

By: Capriglione

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 [~~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. Section 151.002(b)(11), Finance Code, is amended to read as follows:

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

SECTION 3. Section 151.003, Finance Code, is amended to read as follows:

Sec. 151.003. EXCLUSIONS. The [~~Subject to Subchapter J,~~

1 ~~the~~ following persons are not required to be licensed under this  
2 chapter:

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

6 (2) a state or an agency, political subdivision, or  
7 other instrumentality of a state;

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

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

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

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

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

24 (6) a person that, on behalf of the United States or a  
25 department, agency, or instrumentality of the United States, or a  
26 state or county, city, or any other governmental agency or  
27 political subdivision of a state, provides electronic funds

1 transfer services of governmental benefits for a federal, state,  
2 county, or local governmental agency;

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

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

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

19 (A) only transports currency:

20 (i) from a person to the same person at  
21 another location;

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

25 (iii) to a person from a financial  
26 institution after being withdrawn from an account belonging to the  
27 same person; and

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

4 (9-a) a trust company, as defined by Section  
5 187.001(a), that is organized under the laws of this state; and

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

11 SECTION 4. Section 151.201, Finance Code, is amended to  
12 read as follows:

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

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

26 (a) If a license holder does not continue to meet the  
27 qualifications or satisfy the requirements that apply to an

1 applicant for a new money transmission license or [7] currency  
2 exchange license, [~~or depository agent license,~~] as applicable, the  
3 commissioner may suspend or revoke the license holder's license.

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

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

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

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

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

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

24 (d) If the license holder fails to submit the completed  
25 annual report and pay the annual license fee and any late fee due  
26 within the time prescribed by Subsection (c)(1), the license  
27 expires, and the license holder must cease and desist from engaging

1 in the business of money transmission or [~~7~~] currency exchange, [~~or~~  
2 ~~depository agent services,~~] as applicable, as of that date. The  
3 expiration of a license is not subject to appeal.

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

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

12 (1) is licensed under this subchapter;

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

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

17 or

18 (4) has been granted an exemption under Subsection  
19 (c).

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

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

25 (1) is licensed under this subchapter;

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

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

3 (4) is excluded under Section 151.003; or

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

8 [~~6~~] has been granted an exemption under Subsection  
9 (d).

10 SECTION 8. Section 151.602(a), Finance Code, is amended to  
11 read as follows:

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

16 (1) a record of each money transmission transaction or  
17 ~~[7]~~ currency exchange transaction, ~~[or depository agent services~~  
18 ~~transaction]~~ as applicable;

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

23 (3) bank statements and bank reconciliation records;

24 (4) all records and reports required by applicable  
25 state and federal law, including the reporting and recordkeeping  
26 requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT,  
27 and Chapter 271, and other federal and state laws pertaining to

1 money laundering, drug trafficking, or terrorist funding; and

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

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

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

15 (9-a) "Financial institution" has the meaning  
16 assigned by Section 201.101, Finance Code.

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

19 (c) The comptroller shall adopt rules necessary to carry out  
20 this chapter.

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

24 (a) The depository is administered as a division of the  
25 office of the comptroller and under the direction and supervision  
26 of a bullion depository administrator appointed by the comptroller  
27 [~~with the advice and consent of the governor, lieutenant governor,~~



1 ~~and senate]~~.

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

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

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

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

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

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

26 (b) The depository shall make a delivery described by  
27 Subsection (a) on demand by the presentment of a written demand

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

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

12 SECTION 14. Section 2116.007, Government Code, is amended  
13 to read as follows:

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

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

27 (c) If a depository account holder transfers to a payee who

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

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

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

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

26 SECTION 16. Section 2116.010, Government Code, is amended  
27 to read as follows:

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

8           SECTION 17. Section 2116.021, Government Code, is amended  
9 to read as follows:

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

19           (b) The depository may advertise and promote the depository  
20 in any available media.

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

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

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

4        SECTION 19. Section 2116.024, Government Code, is amended  
5 to read as follows:

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

14        SECTION 20. Section 2116.025, Government Code, is amended  
15 to read as follows:

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

23        SECTION 21. Subchapter A, Chapter 2116, Government Code, is  
24 amended by adding Sections 2116.027 and 2116.028 to read as  
25 follows:

26        Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS  
27 EXEMPT FROM DISCLOSURE. (a) Records relating to individual

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

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

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

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

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

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

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

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

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

24 (4) to a current or prospective depository account  
25 holder;

26 (5) in response to a subpoena issued under applicable  
27 law;

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

3           (7) as otherwise permitted by the depository account  
4 agreement applicable to a depository account holder's account.

5           Sec. 2116.028. EXEMPTION FROM CREDITORS' CLAIMS.

6 (a) Property held in the depository is exempt from garnishment,  
7 attachment, execution, or other seizure by a creditor if the  
8 property has an aggregate fair market value of not more than \$1  
9 million, exclusive of the amount of any liens, security interests,  
10 or other charges encumbering the property.

11           (b) Subsection (a) does not apply to the claim of a creditor  
12 for a debt, judgment, lien, or claim, including a tax delinquency,  
13 that is asserted by or owed to:

14           (1) this state or a political subdivision of this  
15 state;

16           (2) a person who has perfected a pledge made under this  
17 chapter;

18           (3) a person who is owed restitution in a criminal  
19 matter, as reflected in an order of a court; or

20           (4) a person who is owed child support arrearages by  
21 the depository account holder, as reflected in a child support lien  
22 notice that complies with the requirements of Section [157.313](#),  
23 Family Code.

24           (c) Subsection (a) does not apply to a claim asserted by a  
25 governmental entity other than this state if the claim is for a  
26 debt, judgment, or lien for a tax delinquency.

27           (d) Nothing in this section may be construed to increase the

1 personal property exemptions available to a person in a bankruptcy  
2 proceeding.

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

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

12 SECTION 23. The following laws are repealed:

13 (1) Sections 151.002(b)(9-a), (9-b), and (9-c),  
14 Finance Code;

15 (2) Section 151.603(c-1), Finance Code; and

16 (3) Subchapter J, Chapter 151, Finance Code.

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