

## **BILL ANALYSIS**

C.S.H.B. 3169  
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Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to interested parties, the comptroller of public accounts has requested certain changes to the law relating to operation and administration of the Texas Bullion Depository to help operate the depository more efficiently. C.S.H.B. 3169 seeks to make those changes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2 of this bill and to the banking commissioner of Texas in SECTION 24 of this bill.

### **ANALYSIS**

C.S.H.B. 3169 amends the Government Code to change the Texas Bullion Depository from a state agency in the office of the comptroller of public accounts to a program in the comptroller's office and to identify as the program's purpose the provision of a bullion depository and services for the public benefit. The bill authorizes the depository to establish and operate one or more branch locations of the depository and establishes that such branch locations are considered to be part of the depository. The bill authorizes the depository to enter into contracts, as the comptroller determines to be prudent and suitable, to facilitate the operations of the depository and further the purposes of applicable law. The bill prohibits the state and the comptroller from being held liable for the depository or related activities of the depository and prohibits applicable law from being construed as creating financial or other responsibilities for the depository to the state or to the comptroller. The bill establishes that the state does not pledge its full faith and credit for the benefit of the depository.

C.S.H.B. 3169 authorizes the depository to enter into contracts and engage in marketing, the sale of promotional items, advertising, and other activities to promote, market, and advertise the depository and authorizes the comptroller to use appropriated funds to pay for activities of the depository so authorized. The bill authorizes the depository to enter into contracts for the design, manufacture, marketing, and distribution of official commemorative items to promote, market, and advertise the depository, requires the depository to establish the purchase price for any commemorative items, and authorizes the comptroller to use appropriated funds to pay for such depository activities. The bill requires the depository to deposit any funds received from the sale of such commemorative items to the credit of the general revenue fund and authorizes such deposited money to be appropriated to the comptroller to offset the costs of the implementation, administration, promotion, marketing, advertising, and operation of the depository. The bill authorizes the comptroller to adopt rules necessary to implement statutory provisions governing

the depository.

C.S.H.B. 3169 removes the condition that the bullion depository administrator appointed by the comptroller is so appointed with the advice and consent of the governor, lieutenant governor, and senate. The bill adds to the requirement that the administrator administer, supervise, and direct the operations and affairs of depository agents to also require the administrator to liaise with depository agents. The bill changes the definition of "depository agent" from a person licensed to serve as an intermediary between the depository and a retail customer in making a transaction in precious metals bullion or specie to a person licensed to serve as an agent on behalf of a current or prospective depository account holder in making a retail transaction in precious metals bullion or specie. The bill includes staff among those the administrator may appoint as necessary and appropriate to the efficient administration of the depository.

C.S.H.B. 3169 replaces references to "bullion or specie" in statutory provisions relating to the unavailability of deposits and related assets in the depository for legislative appropriation and relating to standards for deposits and depository accounts with references to "precious metal" and redefines that term to mean a metal that bears a high value-to-weight ratio relative to common industrial metals and that may be formed into bullion, specie, or other physical form. The bill requires the comptroller to develop standards and processes for the shipping, handling, and deposit of precious metals to the depository to ensure the integrity of and verify any precious metals shipped to the depository for deposit. The bill prohibits a depository agent or other person who is acting on behalf of an account holder or who is holding the deposits or funds of an account holder from commingling any deposits or funds belonging to the depository agent or other person with the deposits or funds of the account holder.

C.S.H.B. 3169 replaces references to a "check" or "draft" in statutory provisions relating to delivery of precious metal on the demand of a depository account holder and relating to transfer of the balance of a depository account with references to a "written demand." The bill requires the comptroller to develop forms, standards, and processes by which a depository account holder may transfer any portion of the balance of the holder's depository account by written demand 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. The bill replaces a requirement for the depository, 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, to allow the payee to establish a depository account by presentment of the payor's written demand or digital electronic instruction to the depository or to a depository agent with an authorization for the depository to so allow.

C.S.H.B. 3169 removes and repeals provisions relating to a cause of action for denial of deposit liability on a depository account contract without a maturity date. The bill requires the depository to furnish depository account holders with a passbook or an account statement, defined by the bill as a depository account holder's daily account balance accessed through the website designated by the depository for that purpose, and makes the account holder responsible for promptly examining each account statement received from the depository and for giving notice of any discrepancy in the account statement to the depository within the time frame established by the comptroller. The bill establishes that if an account holder does not report an account balance discrepancy reflected on the account holder's account statement or passbook in the appropriate time frame the account holder is considered to have accepted as accurate the account statement or passbook and the depository account statement or passbook is considered to be accurate.

C.S.H.B. 3169 authorizes the comptroller to establish other fees and charges and receive payments in the course of depository operations and activities authorized by applicable law, requires the comptroller to deposit revenue realized by the depository from fees, service charges, and penalties to the credit of the general revenue fund, and authorizes money so credited to be appropriated to the comptroller to offset the costs of implementation, administration, promotion,

marketing, advertising, and operation of the depository.

C.S.H.B. 3169 prohibits the depository from paying on any funds held on behalf of a depository account holder interest, an amount in the nature of interest, or a fee or other payment for the use or forbearance of use of money, bullion, specie, or precious metals deposited to a depository account.

C.S.H.B. 3169 exempts deposits of bullion or specie held in the depository in accordance with applicable law from claims of creditors and exempts the rights of a depository account holder in regard to any deposits of bullion or specie held in the depository from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a depository account holder or successor in interest of a depository account holder. The bill establishes that these exemptions do not apply to the claim of a creditor of a depository account holder or a successor in interest of a depository account holder for a debt, judgment, lien, or claim asserted by or owed to the state, to a person who has perfected a 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, or to a person who is owed child support arrearages by the depository account holder, reflected in a child support lien notice that complies with applicable law. The bill authorizes the depository to take any necessary and appropriate action to effectuate the transfer of a depository account, or all or part of a depository account balance, to a creditor with such a claim. The bill expressly does not permit a debtor to exempt bullion or specie held in a depository account from property of the estate in a bankruptcy proceeding.

C.S.H.B. 3169 replaces the requirement that the depository enter into transactions and relationships with certain entities as the comptroller determines to be prudent and suitable to facilitate the operations of the depository and to further its purposes with an authorization to do so and includes banks approved by the Internal Revenue Service or non-banks acting as custodians for individual retirement accounts, precious metals exchanges, and intermediaries among such entities. The bill requires the depository, on receipt of notice of certain transactions involving an attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, to refer the notice to the attorney general for representation and requires the attorney general to represent the depository in any such matter.

C.S.H.B. 3169 sets out provisions relating to the confidentiality of the depository's records, the depository's intellectual property, and advertising, signage, and disclosures by certain third-parties in relation to the depository. The bill replaces a requirement for the depository to 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 with an authorization for such account holders to use such firms and institutions to conduct transactions in bullion and specie on behalf of the account holders. The bill changes the purpose of the maintenance of systems and processes for electronic information sharing and communication with the comptroller and the depository from ensuring that all transactions effected on behalf of the depository are reported to and integrated into the depository's records by a certain time to ensuring that all transactions effected on behalf of current and prospective depository account holders are so reported and integrated.

C.S.H.B. 3169 amends the Finance Code to change the definition of "depository agent services" for purposes of the Money Services Act from certain services rendered to the general public for or on behalf of the depository to those services rendered for or on behalf of current or prospective depository account holders of the depository.

C.S.H.B. 3169 requires the banking commissioner of Texas, in consultation with and subject to approval by the comptroller, to create defined categories of licenses for depository agents with specific application requirements for each different category of license. The bill authorizes such

licensing categories to be differentiated on the basis of the type and value of authorized precious metal transactions for a depository agent in each category or on certain other bases. The bill requires the commissioner, in adopting application requirements for such license categories, to ensure that the requirements enable qualified individuals and firms to apply for a license and provide for the safety and security of depository account holders and the depository. The bill requires the commissioner, in consultation with and subject to the approval of the comptroller, to determine whether any person, transaction, or class of persons is exempt from depository agent licensing under a provision of the Money Services Act. The bill makes certain revisions to the contents of an application for a depository agent license and authorizes the banking commissioner to adopt rules relating to additional security the commissioner requires to be part of such an application.

C.S.H.B. 3169 requires a depository agent license holder to comply with the bill's provisions relating to advertising, signage, and disclosures by third parties. The bill requires the banking commissioner, in consultation with the comptroller, to adopt processes and procedures for interactions between a depository agent license holder and a depository account holder to ensure compliance with applicable law and other applicable regulatory requirements. The bill prohibits a depository agent license holder or other person who is acting on behalf of an account holder from commingling deposits or funds belonging to the depository agent or other person with the deposits or funds of a depository account holder.

C.S.H.B. 3169 amends the Tax Code to entitle a person to an exemption from taxation of the precious metal that the person owns and that is held in the Texas Bullion Depository, regardless of whether the precious metal is held or used by the person for the production of income. The bill prohibits the governing body of a taxing unit from providing for the taxation of precious metal so exempted from taxation. The bill establishes that such exemption is effective immediately on qualification for the exemption. The bill's provisions relating to such exemption take effect January 1, 2018, if the constitutional amendment authorizing the legislature to establish such an exemption is approved by the voters. If that amendment is not approved by the voters, those provisions have no effect.

C.S.H.B. 3169 repeals Sections 2116.009(a), (c), (d), (e), and (f), Government Code.

#### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3169 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 2116.001(9), Government Code, is amended to read as follows:

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 2116.001(4), (9), and (10), Government Code, are amended to read as follows:

(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,

(9) "Depository agent" means a person licensed in accordance with this chapter to serve as an agent on behalf of a current or prospective [intermediary between the] depository account holder [and a retail customer] in making a retail transaction in precious metals bullion or specie.

SECTION 2. Section 2116.002, Government Code, is amended by amending Subsection (a) and adding Subsections (c)-(h) to read as follows:

(a) The Texas Bullion Depository is established as a program [an agency of this state] in the office of the comptroller to provide a bullion depository and services for the public benefit relating to bullion, specie, and precious metals.

(c) The comptroller may establish a special purpose corporation or other legal entity, with all general corporate powers incident to its operation as a corporate body, to operate the depository for the public benefit and provide related services, as provided by this chapter. The entity has all necessary and implied powers to accomplish the purposes of the entity. The entity is subject to regulation only as provided by this chapter.

(d) The depository may adopt and amend articles of incorporation, bylaws, resolutions, and other documents necessary to carry out its purposes.

(e) This state and the comptroller may not

or other physical form [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.

(9) "Depository agent" means a person licensed in accordance with this chapter to serve as an agent on behalf of a current or prospective [intermediary between the] depository account holder [and a retail customer] in making a retail transaction in precious metals bullion or specie.

(10) "Precious metal" means a metal, including gold, silver, and platinum group metals, including platinum, palladium, ruthenium, osmium, iridium, and rhodium, that:

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

(B) may be [customarily is] formed into bullion, [or] specie, or other physical form.

SECTION 2. Section 2116.002, Government Code, is amended by amending Subsection (a) and adding Subsections (c) through (i) to read as follows:

(a) The Texas Bullion Depository is established as a program [an agency of this state] in the office of the comptroller to provide a bullion depository and services for the public benefit.

(c) The depository may establish and operate one or more branch locations of the depository. Branch locations of the depository are considered to be part of the depository.

(d) The depository may enter into contracts, as the comptroller determines to be prudent and suitable, to facilitate the operations of the depository and further the purposes of this chapter.

(e) This state and the comptroller may not

be held liable for the depository or related activities of the depository. This chapter may not be construed as creating financial or other responsibilities to the state or to the comptroller. This state does not pledge the full faith and credit of this state for the benefit of the depository.

(f) The depository may enter into one or more contracts with a vendor to operate the depository or provide any of the depository's services.

(g) Notwithstanding Chapter 2113, Government Code, the depository may enter into contracts and engage in marketing, the sale of promotional items, advertising, and other activities to promote the depository. The comptroller may use appropriated funds to pay for activities of the depository authorized under this section.

SECTION 3. Section 2116.003, Government Code, is amended to read as follows:

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

(a) The depository is administered as a program [~~division~~] of the office of the comptroller and under the direction and

be held liable for the depository or related activities of the depository. This chapter may not be construed as creating financial or other responsibilities for the depository to the state or to the comptroller. This state does not pledge the full faith and credit of this state for the benefit of the depository.

*(See 2116.002(d) above.)*

(f) Notwithstanding Chapter 2113, the depository may enter into contracts and engage in marketing, the sale of promotional items, advertising, and other activities to promote, market, and advertise the depository. The comptroller may use appropriated funds to pay for activities of the depository authorized under this section.

(g) Notwithstanding any other provision of law, the depository may enter into contracts for the design, manufacture, marketing, and distribution of official commemorative items, including coins or other items containing precious metal, to promote, market, and advertise the depository. The depository shall establish the purchase price for any commemorative items. The comptroller may use appropriated funds to pay for depository activities authorized by this subsection.

(h) The depository shall deposit any funds received from the sale of commemorative items described by Subsection (g) to the credit of the general revenue fund. Money deposited to the general revenue fund under this subsection may be appropriated to the comptroller to offset the costs of the implementation, administration, promotion, marketing, advertising, and operation of the depository.

(i) The comptroller may adopt rules necessary to implement this chapter.

SECTION 3. Section 2116.003, Government Code, is amended to read as follows:

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

(a) The depository is administered as a program [~~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 liaise with 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 or staff member as necessary and appropriate to the efficient administration of the depository. The depository may contract with the comptroller's office to provide staff support.

(d) The administrator, the deputy administrator or another subordinate officer, or a staff member of the depository is not personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of the depository, its business, or other related affairs.

No equivalent provision.

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 liaise with 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 or may employ staff as necessary and appropriate to the efficient administration of the depository.

SECTION 4. Sections 2116.004(a) and (b), Government Code, are amended to read as follows:

(a) The following are not available for legislative appropriation:

(1) a deposit to the depository;

(2) precious metal ~~[bullion or specie]~~ held by or on behalf of the depository or a depository agent;

(3) precious metal ~~[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 precious metal ~~[bullion or specie]~~.

(b) Precious metal ~~[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.

No equivalent provision.

SECTION 5. Section 2116.005, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (a-1) and (f) to read as follows:

(a) The depository may receive a deposit of precious metal [~~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.

(a-1) The comptroller shall develop standards and processes for the shipping, handling, and deposit of precious metals to the depository to ensure the integrity of and verify any precious metals shipped to the depository for deposit.

(c) The comptroller [~~by rule~~] shall develop [~~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.

(f) A depository agent or other person who is acting on behalf of an account holder or who is holding the deposits or funds of an



account holder may not commingle any deposits or funds belonging to the depository agent or other person with the deposits or funds of the account holder.

No equivalent provision.

SECTION 6. Section 2116.006(b), Government Code, is amended to read as follows:

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

No equivalent provision.

SECTION 7. Section 2116.007, Government Code, is amended to read as follows:

Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE.

(a) The comptroller shall develop forms, standards, and processes by which [~~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 written demand [~~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 written demand [~~check, draft,~~] or digital electronic [~~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 may [~~shall~~] allow the payee to establish a depository account by presentment of the payor's written demand [~~check, draft,~~] or digital electronic 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.

No equivalent provision.

SECTION 8. Section 2116.008(b), Government Code, is amended to read as follows:

(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.

SECTION 4. The heading to Section 2116.009, Government Code, is amended.

SECTION 9. Same as introduced version.

SECTION 5. Section 2116.009, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3), and (b-4) to read as follows:

(b) The depository shall furnish depository account holders with [~~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~~].

(b-1) The depository account holder is responsible for:

(1) promptly examining each account statement received from the depository; and  
(2) reporting any discrepancy in the account statement to the depository not later than the 60th day after the depository sent the account statement.

(b-2) The depository may establish a process to resolve any disputed depository account balance.

(b-3) If the depository account holder fails to report any account balance discrepancy reflected on the account balance statement or passbook to the depository within 60 days of the date the depository sent the statement or passbook, then:

(1) the depository account holder will be deemed to have accepted the account statement or passbook as accurate;

(2) the depository account holder may not dispute the account balance; and

(3) the depository shall deem the depository

SECTION 10. Section 2116.009, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b) The depository shall furnish depository account holders with [~~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~~].

(b-1) The depository account holder is responsible for:

(1) promptly examining each account statement received from the depository; and  
(2) giving notice of any discrepancy in the account statement to the depository within the time frame established by the comptroller.

(b-2) If a depository account holder does not report an account balance discrepancy reflected on the account holder's account statement or passbook in the appropriate time period described by Subsection (b-1):

(1) the account holder is considered to have accepted as accurate the account statement or passbook; and

(2) the depository account statement or

account statement or passbook as accurate and undisputed by the depository account holder.

(b-4) The comptroller may adopt rules to implement this section.

SECTION 6. Section 2116.010, Government Code, is amended to read as follows:

Sec. 2116.010. FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

(a) 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.

(b) The comptroller may establish other charges and receive payments in the course of depository operations and activities, including from transactions and relationships authorized by Section 2116.021.

(c) The comptroller shall deposit revenue realized by the depository under this section to the credit of the general revenue fund.

(d) Money credited to the general revenue fund under this section may be appropriated to the comptroller to offset the costs of implementation, administration, promotion, marketing, advertising, and operation of the depository.

No equivalent provision.

passbook is considered to be accurate.

(b-3) For purposes of this section, "account statement" means a depository account holder's daily account balance, accessed through the Internet website designated by the depository for that purpose.

SECTION 11. Section 2116.010, Government Code, is amended to read as follows:

Sec. 2116.010. FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

(a) 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.

(b) The comptroller may establish other fees and charges and receive payments in the course of depository operations and activities authorized by this chapter, including from transactions and relationships authorized by Section 2116.021.

(c) The comptroller shall deposit revenue realized by the depository under this section to the credit of the general revenue fund.

(d) Money credited to the general revenue fund under this section may be appropriated to the comptroller to offset the costs of implementation, administration, promotion, marketing, advertising, and operation of the depository.

SECTION 12. Section 2116.013, Government Code, is amended to read as follows:

Sec. 2116.013. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING. The depository may not pay on a depository account or on any funds held on behalf of a depository account holder:

- (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.

No equivalent provision.

SECTION 13. Subchapter A, Chapter 2116, Government Code, is amended by adding Section 2116.0145 to read as follows:

Sec. 2116.0145. EXEMPTION FROM CREDITORS' CLAIMS. (a) Deposits of bullion or specie held in the depository in accordance with this chapter are exempt from claims of creditors, including claims of creditors of a depository account holder or a successor in interest of a depository account holder.

(b) Except as provided by Subsection (c), the rights of a depository account holder in regard to any deposits of bullion or specie held in the depository are exempt from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a depository account holder or successor in interest of a depository account holder.

(c) This section does not apply to the claim of a creditor of a depository account holder or a successor in interest of a depository account holder for a debt, judgment, lien, or claim, including a tax delinquency, asserted by or owed to:

(1) the state;

(2) a person who has perfected a pledge made under Section 2116.014(d); or

(3) a person who is owed child support arrearages by the depository account holder, reflected in a child support lien notice that complies with the requirements of Section 157.313, Family Code.

(d) The depository may take any necessary and appropriate action to effectuate the transfer of a depository account, or all or part of a depository account balance, to a creditor with a claim described by Subsection (c).

(e) This section does not permit a debtor to exempt bullion or specie held in a depository account from property of the estate in a bankruptcy proceeding.

SECTION 7. Section 2116.021, Government Code, is amended to read as follows:

Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The depository may [~~shall~~] enter into transactions and

SECTION 14. Section 2116.021, Government Code, is amended to read as follows:

Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The depository may [~~shall~~] enter into transactions and

relationships with bullion banks, depositories, dealers, central banks, an IRS approved bank or non-bank acting as custodian for Individual Retirement Accounts, sovereign wealth funds, financial institutions, international nongovernmental organizations, intermediaries, 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.

SECTION 8. Section 2116.023, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(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 the representation of the depository by the attorney general and 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 the transfer to the full extent authorized by this chapter, the representation of the depository by the attorney general, and rules adopted under this chapter.

(d) On receipt of notice of any transaction described by Subsection (a), the depository shall refer the notice to the attorney general for representation, and the attorney general shall represent the depository in any action related to the notice.

No equivalent provision.

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relationships with bullion banks, depositories, dealers, central banks, banks approved by the Internal Revenue Service or non-banks acting as custodians for individual retirement accounts, sovereign wealth funds, financial institutions, precious metals exchanges, international nongovernmental organizations, intermediaries, 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.

SECTION 15. Section 2116.023, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(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, and on direction of the attorney general,

the depository shall suspend withdrawal privileges associated with the balances of the depository account until suitable substitute arrangements may be effected in accordance with the representation of the depository by the attorney general and 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 the transfer to the full extent authorized by this chapter, the representation of the depository by the attorney general, and rules adopted under this chapter.

(d) On receipt of notice of any transaction described by Subsection (a), the depository shall refer the notice to the attorney general for representation, and the attorney general shall represent the depository in any matter described by Subsection (a).

SECTION 16. Section 2116.024, Government Code, is amended to read as

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follows:

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.

No equivalent provision.

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

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.

SECTION 9. Subchapter A, Chapter 2116, Government Code, is amended by adding Sections 2116.027 and 2116.028 to read as follows:

Sec. 2116.027. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by Section 2116.028 and this section, the depository's records are subject to public inspection to the extent authorized by Chapter 552.

(b) The following information is confidential and is exempt from disclosure under Chapter 552:

(1) records and information related to the depository's physical security, information security, or designed to ensure the integrity and security of the depository including without limitation

access codes,  
passwords,  
signatures,  
specifications,  
technical details,

SECTION 18. Subchapter A, Chapter 2116, Government Code, is amended by adding Sections 2116.027, 2116.028, and 2116.029 to read as follows:

Sec. 2116.027. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by Section 2116.028 and this section, the depository's records are subject to public inspection to the extent authorized by Chapter 552.

(b) The following information is confidential and is exempt from disclosure under Chapter 552:

(1) records and information related to the depository's physical security, information security, or information designed to ensure the integrity and security of the depository, including:

(A) access codes;  
(B) passwords;  
(C) signatures;  
(D) specifications;  
(E) technical details;

operating procedures,  
locations, and  
financial information on expenditures for  
depository security;

(2) records relating to individual accounts  
or to current or prospective depository  
account holders that are in the custody of  
the depository or in the custody of a vendor  
performing services related to the  
depository;

(3) records related to setting depository  
fees, service charges, penalties, or other  
charges or payments;

(4) records related to establishing standards  
under Sections 2116.005(c) and (d); and

(5) operational or other information that  
would give advantage to competitors or  
bidders.

(c) Notwithstanding Subsection (b)(2),  
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 necessary  
to administer the program or as required by  
applicable law;

(3) to a vendor providing services to the  
depository or to a current or prospective  
depository account holder;

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

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

(6) with the express written permission of a  
depository account holder.

Sec. 2116.028. INTELLECTUAL  
PROPERTY. (a) The depository may:

(1) apply for, register, secure, hold, and  
protect under the laws of the United States  
or any state or nation:

(A) a patent for the invention, discovery, or  
improvement of any process, machine,  
manufacture, or composition of matter;

(B) a copyright for an original work of  
authorship fixed in any tangible medium of  
expression, known or later developed, from  
which it can be perceived, reproduced, or  
otherwise communicated, either directly or  
with the aid of a machine or device;

(C) a trademark, service mark, collective  
mark, or certification mark for a word,  
name, symbol, device, or slogan that the  
depository uses to identify and distinguish

(F) operating procedures;

(G) locations; and

(H) financial information on expenditures  
for depository security;

(2) records relating to individual accounts  
or to current or prospective depository  
account holders that are in the custody of  
the depository or in the custody of a vendor  
performing services related to the  
depository;

(3) records related to setting depository  
fees, service charges, penalties, or other  
charges or payments;

(4) records related to establishing standards  
under Sections 2116.005(c) and (d); and

(5) operational information, or other  
information, that would give advantage to  
competitors or bidders.

(c) Notwithstanding Subsection (b)(2),  
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 necessary  
to administer the program or as required by  
applicable law;

(3) to a vendor providing services to the  
depository or to a current or prospective  
depository account holder;

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

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

(6) with the express written permission of a  
depository account holder.

Sec. 2116.028. INTELLECTUAL  
PROPERTY. (a) The depository may:

(1) apply for, register, secure, hold, and  
protect under the laws of the United States  
or any state or nation:

(A) a patent for the invention, discovery, or  
improvement of any process, machine,  
manufacture, or composition of matter;

(B) a copyright for an original work of  
authorship fixed in any tangible medium of  
expression, known or later developed, from  
which it can be perceived, reproduced, or  
otherwise communicated, either directly or  
with the aid of a machine or device;

(C) a trademark, service mark, collective  
mark, or certification mark for a word,  
name, symbol, device, or slogan that the  
depository uses to identify and distinguish

the depository's goods and services from other goods and services; or  
(D) other evidence of protection or exclusivity issued for intellectual property;  
(2) contract with a person for the reproduction, public performance, display, distribution, advertising, sale, lease, marketing, licensing, sale, use, or other distribution of the depository's intellectual property;  
(3) obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the exercise of the depository's intellectual property rights; and  
(4) waive or reduce the amount of compensation secured by contract under Subdivision (3) if the depository determines that the waiver or reduction will:  
(A) further a goal or mission of the depository; and  
(B) result in a net benefit to the depository.  
(b) Intellectual property of the depository is excepted from required disclosure under Chapter 552:  
(1) beginning on the date the depository decides to seek a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property; and  
(2) ending on the date the depository receives a decision on the depository's application for a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property.  
(c) The comptroller shall deposit revenue realized by the depository under this section to the credit of the general revenue fund.  
(d) Money credited to the general revenue fund under this section may be appropriated only to the comptroller to offset the costs of implementation, administration, promotion, marketing, advertising, and operation of the depository.  
(e) The comptroller may establish intellectual property policies.

No equivalent provision.

the depository's goods and services from other goods and services; or  
(D) other evidence of protection or exclusivity issued for intellectual property;  
(2) contract with a person for the reproduction, public performance, display, distribution, advertising, sale, lease, marketing, licensing, sale, use, or other distribution of the depository's intellectual property;  
(3) obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the exercise of the depository's intellectual property rights; and  
(4) waive or reduce the amount of compensation secured by contract under Subdivision (3) if the depository determines that the waiver or reduction will:  
(A) further a goal or mission of the depository; and  
(B) result in a net benefit to the depository.  
(b) Intellectual property of the depository is excepted from required disclosure under Chapter 552:  
(1) beginning on the date the depository decides to seek a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property; and  
(2) ending on the date the depository receives a decision on the depository's application for a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property.  
(c) The comptroller shall deposit to the credit of the general revenue fund revenue realized by the depository under this section.  
(d) Money credited to the general revenue fund under this section may be appropriated to the comptroller to offset the costs of implementation, administration, promotion, marketing, advertising, and operation of the depository.  
(e) The comptroller may establish intellectual property policies.

Sec. 2116.029. ADVERTISING, SIGNAGE, AND DISCLOSURES BY THIRD PARTIES. (a) In this section, "third party" means a person who is authorized to provide a service relating to the depository, including a depository agent,



a person who enters into a transactional or other relationship with the depository, or a person selected to operate or provide services to the depository under this chapter.

(b) Third party advertising, marketing, promotional or written material, or signage created or used for commercial purposes related to the depository, in written form or in any other form, may not be used until the comptroller has approved its use.

(c) The comptroller may require that a third party who creates advertising, marketing, promotional or written material, or signage created or used for commercial purposes related to the depository include certain approved disclosures or identifying marks, as the commissioner determines to be appropriate, in the entity's advertising, marketing, promotional or written material, or signage.

SECTION 10. Section 2116.051, Government Code, is amended to read as follows:

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.

SECTION 11. Section 2116.052, Government Code, is amended.

SECTION 12. Section 151.002(b)(9-c), Finance Code, is amended.

No equivalent provision.

SECTION 19. Section 2116.051, Government Code, is amended to read as follows:

Sec. 2116.051. USE OF DEPOSITORY AGENTS. Current and prospective [~~The~~] depository account holders may [~~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.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Subchapter J, Chapter 151, Finance Code, is amended by adding Section 151.8521 to read as follows:

Sec. 151.8521. LICENSE CATEGORIES; EXEMPTIONS FROM LICENSING. (a) The commissioner, in consultation with and subject to approval by the comptroller, shall create defined categories of licenses for depository agents, with specific application requirements for each different category of license. The licensing categories created

under this subsection may be differentiated on the basis of the type and value of authorized precious metal transactions for a depository agent in each category.

(b) Requirements for each category of depository agent license created under Subsection (a) may differ on the basis of:

(1) capital and security requirements;

(2) insurance requirements;

(3) type of depository agent services provided;

(4) availability of safe and secure storage and transport of precious metals;

(5) other licensing requirements; or

(6) qualifications, as appropriate, to fulfill the requirements of Chapter 2116, Government Code.

(c) In adopting application requirements for the depository agent license categories created by the commissioner under Subsection (a), the commissioner shall ensure that the requirements, including any licensing fees, enable qualified individuals and firms to apply for a license and provide for the safety and security of depository account holders and the depository.

(d) The commissioner, in consultation with and subject to the approval of the comptroller, shall determine whether any person, transaction, or class of persons is exempt from depository agent licensing under Section 151.003(10).

No equivalent provision.

SECTION 23. Section 151.853(a), Finance Code, is amended to read as follows:

(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, or as otherwise determined under Section 151.8521(d).

No equivalent provision.

SECTION 24. Section 151.855, Finance Code, is amended to read as follows:

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 and applicable requirements adopted under Section 151.8521.

(b) At the time an application for a depository agent license is submitted, an applicant must file with the department any fee, information, documentation, or security required as provided by Section 151.8521 for the category of license for which the person is applying, which may include:

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

(2) audited financial statements and other financial documentation that is determined to be reliable 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 an [the] amount not to exceed [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; and

(4) additional security that may be required by the commissioner in the form of permissible investments, additional surety, or in any other form considered appropriate to protect depository account holders and the depository and to comply with applicable regulatory requirements.

(c) The commissioner may adopt rules to implement Subsection (b)(4).

SECTION 13. Section 151.858, Finance Code, is amended to read as follows:

Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository agent license holder is liable for the delivery to or for the depository account of ~~[the depository or]~~ each current or prospective depository account holder ~~[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 current or

SECTION 25. Section 151.858, Finance Code, is amended to read as follows:

Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository agent license holder is liable for the delivery to or for the depository 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 depositor

prospective depositor who is entitled to depository agent services.

[depository].

No equivalent provision.

SECTION 26. The heading to Section 151.860, Finance Code, is amended to read as follows:

Sec. 151.860. DISCLOSURE AND OTHER REQUIREMENTS.

No equivalent provision.

SECTION 27. Section 151.860, Finance Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A depository agent license holder must comply with the requirements of Section 2116.029, Government Code.

(d) The commissioner, in consultation with the comptroller, shall adopt processes and procedures for interactions between a depository agent license holder and a depository account holder to ensure compliance with this chapter, Chapter 2116, Government Code, and other applicable regulatory requirements.

(e) A depository agent license holder or other person who is acting on behalf of an account holder may not commingle deposits or funds belonging to the depository agent or other person with the deposits or funds of a depository account holder.

No equivalent provision.

SECTION 28. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.141 to read as follows:

Sec. 11.141. PRECIOUS METAL HELD IN TEXAS BULLION DEPOSITORY. (a) For purposes of this section, "precious metal" has the meaning assigned by Section 2116.001, Government Code.

(b) A person is entitled to an exemption from taxation of the precious metal that the person owns and that is held in the Texas Bullion Depository established under Chapter 2116, Government Code, regardless of whether the precious metal is held or used by the person for the production of income.

(c) Notwithstanding Section 11.14(c), the governing body of a taxing unit may not provide for the taxation of precious metal exempted from taxation under Subsection (b).

No equivalent provision.

SECTION 29. Section 11.42(b), Tax Code, is amended to read as follows:

(b) An exemption authorized by Section 11.11 or 11.141 is effective immediately on qualification for the exemption.

No equivalent provision.

SECTION 30. Section 11.43(a), Tax Code, is amended to read as follows:

(a) To receive an exemption, a person claiming the exemption, other than an exemption authorized by Section 11.11, 11.12, 11.14, 11.141, 11.145, 11.146, 11.15, 11.16, 11.161, or 11.25 [~~of this code~~], must apply for the exemption. To apply for an exemption, a person must file an exemption application form with the chief appraiser for each appraisal district in which the property subject to the claimed exemption has situs.

SECTION 14. Sections 2116.009(a), (c), (d), (e), and (f), Government Code, are repealed.

SECTION 31. Same as introduced version.

SECTION 15.

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, 2017.

SECTION 32. (a) Except as provided by Subsection (b) of this section:

(1) 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; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(b) Section 11.141, Tax Code, as added by this Act, and Sections 11.42(b) and 11.43(a), Tax Code, as amended by this Act, take effect January 1, 2018, but only if the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizing the legislature to exempt from ad valorem taxation precious metal held in the Texas Bullion Depository is approved by the voters. If that amendment is not approved by the voters, those sections have no effect.

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