

# Creation of a [State Mint] [Tennessee template]

AN ACT to amend [State] Code Annotated, Title \_\_\_\_,  
Chapter \_\_\_\_, relative to a facility to produce a wide range of precious metal products.

WHEREAS, the governor signed House Bill \_\_\_\_\_ / Senate Bill \_\_\_\_\_ allowing the state treasurer to purchase and sell physical gold and precious metal bullion; and

WHEREAS, it is in the interest of the State to enable residents and interested parties to purchase, securely and reliably, gold and precious metal bullion; and

WHEREAS, gold and precious metal bullion offered for sale by the State must be securely controlled and identifiable as originating from the State; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF \_\_\_\_\_:

SECTION 1. [State] Code Annotated, Section \_\_\_\_\_, is amended by [adding the following as

new, appropriately numbered subdivisions]:

( ) "Covered activity" means:

(A) Making capital improvements, including construction, reconstruction, and non-routine maintenance of a structure, infrastructure, or improvement relating to the operation of, or access to, a facility to produce bullion products in uniform shapes, including, but not limited to, rounds, bars, and commemorative pieces with unique designs, shapes, and finishes that appeal to collectors and investors;

(B) Receiving orders from the state for the production of such bullion products and shipping them to locations designated by the state treasurer in a state depository; and

(C) Another activity necessary to operate or maintain the facility of an eligible entity;

( ) "Eligible entity" means an entity with:

(A) Previous or current contracts with the federal government and other governmental entities to produce coinage products in uniform shapes to be stamped by the respective governments into official coin products;

(B) A written comprehensive plan to build all facilities necessary for operation of the [State] Mint, which comply with the requirements of § \_\_\_\_ [State trust company provision]; and

(C) United States domicile and ownership, operating for over fifty (50) years as a manufacturer, with not less than forty (40) of such years manufacturing coinage products in uniform shape for coin products;

( ) "State depository" has the same meaning as defined in § 9-4-107; and

( ) "State mint" or "Tennessee Mint" means a facility in existence on the effective date of this act, which is designated by a contractual agreement between an eligible entity with the state treasurer pursuant to § \_\_\_\_ [powers of State Trust of [State]] to securely produce, store, process, and ship bullion products for the state's depository.

SECTION 2. [State] Code Annotated, Title \_\_, Chapter \_\_, Part \_\_\_\_, is amended by adding the following language as a new section:

Pursuant to the procurement requirements and process required in Title \_\_, Chapter \_\_, relating to public contracts, and subject to appropriation, the state treasurer shall:

- (1) Enter into an agreement with an eligible entity to carry out covered activities in order to serve as the state mint and upon completion of such covered activities, designating it as the state mint; and
- (2) Promulgate rules to effectuate the operations of the state mint established in this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title \_\_\_\_, chapter \_\_.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

### **Electronic Gold**

*Once your core functions of the precious metals depository are set up and operating, the state may add a provision for transactions in electronic precious metals (e.g., a card or other type of method for the transfer of credits for precious metals held in an account in the state precious metals depository by a third party into the account of the cardholder, and vice versa, such as for facilitating the purchase and sale of goods or services between the parties). Note: this facility must be under the jurisdiction of state law and courts (i.e., according to contractual choice of law provisions).*

# **EXHIBIT A: TEXAS BULLION DEPOSITORY PROVISION IN TEXAS CODE**

*Sec. 2116.001. DEFINITIONS. In this chapter:*

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

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

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

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

(A) *the depository; or*

(B) *a depository agent.*

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

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

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

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

(9) *"Depository agent" means a 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.*

(9-a) *"Financial institution" has the meaning assigned by Section 201.101, Finance Code.*

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 9, eff. May 24, 2019.*

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

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

*(c) The comptroller shall adopt rules necessary to carry out this chapter.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 10, eff. May 24, 2019.*

*Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR. (a) The depository is administered as a division of the office of the comptroller and under the direction and supervision of a bullion depository administrator appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.*

*(b) The administrator shall:*

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 11, eff. May 24, 2019.*

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

*(1) a deposit to the depository;*

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

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

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

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

*under this chapter.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

*(1) ensure compliance with law; and*

*(2) protect the interests of:*

*(A) the depository;*

*(B) depository account holders;*

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

*(D) the public at large.*

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

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

*(d) The comptroller 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.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 12, eff. May 24, 2019.*

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

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

*(c) The depository shall make a delivery at the depository's settlement facility designated by the comptroller, shipping to an address specified by the account holder or, at the depository's discretion, at a facility of a depository agent at which presentment is made, not later than 10 business days after the date of presentment.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 13, eff. May 24, 2019.*

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

*(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 or other instruction by reducing the payor's depository account balance and increasing the depository account balance of the payee accordingly.*

*(c) If a depository account holder transfers to a payee who is not a depository account holder any portion of the balance of the depository account holder's depository account, the depository shall, if the payee is otherwise eligible to open a depository account under applicable laws and depository policy, allow the payee to establish a depository account. The depository shall credit a newly established account on behalf of the payee and shall debit the payor's account accordingly.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 14, eff. May 24, 2019.*

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

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

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

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 15, eff. May 24, 2019.*

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

*(b) The depository's act of furnishing an account statement or passbook, whether in*



*physical, digital, or electronic form, constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook.*

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Sec. 2116.010. FEES; SERVICE CHARGES; PENALTIES. The comptroller 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. The comptroller may waive any fees, service charges, or penalties established under this section.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 16, eff. May 24, 2019.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

*(1) interest;*

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

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

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

*(3) a business or nonprofit corporation;*

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Sec. 2116.016. APPLICABILITY OF ESTATES CODE. The applicable provisions of Chapters 111, 112, and 113, Estates Code, govern a depository account.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Sec. 2116.017. PLEDGE OF JOINTLY HELD DEPOSITORY ACCOUNT. (a) Unless a term of the depository account provides otherwise, a person on whose signature precious metals may be withdrawn from a depository account that is jointly held in the names of two or more persons may, by a signed pledge, pledge and transfer to the depository or to a third party all or part of the account.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Sec. 2116.018. DEPOSITORY ACCOUNT HELD BY FIDUCIARY. (a) The depository or a depository agent may accept a depository account in the name of a fiduciary, including*

*an administrator, executor, custodian, guardian, or trustee, for a named beneficiary.*

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

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

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

***Sec. 2116.019. DEPOSITORY ACCOUNT HELD IN TRUST; UNDISCLOSED TRUST INSTRUMENT.*** *(a) If the depository opens a depository account for a person claiming to be the trustee for another person and the depository has no other notice of the existence or terms of the trust other than a written claim against the account:*

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

***Sec. 2116.020. POWER OF ATTORNEY; REVOCATION ON DEATH OR INCOMPETENCY.*** *(a) The depository shall recognize the authority of an attorney-in-fact authorized in writing by a depository account holder to manage or withdraw precious metals from the depository account holder's depository account until the*

*depository receives written or actual notice of the revocation of that authority.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS; MARKETING AND PUBLICITY. (a) The depository may 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) The depository may advertise and promote the depository in any available media.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 17, eff. May 24, 2019.*

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

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

*loss during shipment, or similar risks;*

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

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

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

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

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

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

**Sec. 2116.023. CONFISCATIONS, REQUISITIONS, SEIZURES, AND OTHER ACTIONS VOID.** *(a) A purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by the balance of a depository account, if effected by a governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, is void ab initio and of no force or effect.*

*(b) The depository in the case of receiving notice of a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account, including the precious metals represented by the balance of a depository account, effected by a*

*governmental or quasi-governmental authority other than an authority of this state or by a financial institution or other person acting on behalf of or pursuant to a directive or authorization issued by a governmental or quasi-governmental authority other than an authority of this state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, may not recognize the governmental or quasi-governmental authority, financial institution, or other person acting as the lawful successor of the registered holder of a depository account in question.*

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

*(d) The depository shall refer any matter relating to an action described by Subsection (a) to the attorney general for resolution.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 18, eff. May 24, 2019.*

*Sec. 2116.024. OFFICIAL EXCHANGE RATES. The comptroller 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.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 19, eff. May 24, 2019.*

*Sec. 2116.025. FACILITATION OF ACCOUNTING AND REPORTING OF TAXABLE*

*GAINS. The comptroller 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.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 20, eff. May 24, 2019.*

*Sec. 2116.026. ANNUAL REPORT. The comptroller shall submit to the governor and the legislature a report on the status, condition, operations, and prospects for the depository and depository participation each year not later than September 30.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

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

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

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

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

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

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

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

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

*(4) 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) as otherwise permitted by the depository account agreement applicable to a depository account holder's account.*

*Added by Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 21, eff. May 24, 2019.*

#### **SUBCHAPTER B. DEPOSITORY AGENTS**

*Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository may use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public on behalf of the depository.*

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

*Amended by:*

*Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 22, eff. May 24, 2019.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

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

*Added by Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 1, eff. June 19, 2015.*

#### **SUBCHAPTER C. ACQUISITION OF REAL PROPERTY FOR DEPOSITORY**

*Sec. 2116.071. ACQUISITION OF REAL PROPERTY. The comptroller, by purchase, lease, donation, or other means, may acquire real property necessary for one or more buildings to operate the depository.*

*Added by Acts 2021, 87th Leg., R.S., Ch. 981 (S.B. 2230), Sec. 2, eff. June 18, 2021.*

*Sec. 2116.072. PURCHASE OF BUILDING SUBJECT TO EXISTING LEASES. The comptroller may:*

*(1) acquire a building that is subject to a lease by a private tenant and may continue or renew a lease for the building if the comptroller determines that doing so is advantageous to this state; and*

*(2) renegotiate the terms of a lease described by Subdivision (1) to obtain terms that are more favorable to this state.*

*Added by Acts 2021, 87th Leg., R.S., Ch. 981 (S.B. 2230), Sec. 2, eff. June 18, 2021.*

*Sec. 2116.073. LEASING PROPERTY AND USE OF LEASE PROCEEDS. (a) The comptroller may lease at fair market value any portion of a property acquired under this subchapter to a private tenant for commercial activities.*

*(b) Money received by the comptroller under a lease of property acquired under this subchapter may be used by the comptroller to:*

*(1) repay obligations issued under Section 1232.1026 and used to acquire the property or construct the building; or*

*(2) make payments under a lease-to-purchase agreement or other comparable financing agreement between the comptroller and the Texas Public Finance Authority.*

*Added by Acts 2021, 87th Leg., R.S., Ch. 981 (S.B. 2230), Sec. 2, eff. June 18, 2021.*

*Sec. 2116.074. TITLE TO AND CONTROL OF REAL PROPERTY. The comptroller, subject to the lease-to-purchase agreement or other comparable financing agreement executed under Section 1232.1026, shall obtain in the name of this state title to any real property acquired or building constructed under this subchapter and retain control of that real property.*

*Added by Acts 2021, 87th Leg., R.S., Ch. 981 (S.B. 2230), Sec. 2, eff. June 18, 2021.*

*Sec. 2116.075. BORROWING MONEY; ISSUING AND SELLING BONDS. (a) The comptroller may borrow money in the amount and under the circumstances authorized by the legislature and may request the Texas Public Finance Authority, on behalf of the comptroller, to issue and sell bonds to acquire real property or construct a building to operate the depository.*

*(b) The Texas Public Finance Authority may issue and sell bonds for the purposes of Subsection (a) in any manner and on such terms the authority determines to be in the best interest of the comptroller, subject to the requirements of Chapter 1202.*

*Added by Acts 2021, 87th Leg., R.S., Ch. 981 (S.B. 2230), Sec. 2, eff. June 18, 2021.*

## **State Precious Metals Depository**

Currently, the only state with a state precious metals depository is Texas's Texas Bullion Depository (<https://texasbulliondepository.gov/>), an agency of the State of Texas, which was established in 2015. Any resident of the United States may establish an account at the Texas Bullion Depository, where deposits are covered while stored in its vaults by insurance issued by Lloyd's of London. Since Texas has no sales tax on gold, silver or platinum bullion, residents of states that tax precious metals purchases may be able to avoid such taxes by purchasing and storing precious metals at the Texas Bullion Depository, which sells gold, silver, platinum and palladium coins. The depository is overseen by the State of Texas, which, together with a third-party accounting firm approved by the Texas Comptroller, conducts regularly scheduled audits. See Exhibit A for the section of the Texas Government Code that deals with the establishment and administration of the Texas Bullion Depository.

Solari Paper #2: U.S. State Bullion Depositories describes various considerations in establishing a state bullion depository, including issues related to integrity of operations, particularly risks involving contracting with private parties for the provision of services: <https://home.solari.com/the-solari-papers-2-u-s-state-bullion-depositories/>.