

## **BILL ANALYSIS**

Senate Research Center

H.B. 2458  
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Finance  
5/4/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 84th Texas Legislature passed H.B. 483, which established the Texas Bullion Depository (TXBD) within the Office of the Comptroller of Public Accounts of the State of Texas (comptroller). TXBD is available for storage of precious metal assets in the form of bullion or specie by individuals, businesses, or state agencies.

After significant research and stakeholder feedback, the comptroller completed the rulemaking process and fully implemented TXBD, opening its doors to the public in June 2018. Through a procurement process, the comptroller selected Lone Star Tangible Assets (LSTA) as the vendor to operate TXBD. In December 2018, LSTA began work on a new multi-acre site in Leander, Texas, that will permanently house TXBD.

Through the implementation process, the comptroller has gained valuable industry knowledge and recognized the need to update existing statute to ensure TXBD continues to be administered in an efficient, prudent manner.

H.B. 2458 cleans up a number of issues identified by the comptroller through the implementation process to ensure the efficient administration of TXBD. Proposed changes fall within three categories:

- Strengthening confidentiality of depository records

Current law does not provide an exemption to the Public Information Act. If the depository is not able to keep account and other proprietary records confidential, it will be at a competitive disadvantage with private entities that are not subject to the PIA. The changes sought will help ensure the physical security of the depository and ensure that account holders' personal and financial information is not released.

- Removal of burdensome regulatory requirements for depository agents

Due to the costs associated with the current regulatory regime for depository agents, no businesses have applied to be appointed as a depository agent. H.B. 2458 changes the eligibility requirements to become a depository agent to entities that are already regulated by state or federal agencies, thereby eliminating the need for additional regulation at the state level. Therefore, H.B. 2458 deletes all unneeded references to depository agents in relevant sections of the Finance Code and Government Code.

- Providing additional flexibility to administer the program

Current law requires the comptroller to adopt rules regarding many operational issues including setting fees, adopting standards, and establishing procedures. This limits the ability of the depository to react to market conditions and compete with privately owned depositories. H.B. 2458 provides enhances the commercial competitiveness of the depository by providing greater flexibility to administer the program by allowing the comptroller to make operational changes without

needing to adopt or change rules. In addition, H.B. 2458 provides additional authority to the comptroller to promote and advertise the depository.

H.B. 2458 amends current law relating to the operation and administration of the Texas Bullion Depository.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas (comptroller) in SECTION 10 (Section 2116.002, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 12 (Section 2116.005, Government Code), SECTION 13 (Section 2116.006, Government Code), SECTION 16 (Section 2116.010, Government Code), SECTION 19 (Section 2116.024, Government Code), and SECTION 20 (Section 2116.025, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 151.002(a), Finance Code, as follows:

(a) Provides that this section (Definitions) defines general terms that apply to an applicant for or holder of a money services license issued under this chapter (Regulation of Money Services Businesses), regardless of whether the license is a money transmission license or a currency exchange license, rather than whether the license is a money transmission license, a currency exchange license, or a Texas Bullion Depository (TXBD) agent license. Deletes existing text providing that additional terms that apply specifically to TXBD agents are defined in Section 151.851 (Definitions).

SECTION 2. Amends Sections 151.002(b)(11) and (14), Finance Code, as follows:

(11) Redefines "license holder" as a person that holds a money transmission license or a currency exchange license, rather than a money transmission license, a currency exchange license, or a TXBD agent license.

(14) Redefines "money services" as money transmission or currency exchange services, rather than money transmission, currency exchange, or TXBD agent services.

SECTION 3. Amends Section 151.003, Finance Code, as follows:

Sec. 151.003. EXCLUSIONS. Provides that the following persons are not required to be licensed under this chapter, rather than provides, subject to Subchapter J (Depository Agent License), that the following persons are not required to be licensed under this chapter:

(1)–(8) makes no changes to these subdivisions;

(9) a person engaged in the business of currency transportation who is both a registered motor carrier under Chapter 643 (Motor Carrier Registration), Transportation Code, and a licensed armored car company or courier company under Chapter 1702 (Private Security), Occupations Code, provided that the person:

(A) makes no changes to this paragraph; and

(B) does not otherwise engage in the money transmission or currency exchange business, rather than does not otherwise engage in the money transmission or currency exchange business or TXBD agent services business, without a license issued under this chapter; and

(9-a) and (10) makes no changes to these subdivisions.

SECTION 4. Amends Section 151.201, Finance Code, as follows:

Sec. 151.201. SCOPE. Provides that this subchapter (General Qualifications and Provisions Applicable to Money Services Licenses) sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license or a currency exchange license, rather than a money transmission license, a currency exchange license, or a TXBD agent license. Deletes existing text providing that Subchapter J sets forth the additional qualifications and provisions that apply specifically to a TXBD agent license.

SECTION 5. Amends Sections 151.207(a), (b), and (d), Finance Code, to make conforming changes.

SECTION 6. Reenacts Section 151.302(a), Finance Code, as amended by Chapters 75 (S.B. 899) and 1000 (H.B. 483), Acts of the 84th Legislature, Regular Session, 2015, and makes no further changes to that subsection.

SECTION 7. Amends Section 151.502(a), Finance Code, as follows:

(a) Prohibits a person from engaging in the business of currency exchange or advertising, soliciting, or holding itself out as providing currency exchange unless the person:

(1)–(3) makes no changes to these subdivisions;

(4) makes a nonsubstantive change to this subdivision; or

(5) creates this subdivision from existing Subdivision (6) and deletes existing text relating to a person who is licensed as a TXBD agent under Subchapter J and only engages in the business of currency exchange in connection with, and to the extent necessary for, the performance of TXBD agent activities.

SECTION 8. Amends Section 151.602(a), Finance Code, to make conforming and nonsubstantive changes to this subsection.

SECTION 9. Amends Section 2116.001, Government Code, by amending Subdivision (9) and adding Subdivision (9-a), as follows:

(9) Redefines "depository agent" as a financial institution that has entered into an agreement with TXBD to provide a retail location for the provision of TXBD services to the general public on behalf of the TXBD, rather than a person licensed in accordance with this chapter (Texas Bullion Depository) to serve as an intermediary between TXBD and a retail customer in making a transaction in precious metals bullion or specie.

(9-a) Defines "financial institution."

SECTION 10. Amends Section 2116.002, Government Code, by adding Subsection (c) to require the comptroller of public accounts of the State of Texas (comptroller) to adopt rules as necessary to carry out this chapter.

SECTION 11. Amends Section 2116.003, Government Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes the TXBD administrator (administrator) appointed under Section 2116.003 (Depository Administration; Administrator) to appoint or employ, subject to approval of the comptroller, a deputy administrator or other subordinate officers or employees, rather than appoint, subject to approval of the comptroller, a deputy administrator or other subordinate officer, as necessary and appropriate to the efficient administration of TXBD.

(d) Authorizes the comptroller to employ security officers to provide needed security services for TXBD and to commission the officers as peace officers.

SECTION 12. Amends Sections 2116.005(c) and (d), Government Code, as follows:

(c) Requires the comptroller, rather than requiring the comptroller by rule, to adopt certain standards.

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

SECTION 13. Amends Sections 2116.006(b) and (c), Government Code, as follows:

(b) Requires TXBD to make a delivery described by Subsection (a) (relating to requiring TXBD to deliver any precious metal held by or on behalf of TXBD in certain forms on the order of a TXBD account holder in a certain quantity) on demand by the presentment of a written demand or digital electronic instruction, rather than by the presentment of a suitable check, draft, or digital electronic instruction, to TXBD or a TXBD agent. Authorizes the comptroller to prescribe, rather than requiring the comptroller by rule to adopt, the forms, standards, and processes through which an order for delivery on demand may be made, presented, and honored.

(c) Requires TXBD to make a delivery at TXBD's settlement facility designated by the comptroller, shipping to an address specified by the account holder or, at TXBD's discretion, at a facility of a TXBD agent at which presentment is made, not later than 10 business days, rather than not later than five business days, after the date of presentment.

SECTION 14. Amends Section 2116.007, Government Code, as follows:

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

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

(c) Requires TXBD, if a TXBD account holder transfers to a payee who is not a TXBD account holder any portion of the balance of the TXBD account holder's TXBD account, to, if the payee is otherwise eligible to open a TXBD account under applicable laws and TXBD policy, allow the payee to establish a TXBD account, rather than requiring TXBD, if a TXBD account holder transfers to a payee who is not a TXBD account holder any portion of the balance of the holder's TXBD account, to allow the payee to establish a TXBD account by presentment of the payor's check, draft, or instruction to TXBD or to a TXBD agent.

SECTION 15. Amends Sections 2116.008(c) and (e), Government Code, as follows:

(c) Requires TXBD, rather than TXBD or a TXBD agent, to hold the contract for a TXBD account in the records pertaining to the account.

(e) Authorizes TXBD and the TXBD account holder to amend a contract for a TXBD account by agreement, or TXBD to amend the deposit contract by providing, rather than by mailing a, certain written notice. Authorizes the notice to be provided electronically.

SECTION 16. Amends Section 2116.010, Government Code, as follows:

Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. Authorizes the comptroller, rather than authorizing the comptroller by rule, to establish fees, service charges, and penalties to be charged a TXBD account holder for a service or activity regarding a TXBD account, including certain fees. Authorizes the comptroller to waive any fees, service charges, or penalties established under this section.

SECTION 17. Amends Section 2116.021, Government Code, as follows:

Sec. 2116.021. New heading: TRANSACTIONS AND RELATIONSHIPS; MARKETING AND PUBLICITY. (a) Creates this subsection from existing text. Authorizes TXBD, rather than requiring TXBD, to enter into transactions and relationships with certain entities as the comptroller determines to be prudent and suitable to facilitate the operations of TXBD and to further the purposes of this chapter.

(b) Authorizes TXBD to advertise and promote TXBD in any available media.

(c) Authorizes TXBD to issue, sell, license for sale, or obtain a license to sell promotional items approved by the administrator to further the purposes of this chapter and to promote TXBD. Authorizes TXBD to set commercially reasonable prices for items licensed or sold under this section.

SECTION 18. Amends Section 2116.023, Government Code, by adding Subsection (d) to require TXBD to refer any matter relating to an action described by Subsection (a) (relating to a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a TXBD account) to the Texas attorney general for resolution.

SECTION 19. Amends Section 2116.024, Government Code, to require the comptroller, rather than requiring the comptroller by rule, to establish the references by which the official exchange rate for pricing precious metals transactions in terms of United States dollars or other currency are required to be established at the time of a TXBD transaction.

SECTION 20. Amends Section 2116.025, Government Code, to require the comptroller, rather than requiring the comptroller by rule, to establish procedures and requirements for TXBD and TXBD agents designed to minimize the burden to system participants of accounting for and reporting taxable gains and losses arising out of TXBD transactions as denominated in United States dollars or another currency.

SECTION 21. Amends Subchapter A, Chapter 2116, Government Code, by adding Section 2116.027, as follows:

Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS EXEMPT FROM DISCLOSURE. (a) Provides that records relating to individual TXBD accounts or TXBD account holders, including current, former, or prospective TXBD account holders, that are in the custody of TXBD or a vendor performing services related to TXBD are confidential and exempt from disclosure under Chapter 552 (Public Information).

(b) Provides that the following information of TXBD is excepted from the requirements of Section 552.021 (Availability of Public Information):

(1) records and other information related to the security of TXBD;

(2) records related to the method of setting TXBD's fees, service charges, penalties, and other charges or payments; and

(3) commercial or financial information that would cause substantial competitive harm to TXBD, including operational or other information that would give advantage to competitors or bidders.

(c) Authorizes TXBD account information, notwithstanding Subsection (a), to be disclosed:

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

(2) to a state or federal agency as required by applicable law;

(3) to a vendor providing services to TXBD;

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

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

(6) as otherwise permitted by the TXBD account agreement applicable to a TXBD account holder's account.

SECTION 22. Amends Section 2116.051, Government Code, as follows:

Sec. 2116.051. USE OF DEPOSITORY AGENTS. Authorizes TXBD to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public on behalf of the depository, rather than authorizing TXBD to use private, independently managed firms and institutions licensed as TXBD agents as intermediaries to conduct retail transactions in bullion and specie on behalf of TXBD with current and prospective TXBD account holders.

SECTION 23. Repealer: Section 151.002(b)(9-a) (relating to defining "depository agent"), Finance Code.

Repealer: Section 151.002(b)(9-b) (relating to defining "depository agent license"), Finance Code.

Repealer: Section 151.002(b)(9-c) (relating to defining "depository agent services"), Finance Code.

Repealer: Section 151.603(c-1) (relating to requiring a depository agent license holder to prepare certain written reports and statements in a certain manner), Finance Code.

Repealer: Subchapter J (Depository Agent License), Chapter 151, Finance Code.

SECTION 24. Effective date: upon passage or September 1, 2019.