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S.B. No. 989

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

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

5 (A) the depository; or

6 (B) a depository agent.

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

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

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

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

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

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

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

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

26 (11) "Specie" means a precious metal stamped into
27 coins of uniform shape, size, design, content, and purity, suitable

1 for or customarily used as currency, as a medium of exchange, or as
2 the medium for purchase, sale, storage, transfer, or delivery of
3 precious metals in retail or wholesale transactions.

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

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

11 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

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

17 (b) The administrator shall:

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

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

26 (c) The administrator may appoint, subject to the approval
27 of the comptroller, a deputy administrator or other subordinate

1 officer as necessary and appropriate to the efficient
2 administration of the depository.

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

7 (1) a deposit to the depository;

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

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

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

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

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

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

1 (1) ensure compliance with law; and

2 (2) protect the interests of:

3 (A) the depository;

4 (B) depository account holders;

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

7 (D) the public at large.

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

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

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

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

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

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

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

19 Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE.

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

26 (b) The depository shall adjust the depository account
27 balances of the depository accounts to reflect a transfer

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

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

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

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

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

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

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

26 (d) A contract for a depository account executed by a
27 depositor and the depository is considered a contract in writing

1 for all purposes, and may be evidenced by one or more agreements,
2 deposit receipts, signature cards, amendment notices, or other
3 documentation as provided by law.

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

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

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

23 Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The
24 comptroller by rule may establish fees, service charges, and
25 penalties to be charged a depository account holder for a service or
26 activity regarding a depository account, including a fee for an
27 overdraft, an insufficient fund check or draft, or a stop payment

1 order.

2 Sec. 2116.011. DEPOSITORY ACCOUNT OWNERSHIP BY OWNER OF
3 RECORD. Unless the depository acknowledges in writing a pledge of a
4 depository account, the depository may treat the holder of record
5 of the account as the owner of the account for all purposes and
6 without regard to a notice to the contrary.

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

10 (1) evidence of transfer satisfactory to the
11 depository; and

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

14 (b) A person to whom a depository account is to be
15 transferred must accept the transferred account subject to the
16 terms of the deposit contract, this chapter, and rules adopted
17 under this chapter.

18 Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING.
19 The depository may not pay on a depository account:

20 (1) interest;

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

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

25 Sec. 2116.014. LIEN ON DEPOSITORY ACCOUNT. (a) Without
26 the need of any further agreement or pledge, the depository has a
27 lien on each depository account owned by a depository account

1 holder to secure any fees, charges, or other obligations owed or
2 that may become owed to the depository in connection with any of the
3 depository account holder's depository accounts as provided by the
4 terms of the depository account holder's applicable depository
5 account contract.

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

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

15 (d) Subject to a lien created as provided by this section,
16 the depository shall recognize the lawful pledge to a third party by
17 a depository account holder of the depository account holder's
18 rights, interests, and entitlements in and to a depository account
19 as an intangible asset. On the satisfaction of other requirements
20 of law in respect of the perfection and enforcement of a pledge of
21 that type, the depository shall take all steps reasonably necessary
22 and appropriate to effectuate on the depository's books any
23 transfer of a depository account or of all or part of a depository
24 account balance to the account of the secured party on the
25 successful enforcement of the pledge.

26 Sec. 2116.015. DEPOSITORY ACCOUNT AS LEGAL INVESTMENT.

27 (a) The following persons may invest the person's money in a

1 depository account by purchasing precious metals and depositing the
2 precious metals with the depository or a depository agent:

3 (1) a fiduciary, including an administrator,
4 executor, custodian, guardian, or trustee;

5 (2) a political subdivision of this state or an
6 instrumentality of this state;

7 (3) a business or nonprofit corporation;

8 (4) a charitable or educational corporation or
9 association; or

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

12 (b) An investment by an insurance company in a depository
13 account is eligible to be applied as a credit against taxes payable
14 under Chapters 221 and 222, Insurance Code, in accordance with
15 rules adopted by the comptroller after consultation with the
16 commissioner of insurance.

17 (c) An investment by a school district in a depository
18 account may be made instead of an investment as provided by Section
19 45.102, Education Code, and the depository may be used by a district
20 instead of a depository bank for the purposes of Subchapter G,
21 Chapter 45, Education Code.

22 Sec. 2116.016. APPLICABILITY OF ESTATES CODE. The
23 applicable provisions of Chapters 111, 112, and 113, Estates Code,
24 govern a depository account.

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

26 (a) Unless a term of the depository account provides otherwise, a
27 person on whose signature precious metals may be withdrawn from a

1 depository account that is jointly held in the names of two or more
2 persons may, by a signed pledge, pledge and transfer to the
3 depository or to a third party all or part of the account.

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

7 Sec. 2116.018. DEPOSITORY ACCOUNT HELD BY FIDUCIARY.

8 (a) The depository or a depository agent may accept a depository
9 account in the name of a fiduciary, including an administrator,
10 executor, custodian, guardian, or trustee, for a named beneficiary.

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

13 (c) Except as otherwise provided by law, a payment or
14 delivery to a fiduciary or an acquittance signed by the fiduciary to
15 whom a payment or delivery is made is a discharge of the depository
16 for the payment or delivery.

17 (d) After a person who holds a depository account in a
18 fiduciary capacity dies, the depository may pay or deliver to the
19 beneficiary of the account the quantity of precious metals
20 represented by the balance in the depository account, plus other
21 rights relating to the depository account, wholly or partly, if the
22 depository has no written notice or order of the probate court of:

23 (1) a revocation or termination of the fiduciary
24 relationship; or

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

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

1 Sec. 2116.019. DEPOSITORY ACCOUNT HELD IN TRUST;
2 UNDISCLOSED TRUST INSTRUMENT. (a) If the depository opens a
3 depository account for a person claiming to be the trustee for
4 another person and the depository has no other notice of the
5 existence or terms of the trust other than a written claim against
6 the account:

7 (1) the person claiming to be the trustee, on the
8 person's signature, may withdraw precious metals from the account;
9 and

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

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

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

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

26 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The
27 depository shall enter into transactions and relationships with

1 bullion banks, depositories, dealers, central banks, sovereign
2 wealth funds, financial institutions, international
3 nongovernmental organizations, and other persons, located inside
4 or outside of this state or inside or outside of the United States,
5 as the comptroller determines to be prudent and suitable to
6 facilitate the operations of the depository and to further the
7 purposes of this chapter.

8 Sec. 2116.022. CERTAIN ACTIONS PROHIBITED. The depository
9 may not take any of the following actions, and any attempt by the
10 depository to take any of the following actions is void ab initio
11 and of no force or effect:

12 (1) entering into a precious metals leasing,
13 sale-leaseback, forward transaction, swap transaction, future
14 transaction, index transaction, or option on or other derivative of
15 any of those, whether in the nature of a cap transaction, floor
16 transaction, collar transaction, repurchase transaction, reverse
17 repurchase transaction, buy-and-sell-back transaction, securities
18 lending transaction, or other financial instrument or interest
19 intended to or having the effect of hedging or leveraging the
20 depository's holdings of precious metals, including any option
21 with respect to any of these transactions, or any combination of
22 these transactions, except that the limitation provided by this
23 subdivision does not apply to a transaction entered into to limit
24 the depository's exposure to post-signature price risks associated
25 with executory agreements to purchase or sell precious metals in
26 the ordinary course of depository operations and does not apply to
27 policies of insurance purchased to insure against ordinary casualty

1 risks such as theft, damage or destruction, loss during shipment,
2 or similar risks;

3 (2) crediting the depository account balances of a
4 depository account holder, or disposing of any precious metals, if
5 to do so would cause the aggregate depository account balances with
6 respect to any precious metal represented by all depository
7 accounts to exceed the aggregate quantities of such precious metal
8 held by or for the benefit of the depository and the depository's
9 depository agents;

10 (3) entering into or maintaining a deposit, trust, or
11 similar relationship for the custody of precious metals by a third
12 party outside this state, directly or indirectly, for the account
13 or benefit of the depository if the comptroller by rule establishes
14 that:

15 (A) the custody or intermediary arrangements in
16 question do not meet the comptroller's standards of safety,
17 security, and liquidity; or

18 (B) except in those cases where such relationship
19 may be incidental to the performance of or preparation for purchase
20 and sale transactions with counterparties located outside of this
21 state, suitable alternate arrangements for physical custody of the
22 precious metals inside this state have been established and are
23 available;

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

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

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

20 (b) The depository in the case of receiving notice of a
21 purported confiscation, requisition, seizure, or other attempt to
22 control the ownership, disposition, or proceeds of a withdrawal,
23 transfer, liquidation, or settlement of a depository account,
24 including the precious metals represented by the balance of a
25 depository account, effected by a governmental or
26 quasi-governmental authority other than an authority of this state
27 or by a financial institution or other person acting on behalf of or

1 pursuant to a directive or authorization issued by a governmental
2 or quasi-governmental authority other than an authority of this
3 state, in the course of a generalized declaration of illegality or
4 emergency relating to the ownership, possession, or disposition of
5 one or more precious metals, contracts, or other rights to the
6 precious metals or contracts or derivatives of the ownership,
7 possession, disposition, contracts, or other rights, may not
8 recognize the governmental or quasi-governmental authority,
9 financial institution, or other person acting as the lawful
10 successor of the registered holder of a depository account in
11 question.

12 (c) On receipt of notice of any transaction described by
13 Subsection (a), with respect to all or any portion of the balance of
14 a depository account, the depository shall suspend withdrawal
15 privileges associated with the balances of the depository account
16 until suitable substitute arrangements may be effected in
17 accordance with rules of the comptroller to enable the registered
18 account holder to take delivery of the precious metals represented
19 by the account balances in question. A voluntary transfer of a
20 depository account balance or of a depository account among
21 depository account holders may continue to take place unaffected by
22 the suspension, and the depository shall recognize to the full
23 extent authorized by this chapter and rules adopted under this
24 chapter.

25 Sec. 2116.024. OFFICIAL EXCHANGE RATES. The comptroller by
26 rule shall establish the references by which the official exchange
27 rate for pricing precious metals transactions in terms of United

1 States dollars or other currency must be established at the time of
2 a depository transaction. The comptroller shall establish
3 procedures and facilities through which the rates are made
4 discoverable at all reasonable times by system participants, both
5 on a real-time basis and retrospectively.

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

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

17 SUBCHAPTER B. DEPOSITORY AGENTS

18 Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository
19 shall use private, independently managed firms and institutions
20 licensed as depository agents as intermediaries to conduct retail
21 transactions in bullion and specie on behalf of the depository with
22 current and prospective depository account holders. In addition to
23 licensing requirements for a depository agent provided by Chapter
24 151, Finance Code, and rules adopted under that chapter, the
25 comptroller by rule may impose additional requirements to qualify a
26 depository agent to conduct transactions or take other action on
27 behalf of the depository.

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

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

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

17 (a) This section defines general terms that apply to an
18 applicant for or holder of a money services license issued under
19 this chapter, regardless of whether the license is a money
20 transmission license, ~~or~~ a currency exchange license, or a
21 depository agent license. Additional terms that apply specifically
22 to money transmission are defined in Section 151.301. Additional
23 terms that apply specifically to currency exchange are defined in
24 Section 151.501. Additional terms that apply specifically to
25 depository agents are defined in Section 151.851.

26 SECTION 3. Section 151.002(b), Finance Code, is amended by
27 adding Subdivisions (9-a), (9-b), and (9-c) and amending

1 Subdivisions (11) and (14) to read as follows:

2 (9-a) "Depository agent" has the meaning assigned by
3 Section 151.851.

4 (9-b) "Depository agent license" means a license
5 issued under Subchapter J.

6 (9-c) "Depository agent services" means services
7 rendered to the general public for or on behalf of the Texas Bullion
8 Depository in the nature of purchasing, selling, transferring,
9 accepting, transporting, delivering, or otherwise dealing in
10 precious metals bullion or specie in connection with the creation,
11 transfer, clearing, settlement, or liquidation of the rights and
12 interests of a depository account holder and a direct or indirect
13 transferee of a depository account holder, as those terms are
14 defined by Subchapter J. The term "depository agent services" does
15 not include:

16 (A) participation as a party or counterparty to a
17 transaction, including an agreement with respect to a transaction,
18 in or in connection with a contract for the purchase or sale of a
19 person's rights and interests as a depository account holder, as a
20 cash contract for present delivery, a cash contract for deferred
21 shipment or delivery, or a contract for future delivery, where the
22 underlying deliverable consists of the depository account holder's
23 interest in the depository account, rather than the underlying
24 precious metal represented by the depository account balance;

25 (B) the opening, transfer, settlement, or
26 liquidation of any derivative of a contract described by Paragraph
27 (A), including a forward transaction, swap transaction, currency

1 transaction, future transaction, index transaction, or option on or
2 other derivative of a transaction of any of those types, in the
3 nature of a cap transaction, floor transaction, collar transaction,
4 repurchase transaction, reverse repurchase transaction,
5 buy-and-sell-back transaction, securities lending transaction, or
6 other financial instrument or interest, including an option with
7 respect to a transaction, or any combination of these transactions;
8 or

9 (C) the rendition of services exclusively in
10 support of the opening, transfer, settlement, or liquidation of
11 transaction derivatives described by Paragraph (B) through a
12 central counterparty, such as those customarily rendered by a
13 clearinghouse, clearing association, or clearing corporation, or
14 through an interbank payment system, physical or electronic trading
15 facility, broker or brokerage firm, or similar entity, facility,
16 system, or organization.

17 (11) "License holder" means a person that holds a
18 money transmission license, ~~or~~ a currency exchange license, or a
19 depository agent license.

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

22 SECTION 4. Section 151.003, Finance Code, is amended to
23 read as follows:

24 Sec. 151.003. EXCLUSIONS. Subject to Subchapter J, the
25 ~~The~~ following persons are not required to be licensed under this
26 chapter:

27 (1) the United States or an instrumentality of the

1 United States, including the United States Post Office or a
2 contractor acting on behalf of the United States Post Office;

3 (2) a state or an agency, political subdivision, or
4 other instrumentality of a state;

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

8 (4) a foreign bank branch or agency in the United
9 States established under the federal International Banking Act of
10 1978 (12 U.S.C. Section 3101 et seq.);

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

14 (A) the entity is liable for satisfying the money
15 services obligation owed to the purchaser on the person's receipt
16 of the purchaser's money; and

17 (B) the entity and person enter into a written
18 contract that appoints the person as the entity's agent and the
19 person acts only within the scope of authority conferred by the
20 contract;

21 (6) a person that, on behalf of the United States or a
22 department, agency, or instrumentality of the United States, or a
23 state or county, city, or any other governmental agency or
24 political subdivision of a state, provides electronic funds
25 transfer services of governmental benefits for a federal, state,
26 county, or local governmental agency;

27 (7) a person that acts as an intermediary on behalf of

1 and at the direction of a license holder in the process by which the
2 license holder, after receiving money or monetary value from a
3 purchaser, either directly or through an authorized delegate,
4 transmits the money or monetary value to the purchaser's designated
5 recipient, provided that the license holder is liable for
6 satisfying the obligation owed to the purchaser;

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

11 (9) a person engaged in the business of currency
12 transportation who is both a registered motor carrier under Chapter
13 643, Transportation Code, and a licensed armored car company or
14 courier company under Chapter 1702, Occupations Code, provided that
15 the person does not engage in the money transmission or currency
16 exchange business or depository agent services business without a
17 license issued under this chapter; and

18 (10) any other person, transaction, or class of
19 persons or transactions exempted by commission rule or any other
20 person or transaction exempted by the commissioner's order on a
21 finding that the licensing of the person is not necessary to achieve
22 the purposes of this chapter.

23 SECTION 5. Section 151.201, Finance Code, is amended to
24 read as follows:

25 Sec. 151.201. SCOPE. This subchapter sets out the general
26 qualifications and provisions that apply to a money services
27 license, regardless of whether the license is a money transmission

1 license, ~~or~~ a currency exchange license, or a depository agent
2 license. Subchapters D and E set forth the additional
3 qualifications and provisions that apply specifically to a money
4 transmission license. Subchapter F sets forth the additional
5 qualifications and provisions that apply specifically to a currency
6 exchange license. Subchapter J sets forth the additional
7 qualifications and provisions that apply specifically to a
8 depository agent license.

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

11 (a) If a license holder does not continue to meet the
12 qualifications or satisfy the requirements that apply to an
13 applicant for a new money transmission license, ~~or~~ currency
14 exchange license, or depository agent license, as applicable, the
15 commissioner may suspend or revoke the license holder's license.

16 (b) In addition to complying with Subsection (a), a license
17 holder must annually:

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

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

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

26 (B) if the license is a currency exchange
27 license, a financial statement, audited or unaudited, dated as of

1 the last day of the license holder's fiscal year that ended in the
2 immediately preceding calendar year; and

3 (C) documentation and certification, or any
4 other information the commissioner reasonably requires to
5 determine the security, net worth, permissible investments, and
6 other requirements the license holder must satisfy and whether the
7 license holder continues to meet the qualifications and
8 requirements for licensure.

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

16 SECTION 7. Section 151.602(a), Finance Code, is amended to
17 read as follows:

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

22 (1) a record of each money transmission transaction,
23 ~~or~~ currency exchange transaction, or depository agent services
24 transaction, as applicable;

25 (2) a general ledger posted in accordance with
26 generally accepted accounting principles containing all asset,
27 liability, capital, income, and expense accounts, unless directed

1 otherwise by the commissioner;

2 (3) bank statements and bank reconciliation records;

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

8 (5) any other records required by commission rule or
9 reasonably requested by the commissioner to determine compliance
10 with this chapter.

11 SECTION 8. Section [151.603](#), Finance Code, is amended by
12 adding Subsection (c-1) to read as follows:

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

15 (1) the renewal report required by Section
16 [151.207](#)(b)(2), including an audited unconsolidated financial
17 statement that is dated as of the last day of the license holder's
18 fiscal year that ended in the immediately preceding calendar year;

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

26 (3) any other report required by commission rule or
27 reasonably requested by the commissioner to determine compliance

1 with this chapter.

2 SECTION 9. Section 151.604(b), Finance Code, is amended to
3 read as follows:

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

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

9 (2) the filing of a petition by or against the license
10 holder for receivership, the commencement of any other judicial or
11 administrative proceeding for its dissolution or reorganization,
12 or the making of a general assignment for the benefit of the license
13 holder's creditors;

14 (3) the institution of a proceeding to revoke or
15 suspend the license holder's license, or to enjoin or otherwise
16 require the license holder to cease and desist from engaging in an
17 activity related to a business activity that, if conducted in this
18 state, would be subject to this chapter [~~money transmission~~], by a
19 state or country in which the license holder engages in business or
20 is licensed;

21 (4) the felony indictment or conviction of the license
22 holder or a principal of, person in control of, responsible
23 individual of, or authorized delegate of the license holder for an
24 offense identified in Section 151.202(e);

25 (5) the cancellation or other impairment of the
26 license holder's security; or

27 (6) the inability to meet the license holder's

1 transmission obligations under this chapter for a period of 24
2 hours or longer.

3 SECTION 10. Chapter 151, Finance Code, is amended by adding
4 Subchapter J to read as follows:

5 SUBCHAPTER J. DEPOSITORY AGENT LICENSE

6 Sec. 151.851. DEFINITIONS. In this subchapter, "bullion,"
7 "deposit," "depository," "depository account," "depository account
8 holder," "depository agent," "precious metal," and "specie" have
9 the meanings assigned by Section 2116.001, Government Code.

10 Sec. 151.852. APPLICABILITY TO DEPOSITORY AGENT SERVICES.

11 (a) Notwithstanding any other provision of this chapter, a money
12 service that constitutes both a depository agent service and a
13 money transmission service, or both a depository agent service and
14 a currency exchange service, for purposes of this chapter
15 constitutes a depository agent service only.

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

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

25 Sec. 151.853. LICENSE REQUIRED. (a) A person may not
26 engage in the business of rendering depository agent services or
27 advertise, solicit, or hold itself out as a person that engages in

1 the business of depository agent services unless the person:

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

7 (2) is exempted from licensing requirements under
8 Section 151.003(2).

9 (b) Notwithstanding any other provision of this chapter, a
10 person described by Section 151.003(1), (6), (7), (8), or (9) is not
11 eligible for a license under this subchapter.

12 (c) For purposes of this chapter:

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

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

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

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

24 (d) Notwithstanding Subsection (c), a person does not
25 engage in the business of depository agent services by engaging in a
26 transaction for the person's own depository account or for the
27 account of another person acting as a fiduciary that would

1 constitute depository agent services if conducted for another
2 person.

3 (e) A depository agent license holder may engage in
4 depository agent services business at one or more locations in this
5 state owned directly or indirectly by the license holder under a
6 single license.

7 Sec. 151.854. ADDITIONAL QUALIFICATIONS. In addition to
8 the general qualifications for licensure set forth in Section
9 151.202, an applicant for a depository agent license must
10 demonstrate to the satisfaction of the commissioner that:

11 (1) the applicant has and will maintain the
12 capitalization, minimum net worth, and other applicable financial
13 requirements established by rules of the comptroller;

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

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

20 Sec. 151.855. APPLICATION AND ACCOMPANYING FEE,
21 STATEMENTS, AND SECURITY. (a) An applicant for a depository agent
22 license must submit an application in accordance with Section
23 151.203.

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

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

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

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

11 Sec. 151.856. INVESTIGATION AND ACTION ON APPLICATION. The
12 commissioner shall investigate the applicant and act on the
13 application in accordance with Sections [151.204](#) and [151.205](#).

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

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

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

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

27 (4) agrees in writing that, until a permanent license

1 is issued, the person will engage only in activities being
2 conducted at existing locations; and

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

5 (b) The effective period for a temporary depository agent
6 license may not exceed 90 days after the date the license is issued.
7 The commissioner may extend the effective period for not more than
8 30 days if necessary to complete the processing of a timely filed
9 application for which approval is likely.

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

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

22 (b) If a depository agent license holder commingles any
23 money or other property received for delivery with money or other
24 property owned or controlled by the depository agent license
25 holder, all commingled money and other property are impressed with
26 a trust as provided by this section in an amount equal to the amount
27 of money or property received for delivery, less the amount of fees

1 paid for the delivery.

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

6 (d) Money or other property of a depository agent license
7 holder impressed with a trust under this section may not be
8 considered an asset or property of the license holder in the event
9 of bankruptcy, receivership, or a claim against the license holder
10 unrelated to the license holder's obligations under this chapter.

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

16 (b) A depository agent license holder receiving currency or
17 an instrument payable in currency for transmission must comply with
18 Chapter 278.

19 SECTION 11. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2015.