

By: Capriglione

H.B. No. 3505

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and administration of a state bullion depository and the investment of certain public money in precious metals and depository accounts.

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's to deliver to the order of the person establishing with the depository the obligation, on demand, a

1 quantity of a specified precious metal, in bullion, specie, or a
2 combination of both, equal to the quantity of the same precious
3 metal delivered by or on behalf of the depositor into the custody
4 of:

5 (A) the depository; or

6 (B) a depository agent.

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

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

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

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

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

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

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

25 (B) customarily is formed into bullion or specie.

26 (11) "Specie" means a precious metal stamped into
27 coins of uniform shape, size, design, content, and purity, suitable

1 for or customarily used as currency, as a medium of exchange, or as
2 the medium for purchase, sale, storage, transfer, or delivery of
3 precious metals in retail or wholesale transactions.

4 Sec. 2116.002. TEXAS BULLION DEPOSITORY. (a) The Texas
5 Bullion Depository is established as an agency of this state in the
6 office of the comptroller.

7 (b) The depository is established to:

8 (1) serve as the custodian, guardian, and
9 administrator of all bullion and specie transferred to or otherwise
10 acquired by this state or an agency, a political subdivision, or
11 another instrumentality of this state;

12 (2) provide the basis for a system for precious
13 metals-denominated intergovernmental payments and settlements
14 between and among:

15 (A) the agencies, political subdivisions, and
16 instrumentalities of this state; and

17 (B) persons making payments to, receiving
18 payments from, or otherwise doing business with an agency, a
19 political subdivision, or another instrumentality of this state in
20 the exercise and discharge of a governmental function or
21 responsibility of the political subdivision, agency, or
22 instrumentality;

23 (3) establish a process and mechanism by which the
24 system described by Subdivision (2) is able to function in the event
25 of a systemic dislocation in a national and international financial
26 system, including systemic problems in liquidity, credit markets,
27 or currency markets; and

1 (4) provide a regulatory and administrative framework
2 for the system described by Subdivision (2) to be made available to
3 private persons.

4 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

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

10 (b) The administrator shall:

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

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

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

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

27 (1) a deposit to the depository;

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

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

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

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

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

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

21 (1) ensure compliance with law; and

22 (2) protect the interests of:

23 (A) the depository;

24 (B) depository account holders;

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

27 (D) the public at large.

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

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

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

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

21 (f) Precious metal deposited with the depository by any
22 person is the property of this state and is held by the depository
23 outside the state treasury. On withdrawal and settlement, the
24 precious metals become the property of the depository account
25 holder.

26 Sec. 2116.006. DEMAND, PRESENTMENT, WITHDRAWAL, DELIVERY,
27 AND SETTLEMENT. (a) Except as otherwise provided by Subsection

1 (e), the depository shall deliver any precious metal held by or on
2 behalf of the depository in bullion, specie, or a combination of
3 bullion and specie, on the order of a depository account holder in a
4 quantity of that precious metal as is available in the depository
5 account holder's depository account.

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

12 (c) The depository, to the extent reasonably practicable,
13 shall make or cause to be made deliveries on demand in the form
14 requested by the depository account holder, except that the form of
15 delivery may be made in any form at the discretion of the depository
16 after considering cost, convenience, and availability.

17 (d) The depository shall make a delivery at the depository's
18 settlement facility designated by the comptroller or, at the
19 depository's discretion, at a facility of a depository agent at
20 which presentment is made, not later than five business days after
21 the date of presentment.

22 (e) A depository account holder may order delivery in any
23 integral multiple of one one-thousandth of a troy ounce. To the
24 extent a portion of an order is not available for delivery in
25 bullion or specie, that portion shall be settled in the equivalent
26 value of that portion in United States legal tender or other
27 available cash or currency reasonably acceptable to the depository

1 account holder at exchange rates applicable at the time of
2 settlement.

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

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

16 (c) If a depository account holder transfers to a payee who
17 is not a depository account holder any portion of the balance of the
18 holder's depository account, the depository shall allow the payee
19 to establish a depository account by presentment of the payor's
20 check, draft, or instruction to the depository or to a depository
21 agent. The depository shall credit a newly established account on
22 behalf of the payee and shall debit the payor's account
23 accordingly.

24 Sec. 2116.008. FULL FAITH AND CREDIT. The depository's
25 obligation to deliver precious metals and transfer account balances
26 to the order of a depository account holder under this chapter is
27 backed by the full faith and credit of this state.

1 Sec. 2116.009. DEPOSITORY ACCOUNT CONTRACTS. (a) To
2 establish a depository account, a depositor must contract with the
3 depository for a depository account. The contract must specify:

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

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

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

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

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

19 (e) The depository and the depository account holder may
20 amend a contract for a depository account by agreement, or the
21 depository may amend the deposit contract by mailing a written
22 notice of the amendment to the account holder, separately or as an
23 enclosure with or part of the account holder's statement of account
24 or passbook. In the case of amendment by notice from the
25 depository, the notice must include the text and effective date of
26 the amendment. The effective date may not be earlier than the 30th
27 day after the date the notice is mailed, unless otherwise provided

1 by rules adopted under this chapter.

2 Sec. 2116.010. CAUSE OF ACTION FOR DENIAL OF DEPOSIT
3 LIABILITY. (a) A cause of action for denial of deposit liability
4 on a depository account contract without a maturity date does not
5 accrue until the depository has denied liability and given notice
6 of the denial to the depository account holder.

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

11 Sec. 2116.011. FEES; SERVICE CHARGES; PENALTIES. The
12 comptroller by rule may establish fees, service charges, and
13 penalties to be charged a depository account holder for a service or
14 activity regarding a depository account, including a fee for an
15 overdraft, an insufficient fund check or draft, or a stop payment
16 order.

17 Sec. 2116.012. DEPOSITORY ACCOUNT OWNERSHIP BY OWNER OF
18 RECORD. Unless the depository acknowledges in writing a pledge of a
19 depository account, the depository may treat the holder of record
20 of the account as the owner of the account for all purposes and
21 without regard to a notice to the contrary.

22 Sec. 2116.013. TRANSFER OF DEPOSITORY ACCOUNT. (a) A
23 depository account may be transferred on the books of the
24 depository only on presentation to the depository of:

25 (1) evidence of transfer satisfactory to the
26 depository; and

27 (2) an application for the transfer submitted by the

1 person to whom the depository account is to be transferred.

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

6 Sec. 2116.014. DEPOSITORY ACCOUNTS NOT INTEREST-BEARING.

7 The depository may not pay on a depository account:

8 (1) interest;

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

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

13 Sec. 2116.015. DEPOSITORY ACCOUNT NOT REDEEMABLE. Except
14 in circumstances of urgent need of this state as determined under
15 rules adopted under this chapter or by other law, the depository may
16 not redeem all or any part of a depository account.

17 Sec. 2116.016. LIEN ON DEPOSITORY ACCOUNT. (a) Without the
18 need of any further agreement or pledge, the depository has a lien
19 on each depository account owned by a depository account holder to
20 secure any fees, charges, or other obligations owed or that may
21 become owed to the depository in connection with any of the
22 depository account holder's depository accounts as provided by the
23 terms of the depository account holder's applicable depository
24 account contract.

25 (b) On default in the payment or in the satisfaction of a
26 depository account holder's obligation, the depository, without
27 notice to or consent of the depository account holder, may transfer

1 on the depository's books all or part of the balance of a depository
2 account holder's depository account to the extent necessary to pay
3 or satisfy the obligation, as determined by reference to the
4 exchange rates applicable at the time of the transfer.

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

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

18 Sec. 2116.017. DEPOSITORY ACCOUNT AS LEGAL INVESTMENT. (a)
19 The following persons may invest the person's money in a depository
20 account by purchasing precious metals and depositing the precious
21 metals with the depository or a depository agent:

22 (1) a fiduciary, including an administrator,
23 executor, guardian, or trustee;

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

26 (3) a business or nonprofit corporation;

27 (4) a charitable or educational corporation or

1 association; or

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

4 (b) An investment by an insurance company in a depository
5 account is eligible to be applied as a credit against taxes payable
6 under Chapters 221 and 222, Insurance Code, in accordance with
7 rules adopted by the comptroller after consultation with the
8 commissioner of insurance.

9 (c) An investment by a school district in a depository
10 account may be made instead of an investment as provided by Section
11 45.102, Education Code, and the depository may be used by a district
12 instead of a depository bank for the purposes of Subchapter G,
13 Chapter 45, Education Code.

14 Sec. 2116.018. APPLICABILITY OF PROBATE CODE. The
15 applicable provisions of Chapter XI, Texas Probate Code, govern a
16 depository account.

17 Sec. 2116.019. DEPOSITORY ACCOUNT HELD BY MINOR. (a) The
18 depository may accept a minor as the sole and absolute owner of a
19 depository account and the depository may pay withdrawals, transfer
20 rights to account balances, accept a pledge of the account, and act
21 in any other manner with respect to the depository account owned by
22 a minor.

23 (b) Subject to Subsection (d), a payment or delivery to a
24 minor, or an acquittance signed by a minor who holds a depository
25 account, is a discharge of the depository for that payment or
26 delivery.

27 (c) If the depository requires a minor to furnish an

1 acquittance or pledge or take other action with respect to the
2 minor's depository account, that action is binding on the minor as
3 if the minor had the capacity of an adult.

4 (d) If a minor's parent or guardian informs the depository
5 in writing that the parent or guardian, as applicable, denies the
6 minor's authority to control the minor's depository account, the
7 minor may not control the depository account during the minority
8 without the joinder of the parent or guardian.

9 (e) If a minor who owns a depository account dies, the
10 acquittance of a parent or guardian of the minor discharges the
11 depository for amounts that in the aggregate do not exceed \$1,000.

12 Sec. 2116.020. PLEDGE OF JOINTLY HELD DEPOSITORY ACCOUNT.

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

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

21 Sec. 2116.021. DEPOSITORY ACCOUNT HELD BY FIDUCIARY. (a)

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

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

27 (c) Except as otherwise provided by law, a payment or

1 delivery to a fiduciary or an acquittance signed by the fiduciary to
2 whom a payment or delivery is made is a discharge of the depository
3 for the payment or delivery.

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

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

12 (2) any other disposition of the beneficial estate.

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

15 Sec. 2116.022. DEPOSITORY ACCOUNT HELD IN TRUST;
16 UNDISCLOSED TRUST INSTRUMENT. (a) If the depository opens a
17 depository account for a person claiming to be the trustee for
18 another person and the depository has no other notice of the
19 existence or terms of the trust other than a written claim against
20 the account:

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

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

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

3 Sec. 2116.023. POWER OF ATTORNEY; REVOCATION ON DEATH OR
4 INCOMPETENCY. (a) The depository shall recognize the authority of
5 an attorney-in-fact authorized in writing by a depository account
6 holder to manage or withdraw precious metals from the depository
7 account holder's depository account until the depository receives
8 written or actual notice of the revocation of that authority.

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

13 Sec. 2116.024. TRANSACTIONS AND RELATIONSHIPS. The
14 depository shall enter into transactions and relationships with
15 bullion banks, depositories, dealers, central banks, sovereign
16 wealth funds, financial institutions, international
17 nongovernmental organizations, and other persons, located inside
18 or outside of this state or inside or outside of the United States,
19 as the comptroller determines to be prudent and suitable to
20 facilitate the operations of the depository and to further the
21 purposes of this chapter.

22 Sec. 2116.025. CERTAIN ACTIONS PROHIBITED. The depository
23 may not take any of the following actions, and any attempt by the
24 depository to take any of the following actions is void ab initio
25 and of no force or effect:

26 (1) enter into a precious metals leasing,
27 sale-leaseback, forward transaction, swap transaction, future

1 transaction, index transaction, or option on or other derivative of
2 any of those, whether in the nature of a cap transaction, floor
3 transaction, collar transaction, repurchase transaction, reverse
4 repurchase transaction, buy-and-sell-back transaction, securities
5 lending transaction, or other financial instrument or interest
6 intended to or having the effect of hedging or leveraging the
7 depository's holdings of precious metals, including any option
8 with respect to any of these transactions, or any combination of
9 these transactions, except that the limitation provided by this
10 subdivision does not apply to a transaction entered into to limit
11 the depository's exposure to post-signature price risks associated
12 with executory agreements to purchase or sell precious metals in
13 the ordinary course of depository operations and does not apply to
14 policies of insurance purchased to insure against ordinary casualty
15 risks such as theft, damage or destruction, loss during shipment,
16 or similar risks;

17 (2) credit the depository account balances of a
18 depository account holder, or dispose of any precious metals, if to
19 do so would cause the aggregate depository account balances with
20 respect to any precious metal represented by all depository
21 accounts to exceed the aggregate quantities of such precious metal
22 held by or for the benefit of the depository and the depository's
23 depository agents;

24 (3) enter into or maintain a deposit, trust, or
25 similar relationship for the custody of precious metals by a third
26 party outside this state, directly or indirectly, for the account
27 or benefit of the depository if the comptroller by rule establishes

1 that:

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

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

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

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

18 Sec. 2116.026. CONFISCATIONS, REQUISITIONS, SEIZURES, AND
19 OTHER ACTIONS VOID. (a) A purported confiscation, requisition,
20 seizure, or other attempt to control the ownership, disposition, or
21 proceeds of a withdrawal, transfer, liquidation, or settlement of a
22 depository account, including the precious metals represented by
23 the balance of a depository account, if effected by a governmental
24 or quasi-governmental authority other than an authority of this
25 state or by a financial institution or other person acting on behalf
26 of or pursuant to a directive or authorization issued by a
27 governmental or quasi-governmental authority other than an

1 authority of this state, in the course of a generalized declaration
2 of illegality or emergency relating to the ownership, possession,
3 or disposition of one or more precious metals, contracts, or other
4 rights to the precious metals or contracts or derivatives of the
5 ownership, possession, disposition, contracts, or other rights, is
6 void ab initio and of no force or effect.

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

26 (c) On receipt of notice of any such event with respect to
27 all or any portion of the balance of a depository account, the

1 depository shall suspend withdrawal privileges associated with the
2 balances of the depository account until suitable substitute
3 arrangements may be effected in accordance with rules of the
4 comptroller to enable the registered account holder to take
5 delivery of the precious metals represented by the account balances
6 in question. A voluntary transfer of a depository account balance
7 or of a depository account among depository account holders may
8 continue to take place unaffected by the suspension, and the
9 depository shall recognize to the full extent authorized by this
10 chapter rules adopted under this chapter.

11 Sec. 2116.027. OFFICIAL EXCHANGE RATES. The comptroller by
12 rule shall establish the references by which the official exchange
13 rate for pricing precious metals transactions in terms of United
14 States dollars or other currency must be established at the time of
15 a depository transaction. The comptroller shall establish
16 procedures and facilities through which the rates are made
17 discoverable at all reasonable times by system participants, both
18 on a real-time basis and retrospectively.

19 Sec. 2116.028. DEVELOPMENT OF DEPOSITORY SYSTEM AND
20 PARTICIPATION. (a) The comptroller shall monitor the development
21 of the depository-based system of payments and settlements and
22 shall direct and encourage all funds and agencies of this state to
23 use the system for intergovernmental payments and settlements to
24 the extent prudent and practicable.

25 (b) As conditions of acceptance and liquidity of the
26 depository system improve, the comptroller shall:

27 (1) establish appropriate firm requirements for the

1 use of the system for intergovernmental payments and settlements to
2 the extent prudent and practicable; and

3 (2) encourage the use of the system by private persons
4 to make or receive payments to or from a state agency or fund.

5 Sec. 2116.029. FACILITATION OF ACCOUNTING AND REPORTING OF
6 TAXABLE GAINS. The comptroller by rule shall establish procedures
7 and requirements for the depository and depository agents designed
8 to minimize the burden to system participants of accounting for and
9 reporting taxable gains and losses arising out of depository
10 transactions as denominated in United States dollars or another
11 currency.

12 Sec. 2116.030. ANNUAL REPORT. The comptroller shall submit
13 to the governor and the legislature a report on the status,
14 condition, operations, and prospects for the depository and
15 depository participation each year not later than September 30.

16 [Sections 2116.031-2116.050 reserved for expansion]

17 SUBCHAPTER B. DEPOSITORY AGENTS

18 Sec. 2116.051. USE OF DEPOSITORY AGENTS. To the extent that
19 the services of depository agents are reasonably cost-effective and
20 available, the depository shall use private, independently managed
21 firms and institutions licensed as depository agents as
22 intermediaries to conduct retail transactions in bullion and specie
23 on behalf of the depository with current and prospective depository
24 account holders. In addition to licensing requirements for
25 depository agents provided by Chapter 151, Finance Code, and rules
26 adopted under that chapter, the comptroller by rule may impose
27 additional requirements as to capitalization, net worth,

1 liquidity, or other financial prerequisites to qualify a depository
2 agent to conduct transactions or take other action on behalf of the
3 depository.

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

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

18 SECTION 2. Section 151.002(a), Finance Code, is amended to
19 read as follows:

20 (a) This section defines general terms that apply to an
21 applicant for or holder of a money services license issued under
22 this chapter, regardless of whether the license is a money
23 transmission license, ~~or~~ a currency exchange license, or a
24 depository agent license. Additional terms that apply specifically
25 to money transmission are defined in Section 151.301. Additional
26 terms that apply specifically to currency exchange are defined in
27 Section 151.501. Additional terms that apply specifically to

1 depository agents are defined in Section 151.851.

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

5 (9-a) "Depository agent" has the meaning assigned by
6 Section 151.851.

7 (9-b) "Depository agent license" means a license
8 issued under Subchapter J.

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

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

1 (B) the opening, transfer, settlement, or
2 liquidation of any derivative of a contract described by Paragraph
3 (A), including a forward transaction, swap transaction, currency
4 transaction, future transaction, index transaction, or option on or
5 other derivative of a transaction of any of those types, in the
6 nature of a cap transaction, floor transaction, collar transaction,
7 repurchase transaction, reverse repurchase transaction,
8 buy-and-sell-back transaction, securities lending transaction, or
9 other financial instrument or interest, including an option with
10 respect to a transaction, or any combination of these transactions;
11 or

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

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

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

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

27 Sec. 151.003. EXCLUSIONS. Subject to Subchapter J, the

1 ~~The~~ following persons are not required to be licensed under this
2 chapter:

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

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

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

11 (4) a foreign bank branch or agency in the United
12 States established under the federal International Banking Act of
13 1978 (12 U.S.C. Section 3101 et seq.);

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

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

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

24 (6) a person that, on behalf of the United States or a
25 department, agency, or instrumentality of the United States, or a
26 state or county, city, or any other governmental agency or
27 political subdivision of a state, provides electronic funds

1 transfer services of governmental benefits for a federal, state,
2 county, or local governmental agency;

3 (7) a person that acts as an intermediary on behalf of
4 and at the direction of a license holder in the process by which the
5 license holder, after receiving money or monetary value from a
6 purchaser, either directly or through an authorized delegate,
7 transmits the money or monetary value to the purchaser's designated
8 recipient, provided that the license holder is liable for
9 satisfying the obligation owed to the purchaser;

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

14 (9) a person engaged in the business of currency
15 transportation who is both a registered motor carrier under Chapter
16 643, Transportation Code, and a licensed armored car company or
17 courier company under Chapter 1702, Occupations Code, provided that
18 the person does not engage in the money transmission or currency
19 exchange business or depository agent services business without a
20 license issued under this chapter; and

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

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

1 Sec. 151.201. SCOPE. This subchapter sets out the general
2 qualifications and provisions that apply to a money services
3 license, regardless of whether the license is a money transmission
4 license, ~~or~~ a currency exchange license, or a depository agent
5 license. Subchapters D and E set forth the additional
6 qualifications and provisions that apply specifically to a money
7 transmission license. Subchapter F sets forth the additional
8 qualifications and provisions that apply specifically to a currency
9 exchange license. Subchapter J sets forth the additional
10 qualifications and provisions that apply specifically to a
11 depository agent license.

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

14 (b) As a condition of renewal, a license holder must
15 continue to possess the qualifications and satisfy the requirements
16 that apply to an applicant for a new money transmission license,
17 ~~or~~ currency exchange license, or depository agent license, as
18 applicable. Additionally, not later than July 1 of each year, a
19 license holder must:

20 (1) pay an annual renewal fee in an amount established
21 by commission rule; and

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

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

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

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

11 (d) If the license holder fails to submit the completed
12 renewal report and pay the renewal fee and any late fee due, the
13 license expires effective 5 p.m. central daylight time on August
14 15, and the license holder must cease and desist from engaging in
15 the business of money transmission, ~~or~~ currency exchange, or
16 depository agent services, as applicable, as of that time. The
17 expiration of a license is not subject to appeal.

18 SECTION 7. Section 151.602(a), Finance Code, is amended to
19 read as follows:

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

24 (1) a record of each money transmission transaction, ~~or~~
25 currency exchange transaction, or depository agent
26 transaction, as applicable;

27 (2) a general ledger posted in accordance with

1 generally accepted accounting principles containing all asset,
2 liability, capital, income, and expense accounts, unless directed
3 otherwise by the commissioner;

4 (3) bank statements and bank reconciliation records;

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

10 (5) any other records required by commission rule or
11 reasonably requested by the commissioner to determine compliance
12 with this chapter.

13 SECTION 8. Section 151.603, Finance Code, is amended by
14 adding Subsection (c-1) to read as follows:

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

17 (1) the renewal report required by Section
18 151.207(b)(2), including an audited unconsolidated financial
19 statement that is dated as of the last day of the license holder's
20 fiscal year that ended in the immediately preceding calendar year;

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

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

4 SECTION 9. Section 151.604(b), Finance Code, is amended to
5 read as follows:

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

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

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

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

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

27 (5) the cancellation or other impairment of the

1 license holder's security; or

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

5 SECTION 10. Chapter 151, Finance Code, is amended by adding
6 Subchapter J to read as follows:

7 SUBCHAPTER J. DEPOSITORY AGENT LICENSE

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

12 Sec. 151.852. APPLICABILITY TO DEPOSITORY AGENT SERVICES.

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

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

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

27 Sec. 151.853. LICENSE REQUIRED. (a) A person may not

1 engage in the business of rendering depository agent services or
2 advertise, solicit, or hold itself out as a person that engages in
3 the business of depository agent services unless the person:

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

9 (2) is exempted from licensing requirements under
10 Section 151.003(2).

11 (b) Notwithstanding any other provision of this chapter, a
12 person described by Section 151.003(1), (6), (7), (8), or (9) is not
13 eligible for a license under this subchapter.

14 (c) For purposes of this chapter:

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

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

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

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

26 (d) Notwithstanding Subsection (c), a person does not
27 engage in the business of depository agent services by engaging in a

1 transaction for the person's own depository account or for the
2 account of another person acting as a fiduciary that would
3 constitute depository agent services if conducted for another
4 person.

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

9 Sec. 151.854. ADDITIONAL QUALIFICATIONS. In addition to
10 the general qualifications for licensure set forth in Section
11 151.202, an applicant for a depository agent license must
12 demonstrate to the satisfaction of the commissioner that:

13 (1) the applicant has and will maintain the
14 capitalization, minimum net worth, and other applicable financial
15 requirements established from time to time by rules of the
16 comptroller;

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

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

23 Sec. 151.855. APPLICATION AND ACCOMPANYING FEE,
24 STATEMENTS, AND SECURITY. (a) An applicant for a depository agent
25 license must submit an application in accordance with Section
26 151.203.

27 (b) At the time an application for a depository agent

1 license is submitted, an applicant must file with the department:

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

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

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

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

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

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

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

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

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

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

8 (b) The effective period for a temporary depository agent
9 license may not exceed 90 days from the date the license is issued.
10 The commissioner may extend the effective period for not more than
11 30 days if necessary to complete the processing of a timely filed
12 application for which approval is likely.

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

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

25 (b) If a depository agent license holder commingles any
26 money or other property received for delivery with money or other
27 property owned or controlled by the depository agent license

1 holder, all commingled money and other property are impressed with
2 a trust as provided by this section in an amount equal to the amount
3 of money or property received for delivery, less the amount of fees
4 paid for the delivery.

5 (c) If the commissioner revokes a depository agent license,
6 all money and other property held in trust by the depository agent
7 license holder is assigned to the commissioner for the benefit of
8 the persons to whom the related delivery obligations are owed.

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

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

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

22 SECTION 11. As soon as practicable after the effective date
23 of this Act, the comptroller of public accounts shall:

24 (1) undertake or cause to be undertaken a survey of
25 existing third-party facilities and firms in this state that may be
26 suitable for rendering custodial services to the Texas Bullion
27 Depository with respect to precious metals deposited in accordance

1 with Chapter 2116, Government Code, as added by this Act, and
2 identify where possible the direct and indirect ownership of
3 suitable facilities and firms. The survey must be designed to
4 ascertain the terms and conditions under which the facilities and
5 firms would likely be made available for that purpose;

6 (2) in coordination with the governor and lieutenant
7 governor, undertake a survey of those sites currently in the
8 control of this state or that might through purchase be brought
9 within the control of this state that are or could be made suitable
10 for a fortified, secure depository facility operated by this state
11 and controlled by the Texas Bullion Depository, ascertaining the
12 estimated costs and time required to establish and operate the
13 facility on an ongoing basis; and

14 (3) report the findings of these surveys to the
15 legislature for further consideration no later than September 1,
16 2014.

17 SECTION 12. (a) In this section:

18 (1) "Collateralized debt obligations" means direct or
19 securitized obligations based upon, derived from or in any way
20 representing anticipated stream of income or principal from
21 third-party debt obligations secured by the assets of such third
22 parties, such as, by way of illustration and not limitation, home
23 mortgages, auto finance loans, and other consumer credit
24 facilities, whether or not such instruments bear an explicit or
25 implicit guarantee of any governmental or quasi-governmental
26 organization, or that otherwise would be classified as "Corporate
27 Asset and Mortgage Backed" investments in the comptroller's

1 Comprehensive Annual Financial Report for the State of Texas.

2 (2) "Federal debt securities" means any debt
3 obligation, coupon, scrip, or other component thereof issued by the
4 United States government or any agency or instrumentality thereof
5 that would be classified in the comptroller's Comprehensive Annual
6 Financial Report for the State of Texas as "U.S. Treasury
7 Securities," "U.S. Treasury Strips," "U.S. Treasury Scrip," "U.S.
8 Treasury TIPS," and "U.S. Governmental Agency Securities"
9 investments, together with any and all investments that would be
10 classified in such report as "repurchase agreements," "securities
11 lending collateral," and "cash or cash equivalents" that are based
12 upon, derived from, or in any way representing any of the foregoing.

13 (3) "Municipal debt securities" means any direct or
14 securitized obligations based upon, derived from, or in any way
15 representing anticipated stream of income or principal from debt
16 obligations issued by or on behalf of local governmental districts
17 and municipalities.

18 (4) "Maximum percentage" means the highest percentage
19 of their overall investment holdings in which state funds and state
20 agencies may lawfully continue to hold collateralized debt
21 obligations, federal debt securities, and municipal debt
22 securities from and after the 180th day following the effective
23 date of this Act, as established from time to time by the provisions
24 of this Act and the rules issued by the comptroller of public
25 accounts under this Act.

26 (b) Subject to the terms and provisions of this section, but
27 in accordance with rules and procedures to be established by the

1 comptroller of public accounts under this section, the comptroller
2 and each state fund and state agency not otherwise barred from doing
3 so by the Texas Constitution shall undertake to divest itself of
4 one-half the amount by value of its holdings of federal debt
5 securities, collateralized debt obligations, and municipal debt
6 obligations as reflected in the comptroller's 2012 Comprehensive
7 Annual Financial Report for the State of Texas.

8 (c) For those funds and investments in the custody or under
9 the management of the comptroller of public accounts, the
10 comptroller shall commence divestment promptly on the 180th day
11 following the effective date of this Act and shall continue such
12 divestment in a deliberate and orderly manner until achieving
13 compliance with the requirement of Subsection (b) of this section.

14 (d) Compliance shall be determined individually with
15 respect to the investment holdings of each state fund and state
16 agency, except that investment holdings maintained by the
17 comptroller of public accounts in a pooled or consolidated fund or
18 account shall be treated for this purpose on an aggregate,
19 consolidated basis as measured with respect to the pooled or
20 consolidated fund or account in its entirety, and those funds shall
21 be excluded from the other assets of state funds and state agencies
22 for purposes of their individual determinations.

23 (e) The comptroller of public accounts shall exercise
24 reasonable prudence and discretion in the timing and amounts of
25 divestment and reinvestment transactions so as to conduct those
26 transactions in the most favorable market conditions, and on the
27 most favorable terms, reasonably feasible or available. The

1 program of divestment required to achieve initial compliance shall
2 in any case be completed not later than December 31, 2015.

3 (f) Following the initial compliance with this section, the
4 comptroller of public accounts shall manage or cause to be managed
5 such funds in such a way as to remain in compliance with the
6 applicable standards except in those limited circumstances in which
7 fluctuations in market value, unplanned inflows or outflows, or
8 other factors beyond the comptroller's immediate control cause such
9 holdings to exceed the maximum percentage. In such circumstances,
10 the comptroller shall promptly effect or cause to be effected such
11 transactions as shall be necessary and sufficient to restore the
12 fund or account in question to full compliance.

13 (g) As and to the extent practicable in view of the
14 divestments described by this section, market conditions, and the
15 development of the depository system established by Chapter 2116,
16 Government Code, as added by this Act, the comptroller of public
17 accounts shall cause a portion between 3 and 10 percent of
18 investment assets under the comptroller's management to be
19 reinvested in physical precious metals or in trust or depository
20 accounts with respect to physical precious metals determined by the
21 comptroller to meet requisite standards of safety, security, and
22 liquidity. To the extent available, such investments shall by
23 preference be made in depository accounts provided for by this Act.
24 Otherwise they may be made through other institutions and parties.

25 (h) For those state funds not in the custody or under the
26 management of the comptroller of public accounts, the boards,
27 trustees, or other investment decision authorities of such funds

1 and agencies shall undertake to establish a plan of divestment that
2 would be necessary to achieve compliance with the foregoing
3 provisions in the absence of any contrary provision of the Texas
4 Constitution.

5 (i) Not later than the 240th day after the effective date of
6 this Act, each such state fund and state agency shall submit its
7 divestment plan to the comptroller of public accounts, together
8 with an itemization of the provisions of the Texas Constitution, if
9 any, that would require modification in order for such fund or
10 agency lawfully to implement the plan submitted.

11 (j) The comptroller of public accounts shall review the
12 plans so received and, in consultation with the attorney general,
13 present a report to the governor and the legislature on or before
14 the first anniversary of the effective date of this Act proposing
15 any amendments to the Texas Constitution as are minimally necessary
16 to authorize and enable all state funds and state agencies to meet
17 the standards established by this Act. The comptroller by rule may
18 prescribe forms and procedures as suitable to facilitate and
19 coordinate the reporting process described by this section.

20 (k) For those state funds and state agencies for which no
21 amendments to the Texas Constitution would be necessary, the
22 comptroller of public accounts, in communication and coordination
23 with those funds and agencies, shall issue findings and regulations
24 as are reasonably suited to establishing a coordinated divestment
25 plan for all such funds and agencies. This coordinated divestment
26 plan must:

27 (1) minimize disruption to, or the creation of adverse

1 conditions in, the financial markets in which such debt and
2 securities are traded as a result of the transactions to be effected
3 by such funds and agencies;

4 (2) take into consideration the results or likely
5 effects of the transactions to be effected by the comptroller under
6 Subsection (c) of this section, the aggregate values and types of
7 securities to be liquidated, the size, liquidity, and absorptive
8 capacity of the markets for such securities at the time in question,
9 and the availability of alternative investments such as those
10 authorized by this Act; and

11 (3) afford the boards, trustees, or other investment
12 decision authorities of such funds and agencies sufficient latitude
13 as to have a reasonable opportunity to conduct the transactions to
14 be effected by the comptroller under Subsection (c) of this section
15 in the most favorable market conditions and on the most favorable
16 terms reasonably feasible or available.

17 (1) However, the program of divestment required for such
18 funds and agencies to achieve initial compliance shall in any case
19 be completed not later than the later of December 31, 2016, or the
20 first anniversary of the issuance by the comptroller of public
21 accounts of the coordinated divestment plan and applicable rules.

22 (m) Following the initial compliance with this section, the
23 boards, trustees, or other authorities shall manage or cause to be
24 managed such funds in such a way as to remain in compliance with the
25 applicable standards except in those limited circumstances in which
26 fluctuations in market value, unplanned inflows or outflows, or
27 other factors beyond the boards', trustees', or other authorities'

1 immediate control cause such holdings to be in noncompliance with
2 this section. In such circumstances, the authority shall promptly
3 effect or cause to be effected such transactions as shall be
4 necessary and sufficient to restore the fund or account in question
5 to full compliance.

6 (n) As and to the extent practicable in view of the
7 divestments described by this section, market conditions, and the
8 development of the depository system established by this Act, the
9 boards, trustees, or other investment authorities of such funds and
10 agencies shall cause a portion between 3 and 10 percent of
11 investment assets under their management to be reinvested in
12 physical precious metals or in trust or depository accounts with
13 respect to physical precious metals determined by the comptroller
14 of public accounts to meet requisite standards of safety, security,
15 and liquidity. To the extent available, such investments shall by
16 preference be made in depository accounts provided for by this Act.
17 Otherwise they may be made through other institutions and parties.

18 (o) Not later than the 120th day after the effective date of
19 this Act, the comptroller of public accounts shall adopt rules
20 establishing the procedures by which the transactions required by
21 this section shall be coordinated and the frequency and amounts
22 with which such transactions shall be implemented, in order to
23 minimize any resulting disturbance to the regular functioning of
24 the markets for the securities affected and to ensure the best
25 possible pricing for such sales on the dates and times thereof. Such
26 rules shall afford each participating fund or agency access on a
27 non-preferential basis to the opportunities to participate in such

1 transactions, in proportion to the aggregate values in which they
2 then hold the types of securities to be covered by such
3 transactions.

4 (p) Within the limits and guidelines established by this
5 Act, the comptroller of public accounts shall establish from time
6 to time by rule guidelines for the maximum holdings of federal debt
7 securities, collateralized debt obligations, and municipal debt
8 securities in which state funds and agencies may be invested at any
9 given time. The initial figures so established shall be determined
10 as one-half the amount by value of such securities as reported for
11 the fund or agency in question in the comptroller's 2012
12 Comprehensive Annual Financial Report for the State of Texas,
13 subject to subsequent adjustment as necessary to reflect changes in
14 the composition and value of such investments and evolving market
15 conditions, but always with the aim of keeping the percentage of
16 aggregate fund or agency investments represented by such securities
17 at no more than one-half the percentage reflected in that report.

18 SECTION 13. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2013.