

By: Capriglione

H.B. No. 3169

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the operation and administration of the Texas Bullion  
3 Depository; depository agents; and to the appropriation of money  
4 from the fees, charges, penalties, and other amounts related to the  
5 depository and deposited to the general revenue fund for that  
6 purpose.

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

8 SECTION 1. Section 2116.001(9), Government Code, is amended  
9 to read as follows:

10 (9) "Depository agent" means a person licensed in  
11 accordance with this chapter to serve as an agent on behalf of a  
12 current or prospective [~~intermediary between the~~] depository  
13 account holder [~~and a retail customer~~] in making a retail  
14 transaction in precious metals bullion or specie.

15 SECTION 2. Section 2116.002, Government Code, is amended by  
16 amending Subsection (a) and adding Subsections (c)-(h) to read as  
17 follows:

18 (a) The Texas Bullion Depository is established as a program  
19 [~~an agency of this state~~] in the office of the comptroller to  
20 provide a bullion depository and services for the public benefit  
21 relating to bullion, specie, and precious metals.

22 (c) The comptroller may establish a special purpose  
23 corporation or other legal entity, with all general corporate  
24 powers incident to its operation as a corporate body, to operate the

1 depository for the public benefit and provide related services, as  
2 provided by this chapter. The entity has all necessary and implied  
3 powers to accomplish the purposes of the entity. The entity is  
4 subject to regulation only as provided by this chapter.

5 (d) The depository may adopt and amend articles of  
6 incorporation, bylaws, resolutions, and other documents necessary  
7 to carry out its purposes.

8 (e) This state and the comptroller may not be held liable  
9 for the depository or related activities of the depository. This  
10 chapter may not be construed as creating financial or other  
11 responsibilities to the state or to the comptroller. This state  
12 does not pledge the full faith and credit of this state for the  
13 benefit of the depository.

14 (f) The depository may enter into one or more contracts with  
15 a vendor to operate the depository or provide any of the  
16 depository's services.

17 (g) Notwithstanding Chapter 2113, Government Code, the  
18 depository may enter into contracts and engage in marketing, the  
19 sale of promotional items, advertising, and other activities to  
20 promote the depository. The comptroller may use appropriated funds  
21 to pay for activities of the depository authorized under this  
22 section.

23 SECTION 3. Section 2116.003, Government Code, is amended to  
24 read as follows:

25 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

26 (a) The depository is administered as a program [~~division~~] of the  
27 office of the comptroller and under the direction and supervision

1 of a bullion depository administrator appointed by the comptroller  
2 [~~with the advice and consent of the governor, lieutenant governor,~~  
3 ~~and senate~~].

4 (b) The administrator shall:

5 (1) administer, supervise, and direct the operations  
6 and affairs of the depository and liaise with depository agents;  
7 and

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

14 (c) The administrator may appoint, subject to the approval  
15 of the comptroller, a deputy administrator or other subordinate  
16 officer or staff member as necessary and appropriate to the  
17 efficient administration of the depository. The depository may  
18 contract with the comptroller's office to provide staff support.

19 (d) The administrator, the deputy administrator or another  
20 subordinate officer, or a staff member of the depository is not  
21 personally liable in the person's private capacity for any act  
22 performed or for any contract or other obligation entered into or  
23 undertaken in an official capacity in good faith and without intent  
24 to defraud in connection with the administration, management, or  
25 conduct of the depository, its business, or other related affairs.

26 SECTION 4. The heading to Section [2116.009](#), Government  
27 Code, is amended to read as follows:

1           Sec. 2116.009. ACCOUNT BALANCES [~~CAUSE OF ACTION FOR DENIAL~~  
2 ~~OF DEPOSIT LIABILITY~~].

3           SECTION 5. Section 2116.009, Government Code, is amended by  
4 amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3),  
5 and (b-4) to read as follows:

6           (b) The depository shall furnish depository account holders  
7 with [~~depository's act of furnishing~~] an account statement or  
8 passbook, whether in physical, digital, or electronic form[~~,~~  
9 ~~constitutes a denial of liability and the giving of such notice as~~  
10 ~~to any amount not shown on the statement or passbook~~].

11           (b-1) The depository account holder is responsible for:

12                   (1) promptly examining each account statement  
13 received from the depository; and

14                   (2) reporting any discrepancy in the account statement  
15 to the depository not later than the 60th day after the depository  
16 sent the account statement.

17           (b-2) The depository may establish a process to resolve any  
18 disputed depository account balance.

19           (b-3) If the depository account holder fails to report any  
20 account balance discrepancy reflected on the account balance  
21 statement or passbook to the depository within 60 days of the date  
22 the depository sent the statement or passbook, then:

23                   (1) the depository account holder will be deemed to  
24 have accepted the account statement or passbook as accurate;

25                   (2) the depository account holder may not dispute the  
26 account balance; and

27                   (3) the depository shall deem the depository account

1 statement or passbook as accurate and undisputed by the depository  
2 account holder.

3 (b-4) The comptroller may adopt rules to implement this  
4 section.

5 SECTION 6. Section 2116.010, Government Code, is amended to  
6 read as follows:

7 Sec. 2116.010. FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

8 (a) The comptroller [~~by rule~~] may establish fees, service charges,  
9 and penalties to be charged a depository account holder for a  
10 service or activity regarding a depository account, including a fee  
11 for an overdraft, an insufficient fund check or draft, or a stop  
12 payment order.

13 (b) The comptroller may establish other charges and receive  
14 payments in the course of depository operations and activities,  
15 including from transactions and relationships authorized by  
16 Section 2116.021.

17 (c) The comptroller shall deposit revenue realized by the  
18 depository under this section to the credit of the general revenue  
19 fund.

20 (d) Money credited to the general revenue fund under this  
21 section may be appropriated to the comptroller to offset the costs  
22 of implementation, administration, promotion, marketing,  
23 advertising, and operation of the depository.

24 SECTION 7. Section 2116.021, Government Code, is amended to  
25 read as follows:

26 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The  
27 depository may [~~shall~~] enter into transactions and relationships

1 with bullion banks, depositories, dealers, central banks, an IRS  
2 approved bank or non-bank acting as custodian for Individual  
3 Retirement Accounts, sovereign wealth funds, financial  
4 institutions, international nongovernmental organizations,  
5 intermediaries, and other persons, located inside or outside of  
6 this state or inside or outside of the United States, as the  
7 comptroller determines to be prudent and suitable to facilitate the  
8 operations of the depository and to further the purposes of this  
9 chapter.

10 SECTION 8. Section [2116.023](#), Government Code, is amended by  
11 amending Subsection (c) and adding Subsection (d) to read as  
12 follows:

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

1        (d) On receipt of notice of any transaction described by  
2 Subsection (a), the depository shall refer the notice to the  
3 attorney general for representation, and the attorney general shall  
4 represent the depository in any action related to the notice.

5        SECTION 9. Subchapter A, Chapter 2116, Government Code, is  
6 amended by adding Sections 2116.027 and 2116.028 to read as  
7 follows:

8        Sec. 2116.027. CONFIDENTIALITY OF RECORDS. (a) Except as  
9 otherwise provided by Section 2116.028 and this section, the  
10 depository's records are subject to public inspection to the extent  
11 authorized by Chapter 552.

12        (b) The following information is confidential and is exempt  
13 from disclosure under Chapter 552:

14            (1) records and information related to the  
15 depository's physical security, information security, or designed  
16 to ensure the integrity and security of the depository including  
17 without limitation access codes, passwords, signatures,  
18 specifications, technical details, operating procedures,  
19 locations, and financial information on expenditures for  
20 depository security;

21            (2) records relating to individual accounts or to  
22 current or prospective depository account holders that are in the  
23 custody of the depository or in the custody of a vendor performing  
24 services related to the depository;

25            (3) records related to setting depository fees,  
26 service charges, penalties, or other charges or payments;

27            (4) records related to establishing standards under

1 Sections 2116.005(c) and (d); and

2 (5) operational or other information that would give  
3 advantage to competitors or bidders.

4 (c) Notwithstanding Subsection (b)(2), depository account  
5 information may be disclosed:

6 (1) to a depository account holder regarding the  
7 depository account holder's account;

8 (2) to a state or federal agency as necessary to  
9 administer the program or as required by applicable law;

10 (3) to a vendor providing services to the depository  
11 or to a current or prospective depository account holder;

12 (4) in response to a subpoena issued under applicable  
13 law;

14 (5) if compiled as collective information that does  
15 not include any identifying information about a person; or

16 (6) with the express written permission of a  
17 depository account holder.

18 Sec. 2116.028. INTELLECTUAL PROPERTY. (a) The depository  
19 may:

20 (1) apply for, register, secure, hold, and protect  
21 under the laws of the United States or any state or nation:

22 (A) a patent for the invention, discovery, or  
23 improvement of any process, machine, manufacture, or composition of  
24 matter;

25 (B) a copyright for an original work of  
26 authorship fixed in any tangible medium of expression, known or  
27 later developed, from which it can be perceived, reproduced, or



1 otherwise communicated, either directly or with the aid of a  
2 machine or device;

3 (C) a trademark, service mark, collective mark,  
4 or certification mark for a word, name, symbol, device, or slogan  
5 that the depository uses to identify and distinguish the  
6 depository's goods and services from other goods and services; or

7 (D) other evidence of protection or exclusivity  
8 issued for intellectual property;

9 (2) contract with a person for the reproduction,  
10 public performance, display, distribution, advertising, sale,  
11 lease, marketing, licensing, sale, use, or other distribution of  
12 the depository's intellectual property;

13 (3) obtain under a contract described in Subdivision  
14 (2) a royalty, license right, or other appropriate means of  
15 securing reasonable compensation for the exercise of the  
16 depository's intellectual property rights; and

17 (4) waive or reduce the amount of compensation secured  
18 by contract under Subdivision (3) if the depository determines that  
19 the waiver or reduction will:

20 (A) further a goal or mission of the depository;  
21 and

22 (B) result in a net benefit to the depository.

23 (b) Intellectual property of the depository is excepted  
24 from required disclosure under Chapter 552:

25 (1) beginning on the date the depository decides to  
26 seek a patent, trademark, service mark, collective mark,  
27 certification mark, or other evidence of protection of exclusivity

1 concerning the property; and

2 (2) ending on the date the depository receives a  
3 decision on the depository's application for a patent, trademark,  
4 service mark, collective mark, certification mark, or other  
5 evidence of protection of exclusivity concerning the property.

6 (c) The comptroller shall deposit revenue realized by the  
7 depository under this section to the credit of the general revenue  
8 fund.

9 (d) Money credited to the general revenue fund under this  
10 section may be appropriated only to the comptroller to offset the  
11 costs of implementation, administration, promotion, marketing,  
12 advertising, and operation of the depository.

13 (e) The comptroller may establish intellectual property  
14 policies.

15 SECTION 10. Section 2116.051, Government Code, is amended  
16 to read as follows:

17 Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository  
18 shall use private, independently managed firms and institutions  
19 licensed as depository agents as intermediaries to conduct retail  
20 transactions in bullion and specie on behalf of [~~the depository~~  
21 ~~with~~] current and prospective depository account holders.

22 SECTION 11. Section 2116.052, Government Code, is amended  
23 to read as follows:

24 Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND  
25 PROCESSES. A [~~The comptroller by rule shall require a~~] depository  
26 agent shall [~~to~~] maintain suitable systems and processes for  
27 electronic information sharing and communication with the

1 comptroller and the depository to ensure that all transactions  
2 effected on behalf of current and prospective ~~[the]~~ depository  
3 account holders are reported to and integrated into the  
4 depository's records not later than 11:59:59 p.m. on the date of  
5 each transaction.

6 SECTION 12. Section 151.002(b)(9-c), Finance Code, is  
7 amended to read as follows:

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

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

1 (B) the opening, transfer, settlement, or  
2 liquidation of any derivative of a contract described by Paragraph  
3 (A), including a forward transaction, swap transaction, currency  
4 transaction, future transaction, index transaction, or option on or  
5 other derivative of a transaction of any of those types, in the  
6 nature of a cap transaction, floor transaction, collar transaction,  
7 repurchase transaction, reverse repurchase transaction,  
8 buy-and-sell-back transaction, securities lending transaction, or  
9 other financial instrument or interest, including an option with  
10 respect to a transaction, or any combination of these transactions;  
11 or

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

20 SECTION 13. Section 151.858, Finance Code, is amended to  
21 read as follows:

22 Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository  
23 agent license holder is liable for the delivery to or for the  
24 depository account of [~~the depository or~~] each current or  
25 prospective depository account holder [~~depositor~~], as applicable,  
26 of all bullion, specie, and money payable or deliverable in  
27 connection with the transactions in which the license holder

1 engages on behalf of the current or prospective depositor who is  
2 entitled to depository agent services.

3 SECTION 14. Sections 2116.009(a), (c), (d), (e), and (f),  
4 Government Code, are repealed.

5 SECTION 15. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2017.