 the person does not engage in the money transmission or currency
27 exchange business or depository agent services business without a

1 license issued under this chapter; and

2 (10) any other person, transaction, or class of
3 persons or transactions exempted by commission rule or any other
4 person or transaction exempted by the commissioner's order on a
5 finding that the licensing of the person is not necessary to achieve
6 the purposes of this chapter.

7 SECTION 5. Section 151.201, Finance Code, is amended to
8 read as follows:

9 Sec. 151.201. SCOPE. This subchapter sets out the general
10 qualifications and provisions that apply to a money services
11 license, regardless of whether the license is a money transmission
12 license, ~~or~~ a currency exchange license, or a depository agent
13 license. Subchapters D and E set forth the additional
14 qualifications and provisions that apply specifically to a money
15 transmission license. Subchapter F sets forth the additional
16 qualifications and provisions that apply specifically to a currency
17 exchange license. Subchapter J sets forth the additional
18 qualifications and provisions that apply specifically to a
19 depository agent license.

20 SECTION 6. Sections 151.207(a), (b), and (d), Finance Code,
21 are amended to read as follows:

22 (a) If a license holder does not continue to meet the
23 qualifications or satisfy the requirements that apply to an
24 applicant for a new money transmission license, ~~or~~ currency
25 exchange license, or depository agent license, as applicable, the
26 commissioner may suspend or revoke the license holder's license.

27 (b) In addition to complying with Subsection (a), a license

1 holder must annually:

2 (1) pay a license fee in an amount established by
3 commission rule; and

4 (2) submit a report that is under oath, is in the form
5 and medium required by the commissioner, and contains:

6 (A) if the license is a money transmission
7 license or depository agent license, an audited unconsolidated
8 financial statement dated as of the last day of the license holder's
9 fiscal year that ended in the immediately preceding calendar year;

10 (B) if the license is a currency exchange
11 license, a financial statement, audited or unaudited, dated as of
12 the last day of the license holder's fiscal year that ended in the
13 immediately preceding calendar year; and

14 (C) documentation and certification, or any
15 other information the commissioner reasonably requires to
16 determine the security, net worth, permissible investments, and
17 other requirements the license holder must satisfy and whether the
18 license holder continues to meet the qualifications and
19 requirements for licensure.

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

27 SECTION 7. Section 151.302(a), Finance Code, is amended to

1 read as follows:

2 (a) A person may not engage in the business of money
3 transmission or advertise, solicit, or hold itself out as a person
4 that engages in the business of money transmission unless the
5 person:

6 (1) is licensed under this subchapter;

7 (2) is an authorized delegate of a person licensed
8 under this subchapter, appointed by the license holder in
9 accordance with Section 151.402;

10 (3) is excluded from licensure under Section 151.003;

11 [~~or~~]

12 (4) is licensed as a depository agent under Subchapter
13 J and only engages in the business of money transmission in
14 connection with, and to the extent necessary for, the performance
15 of depository agent activities; or

16 (5) has been granted an exemption under Subsection
17 (c).

18 SECTION 8. Section 151.502(a), Finance Code, is amended to
19 read as follows:

20 Sec. 151.502. LICENSE REQUIRED. (a) A person may not engage
21 in the business of currency exchange or advertise, solicit, or hold
22 itself out as providing currency exchange unless the person:

23 (1) is licensed under this subchapter;

24 (2) is licensed for money transmission under
25 Subchapter D;

26 (3) is an authorized delegate of a person licensed for
27 money transmission under Subchapter D;

1 (4) is excluded under Section 151.003; [~~or~~]

2 (5) is licensed as a depository agent under Subchapter
3 J and only engages in the business of currency exchange in
4 connection with, and to the extent necessary for, the performance
5 of depository agent activities; or

6 (6) has been granted an exemption under Subsection
7 (d).

8 SECTION 9. Section 151.602(a), Finance Code, is amended to
9 read as follows:

10 (a) A license holder must prepare, maintain, and preserve
11 the following books, accounts, and other records for at least five
12 years or another period as may be prescribed by rule of the
13 commission:

14 (1) a record of each money transmission transaction,
15 [~~or~~] currency exchange transaction, or depository agent services
16 transaction, as applicable;

17 (2) a general ledger posted in accordance with
18 generally accepted accounting principles containing all asset,
19 liability, capital, income, and expense accounts, unless directed
20 otherwise by the commissioner;

21 (3) bank statements and bank reconciliation records;

22 (4) all records and reports required by applicable
23 state and federal law, including the reporting and recordkeeping
24 requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT,
25 and Chapter 271, and other federal and state laws pertaining to
26 money laundering, drug trafficking, or terrorist funding; and

27 (5) any other records required by commission rule or

1 reasonably requested by the commissioner to determine compliance
2 with this chapter.

3 SECTION 10. Section 151.603, Finance Code, is amended by
4 adding Subsection (c-1) to read as follows:

5 (c-1) A depository agent license holder shall prepare
6 written reports and statements as follows:

7 (1) the renewal report required by Section
8 151.207(b)(2), including an audited unconsolidated financial
9 statement that is dated as of the last day of the license holder's
10 fiscal year that ended in the immediately preceding calendar year;

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

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

21 SECTION 11. Section 151.604(b), Finance Code, is amended to
22 read as follows:

23 (b) A license holder must file a written report with the
24 commissioner not later than 24 hours after the license holder knows
25 or has reason to know of:

26 (1) the filing of a petition by or against the license
27 holder for bankruptcy or reorganization;

1 (2) the filing of a petition by or against the license
2 holder for receivership, the commencement of any other judicial or
3 administrative proceeding for its dissolution or reorganization,
4 or the making of a general assignment for the benefit of the license
5 holder's creditors;

6 (3) the institution of a proceeding to revoke or
7 suspend the license holder's license, or to enjoin or otherwise
8 require the license holder to cease and desist from engaging in an
9 activity related to a business activity that, if conducted in this
10 state, would be subject to this chapter [~~money transmission~~], by a
11 state or country in which the license holder engages in business or
12 is licensed;

13 (4) the felony indictment or conviction of the license
14 holder or a principal of, person in control of, responsible
15 individual of, or authorized delegate of the license holder for an
16 offense identified in Section 151.202(e);

17 (5) the cancellation or other impairment of the
18 license holder's security; or

19 (6) the inability to meet the license holder's
20 transmission obligations under this chapter for a period of 24
21 hours or longer.

22 SECTION 12. Chapter 151, Finance Code, is amended by adding
23 Subchapter J to read as follows:

24 SUBCHAPTER J. DEPOSITORY AGENT LICENSE

25 Sec. 151.851. DEFINITIONS. In this subchapter, "bullion,"
26 "deposit," "depository," "depository account," "depository account
27 holder," "depository agent," "precious metal," and "specie" have

1 the meanings assigned by Section 2116.001, Government Code.

2 Sec. 151.852. APPLICABILITY TO DEPOSITORY AGENT SERVICES.

3 (a) Notwithstanding any other provision of this chapter, a money
4 service that constitutes both a depository agent service and a
5 money transmission service, or both a depository agent service and
6 a currency exchange service, for purposes of this chapter
7 constitutes a depository agent service only.

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

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

17 Sec. 151.853. LICENSE REQUIRED. (a) A person may not
18 engage in the business of rendering depository agent services or
19 advertise, solicit, or hold itself out as a person that engages in
20 the business of depository agent services unless the person:

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

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

1 (b) Notwithstanding any other provision of this chapter, a
2 person described by Section 151.003(1), (6), (7), (8), or (9) is not
3 eligible for a license under this subchapter and may not engage in
4 depository agent activities.

5 (c) For purposes of this chapter:

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

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

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

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

17 (d) Notwithstanding Subsection (c), a person does not
18 engage in the business of depository agent services by engaging in a
19 transaction for the person's own depository account or for the
20 account of another person acting as a fiduciary that would
21 constitute depository agent services if conducted for another
22 person.

23 (e) A depository agent license holder may engage in
24 depository agent services business at one or more locations in this
25 state owned directly or indirectly by the license holder under a
26 single license.

27 Sec. 151.854. ADDITIONAL QUALIFICATIONS. In addition to

1 the general qualifications for licensure set forth in Section
2 151.202, an applicant for a depository agent license must
3 demonstrate to the satisfaction of the commissioner that:

4 (1) the applicant has and will maintain the
5 capitalization, minimum net worth, and other applicable financial
6 requirements established by rules of the commission;

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

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

13 Sec. 151.855. APPLICATION AND ACCOMPANYING FEE,
14 STATEMENTS, AND SECURITY. (a) An applicant for a depository agent
15 license must submit an application in accordance with Section
16 151.203.

17 (b) At the time an application for a depository agent
18 license is submitted, an applicant must file with the department:

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

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

26 (3) security in the amount of \$500,000 that meets the
27 requirements of applicable rules and an undertaking or agreement

1 that the applicant will increase or supplement the security to
2 equal the aggregate security required by the commissioner before
3 the issuance of the license and the start of operations.

4 Sec. 151.856. INVESTIGATION AND ACTION ON APPLICATION. The
5 commissioner shall investigate the applicant and act on the
6 application in accordance with Sections 151.204 and 151.205.

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

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

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

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

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

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

25 (b) The effective period for a temporary depository agent
26 license may not exceed 90 days after the date the license is issued.

27 The commissioner may extend the effective period for not more than

1 30 days if necessary to complete the processing of a timely filed
2 application for which approval is likely.

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

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

15 (b) If a depository agent license holder commingles any
16 money or other property received for delivery with money or other
17 property owned or controlled by the depository agent license
18 holder, all commingled money and other property are impressed with
19 a trust as provided by this section in an amount equal to the amount
20 of money or property received for delivery, less the amount of fees
21 paid for the delivery.

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

26 (d) Money or other property of a depository agent license
27 holder impressed with a trust under this section may not be

1 considered an asset or property of the license holder in the event
2 of bankruptcy, receivership, or a claim against the license holder
3 unrelated to the license holder's obligations under this chapter.

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

9 (b) A depository agent license holder receiving currency or
10 an instrument payable in currency for transmission must comply with
11 Chapter 278.

12 SECTION 13. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2015.