

By: Capriglione, Parker

H.B. No. 2458

A BILL TO BE ENTITLED

AN ACT

relating to the operation and administration of the Texas Bullion Depository.

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

SECTION 1. Section 151.002(a), Finance Code, is amended to read as follows:

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

SECTION 2. Sections 151.002(b)(11) and (14), Finance Code, are amended to read as follows:

(11) "License holder" means a person that holds a money transmission license or [7] a currency exchange license [~~7~~ ~~or a depository agent license~~].

(14) "Money services" means money transmission or [7] currency exchange [~~7~~ ~~or depository agent~~] services.

SECTION 3. Section 151.003, Finance Code, is amended to

1 read as follows:

2           Sec. 151.003. EXCLUSIONS. The [~~Subject to Subchapter J,~~  
3 ~~the~~] following persons are not required to be licensed under this  
4 chapter:

5           (1) the United States or an instrumentality of the  
6 United States, including the United States Post Office or a  
7 contractor acting on behalf of the United States Post Office;

8           (2) a state or an agency, political subdivision, or  
9 other instrumentality of a state;

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

13           (4) a foreign bank branch or agency in the United  
14 States established under the federal International Banking Act of  
15 1978 (12 U.S.C. Section 3101 et seq.);

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

19           (A) the entity is liable for satisfying the money  
20 services obligation owed to the purchaser on the person's receipt  
21 of the purchaser's money; and

22           (B) the entity and person enter into a written  
23 contract that appoints the person as the entity's agent and the  
24 person acts only within the scope of authority conferred by the  
25 contract;

26           (6) a person that, on behalf of the United States or a  
27 department, agency, or instrumentality of the United States, or a

1 state or county, city, or any other governmental agency or  
2 political subdivision of a state, provides electronic funds  
3 transfer services of governmental benefits for a federal, state,  
4 county, or local governmental agency;

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

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

16 (9) a person engaged in the business of currency  
17 transportation who is both a registered motor carrier under Chapter  
18 643, Transportation Code, and a licensed armored car company or  
19 courier company under Chapter 1702, Occupations Code, provided that  
20 the person:

21 (A) only transports currency:

22 (i) from a person to the same person at  
23 another location;

24 (ii) from a person to a financial  
25 institution to be deposited in an account belonging to the same  
26 person; or

27 (iii) to a person from a financial

1 institution after being withdrawn from an account belonging to the  
2 same person; and

3 (B) does not otherwise engage in the money  
4 transmission or currency exchange business [~~or depository agent~~  
5 ~~services business~~] without a license issued under this chapter;

6 (9-a) a trust company, as defined by Section  
7 187.001(a), that is organized under the laws of this state; and

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

13 SECTION 4. Section 151.201, Finance Code, is amended to  
14 read as follows:

15 Sec. 151.201. SCOPE. This subchapter sets out the general  
16 qualifications and provisions that apply to a money services  
17 license, regardless of whether the license is a money transmission  
18 license or [~~7~~] a currency exchange license [~~7, or a depository agent~~  
19 ~~license~~]. Subchapters D and E set forth the additional  
20 qualifications and provisions that apply specifically to a money  
21 transmission license. Subchapter F sets forth the additional  
22 qualifications and provisions that apply specifically to a currency  
23 exchange license. [~~Subchapter J sets forth the additional~~  
24 ~~qualifications and provisions that apply specifically to a~~  
25 ~~depository agent license.~~]

26 SECTION 5. Sections 151.207(a), (b), and (d), Finance Code,  
27 are amended to read as follows:

1 (a) If a license holder does not continue to meet the  
2 qualifications or satisfy the requirements that apply to an  
3 applicant for a new money transmission license or [7] currency  
4 exchange license, [~~or depository agent license,~~] as applicable, the  
5 commissioner may suspend or revoke the license holder's license.

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

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

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

12 (A) if the license is a money transmission  
13 license [~~or depository agent license,~~] an audited unconsolidated  
14 financial statement dated as of the last day of the license holder's  
15 fiscal year that ended in the immediately preceding calendar year;

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

20 (C) documentation and certification, or any  
21 other information the commissioner reasonably requires to  
22 determine the security, net worth, permissible investments, and  
23 other requirements the license holder must satisfy and whether the  
24 license holder continues to meet the qualifications and  
25 requirements for licensure.

26 (d) If the license holder fails to submit the completed  
27 annual report and pay the annual license fee and any late fee due

1 within the time prescribed by Subsection (c)(1), the license  
2 expires, and the license holder must cease and desist from engaging  
3 in the business of money transmission or [7] currency exchange, [~~or~~  
4 ~~depository agent services,~~] as applicable, as of that date. The  
5 expiration of a license is not subject to appeal.

6 SECTION 6. Section 151.302(a), Finance Code, as amended by  
7 Chapters 75 (S.B. 899) and 1000 (H.B. 483), Acts of the 84th  
8 Legislature, Regular Session, 2015, is reenacted to read as  
9 follows:

10 (a) A person may not engage in the business of money  
11 transmission in this state or advertise, solicit, or represent that  
12 the person engages in the business of money transmission in this  
13 state unless the person:

14 (1) is licensed under this subchapter;

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

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

19 or

20 (4) has been granted an exemption under Subsection  
21 (c).

22 SECTION 7. Section 151.502(a), Finance Code, is amended to  
23 read as follows:

24 (a) A person may not engage in the business of currency  
25 exchange or advertise, solicit, or hold itself out as providing  
26 currency exchange unless the person:

27 (1) is licensed under this subchapter;

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

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

5           (4) is excluded under Section [151.003](#); or

6           (5) ~~[is licensed as a depository agent under~~  
7 ~~Subchapter J and only engages in the business of currency exchange~~  
8 ~~in connection with, and to the extent necessary for, the~~  
9 ~~performance of depository agent activities; or~~

10           ~~[(6)]~~ has been granted an exemption under Subsection  
11 (d).

12           SECTION 8. Section [151.602](#)(a), Finance Code, is amended to  
13 read as follows:

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

18           (1) a record of each money transmission transaction or  
19 ~~[7]~~ currency exchange transaction, ~~[or depository agent services~~  
20 ~~transaction]~~ as applicable;

21           (2) a general ledger posted in accordance with  
22 generally accepted accounting principles containing all asset,  
23 liability, capital, income, and expense accounts, unless directed  
24 otherwise by the commissioner;

25           (3) bank statements and bank reconciliation records;

26           (4) all records and reports required by applicable  
27 state and federal law, including the reporting and recordkeeping

1 requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT,  
2 and Chapter 271, and other federal and state laws pertaining to  
3 money laundering, drug trafficking, or terrorist funding; and

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

7 SECTION 9. Section 2116.001, Government Code, is amended by  
8 amending Subdivision (9) and adding Subdivision (9-a) to read as  
9 follows:

10 (9) "Depository agent" means a financial institution  
11 that has entered into an agreement with the depository to provide a  
12 retail location for the provision of depository services to the  
13 general public on behalf of [~~person licensed in accordance with~~  
14 ~~this chapter to serve as an intermediary between~~] the depository  
15 [~~and a retail customer in making a transaction in precious metals~~  
16 ~~bullion or specie].~~

17 (9-a) "Financial institution" has the meaning  
18 assigned by Section 201.101, Finance Code.

19 SECTION 10. Section 2116.002, Government Code, is amended  
20 by adding Subsection (c) to read as follows:

21 (c) The comptroller shall adopt rules necessary to carry out  
22 this chapter.

23 SECTION 11. Section 2116.003, Government Code, is amended  
24 by amending Subsection (c) and adding Subsection (d) to read as  
25 follows:

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



1 subordinate officers or employees [~~officer~~] as necessary and  
2 appropriate to the efficient administration of the depository.

3 (d) The comptroller may employ security officers to provide  
4 needed security services for the depository and may commission the  
5 officers as peace officers.

6 SECTION 12. Sections 2116.005(c) and (d), Government Code,  
7 are amended to read as follows:

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

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

21 SECTION 13. Sections 2116.006(b) and (c), Government Code,  
22 are amended to read as follows:

23 (b) The depository shall make a delivery described by  
24 Subsection (a) on demand by the presentment of a written demand  
25 [~~suitable check, draft,~~] or digital electronic instruction to the  
26 depository or a depository agent. The comptroller may prescribe  
27 [~~by rule shall adopt~~] the forms, standards, and processes through

1 which an order for delivery on demand may be made, presented, and  
2 honored.

3 (c) The depository shall make a delivery at the depository's  
4 settlement facility designated by the comptroller, shipping to an  
5 address specified by the account holder or, at the depository's  
6 discretion, at a facility of a depository agent at which  
7 presentment is made, not later than 10 [~~five~~] business days after  
8 the date of presentment.

9 SECTION 14. Section 2116.007, Government Code, is amended  
10 to read as follows:

11 Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a)  
12 In accordance with rules adopted under this chapter, a depository  
13 account holder may transfer any portion of the balance of the  
14 holder's depository account by written demand [~~check, draft,~~] or  
15 digital electronic instruction to another person [~~depository~~  
16 ~~account holder or to a person who at the time the transfer is~~  
17 ~~initiated is not a depository account holder~~].

18 (b) The depository shall adjust the depository account  
19 balances of the depository accounts to reflect a transfer  
20 transaction between depository account holders on presentment of  
21 the written demand [~~check, draft,~~] or other instruction by reducing  
22 the payor's depository account balance and increasing the  
23 depository account balance of the payee accordingly.

24 (c) If a depository account holder transfers to a payee who  
25 is not a depository account holder any portion of the balance of the  
26 depository account holder's depository account, the depository  
27 shall, if the payee is otherwise eligible to open a depository

1 account under applicable laws and depository policy, allow the  
2 payee to establish a depository account [~~by presentment of the~~  
3 ~~payor's check, draft, or instruction to the depository or to a~~  
4 ~~depository agent~~]. The depository shall credit a newly  
5 established account on behalf of the payee and shall debit the  
6 payor's account accordingly.

7 SECTION 15. Sections 2116.008(c) and (e), Government Code,  
8 are amended to read as follows:

9 (c) The depository [~~or a depository agent~~] shall hold the  
10 contract for a depository account in the records pertaining to the  
11 account.

12 (e) The depository and the depository account holder may  
13 amend a contract for a depository account by agreement, or the  
14 depository may amend the deposit contract by providing [~~mailing a~~]  
15 written notice of the amendment to the account holder, separately  
16 or as an enclosure with or part of the account holder's statement of  
17 account or passbook. In the case of amendment by notice from the  
18 depository, the notice must include the text and effective date of  
19 the amendment. The notice may be provided electronically. The  
20 effective date may not be earlier than the 30th day after the date  
21 the notice is mailed, unless otherwise provided by rules adopted  
22 under this chapter.

23 SECTION 16. Section 2116.010, Government Code, is amended  
24 to read as follows:

25 Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The  
26 comptroller [~~by rule~~] may establish fees, service charges, and  
27 penalties to be charged a depository account holder for a service or

1 activity regarding a depository account, including a fee for an  
2 overdraft, an insufficient fund check or draft, or a stop payment  
3 order. The comptroller may waive any fees, service charges, or  
4 penalties established under this section.

5 SECTION 17. Section 2116.021, Government Code, is amended  
6 to read as follows:

7 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS; MARKETING  
8 AND PUBLICITY. (a) The depository may [~~shall~~] enter into  
9 transactions and relationships with bullion banks, depositories,  
10 dealers, central banks, sovereign wealth funds, financial  
11 institutions, international nongovernmental organizations, and  
12 other persons, located inside or outside of this state or inside or  
13 outside of the United States, as the comptroller determines to be  
14 prudent and suitable to facilitate the operations of the depository  
15 and to further the purposes of this chapter.

16 (b) The depository may advertise and promote the depository  
17 in any available media.

18 (c) The depository may issue, sell, license for sale, or  
19 obtain a license to sell promotional items approved by the  
20 administrator to further the purposes of this chapter and to  
21 promote the depository. The depository may set commercially  
22 reasonable prices for items licensed or sold under this section.

23 SECTION 18. Section 2116.023, Government Code, is amended  
24 by adding Subsection (d) to read as follows:

25 (d) The depository shall refer any matter relating to an  
26 action described by Subsection (a) to the attorney general for  
27 resolution.

1 SECTION 19. Section 2116.024, Government Code, is amended  
2 to read as follows:

3 Sec. 2116.024. OFFICIAL EXCHANGE RATES. The comptroller  
4 [~~by rule~~] shall establish the references by which the official  
5 exchange rate for pricing precious metals transactions in terms of  
6 United States dollars or other currency must be established at the  
7 time of a depository transaction. The comptroller shall establish  
8 procedures and facilities through which the rates are made  
9 discoverable at all reasonable times by system participants, both  
10 on a real-time basis and retrospectively.

11 SECTION 20. Section 2116.025, Government Code, is amended  
12 to read as follows:

13 Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF  
14 TAXABLE GAINS. The comptroller [~~by rule~~] shall establish  
15 procedures and requirements for the depository and depository  
16 agents designed to minimize the burden to system participants of  
17 accounting for and reporting taxable gains and losses arising out  
18 of depository transactions as denominated in United States dollars  
19 or another currency.

20 SECTION 21. Subchapter A, Chapter 2116, Government Code, is  
21 amended by adding Section 2116.027 to read as follows:

22 Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS  
23 EXEMPT FROM DISCLOSURE. (a) Records relating to individual  
24 depository accounts or depository account holders, including  
25 current, former, or prospective depository account holders, that  
26 are in the custody of the depository or a vendor performing services  
27 related to the depository are confidential and exempt from

1 disclosure under Chapter 552.

2 (b) The following information of the depository is excepted  
3 from the requirements of Section 552.021:

4 (1) records and other information related to the  
5 security of the depository;

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

9 (3) commercial or financial information that would  
10 cause substantial competitive harm to the depository, including  
11 operational or other information that would give advantage to  
12 competitors or bidders.

13 (c) Notwithstanding Subsection (a), depository account  
14 information may be disclosed:

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

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

19 (3) to a vendor providing services to the depository;

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

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

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

26 SECTION 22. Section 2116.051, Government Code, is amended  
27 to read as follows:

1           Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository  
2 may [~~shall~~] use private, independently managed financial [~~firms~~  
3 ~~and~~] institutions to provide retail locations for the provision of  
4 depository services to the public [~~licensed as depository agents as~~  
5 ~~intermediaries to conduct retail transactions in bullion and~~  
6 ~~specie~~] on behalf of the depository [~~with current and prospective~~  
7 ~~depository account holders~~].

8           SECTION 23. The following laws are repealed:

- 9                   (1) Sections [151.002](#)(b)(9-a), (9-b), and (9-c),  
10 Finance Code;  
11                   (2) Section [151.603](#)(c-1), Finance Code; and  
12                   (3) Subchapter J, Chapter [151](#), Finance Code.

13           SECTION 24. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section [39](#), Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect September 1, 2019.