

1-1 By: Capriglione, Parker (Senate Sponsor - Fallon) H.B. No. 2458
 1-2 (In the Senate - Received from the House April 26, 2019;
 1-3 April 29, 2019, read first time and referred to Committee on
 1-4 Finance; May 7, 2019, reported favorably by the following vote:
 1-5 Yeas 14, Nays 0; May 7, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Nelson	X			
1-8 Hinojosa	X			
1-9 Bettencourt	X			
1-10 Birdwell	X			
1-11 Campbell	X			
1-12 Flores	X			
1-13 Hancock			X	
1-14 Huffman	X			
1-15 Kolthorst	X			
1-16 Nichols	X			
1-17 Perry	X			
1-18 Taylor	X			
1-19 Watson	X			
1-20 West	X			
1-21 Whitmire	X			

1-23 A BILL TO BE ENTITLED
 1-24 AN ACT

1-25 relating to the operation and administration of the Texas Bullion
 1-26 Depository.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 151.002(a), Finance Code, is amended to
 1-29 read as follows:

1-30 (a) This section defines general terms that apply to an
 1-31 applicant for or holder of a money services license issued under
 1-32 this chapter, regardless of whether the license is a money
 1-33 transmission license or ~~[7] a currency exchange license~~, ~~or a~~
 1-34 ~~depository agent license~~. Additional terms that apply
 1-35 specifically to money transmission are defined in Section
 1-36 151.301. Additional terms that apply specifically to currency
 1-37 exchange are defined in Section 151.501. ~~[Additional terms that~~
 1-38 ~~apply specifically to depository agents are defined in Section~~
 1-39 ~~151.851.]~~

1-40 SECTION 2. Sections 151.002(b)(11) and (14), Finance Code,
 1-41 are amended to read as follows:

1-42 (11) "License holder" means a person that holds a
 1-43 money transmission license or ~~[7] a currency exchange license~~, ~~or a~~
 1-44 ~~depository agent license~~.

1-45 (14) "Money services" means money transmission or ~~[7]~~
 1-46 ~~currency exchange~~, ~~or depository agent~~ services.

1-47 SECTION 3. Section 151.003, Finance Code, is amended to
 1-48 read as follows:

1-49 Sec. 151.003. EXCLUSIONS. ~~The~~ ~~[Subject to Subchapter J,~~
 1-50 ~~the]~~ following persons are not required to be licensed under this
 1-51 chapter:

1-52 (1) the United States or an instrumentality of the
 1-53 United States, including the United States Post Office or a
 1-54 contractor acting on behalf of the United States Post Office;

1-55 (2) a state or an agency, political subdivision, or
 1-56 other instrumentality of a state;

1-57 (3) a federally insured financial institution, as that
 1-58 term is defined by Section 201.101, that is organized under the laws
 1-59 of this state, another state, or the United States;

1-60 (4) a foreign bank branch or agency in the United
 1-61 States established under the federal International Banking Act of

2-1 1978 (12 U.S.C. Section 3101 et seq.);

2-2 (5) a person acting as an agent for an entity excluded
2-3 under Subdivision (3) or (4), to the extent of the person's actions
2-4 in that capacity, provided that:

2-5 (A) the entity is liable for satisfying the money
2-6 services obligation owed to the purchaser on the person's receipt
2-7 of the purchaser's money; and

2-8 (B) the entity and person enter into a written
2-9 contract that appoints the person as the entity's agent and the
2-10 person acts only within the scope of authority conferred by the
2-11 contract;

2-12 (6) a person that, on behalf of the United States or a
2-13 department, agency, or instrumentality of the United States, or a
2-14 state or county, city, or any other governmental agency or
2-15 political subdivision of a state, provides electronic funds
2-16 transfer services of governmental benefits for a federal, state,
2-17 county, or local governmental agency;

2-18 (7) a person that acts as an intermediary on behalf of
2-19 and at the direction of a license holder in the process by which the
2-20 license holder, after receiving money or monetary value from a
2-21 purchaser, either directly or through an authorized delegate,
2-22 transmits the money or monetary value to the purchaser's designated
2-23 recipient, provided that the license holder is liable for
2-24 satisfying the obligation owed to the purchaser;

2-25 (8) an attorney or title company that in connection
2-26 with a real property transaction receives and disburses domestic
2-27 currency or issues an escrow or trust fund check only on behalf of a
2-28 party to the transaction;

2-29 (9) a person engaged in the business of currency
2-30 transportation who is both a registered motor carrier under Chapter
2-31 643, Transportation Code, and a licensed armored car company or
2-32 courier company under Chapter 1702, Occupations Code, provided that
2-33 the person:

2-34 (A) only transports currency:

2-35 (i) from a person to the same person at
2-36 another location;

2-37 (ii) from a person to a financial
2-38 institution to be deposited in an account belonging to the same
2-39 person; or

2-40 (iii) to a person from a financial
2-41 institution after being withdrawn from an account belonging to the
2-42 same person; and

2-43 (B) does not otherwise engage in the money
2-44 transmission or currency exchange business [~~or depository agent~~
2-45 ~~services business~~] without a license issued under this chapter;

2-46 (9-a) a trust company, as defined by Section
2-47 187.001(a), that is organized under the laws of this state; and

2-48 (10) any other person, transaction, or class of
2-49 persons or transactions exempted by commission rule or any other
2-50 person or transaction exempted by the commissioner's order on a
2-51 finding that the licensing of the person is not necessary to achieve
2-52 the purposes of this chapter.

2-53 SECTION 4. Section 151.201, Finance Code, is amended to
2-54 read as follows:

2-55 Sec. 151.201. SCOPE. This subchapter sets out the general
2-56 qualifications and provisions that apply to a money services
2-57 license, regardless of whether the license is a money transmission
2-58 license or [~~7~~] a currency exchange license [~~, or a depository agent~~
2-59 ~~license~~]. Subchapters D and E set forth the additional
2-60 qualifications and provisions that apply specifically to a money
2-61 transmission license. Subchapter F sets forth the additional
2-62 qualifications and provisions that apply specifically to a currency
2-63 exchange license. [~~Subchapter J sets forth the additional~~
2-64 ~~qualifications and provisions that apply specifically to a~~
2-65 ~~depository agent license.~~]

2-66 SECTION 5. Sections 151.207(a), (b), and (d), Finance Code,
2-67 are amended to read as follows:

2-68 (a) If a license holder does not continue to meet the
2-69 qualifications or satisfy the requirements that apply to an

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

3-4 (b) In addition to complying with Subsection (a), a license
 3-5 holder must annually:

3-6 (1) pay a license fee in an amount established by
 3-7 commission rule; and

3-8 (2) submit a report that is under oath, is in the form
 3-9 and medium required by the commissioner, and contains:

3-10 (A) if the license is a money transmission
 3-11 license [~~or depository agent license,~~] an audited unconsolidated
 3-12 financial statement dated as of the last day of the license holder's
 3-13 fiscal year that ended in the immediately preceding calendar year;

3-14 (B) if the license is a currency exchange
 3-15 license, a financial statement, audited or unaudited, dated as of
 3-16 the last day of the license holder's fiscal year that ended in the
 3-17 immediately preceding calendar year; and

3-18 (C) documentation and certification, or any
 3-19 other information the commissioner reasonably requires to
 3-20 determine the security, net worth, permissible investments, and
 3-21 other requirements the license holder must satisfy and whether the
 3-22 license holder continues to meet the qualifications and
 3-23 requirements for licensure.

3-24 (d) If the license holder fails to submit the completed
 3-25 annual report and pay the annual license fee and any late fee due
 3-26 within the time prescribed by Subsection (c)(1), the license
 3-27 expires, and the license holder must cease and desist from engaging
 3-28 in the business of money transmission or [7] currency exchange, [~~or~~
 3-29 ~~depository agent services,~~] as applicable, as of that date. The
 3-30 expiration of a license is not subject to appeal.

3-31 SECTION 6. Section 151.302(a), Finance Code, as amended by
 3-32 Chapters 75 (S.B. 899) and 1000 (H.B. 483), Acts of the 84th
 3-33 Legislature, Regular Session, 2015, is reenacted to read as
 3-34 follows:

3-35 (a) A person may not engage in the business of money
 3-36 transmission in this state or advertise, solicit, or represent that
 3-37 the person engages in the business of money transmission in this
 3-38 state unless the person:

3-39 (1) is licensed under this subchapter;

3-40 (2) is an authorized delegate of a person licensed
 3-41 under this subchapter, appointed by the license holder in
 3-42 accordance with Section 151.402;

3-43 (3) is excluded from licensure under Section 151.003;
 3-44 or

3-45 (4) has been granted an exemption under Subsection
 3-46 (c).

3-47 SECTION 7. Section 151.502(a), Finance Code, is amended to
 3-48 read as follows:

3-49 (a) A person may not engage in the business of currency
 3-50 exchange or advertise, solicit, or hold itself out as providing
 3-51 currency exchange unless the person:

3-52 (1) is licensed under this subchapter;

3-53 (2) is licensed for money transmission under
 3-54 Subchapter D;

3-55 (3) is an authorized delegate of a person licensed for
 3-56 money transmission under Subchapter D;

3-57 (4) is excluded under Section 151.003; or

3-58 (5) [~~is licensed as a depository agent under~~
 3-59 ~~Subchapter J and only engages in the business of currency exchange~~
 3-60 ~~in connection with, and to the extent necessary for, the~~
 3-61 ~~performance of depository agent activities; or~~

3-62 [~~(6)~~] has been granted an exemption under Subsection
 3-63 (d).

3-64 SECTION 8. Section 151.602(a), Finance Code, is amended to
 3-65 read as follows:

3-66 (a) A license holder must prepare, maintain, and preserve
 3-67 the following books, accounts, and other records for at least five
 3-68 years or another period as may be prescribed by rule of the
 3-69 commission:

4-1 (1) a record of each money transmission transaction or
 4-2 [~~7~~] currency exchange transaction, [~~or depository agent services~~
 4-3 ~~transaction,~~] as applicable;

4-4 (2) a general ledger posted in accordance with
 4-5 generally accepted accounting principles containing all asset,
 4-6 liability, capital, income, and expense accounts, unless directed
 4-7 otherwise by the commissioner;

4-8 (3) bank statements and bank reconciliation records;

4-9 (4) all records and reports required by applicable
 4-10 state and federal law, including the reporting and recordkeeping
 4-11 requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT,
 4-12 and Chapter 271, and other federal and state laws pertaining to
 4-13 money laundering, drug trafficking, or terrorist funding; and

4-14 (5) any other records required by commission rule or
 4-15 reasonably requested by the commissioner to determine compliance
 4-16 with this chapter.

4-17 SECTION 9. Section 2116.001, Government Code, is amended by
 4-18 amending Subdivision (9) and adding Subdivision (9-a) to read as
 4-19 follows:

4-20 (9) "Depository agent" means a financial institution
 4-21 that has entered into an agreement with the depository to provide a
 4-22 retail location for the provision of depository services to the
 4-23 general public on behalf of [~~person licensed in accordance with~~
 4-24 ~~this chapter to serve as an intermediary between~~] the depository
 4-25 [~~and a retail customer in making a transaction in precious metals~~
 4-26 ~~bullion or specie~~].

4-27 (9-a) "Financial institution" has the meaning
 4-28 assigned by Section 201.101, Finance Code.

4-29 SECTION 10. Section 2116.002, Government Code, is amended
 4-30 by adding Subsection (c) to read as follows:

4-31 (c) The comptroller shall adopt rules necessary to carry out
 4-32 this chapter.

4-33 SECTION 11. Section 2116.003, Government Code, is amended
 4-34 by amending Subsection (c) and adding Subsection (d) to read as
 4-35 follows:

4-36 (c) The administrator may appoint or employ, subject to the
 4-37 approval of the comptroller, a deputy administrator or other
 4-38 subordinate officers or employees [~~officer~~] as necessary and
 4-39 appropriate to the efficient administration of the depository.

4-40 (d) The comptroller may employ security officers to provide
 4-41 needed security services for the depository and may commission the
 4-42 officers as peace officers.

4-43 SECTION 12. Sections 2116.005(c) and (d), Government Code,
 4-44 are amended to read as follows:

4-45 (c) The comptroller [~~by rule~~] shall adopt standards by which
 4-46 the quantities of precious metals deposited are credited to a
 4-47 depositor's depository account by reference to the particular form
 4-48 in which the metals were deposited, classified by mint,
 4-49 denomination, weight, assay mark, or other indicator, as
 4-50 applicable. The standards must conform to applicable national and
 4-51 international standards of weights and measures.

4-52 (d) The comptroller [~~by rule~~] may, if the comptroller
 4-53 determines that to do so is in the public interest, restrict the
 4-54 forms in which deposits of precious metals may be made [~~to those~~
 4-55 ~~forms that conveniently lend themselves to measurement and~~
 4-56 ~~accounting in units of troy ounces and standardized fractions of~~
 4-57 ~~troy ounces~~].

4-58 SECTION 13. Sections 2116.006(b) and (c), Government Code,
 4-59 are amended to read as follows:

4-60 (b) The depository shall make a delivery described by
 4-61 Subsection (a) on demand by the presentment of a written demand
 4-62 [~~suitable check, draft,~~] or digital electronic instruction to the
 4-63 depository or a depository agent. The comptroller may prescribe
 4-64 [~~by rule shall adopt~~] the forms, standards, and processes through
 4-65 which an order for delivery on demand may be made, presented, and
 4-66 honored.

4-67 (c) The depository shall make a delivery at the depository's
 4-68 settlement facility designated by the comptroller, shipping to an
 4-69 address specified by the account holder or, at the depository's

5-1 discretion, at a facility of a depository agent at which
 5-2 presentment is made, not later than 10 [~~five~~] business days after
 5-3 the date of presentment.

5-4 SECTION 14. Section 2116.007, Government Code, is amended
 5-5 to read as follows:

5-6 Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a)
 5-7 In accordance with rules adopted under this chapter, a depository
 5-8 account holder may transfer any portion of the balance of the
 5-9 holder's depository account by written demand [~~check, draft,~~] or
 5-10 digital electronic instruction to another person [~~depository~~
 5-11 ~~account holder or to a person who at the time the transfer is~~
 5-12 ~~initiated is not a depository account holder~~].

5-13 (b) The depository shall adjust the depository account
 5-14 balances of the depository accounts to reflect a transfer
 5-15 transaction between depository account holders on presentment of
 5-16 the written demand [~~check, draft,~~] or other instruction by reducing
 5-17 the payor's depository account balance and increasing the
 5-18 depository account balance of the payee accordingly.

5-19 (c) If a depository account holder transfers to a payee who
 5-20 is not a depository account holder any portion of the balance of the
 5-21 depository account holder's depository account, the depository
 5-22 shall, if the payee is otherwise eligible to open a depository
 5-23 account under applicable laws and depository policy, allow the
 5-24 payee to establish a depository account [~~by presentment of the~~
 5-25 ~~payor's check, draft, or instruction to the depository or to a~~
 5-26 ~~depository agent~~]. The depository shall credit a newly
 5-27 established account on behalf of the payee and shall debit the
 5-28 payor's account accordingly.

5-29 SECTION 15. Sections 2116.008(c) and (e), Government Code,
 5-30 are amended to read as follows:

5-31 (c) The depository [~~or a depository agent~~] shall hold the
 5-32 contract for a depository account in the records pertaining to the
 5-33 account.

5-34 (e) The depository and the depository account holder may
 5-35 amend a contract for a depository account by agreement, or the
 5-36 depository may amend the deposit contract by providing [~~mailing a~~]
 5-37 written notice of the amendment to the account holder, separately
 5-38 or as an enclosure with or part of the account holder's statement of
 5-39 account or passbook. In the case of amendment by notice from the
 5-40 depository, the notice must include the text and effective date of
 5-41 the amendment. The notice may be provided electronically. The
 5-42 effective date may not be earlier than the 30th day after the date
 5-43 the notice is mailed, unless otherwise provided by rules adopted
 5-44 under this chapter.

5-45 SECTION 16. Section 2116.010, Government Code, is amended
 5-46 to read as follows:

5-47 Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The
 5-48 comptroller [~~by rule~~] may establish fees, service charges, and
 5-49 penalties to be charged a depository account holder for a service or
 5-50 activity regarding a depository account, including a fee for an
 5-51 overdraft, an insufficient fund check or draft, or a stop payment
 5-52 order. The comptroller may waive any fees, service charges, or
 5-53 penalties established under this section.

5-54 SECTION 17. Section 2116.021, Government Code, is amended
 5-55 to read as follows:

5-56 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS; MARKETING
 5-57 AND PUBLICITY. (a) The depository may [~~shall~~] enter into
 5-58 transactions and relationships with bullion banks, depositories,
 5-59 dealers, central banks, sovereign wealth funds, financial
 5-60 institutions, international nongovernmental organizations, and
 5-61 other persons, located inside or outside of this state or inside or
 5-62 outside of the United States, as the comptroller determines to be
 5-63 prudent and suitable to facilitate the operations of the depository
 5-64 and to further the purposes of this chapter.

5-65 (b) The depository may advertise and promote the depository
 5-66 in any available media.

5-67 (c) The depository may issue, sell, license for sale, or
 5-68 obtain a license to sell promotional items approved by the
 5-69 administrator to further the purposes of this chapter and to

6-1 promote the depository. The depository may set commercially
 6-2 reasonable prices for items licensed or sold under this section.

6-3 SECTION 18. Section 2116.023, Government Code, is amended
 6-4 by adding Subsection (d) to read as follows:

6-5 (d) The depository shall refer any matter relating to an
 6-6 action described by Subsection (a) to the attorney general for
 6-7 resolution.

6-8 SECTION 19. Section 2116.024, Government Code, is amended
 6-9 to read as follows:

6-10 Sec. 2116.024. OFFICIAL EXCHANGE RATES. The comptroller
 6-11 [~~by rule~~] shall establish the references by which the official
 6-12 exchange rate for pricing precious metals transactions in terms of
 6-13 United States dollars or other currency must be established at the
 6-14 time of a depository transaction. The comptroller shall establish
 6-15 procedures and facilities through which the rates are made
 6-16 discoverable at all reasonable times by system participants, both
 6-17 on a real-time basis and retrospectively.

6-18 SECTION 20. Section 2116.025, Government Code, is amended
 6-19 to read as follows:

6-20 Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF
 6-21 TAXABLE GAINS. The comptroller [~~by rule~~] shall establish
 6-22 procedures and requirements for the depository and depository
 6-23 agents designed to minimize the burden to system participants of
 6-24 accounting for and reporting taxable gains and losses arising out
 6-25 of depository transactions as denominated in United States dollars
 6-26 or another currency.

6-27 SECTION 21. Subchapter A, Chapter 2116, Government Code, is
 6-28 amended by adding Section 2116.027 to read as follows:

6-29 Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS
 6-30 EXEMPT FROM DISCLOSURE. (a) Records relating to individual
 6-31 depository accounts or depository account holders, including
 6-32 current, former, or prospective depository account holders, that
 6-33 are in the custody of the depository or a vendor performing services
 6-34 related to the depository are confidential and exempt from
 6-35 disclosure under Chapter 552.

6-36 (b) The following information of the depository is excepted
 6-37 from the requirements of Section 552.021:

6-38 (1) records and other information related to the
 6-39 security of the depository;

6-40 (2) records related to the method of setting the
 6-41 depository's fees, service charges, penalties, and other charges or
 6-42 payments; and

6-43 (3) commercial or financial information that would
 6-44 cause substantial competitive harm to the depository, including
 6-45 operational or other information that would give advantage to
 6-46 competitors or bidders.

6-47 (c) Notwithstanding Subsection (a), depository account
 6-48 information may be disclosed:

6-49 (1) to a depository account holder regarding the
 6-50 depository account holder's account;

6-51 (2) to a state or federal agency as required by
 6-52 applicable law;

6-53 (3) to a vendor providing services to the depository;

6-54 (4) in response to a subpoena issued under applicable
 6-55 law;

6-56 (5) if compiled as collective information that does
 6-57 not include any identifying information about a person; or

6-58 (6) as otherwise permitted by the depository account
 6-59 agreement applicable to a depository account holder's account.

6-60 SECTION 22. Section 2116.051, Government Code, is amended
 6-61 to read as follows:

6-62 Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository
 6-63 may [~~shall~~] use private, independently managed financial [~~firms~~
 6-64 and] institutions to provide retail locations for the provision of
 6-65 depository services to the public [~~licensed as depository agents as~~
 6-66 intermediaries to conduct retail transactions in bullion and
 6-67 specie] on behalf of the depository [~~with current and prospective~~
 6-68 depository account holders].

6-69 SECTION 23. The following laws are repealed:

7-1 (1) Sections 151.002(b)(9-a), (9-b), and (9-c),
7-2 Finance Code;
7-3 (2) Section 151.603(c-1), Finance Code; and
7-4 (3) Subchapter J, Chapter 151, Finance Code.
7-5 SECTION 24. This Act takes effect immediately if it
7-6 receives a vote of two-thirds of all the members elected to each
7-7 house, as provided by Section 39, Article III, Texas Constitution.
7-8 If this Act does not receive the vote necessary for immediate
7-9 effect, this Act takes effect September 1, 2019.

* * * * *

7-10