

By: Capriglione

H.B. No. 2458

Substitute the following for H.B. No. 2458:

By: Lambert

C.S.H.B. No. 2458

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and administration of the Texas Bullion
3 Depository.

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

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

7 (a) This section defines general terms that apply to an
8 applicant for or holder of a money services license issued under
9 this chapter, regardless of whether the license is a money
10 transmission license or [7] a currency exchange license [~~7~~ ~~or a~~
11 ~~depository agent license~~]. Additional terms that apply
12 specifically to money transmission are defined in Section
13 151.301. Additional terms that apply specifically to currency
14 exchange are defined in Section 151.501. [~~Additional terms that~~
15 ~~apply specifically to depository agents are defined in Section~~
16 ~~151.851.~~]

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

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

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

24 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 Subsections (a) and (c) and adding Subsection (d) to
25 read as follows:

26 (a) The depository is administered as a 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 (c) The administrator may appoint or employ, subject to the
5 approval of the comptroller, a deputy administrator or other
6 subordinate officers or employees [~~officer~~] as necessary and
7 appropriate to the efficient administration of the depository.

8 (d) The comptroller may employ security officers to provide
9 needed security services for the depository and may commission the
10 officers as peace officers.

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

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

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

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

1 (b) The depository shall make a delivery described by
2 Subsection (a) on demand by the presentment of a written demand
3 [~~suitable check, draft,~~] or digital electronic instruction to the
4 depository or a depository agent. The comptroller may prescribe
5 [~~by rule shall adopt~~] the forms, standards, and processes through
6 which an order for delivery on demand may be made, presented, and
7 honored.

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

14 SECTION 14. Section [2116.007](#), Government Code, is amended
15 to read as follows:

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

23 (b) The depository shall adjust the depository account
24 balances of the depository accounts to reflect a transfer
25 transaction between depository account holders on presentment of
26 the written demand [~~check, draft,~~] or other instruction by reducing
27 the payor's depository account balance and increasing the

1 depository account balance of the payee accordingly.

2 (c) If a depository account holder transfers to a payee who
3 is not a depository account holder any portion of the balance of the
4 depository account holder's depository account, the depository
5 shall, if the payee is otherwise eligible to open a depository
6 account under applicable laws and depository policy, allow the
7 payee to establish a depository account [~~by presentment of the~~
8 ~~payor's check, draft, or instruction to the depository or to a~~
9 ~~depository agent~~]. The depository shall credit a newly
10 established account on behalf of the payee and shall debit the
11 payor's account accordingly.

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

14 (c) The depository [~~or a depository agent~~] shall hold the
15 contract for a depository account in the records pertaining to the
16 account.

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

1 SECTION 16. Section 2116.010, Government Code, is amended
2 to read as follows:

3 Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The
4 comptroller [~~by rule~~] may establish fees, service charges, and
5 penalties to be charged a depository account holder for a service or
6 activity regarding a depository account, including a fee for an
7 overdraft, an insufficient fund check or draft, or a stop payment
8 order. The comptroller may waive any fees, service charges, or
9 penalties established under this section.

10 SECTION 17. Section 2116.021, Government Code, is amended
11 to read as follows:

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

21 (b) The depository may advertise and promote the depository
22 in any available media.

23 (c) The depository may issue, sell, or license for sale
24 promotional items approved by the administrator to further the
25 purposes of this chapter and to promote the depository. The
26 depository may set commercially reasonable prices for items
27 licensed or sold under this section.

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

3 (d) The depository shall refer any matter relating to an
4 action described by Subsection (a) to the attorney general for
5 resolution.

6 SECTION 19. Section 2116.024, Government Code, is amended
7 to read as follows:

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

16 SECTION 20. Section 2116.025, Government Code, is amended
17 to read as follows:

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

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

27 Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS

1 EXEMPT FROM DISCLOSURE. (a) Records relating to individual
2 depository accounts or depository account holders, including
3 current, former, or prospective depository account holders, that
4 are in the custody of the depository or a vendor performing services
5 related to the depository are confidential and exempt from
6 disclosure under Chapter 552.

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

9 (1) records and other information related to the
10 security of the depository;

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

14 (3) commercial or financial information that would
15 cause substantial competitive harm to the depository, including
16 operational or other information that would give advantage to
17 competitors or bidders.

18 (c) Notwithstanding Subsection (a), depository account
19 information may be disclosed:

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

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

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

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

27 (5) if compiled as collective information that does

1 not include any identifying information about a person; or
2 (6) as otherwise permitted by the depository account
3 agreement applicable to a depository account holder's account.

4 SECTION 22. Section 2116.051, Government Code, is amended
5 to read as follows:

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

13 SECTION 23. The following laws are repealed:

- 14 (1) Sections 151.002(b)(9-a), (9-b), and (9-c),
15 Finance Code;
16 (2) Section 151.603(c-1), Finance Code; and
17 (3) Subchapter J, Chapter 151, Finance Code.

18 SECTION 24. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2019.