

BILL ANALYSIS

Senate Research Center
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S.B. 1692
By: Fallon
Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 84th Legislative Session, the legislature passed H.B. 483, which established the Texas Bullion Depository (TXBD) within the Office of the Comptroller of Public Accounts of the State of Texas (comptroller's office). TXBD is available for storage of precious metal assets in the form of bullion or specie by individuals, businesses or state agencies.

After significant research and stakeholder feedback, the comptroller's office completed the rulemaking process and fully implemented TXBD, opening its doors to the public in June 2018. Through a procurement process, the comptroller's office selected Lone Star Tangible Assets (LSTA) as the vendor to operate TXBD. In December 2018, LSTA began work on a new multi-acre site in Leander, Texas, that will permanently house TXBD.

Through the implementation process, the comptroller's office has gained valuable industry knowledge and recognized the need to update existing statute to ensure TXBD continues to be administered in an efficient, prudent manner.

The bill cleans up a number of issues identified by the comptroller's office through the implementation process to ensure the efficient administration of TXBD. Proposed changes fall within three categories:

- Strengthening the confidentiality of depository records

Current law does not provide an exemption to the Public Information Act (PIA). If the depository is not able to keep the account and other proprietary records confidential, it will be at a competitive disadvantage with private entities that are not subject to the PIA. The changes sought will help ensure the physical security of the depository, ensure that account holders' personal and financial information about account holders is not released.

- Removal of burdensome regulatory requirements for depository agents

Due to the costs associated with the current regulatory regime for depository agents, no businesses have applied to be appointed as a depository agent. This bill changes the eligibility requirements to become a depository agent to entities that are already regulated by state or federal agencies, thereby eliminating the need for additional regulation at the state level. Therefore, this bill deletes all unneeded references to depository agents in relevant sections of the Finance Code and Government Code.

- Providing additional flexibility to administer the program

Current law requires the comptroller of public accounts of the State of Texas (comptroller) to adopt rules regarding many operational issues including setting fees, adopting standards, and establishing procedures. This limits the ability of the depository to react to market conditions and compete with privately owned depositories. This bill enhances the commercial competitiveness of the depository by providing greater flexibility to administer the program by allowing the comptroller to make operational changes without needing to adopt or change rules. In addition, this bill provides additional authority to the comptroller to promote and advertise the depository.

As proposed, S.B. 1692 amends current law relating to the operation and administration of the Texas Bullion Depository.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas (comptroller) in SECTION 10 (Section 2116.002, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 12 (Section 2116.005, Government Code), SECTION 13 (Section 2116.006, Government Code), SECTION 16 (Section 2116.010, Government Code), SECTION 19 (Section 2116.024, Government Code), and SECTION 20 (Section 2116.025, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.002(a), Finance Code, as follows:

(a) Deletes existing text providing that a depository agent license is a general term that applies to an applicant for or holder of a money services license issued under this chapter (Regulation of Money Services Businesses). Deletes existing text providing that additional terms that apply specifically to depository agents are defined in Section 151.851 (Definitions). Makes nonsubstantive changes.

SECTION 2. Amends Section 151.002(b)(11), Finance Code, to delete existing text defining "license holder" to include a person that holds a depository agent license and to make nonsubstantive changes.

SECTION 3. Amends Section 151.003, Finance Code, as follows:

Sec. 151.003. EXCLUSIONS. Provides that certain persons, rather than certain persons subject to Subchapter J (Depository Agent License), are not required to be licensed under this chapter and makes a conforming change.

SECTION 4. Amends Section 151.201, Finance Code, as follows:

Sec. 151.201. SCOPE. Deletes existing text providing that Subchapter J sets forth the additional qualifications and provisions that apply specifically to a depository agent license. Makes a conforming and nonsubstantive change.

SECTION 5. Amends Sections 151.207(a), (b), and (d), Finance Code, to make conforming and nonsubstantive changes.

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

(a) Prohibits a person from engaging in the business of money transmission in this state or advertising, soliciting, or representing that the person engages in the business of money transmission in this state unless the person:

(1) is licensed under this subchapter (Money Transmission License);

(2) is an authorized delegate of a person licensed under this subchapter, appointed by the license holder in accordance with Section 151.402 (Conduct of Business Through Authorized Delegate);

(3) is excluded from licensure under Section 151.003 (Exclusions); or

(4) has been granted an exemption under Subsection (c) (relating to authorizing the banking commissioner of Texas to exempt a certain person).

SECTION 7. Amends Section 151.502(a), Finance Code, as follows:

(a) Deletes existing text prohibiting a person from engaging in the business of currency exchange or advertising, soliciting, or holding itself out as providing currency exchange unless the person 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. Redesignates existing text of Subdivision (6) as Subdivision (5) and makes a nonsubstantive change.

SECTION 8. Amends Section 151.602(a), Finance Code, to make a nonsubstantive and conforming change.

SECTION 9. Amends Section 2116.001, Government Code, by amending Subdivision (9) and adding Subdivision (9-a), as follows:

(9) Redefines "depository agent" to mean a financial institution that has entered into an agreement with the depository to provide a retail location for the provision of depository services to the general public on behalf of the depository, rather than to mean 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.

(9-a) Defines "financial institution" for purposes of this section.

SECTION 10. Amends Section 2116.002, Government Code, by adding Subsection (c), to require the comptroller of public accounts of the State of Texas (comptroller) to adopt rules as necessary to carry out this chapter.

SECTION 11. Amends Section 2116.003, Government Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Provides that the depository is administered as a division of the Office of the Comptroller of Public Accounts of the State of Texas and under the direction and supervision of a bullion depository administrator appointed by the comptroller, rather than appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.

(c) Authorizes the administrator to appoint or employ, rather than to appoint, subject to the approval of the comptroller, a deputy administrator or other subordinate officers or employees, rather than other subordinate officer, as necessary and appropriate to the efficient administration of the depository.

(d) Authorizes the comptroller to employ security officers to provide needed security services for the depository and to commission the officers as peace officers.

SECTION 12. Amends Sections 2116.005(c) and (d), Government Code, as follows:

(c) Requires the comptroller, rather than requires the comptroller by rule, to 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.

(d) Authorizes the comptroller, 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, rather than authorizing the comptroller by rule, if the comptroller determines that to do so is in the public interest, to 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.

SECTION 13. Amends Sections 2116.006(b) and (c), Government Code, as follows:

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

(c) Requires the depository to 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 10, rather than five, business days after the date of presentment.

SECTION 14. Amends Section 2116.007, Government Code, as follows:

Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a) Authorizes a depository account holder, in accordance with rules adopted under this chapter, to transfer any portion of the balance of the holder's depository account by written demand or digital electronic instruction to another person, rather than 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) Makes a conforming change.

(c) Requires 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 depository account holder's depository account, to, if the payee is otherwise eligible to open a depository account under applicable laws and depository policy, allow the payee to establish a depository account, rather than requiring the depository, if a depository account holder transfers to a payee who is not a depository account holder of the balance of the holders depository account, to 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.

SECTION 15. Amends Sections 2116.008(c) and (e), Government Code, as follows:

(c) Requires the depository, rather than the depository or a depository agent, to hold the contract for a depository account in the records pertaining to the account.

(e) Authorizes the depository and the depository account holder to amend a contract for a depository account by agreement, or the depository may amend the deposit contract by providing, rather than 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. Authorizes the notice to be provided electronically.

SECTION 16. Amends Section 2116.010, Government Code, as follows:

Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. Authorizes the comptroller, rather than authorizing the comptroller by rule, to 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. Authorizes the comptroller to waive any fees, service charges, or penalties established under this section.

SECTION 17. Amends Section 2116.021, Government Code, as follows:

Sec. 2116.021. New heading: TRANSACTIONS AND RELATIONSHIPS; MARKETING AND PUBLICITY. (a) Creates this section from existing text. Authorizes, rather than requires, the depository to 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.

(b) Authorizes the depository to advertise and promote the depository in any available media.

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

SECTION 18. Amends Section 2116.023, Government Code, by adding Subsection (d) to require the depository to refer any matter relating to an action described by Subsection (a) (relating to confiscations, requisitions, seizures, and other certain actions to be void ab initio) to the Texas attorney general for resolution.

SECTION 19. Amends Section 2116.024, Government Code, as follows:

Sec. 2116.024. OFFICIAL EXCHANGE RATES. Requires the comptroller, rather than requires the comptroller by rule, to 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.

SECTION 20. Amends Section 2116.025, Government Code, as follows:

Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF TAXABLE GAINS. Requires the comptroller, rather than requiring the comptroller by rule, to 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 21. Amends Subchapter A, Chapter 2116, Government Code, by adding Sections 2116.027 and 2116.028, as follows:

Sec. 2116.027. CONFIDENTIALITY OF RECORDS; OTHER RECORDS EXEMPT FROM DISCLOSURE. (a) Provides that records relating to individual depository accounts or depository account holders, including current, former, or prospective depository account holders, that are in the custody of the depository or a vendor performing services related to the depository are confidential and exempt from disclosure under Chapter 552 (Public Information).

(b) Provides that certain information of the depository is excepted from the requirements of Section 552.021 (Availability of Public Information).

(c) Authorizes depository account information to be disclosed, notwithstanding Subsection (a), to certain entities.

Sec. 2116.028. EXEMPTION FROM CREDITORS' CLAIMS. (a) Provides that property held in the depository is exempt from garnishment, attachment, execution, or other seizure by a creditor if the property has an aggregate fair market value of not more than \$1 million, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) Provides that Subsection (a) does not apply to the claim of a creditor for a debt, judgment, lien, or claim, including a tax delinquency, that is asserted by or owed to certain specified entities.

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

(d) Provides that nothing in this section may be construed to increase the personal property exemptions available to a person in a bankruptcy proceeding.

SECTION 22. Amends Section 2116.051, Government Code, as follows:

Sec. 2116.051. USE OF DEPOSITORY AGENTS. Authorizes the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public on behalf of the depository, rather than requiring 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.

SECTION 23. Repealers: Section 151.002(9-a) (relating to the definition of depository agent), (9-b) (relating to the definition of depository agent license), and (9-c) (relating to the definition of depository agent services), Finance Code.

Repealer: Section 151.603(c-1) (relating to requiring a depository agent license holder to prepare written reports and statements), Finance Code.

Repealer: Subchapter J (Depository Agent License), Chapter 151, Finance Code.

SECTION 24. Effective date: upon passage or September 1, 2019.