

BILL ANALYSIS

Senate Research Center

S.B. 2173
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Finance
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2173 as filed makes several changes to the Texas Bullion Depository (TBD) that was created last session.

1. Creates statutory authority to promote, market, and advertise TBD. Includes authority to license intellectual property for branding and sale of promotional goods.
2. Removes requirement to confirm administrator with advice and consent of the governor, lieutenant governor and senate under Section 2116.003, Government Code.
3. Makes TBD security and account holder information confidential and exempt from disclosure under Public Information Act.
4. Adds Office of the Attorney General (OAG) representation of TBD for claims on TBD accounts under Section 2116.023, Government Code.
5. Allows TBD to establish other charges and receive payments in the course of TBD operations and activities, to be deposited to the general revenue fund under Section 2116.010, Government Code. Allows the Texas comptroller of public accounts (comptroller) flexibility in setting fees by eliminating rulemaking requirements.
6. Clarifies there is no state/comptroller liability related to the depository.
7. Removes waiver of sovereign immunity for suit under Section 2116.009, Government Code.
8. Clarifies that TBD agents perform services on behalf of current and prospective account holders.
9. Specifies the comptroller's authority to enter into transactions and relationships with intermediaries, and with bank and non-bank custodians holding IRA-related bullion deposits under Section 2116.021, Government Code.
10. Includes authority to appropriate fee and payment revenue for implementation, administration, promotion, marketing, and operation of the depository.

Possible Committee Substitute to S.B. 2173:

1. Provides property and sales tax exemptions for bullion held in depository
2. Provides exemption for claims by creditors, with certain carve-outs for state debt and overdue child support payments.
3. Allows the comptroller to contract for design, manufacture, marketing and distribution of official commemorative items, including coins or other items containing precious metal, to promote the depository.

4. Prohibits commingling of account holder funds or deposits by a third party who is acting on behalf of a TBD account holder or holding deposits or funds of an account holder.
5. Requires comptroller preapproval of all third-party advertising, marketing, written materials and signage related to the TBD used for commercial purposes.
6. Revises TBD agent licensing structure to create categories of TBD agents licenses and related licensing criteria.

As proposed, S.B. 2173 amends current law relating to the operation and administration of the Texas Bullion Depository; depository agents; and to the appropriation of money from the fees, charges, penalties, and other amounts related to the depository and deposited to the general revenue fund for that purpose.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts (comptroller) in SECTION 5 (Section 2116.009, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 6 (Section 2116.010, Government Code) and SECTION 11 (Section 2116.052, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2116.001(9), Government Code, to redefine “depository agent.”

SECTION 2. Amends Section 2116.002, Government Code, by amending Subsection (a) and adding Subsections (c) through (h), as follows:

(a) Provides that the Texas Bullion Depository (TBD) is established as a program in the office of the Texas comptroller of public accounts (comptroller), rather than established as an agency of this state in the Texas Comptroller’s Office (comptroller’s office), to provide a bullion depository and services for the public benefit relating to bullion, specie, and precious metals.

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

(d) Authorizes TBD to adopt and amend articles of incorporation, bylaws, resolutions, and other documents as necessary to carry out its purposes.

(e) Prohibits this state and the comptroller from being held liable for TBD or related activities of TBD and prohibits this chapter from being construed as creating financial or other responsibilities to the state or to the comptroller. Provides that this state does not pledge the full faith and credit of this state for the benefit of TBD.

(f) Authorizes TBD to enter into one or more contracts with a vendor to operate TBD or provide any of TBD’s services.

(g) Authorizes TBD, notwithstanding Chapter 2113 (Use of Appropriated Money), Government Code, to enter into contracts and engage in certain activities to promote TBD. Authorizes the comptroller to use appropriated funds to pay for authorized TBD activities.

SECTION 3. Amends Section 2116.003, Government Code, as follows:

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR. (a) Provides that TBD is administered as a program, rather than as a division, of the comptroller's office and under the direction and supervision of a TBD administrator (administrator) appointed by the comptroller, rather than appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.

(b) Requires the administrator, among certain other tasks, to administer, supervise, and direct the operations and affairs of TBD and liaise with TBD agents.

(c) Authorizes the administrator to appoint, subject to the approval of the comptroller, a deputy administrator or other subordinate officer or staff member as necessary and appropriate to the efficient administration of TBD. Authorizes TBD to contract with the comptroller's office to provide staff support.

(d) Provides that certain persons are not personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of TBD, its business, or other related affairs.

SECTION 4. Amends the heading to Section 2116.009, Government Code, to read as follows:

Sec. 2116.009. ACCOUNT BALANCES.

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

(b) Requires TBD to furnish TBD account holders with an account statement or passbook, whether in physical, digital, or electronic form, rather than providing that TBD's act of furnishing an account statement or passbook, whether in physical, digital, or electronic form, constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook.

(b-1) Provides that the TBD account holder is responsible for promptly examining each account statement received from TBD and reporting any discrepancy in the account statement to TBD not later than a certain date.

(b-2) Authorizes TBD to establish a process to resolve any disputed TBD account balance.

(b-3) Provides that the TBD account holder, if the TBD account holder fails to report any account balance discrepancy reflected on the account balance statement or passbook to TBD within a certain period, will then be deemed to have accepted the account statement or passbook as accurate and prohibits the TBD account holder from disputing the account balance. Requires TBD, if the TBD account holder fails to report any account balance discrepancy reflected on the account balance statement or passbook to TBD within a certain period, to then deem the TBD account statement or passbook as accurate and undisputed by the TBD account holder.

(b-4) Authorizes the comptroller to adopt rules to implement this section.

SECTION 6. Amends Section 2116.010, Government Code, as follows:

Sec. 2116.010. New heading: FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

(a) Creates this subsection from existing text. Authorizes the comptroller, rather than the comptroller by rule, to establish certain fees, service charges, and penalties.

(b) Authorizes the comptroller to establish other charges and receive payments in the course of TBD operations and activities, including from transactions and relationships authorized by Section 2116.021 (Transactions and Relationships).

(c) Requires the comptroller to deposit revenue realized by TBD under this section to the credit of the general revenue fund (fund).

(d) Authorizes money credited to the fund under this section to be appropriated to the comptroller to offset the costs of certain TBD activities.

SECTION 7. Amends Section 2116.021, Government Code, to authorize, rather than require, TBD to enter into transactions and relationships with certain entities and persons as the comptroller determines to be prudent and suitable to facilitate the operations of TBD and to further the purposes of this chapter, including an IRS approved bank or non-bank acting as custodian for Individual Retirement Accounts and intermediaries.

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

(c) Requires TBD, on receipt of a certain notice, to suspend withdrawal privileges associated with the balances of the TBD account until suitable substitute arrangements may be effected in accordance with the representation of TBD by the attorney general and rules of the comptroller to enable the registered account holder to take delivery of the precious metals represented by the account balances in question. Authorizes a certain voluntary transfer to continue to take place unaffected and requires TBD to recognize the transfer to the full extent authorized by this chapter, the representation of TBD by the attorney general, and rules adopted under this chapter.

(d) Requires TBD, on receipt of notice of any transaction described by Subsection (a), to refer the notice to the attorney general for representation and requires the Texas attorney general (attorney general) to represent TBD in any action related to the notice.

SECTION 9. Amends Subchapter A, Chapter 2116, Government Code, by adding Sections 2116.027 and 2116.028, as follows:

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

(b) Provides that certain information is confidential and is exempt from disclosure under Chapter 552.

(c) Authorizes TBD account information, notwithstanding Subsection (b)(2) (relating to the confidentiality of certain records in the custody of certain entities), to be disclosed to certain entities or persons for certain purposes or to be disclosed under certain conditions.

Sec. 2116.028. INTELLECTUAL PROPERTY. (a) Authorizes TBD to apply for, register, secure, hold, and protect under the laws of the United States or any state or nation certain evidence of protection or exclusivity issued for intellectual property; contract with a person for certain distributions of TBD's intellectual property; obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the exercise of TBD's intellectual property rights; and waive or reduce the amount of compensation secured by contract under Subdivision (3) if TBD determines that the waiver or reduction will further a goal or mission of TBD and result in a net benefit to TBD.

(b) Provides that TBD's intellectual property is excepted from required disclosure under Chapter 552 beginning and ending on certain dates.

(c) Requires the comptroller to deposit revenue realized by TBD under this section to the credit of the fund.

(d) Authorizes money credited to the fund under this section to be appropriated to the comptroller to offset the costs of certain TBD activities.

(e) Authorizes the comptroller to establish intellectual property policies.

SECTION 10. Amends Section 2116.051, Government Code, to require TBD to use private, independently managed firms and institutions licensed as TBD agents as intermediaries to conduct retail transactions in bullion and specie on behalf of current and prospective TBD account holders, rather than on behalf of TBD with current and prospective TBD account holders.

SECTION 11. Amends Section 2116.052, Government Code, as follows:

Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND PROCESSES. Requires a TBD agent to maintain certain suitable systems and processes to ensure that all transactions effected on behalf of current and prospective TBD account holders are reported to and integrated into TBD's records not later than 11:59:59 p.m. on the date of each transaction. Deletes existing text requiring the comptroller, by rule, to require a TBD agent to maintain certain suitable systems and processes to ensure that all transactions effected on behalf of TBD are reported to and integrated into TBD's records not later than 11:59:59 p.m. on the date of each transaction

SECTION 12. Amends Section 151.002(b)(9-c), Finance Code, to redefine "depository agent services."

SECTION 13. Amends Section 151.858, Finance Code, to provide that a TBD agent license holder is liable for the applicable delivery to or for the TBD account of each current or prospective TBD account holder, rather than is liable for the applicable delivery to or for the account of TBD or each depositor, of certain items payable or deliverable in connection with the transactions in which the license holder engages on behalf of the current or prospective depositor who is entitled to TBD agent services, rather than on behalf of TBD.

SECTION 14. Repealers: Sections 2116.009(a) (relating to a cause of action for denial of deposit liability on a TBD account contract without a maturity date), (c) (relating to providing that TBD's sovereign immunity from suit is waived for a certain action), (d) (relating to the limitation of TBD's liability for a denial of deposit liability and the prohibition of depositors from recovering certain money), (e) (relating to requiring certain suits to be brought in a Travis County district court), and (f) (relating to requiring certain suits to be brought before the expiration of one year after a certain date), Government Code.

SECTION 15. Provides that, if the comptroller has not appointed the administrator required by Section 2116.002, as amended by this Act, on or before September 1, 2017, all rights, duties, powers, obligations, and other requirements by this Act and Chapter 1000 (H.B. 483), General Laws, Acts of the 84th Legislature, Regular Session, 2015, are transferred to the General Land Office.

SECTION 16. Effective date: upon passage or September 1, 2017.