

AN ACT

relating to the establishment and administration of a state bullion depository; authorizing fees.

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

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. TEXAS BULLION DEPOSITORY

SUBCHAPTER A. ESTABLISHMENT AND ADMINISTRATION OF TEXAS

BULLION DEPOSITORY

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the bullion depository administrator appointed under Section 2116.003.

(2) "Bullion" means precious metals that are formed into uniform shapes and quantities such as ingots, bars, or plates, with uniform content and purity, as are suitable for or customarily used in the purchase, sale, storage, transfer, and delivery of bulk or wholesale transactions in precious metals.

(3) "Business day" means a day other than a Saturday, Sunday, or banking holiday for a bank chartered under the laws of this state.

(4) "Deposit" means the establishment of an executory obligation of the depository to deliver to the order of the person establishing with the depository the obligation, on demand, a quantity of a specified precious metal, in bullion, specie, or a combination of bullion and specie, equal to the quantity of the same precious metal delivered by or on behalf of the depositor into the custody of:

(A) the depository; or

(B) a depository agent.

(5) "Depositor" means a person who makes a deposit.

(6) "Depository" means the Texas Bullion Depository created by this chapter.

(7) "Depository account" means the rights, interests, and entitlements established in favor of a depositor with respect to a deposit in accordance with this chapter and rules adopted under this chapter.

(8) "Depository account holder," regarding a depository account, means the original depositor or a successor or assignee of the depositor respecting the depository account.

(9) "Depository agent" means a person licensed in accordance with this chapter to serve as an intermediary between the depository and a retail customer in making a transaction in precious metals bullion or specie.

(10) "Precious metal" means a metal, including gold, silver, platinum, palladium, and rhodium, that:

(A) bears a high value-to-weight ratio relative to common industrial metals; and

(B) customarily is formed into bullion or specie.

(11) "Specie" means a precious metal stamped into coins of uniform shape, size, design, content, and purity, suitable for or customarily used as currency, as a medium of exchange, or as the medium for purchase, sale, storage, transfer, or delivery of precious metals in retail or wholesale transactions.

Sec. 2116.002. TEXAS BULLION DEPOSITORY. (a) The Texas

Bullion Depository is established as an agency of this state in the office of the comptroller.

(b) The depository is established to serve as the custodian, guardian, and administrator of certain bullion and specie that may be transferred to or otherwise acquired by this state or an agency, a political subdivision, or another instrumentality of this state.

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

(a) The depository is administered as a division of the office of the comptroller and under the direction and supervision of a bullion depository administrator appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.

(b) The administrator shall:

(1) administer, supervise, and direct the operations and affairs of the depository and depository agents; and

(2) liaise with the comptroller and other divisions of the office of the comptroller to ensure that each transaction with the depository that involves state money, that involves an agency, a political subdivision, or another instrumentality of this state, or that involves a private person is planned, administered, and executed in a manner to achieve the purposes of this chapter.

(c) The administrator may appoint, subject to the approval of the comptroller, a deputy administrator or other subordinate officer as necessary and appropriate to the efficient administration of the depository.

Sec. 2116.004. DEPOSITS AND RELATED ASSETS NOT SUBJECT TO LEGISLATIVE APPROPRIATION; STATUS OF DEPOSITS AND ALLOCATION OF REVENUES. (a) The following are not available for legislative appropriation:

(1) a deposit to the depository;

(2) bullion or specie held by or on behalf of the depository or a depository agent;

(3) bullion or specie in transit to or from the depository or a depository agent; and

(4) a receivable or other amount owed to the depository in settlement of a transaction in bullion or specie.

(b) Bullion, specie, and other assets described by Subsection (a) are subject to redemption, liquidation, or transfer exclusively to discharge an obligation of the depository to depository account holders, depository agents, bullion banks, financial institutions, or other intermediaries in accordance with this chapter and rules adopted under this chapter.

(c) Revenue the depository realizes from fees, charges, or other payments received in the course of depository operations shall be deposited to the credit of the general revenue fund.

Sec. 2116.005. DEPOSITS AND DEPOSITORY ACCOUNTS; STANDARDS. (a) The depository may receive a deposit of bullion or specie from or on behalf of a person acting in the person's own right, as trustee, or in another fiduciary capacity, in accordance with rules adopted by the comptroller as appropriate to:

(1) ensure compliance with law; and

(2) protect the interests of:

(A) the depository;

(B) depository account holders;

(C) this state and the agencies, political subdivisions, and instrumentalities of this state; and

(D) the public at large.

(b) The depository shall record the amount of precious metals a person deposits, regardless of form, in units of troy ounces pure, and the records must also specify the type and quantity of each precious metal deposited.

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

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

(e) The depository shall adjust each depository account balance to reflect additions to or withdrawals or deliveries from the account.

Sec. 2116.006. DEMAND, PRESENTMENT, WITHDRAWAL, DELIVERY, AND SETTLEMENT. (a) The depository shall deliver any precious metal held by or on behalf of the depository in bullion, specie, or a combination of bullion and specie, on the order of a depository account holder in a quantity of that precious metal as is available in the depository account holder's depository account.

(b) The depository shall make a delivery described by Subsection (a) on demand by the presentment of a suitable check, draft, or digital electronic instruction to the depository or a depository agent. The comptroller by rule shall adopt the forms, standards, and processes through which an order for delivery on demand may be made, presented, and honored.

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

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

(b) The depository shall adjust the depository account balances of the depository accounts to reflect a transfer transaction between depository account holders on presentment of the check, draft, or other instruction by reducing the payor's depository account balance and increasing the depository account balance of the payee accordingly.

(c) If a depository account holder transfers to a payee who is not a depository account holder any portion of the balance of the holder's depository account, the depository shall 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.

Sec. 2116.008. DEPOSITORY ACCOUNT CONTRACTS. (a) To establish a depository account, a depositor must contract with the depository for a depository account. The contract must specify:

(1) the terms applicable to the account, including any special terms; and

(2) the conditions on which withdrawals or deliveries with respect to the account may be made.

(b) The execution of a contract for a depository account described by this section may be made, as prescribed by rules adopted under this chapter, by electronic or digital transmission.

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

(d) A contract for a depository account executed by a depositor and the depository is considered a contract in writing for all purposes, and may be evidenced by one or more agreements, deposit receipts, signature cards, amendment notices, or other documentation as provided by law.

(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 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 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.

Sec. 2116.009. CAUSE OF ACTION FOR DENIAL OF DEPOSIT LIABILITY. (a) A cause of action for denial of deposit liability on a depository account contract without a maturity date does not accrue until the depository has denied liability and given notice of the denial to the depository account holder.

(b) The depository's act of furnishing an account statement or passbook, whether in physical, digital, or electronic form, constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook.

(c) The depository's sovereign immunity from suit is waived for an action brought by a depositor for the denial of deposit liability.

(d) The depository's liability for a denial of deposit liability is limited to the amount on deposit for which liability was denied. A depositor may not recover consequential damages, exemplary damages, pre- or post-judgment interest, costs, or attorney's fees.

(e) A suit authorized by this section must be brought in a district court of Travis County.

(f) A suit authorized by this section must be brought before the expiration of one year after the date the cause of action accrues or the suit is barred.

Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The comptroller by rule may establish fees, service charges, and penalties to be charged a depository account holder for a service or activity regarding a depository account, including a fee for an overdraft, an insufficient fund check or draft, or a stop payment order.

Sec. 2116.011. DEPOSITORY ACCOUNT OWNERSHIP BY OWNER OF RECORD. Unless the depository acknowledges in writing a pledge of a depository account, the depository may treat the holder of record of the account as the owner of the account for all purposes and without regard to a notice to the contrary.

Sec. 2116.012. TRANSFER OF DEPOSITORY ACCOUNT. (a) A depository account may be transferred on the books of the depository only on presentation to the depository of:

(1) evidence of transfer satisfactory to the

depository; and

(2) an application for the transfer submitted by the person to whom the depository account is to be transferred.

(b) A person to whom a depository account is to be transferred must accept the transferred account subject to the terms of the deposit contract, this chapter, and rules adopted under this chapter.

Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING. The depository may not pay on a depository account:

(1) interest;

(2) an amount in the nature of interest; or

(3) a fee or other payment for the use or forbearance of use of money, bullion, specie, or precious metals deposited to a depository account.

Sec. 2116.014. LIEN ON DEPOSITORY ACCOUNT. (a) Without the need of any further agreement or pledge, the depository has a lien on each depository account owned by a depository account holder to secure any fees, charges, or other obligations owed or that may become owed to the depository in connection with any of the depository account holder's depository accounts as provided by the terms of the depository account holder's applicable depository account contract.

(b) On default in the payment or in the satisfaction of a depository account holder's obligation, the depository, without notice to or consent of the depository account holder, may transfer on the depository's books all or part of the balance of a depository account holder's depository account to the extent necessary to pay or satisfy the obligation, as determined by reference to the exchange rates applicable at the time of the transfer.

(c) The depository by written instrument may waive wholly or partly the depository's lien on a depository account.

(d) Subject to a lien created as provided by this section, the depository shall recognize the lawful pledge to a third party by a depository account holder of the depository account holder's rights, interests, and entitlements in and to a depository account as an intangible asset. On the satisfaction of other requirements of law in respect of the perfection and enforcement of a pledge of that type, the depository shall take all steps reasonably necessary and appropriate to effectuate on the depository's books any transfer of a depository account or of all or part of a depository account balance to the account of the secured party on the successful enforcement of the pledge.

Sec. 2116.015. DEPOSITORY ACCOUNT AS LEGAL INVESTMENT. (a) The following persons may invest the person's money in a depository account by purchasing precious metals and depositing the precious metals with the depository or a depository agent:

(1) an individual or fiduciary, including an administrator, executor, custodian, guardian, or trustee;

(2) a political subdivision of this state or an instrumentality of this state;

(3) a business or nonprofit corporation;

(4) a charitable or educational corporation or association; or

(5) a financial institution, including a bank, savings and loan association, or credit union.

(b) An investment by a school district in a depository account may be made instead of an investment as provided by Section 45.102, Education Code, and the depository may be used by a district instead of a depository bank for the purposes of Subchapter G, Chapter 45, Education Code.

Sec. 2116.016. APPLICABILITY OF ESTATES CODE. The

applicable provisions of Chapters 111, 112, and 113, Estates Code, govern a depository account.

Sec. 2116.017. PLEDGE OF JOINTLY HELD DEPOSITORY ACCOUNT.

(a) Unless a term of the depository account provides otherwise, a person on whose signature precious metals may be withdrawn from a depository account that is jointly held in the names of two or more persons may, by a signed pledge, pledge and transfer to the depository or to a third party all or part of the account.

(b) A pledge made as described by Subsection (a) does not sever or terminate the joint and survivorship ownership of the account, to the extent applicable to the account before the pledge.

Sec. 2116.018. DEPOSITORY ACCOUNT HELD BY FIDUCIARY.

(a) The depository or a depository agent may accept a depository account in the name of a fiduciary, including an administrator, executor, custodian, guardian, or trustee, for a named beneficiary.

(b) A fiduciary may open, add to, or withdraw precious metals from an account described by Subsection (a).

(c) Except as otherwise provided by law, a payment or delivery to a fiduciary or an acquittance signed by the fiduciary to whom a payment or delivery is made is a discharge of the depository for the payment or delivery.

(d) After a person who holds a depository account in a fiduciary capacity dies, the depository may pay or deliver to the beneficiary of the account the quantity of precious metals represented by the balance in the depository account, plus other rights relating to the depository account, wholly or partly, if the depository has no written notice or order of the probate court of:

(1) a revocation or termination of the fiduciary relationship; or

(2) any other disposition of the beneficial estate.

(e) The depository has no further liability for a payment made or right delivered under Subsection (d).

Sec. 2116.019. DEPOSITORY ACCOUNT HELD IN TRUST;

UNDISCLOSED TRUST INSTRUMENT. (a) If the depository opens a depository account for a person claiming to be the trustee for another person and the depository has no other notice of the existence or terms of the trust other than a written claim against the account:

(1) the person claiming to be the trustee, on the person's signature, may withdraw precious metals from the account; and

(2) if the person claiming to be the trustee dies, the depository may pay or deliver the quantity of precious metals represented by the balance in the account to the person for whom the account was opened.

(b) The depository has no further liability for a payment or delivery made as provided by Subsection (a).

Sec. 2116.020. POWER OF ATTORNEY; REVOCATION ON DEATH OR

INCOMPETENCY. (a) The depository shall recognize the authority of an attorney-in-fact authorized in writing by a depository account holder to manage or withdraw precious metals from the depository account holder's depository account until the depository receives written or actual notice of the revocation of that authority.

(b) For purposes of this section, written notice of the death or adjudication of incompetency of a depository account holder is considered to be written notice of revocation of the authority of the account holder's attorney-in-fact.

Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The

depository shall enter into transactions and relationships with bullion banks, depositories, dealers, central banks, sovereign wealth funds, financial institutions, international

nongovernmental organizations, and other persons, located inside or outside of this state or inside or outside of the United States, as the comptroller determines to be prudent and suitable to facilitate the operations of the depository and to further the purposes of this chapter.

Sec. 2116.022. CERTAIN ACTIONS PROHIBITED. The depository may not take any of the following actions, and any attempt by the depository to take any of the following actions is void ab initio and of no force or effect:

(1) entering into a precious metals leasing, sale-leaseback, forward transaction, swap transaction, future transaction, index transaction, or option on or other derivative of any of those, whether in the nature of a cap transaction, floor transaction, collar transaction, repurchase transaction, reverse repurchase transaction, buy-and-sell-back transaction, securities lending transaction, or other financial instrument or interest intended to or having the effect of hedging or leveraging the depository's holdings of precious metals, including any option with respect to any of these transactions, or any combination of these transactions, except that the limitation provided by this subdivision does not apply to a transaction entered into to limit the depository's exposure to post-signature price risks associated with executory agreements to purchase or sell precious metals in the ordinary course of depository operations and does not apply to policies of insurance purchased to insure against ordinary casualty risks such as theft, damage or destruction, loss during shipment, or similar risks;

(2) crediting the depository account balances of a depository account holder, or disposing of any precious metals, if to do so would cause the aggregate depository account balances with respect to any precious metal represented by all depository accounts to exceed the aggregate quantities of such precious metal held by or for the benefit of the depository and the depository's depository agents;

(3) entering into or maintaining a deposit, trust, or similar relationship for the custody of precious metals by a third party outside this state, directly or indirectly, for the account or benefit of the depository if the comptroller by rule establishes that:

(A) the custody or intermediary arrangements in question do not meet the comptroller's standards of safety, security, and liquidity; or

(B) except in those cases where such relationship may be incidental to the performance of or preparation for purchase and sale transactions with counterparties located outside of this state, suitable alternate arrangements for physical custody of the precious metals inside this state have been established and are available;

(4) extending credit to a person, including credit secured by a depository account or other assets, except an extension of credit incidental to the performance of the functions and responsibilities otherwise provided by this chapter; or

(5) engaging in a business or activity that, if conducted by a private person, would be subject to regulation in this state as a banking or savings and loan function.

Sec. 2116.023. CONFISCATIONS, REQUISITIONS, SEIZURES, AND OTHER ACTIONS VOID. (a) A purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by

the balance of a depository account, if effected by a governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, is void ab initio and of no force or effect.

(b) The depository in the case of receiving notice of a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by the balance of a depository account, effected by a governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, may not recognize the governmental or quasi-governmental authority, financial institution, or other person acting as the lawful successor of the registered holder of a depository account in question.

(c) On receipt of notice of any transaction described by Subsection (a), with respect to all or any portion of the balance of a depository account, the depository shall suspend withdrawal privileges associated with the balances of the depository account until suitable substitute arrangements may be effected in accordance with rules of the comptroller to enable the registered account holder to take delivery of the precious metals represented by the account balances in question. A voluntary transfer of a depository account balance or of a depository account among depository account holders may continue to take place unaffected by the suspension, and the depository shall recognize to the full extent authorized by this chapter and rules adopted under this chapter.

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

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

Sec. 2116.026. ANNUAL REPORT. The comptroller shall submit to the governor and the legislature a report on the status,

condition, operations, and prospects for the depository and depository participation each year not later than September 30.

SUBCHAPTER B. DEPOSITORY AGENTS

Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository shall use private, independently managed firms and institutions licensed as depository agents as intermediaries to conduct retail transactions in bullion and specie on behalf of the depository with current and prospective depository account holders.

Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND PROCESSES. The comptroller by rule shall require a depository agent to maintain suitable systems and processes for electronic information sharing and communication with the comptroller and the depository to ensure that all transactions effected on behalf of the depository are reported to and integrated into the depository's records not later than 11:59:59 p.m. on the date of each transaction.

Sec. 2116.053. PERIODIC REPORTS. A depository agent shall submit monthly, quarterly, and annual reports of all depository transactions not later than the 15th day of the month following the expiration of the period with respect to which such report is submitted. The report must contain information and be in a form and format as rules of the comptroller require.

SECTION 2. 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]~~ 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 3. Section 151.002(b), Finance Code, is amended by adding Subdivisions (9-a), (9-b), and (9-c) and amending Subdivisions (11) and (14) to read as follows:

(9-a) "Depository agent" has the meaning assigned by Section 151.851.

(9-b) "Depository agent license" means a license issued under Subchapter J.

(9-c) "Depository agent services" means services rendered to the general public for or on behalf of the Texas Bullion Depository in the nature of purchasing, selling, transferring, accepting, transporting, delivering, or otherwise dealing in precious metals bullion or specie in connection with the creation, transfer, clearing, settlement, or liquidation of the rights and interests of a depository account holder and a direct or indirect transferee of a depository account holder, as those terms are defined by Subchapter J. The term "depository agent services" does not include:

(A) participation as a party or counterparty to a transaction, including an agreement with respect to a transaction, in or in connection with a contract for the purchase or sale of a person's rights and interests as a depository account holder, as a cash contract for present delivery, a cash contract for deferred shipment or delivery, or a contract for future delivery, where the underlying deliverable consists of the depository account holder's interest in the depository account, rather than the underlying precious metal represented by the depository account balance;

(B) the opening, transfer, settlement, or

liquidation of any derivative of a contract described by Paragraph (A), including a forward transaction, swap transaction, currency transaction, future transaction, index transaction, or option on or other derivative of a transaction of any of those types, in the nature of a cap transaction, floor transaction, collar transaction, repurchase transaction, reverse repurchase transaction, buy-and-sell-back transaction, securities lending transaction, or other financial instrument or interest, including an option with respect to a transaction, or any combination of these transactions;
or

(C) the rendition of services exclusively in support of the opening, transfer, settlement, or liquidation of transaction derivatives described by Paragraph (B) through a central counterparty, such as those customarily rendered by a clearinghouse, clearing association, or clearing corporation, or through an interbank payment system, physical or electronic trading facility, broker or brokerage firm, or similar entity, facility, system, or organization.

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

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

SECTION 4. Section 151.003, Finance Code, is amended to read as follows:

Sec. 151.003. EXCLUSIONS. Subject to Subchapter J, the ~~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 transfer services of governmental benefits for a federal, state, county, or local governmental agency;

(7) a person that acts as an intermediary on behalf of and at the direction of a license holder in the process by which the license holder, after receiving money or monetary value from a purchaser, either directly or through an authorized delegate, transmits the money or monetary value to the purchaser's designated

recipient, provided that the license holder is liable for satisfying the obligation owed to the purchaser;

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

(9) a person engaged in the business of currency transportation who is both a registered motor carrier under Chapter 643, Transportation Code, and a licensed armored car company or courier company under Chapter 1702, Occupations Code, provided that the person does not engage in the money transmission or currency exchange business or depository agent services business without a license issued under this chapter; and

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

SECTION 5. Section 151.201, Finance Code, is amended to read as follows:

Sec. 151.201. SCOPE. This subchapter sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license, ~~[or]~~ a currency exchange license, or a depository agent license. Subchapters D and E set forth the additional qualifications and provisions that apply specifically to a money transmission license. Subchapter F sets forth the additional qualifications and provisions that apply specifically to a currency exchange license. Subchapter J sets forth the additional qualifications and provisions that apply specifically to a depository agent license.

SECTION 6. Sections 151.207(a), (b), and (d), Finance Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

SECTION 7. Section 151.302(a), Finance Code, is amended to read as follows:

(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission unless the person:

- (1) is licensed under this subchapter;
- (2) is an authorized delegate of a person licensed under this subchapter, appointed by the license holder in accordance with Section 151.402;
- (3) is excluded from licensure under Section 151.003;
- ~~or~~
- (4) is licensed as a depository agent under Subchapter J and only engages in the business of money transmission in connection with, and to the extent necessary for, the performance of depository agent activities; or
- (5) has been granted an exemption under Subsection (c).

SECTION 8. Section 151.502(a), Finance Code, is amended to read as follows:

Sec. 151.502. LICENSE REQUIRED. (a) A person may not engage in the business of currency exchange or advertise, solicit, or hold itself out as providing currency exchange unless the person:

- (1) is licensed under this subchapter;
- (2) is licensed for money transmission under 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 9. 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~~ 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 money laundering, drug trafficking, or terrorist funding; and
- (5) any other records required by commission rule or

reasonably requested by the commissioner to determine compliance with this chapter.

SECTION 10. Section 151.603, Finance Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A depository agent license holder shall prepare written reports and statements as follows:

(1) the renewal report required by Section 151.207(b)(2), including an audited unconsolidated financial statement that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(2) a quarterly interim financial statement and report regarding the permissible investments required to be maintained under applicable rules that reflect the license holder's financial condition and permissible investments as of the last day of the calendar quarter to which the statement and report relate and that are prepared not later than the 45th day after the last day of the calendar quarter; and

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

SECTION 11. Section 151.604(b), Finance Code, is amended to read as follows:

(b) A license holder must file a written report with the commissioner not later than 24 hours after the license holder knows or has reason to know of:

(1) the filing of a petition by or against the license holder for bankruptcy or reorganization;

(2) the filing of a petition by or against the license holder for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of the license holder's creditors;

(3) the institution of a proceeding to revoke or suspend the license holder's license, or to enjoin or otherwise require the license holder to cease and desist from engaging in an activity related to a business activity that, if conducted in this state, would be subject to this chapter [~~money transmission~~], by a state or country in which the license holder engages in business or is licensed;

(4) the felony indictment or conviction of the license holder or a principal of, person in control of, responsible individual of, or authorized delegate of the license holder for an offense identified in Section 151.202(e);

(5) the cancellation or other impairment of the license holder's security; or

(6) the inability to meet the license holder's transmission obligations under this chapter for a period of 24 hours or longer.

SECTION 12. Chapter 151, Finance Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DEPOSITORY AGENT LICENSE

Sec. 151.851. DEFINITIONS. In this subchapter, "bullion," "deposit," "depository," "depository account," "depository account holder," "depository agent," "precious metal," and "specie" have the meanings assigned by Section 2116.001, Government Code.

Sec. 151.852. APPLICABILITY TO DEPOSITORY AGENT SERVICES.

(a) Notwithstanding any other provision of this chapter, a money service that constitutes both a depository agent service and a money transmission service, or both a depository agent service and a currency exchange service, for purposes of this chapter constitutes a depository agent service only.

(b) A depository agent service described by Subsection (a) is not subject to a provision of this chapter applicable uniquely to money transmission services or currency exchange services.

(c) A person who renders a service that constitutes a depository agent service, including a depository agent service described by Subsection (a), and renders another service that constitutes money transmission or currency exchange service only, is subject to the requirements of this chapter applicable to each type of service rendered.

Sec. 151.853. LICENSE REQUIRED. (a) A person may not engage in the business of rendering depository agent services or advertise, solicit, or hold itself out as a person that engages in the business of depository agent services unless the person:

(1) is licensed under this subchapter and has received the requisite certifications from the comptroller of its facilities, systems, processes, and procedures as required by Chapter 2116, Government Code, or rules adopted under that chapter; or

(2) is excluded from licensing requirements under Section 151.003.

(b) Notwithstanding any other provision of this chapter, a person described by Section 151.003(1), (6), (7), (8), or (9) is not eligible for a license under this subchapter and may not engage in depository agent activities.

(c) For purposes of this chapter:

(1) a person engages in the business of depository agent services if the person renders a depository agent service, regardless of whether:

(A) compensation is sought or received for the service, directly or indirectly; and

(B) the service is incidental to any other business in which the person is primarily engaged; and

(2) a person solicits, advertises, or holds the person out as a person that engages in the business of depository agent services if the person represents that the person will conduct depository agent services.

(d) Notwithstanding Subsection (c), a person does not engage in the business of depository agent services by engaging in a transaction for the person's own depository account or for the account of another person acting as a fiduciary that would constitute depository agent services if conducted for another person.

(e) A depository agent license holder may engage in depository agent services business at one or more locations in this state owned directly or indirectly by the license holder under a single license.

Sec. 151.854. ADDITIONAL QUALIFICATIONS. In addition to the general qualifications for licensure set forth in Section 151.202, an applicant for a depository agent license must demonstrate to the satisfaction of the commissioner that:

(1) the applicant's financial condition will enable the applicant to safely and soundly engage in the business of depository agent services; and

(2) the applicant does not engage in any activity or practice that adversely affects the applicant's safety and soundness.

Sec. 151.855. APPLICATION AND ACCOMPANYING FEE, STATEMENTS, AND SECURITY. (a) An applicant for a depository agent license must submit an application in accordance with Section 151.203.

(b) At the time an application for a depository agent license is submitted, an applicant must file with the department:

(1) an application fee in the amount established by commission rule;

(2) audited financial statements that are satisfactory to the commissioner for purposes of determining whether the applicant has the minimum net worth required under applicable rules and is likely to maintain the required minimum net worth if a license is issued; and

(3) security in the amount of \$500,000 that meets the requirements of applicable rules and an undertaking or agreement that the applicant will increase or supplement the security to equal the aggregate security required by the commissioner before the issuance of the license and the start of operations.

Sec. 151.856. INVESTIGATION AND ACTION ON APPLICATION. The commissioner shall investigate the applicant and act on the application in accordance with Sections 151.204 and 151.205.

Sec. 151.857. TEMPORARY LICENSE. (a) The commissioner may issue a temporary depository agent license to a person that is engaging in depository agent services, but has not obtained a license under this subchapter, if the person:

(1) certifies in writing that the person qualifies for the license and will submit a completed license application not later than the 60th day after the date the temporary license is issued;

(2) submits a recent financial statement acceptable to the commissioner that reflects the minimum net worth required under applicable regulations;

(3) provides security that meets the requirements specified by the commissioner, but not less than \$500,000;

(4) agrees in writing that, until a permanent license is issued, the person will engage only in activities being conducted at existing locations; and

(5) pays the application fee and a nonrefundable temporary license fee in the amount established by commission rule.

(b) The effective period for a temporary depository agent license may not exceed 90 days after the date the license is issued. The commissioner may extend the effective period for not more than 30 days if necessary to complete the processing of a timely filed application for which approval is likely.

Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository agent license holder is liable for the delivery to or for the account of the depository or each depositor, as applicable, of all bullion, specie, and money payable or deliverable in connection with the transactions in which the license holder engages on behalf of the depository.

Sec. 151.859. TRUST IMPOSED. (a) A depository agent license holder shall hold in trust all cash, bullion, specie, and other assets received in the ordinary course of its business until the time the delivery obligation is discharged. A trust resulting from the depository agent license holder's actions is in favor of the persons to whom such delivery obligations are owed.

(b) If a depository agent license holder commingles any money or other property received for delivery with money or other property owned or controlled by the depository agent license holder, all commingled money and other property are impressed with a trust as provided by this section in an amount equal to the amount of money or property received for delivery, less the amount of fees paid for the delivery.

(c) If the commissioner revokes a depository agent license,

all money and other property held in trust by the depository agent license holder is assigned to the commissioner for the benefit of the persons to whom the related delivery obligations are owed.

(d) Money or other property of a depository agent license holder impressed with a trust under this section may not be considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to the license holder's obligations under this chapter.

Sec. 151.860. DISCLOSURE REQUIREMENTS. (a) A depository agent license holder's name and mailing address or telephone number must be provided to the purchaser in connection with each depository agent services transaction conducted by the depository agent license holder.

(b) A depository agent license holder receiving currency or an instrument payable in currency for transmission must comply with Chapter 278.

SECTION 13. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 483 was passed by the House on May 7, 2015, by the following vote: Yeas 140, Nays 1, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 483 on May 28, 2015, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 483 on May 31, 2015, by the following vote: Yeas 140, Nays 4, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 483 was passed by the Senate, with amendments, on May 26, 2015, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 483 on May 30, 2015, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

APPROVED: _____
Date

Governor