

By: Fallon

S.B. No. 1692

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. 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~~[7, 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,~~

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

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

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

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

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

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

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

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

(6) a person that, on behalf of the United States or a department, agency, or instrumentality of the United States, or a state or county, city, or any other governmental agency or 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;

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

(4) is excluded under Section 151.003; or

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

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

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

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

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

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

(3) bank statements and bank reconciliation records;

(4) all records and reports required by applicable state and federal law, including the reporting and recordkeeping requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT, 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

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

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

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

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

SECTION 16. Section [2116.010](#), Government Code, is amended 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

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

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

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

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

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

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

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

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

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

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

(5) in response to a subpoena issued under applicable 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.