

By: Senator(s) Chism

To: Business and Financial
Institutions; Government
Structure

SENATE BILL NO. 2785

1 AN ACT TO ESTABLISH THE MISSISSIPPI BULLION DEPOSITORY IN THE
2 OFFICE OF THE STATE TREASURER; TO PROVIDE FOR THE APPOINTMENT AND
3 DUTIES OF THE ADMINISTRATOR AND DEPUTY ADMINISTRATOR; TO PROVIDE
4 THAT DEPOSITS MAY NOT BE CONSIDERED PART OF THE STATE GENERAL FUND
5 OR CERTIFIED AS AVAILABLE FOR APPROPRIATION; TO PROVIDE FOR THE
6 DEPOSIT OF CERTAIN MONIES TO THE STATE GENERAL FUND; TO PROVIDE
7 FOR THE RECEIPT OF DEPOSITS; TO SPECIFY PROCEDURES; TO SPECIFY
8 CERTAIN DUTIES OF THE STATE TREASURER; TO REQUIRE THE PROMULGATION
9 OF RULES; TO ESTABLISH STANDARDS FOR TESTING AND AUTHENTICITY; TO
10 PROVIDE FOR THE DELIVERY AND SHIPPING OF DEPOSITS HELD BY OR ON
11 BEHALF OF THE DEPOSITORY; TO PROVIDE FOR THE ISSUANCE OF A DEBIT
12 CARD TO THE DEPOSITORY ACCOUNT HOLDER; TO PROVIDE PROCEDURES FOR
13 THE TRANSFER OF ACCOUNTS; TO PROVIDE FOR ACCOUNTING OF DEPOSITORY
14 ACCOUNT BALANCES; TO SPECIFY PROCEDURES FOR THE ESTABLISHMENT OF
15 DEPOSITORY ACCOUNTS; TO REQUIRE CONTRACTS AND SPECIFY TERMS; TO
16 PROVIDE FOR CONTRACT AMENDMENTS; TO SPECIFY WHEN A CAUSE OF ACTION
17 FOR DENIAL OF DEPOSIT LIABILITY MAY ACCRUE; TO AUTHORIZE THE STATE
18 TREASURER TO ESTABLISH FEES AND PENALTIES; TO PROVIDE FOR PLEDGES
19 AND TRANSFERS OF DEPOSITORY ACCOUNTS; TO PROHIBIT CERTAIN
20 PAYMENTS; TO PROVIDE FOR LIENS ON DEPOSITORY ACCOUNTS AND PAYMENTS
21 OF CERTAIN OBLIGATIONS; TO PROVIDE FOR INVESTMENTS BY CERTAIN
22 PERSONS AND ENTITIES; TO PROVIDE FOR CREDIT AGAINST CERTAIN TAX;
23 TO PROVIDE FOR GOVERNANCE OF CERTAIN LAWS; TO ALLOW THE PLEDGE OR
24 TRANSFER OF JOINTLY HELD ACCOUNTS; TO PROVIDE THAT OWNERSHIP NOT
25 BE SEVERED THEREBY; TO ALLOW THE DEPOSITORY OR DEPOSITORY AGENT TO
26 ACCEPT ACCOUNTS IN THE NAME OF A FIDUCIARY; TO PROVIDE PROCEDURES
27 IN CASES OF PERSONS CLAIMING TO BE TRUSTEES; TO PROVIDE THAT THE
28 DEPOSITORY NOT HAVE FURTHER LIABILITY; TO REQUIRE THE DEPOSITORY
29 TO RECOGNIZE CERTAIN AUTHORITY UPON NOTICE; TO REQUIRE THE
30 DEPOSITORY TO ENTER INTO CERTAIN TRANSACTIONS AND RELATIONSHIPS;
31 TO PROHIBIT CERTAIN ACTS; TO VOID CERTAIN ACTIONS TO CONTROL
32 ACCOUNTS; TO PROVIDE PROCEDURES FOR THE DEPOSITORY IN SUCH
33 INSTANCES; TO REQUIRE THE STATE TREASURER TO ESTABLISH EXCHANGE
34 RATE REFERENCES AND ACCOUNTING AND REPORTING REQUIREMENTS; TO



35 REQUIRE AN ANNUAL REPORT; TO PROVIDE PROCEDURES TO CONDUCT RETAIL
36 TRANSACTIONS; TO PROVIDE FOR THE LICENSING AND APPOINTMENT OF
37 DEPOSITORY AGENTS; TO SPECIFY REQUIREMENTS APPLICABLE TO
38 DEPOSITORY AGENTS; TO PROVIDE FOR DEPOSITORY AGENT SERVICES; TO
39 PROHIBIT CERTAIN ACTS BY UNLICENSED PERSONS; TO PROHIBIT LICENSURE
40 OF CERTAIN PERSONS; TO SPECIFY THE CIRCUMSTANCES UNDER WHICH A
41 PERSON MAY ENGAGE IN THE BUSINESS OF DEPOSITORY AGENT SERVICES; TO
42 PROVIDE FOR APPLICATION FOR A DEPOSITORY AGENT LICENSE; TO REQUIRE
43 CERTAIN SECURITY; TO ALLOW TEMPORARY LICENSURE; TO SPECIFY THE
44 LIABILITY, DUTIES AND PROHIBITED ACTS OF A DEPOSITORY AGENT
45 LICENSE HOLDER; TO PROVIDE FOR THE REVOCATION OF LICENSES; TO
46 PROHIBIT THE CONSIDERATION OF DEPOSITS AS ASSETS IN CERTAIN
47 PROCEEDINGS; TO REQUIRE THE FURNISHING OF CERTAIN INFORMATION IN
48 CONNECTION WITH TRANSACTIONS; AND FOR RELATED PURPOSES.

49 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

50 **SECTION 1.** As used in this act, the following terms have the
51 meanings ascribed below, unless a contrary meaning is clearly
52 indicated:

53 (a) "Administrator" means the bullion depository
54 administrator appointed pursuant to Section 2 of this act.

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

60 (c) "Business day" means a day other than a Saturday,
61 Sunday, or banking holiday for a bank chartered pursuant to the
62 laws of this state.

63 (d) "Deposit" means the establishment of an executory
64 obligation of the depository to deliver to the order of the person
65 establishing with the depository the obligation, on demand, a
66 quantity of a specified precious metal, in bullion, specie or a



67 combination of bullion and specie, equal to the quantity of the
68 same precious metal delivered by or on behalf of the depositor
69 into the custody of the depository or a depository agent.

70 (e) "Depositor" means a person who makes a deposit.

71 (f) "Depository" means the Mississippi Bullion
72 Depository created by this act.

73 (g) "Depository account" means the rights, interests
74 and entitlements established in favor of a depositor with respect
75 to a deposit in accordance with this act and rules promulgated
76 pursuant to this act.

77 (h) "Depository account holder," regarding a depository
78 account, means the original depositor or a successor or assignee
79 of the depositor respecting the depository account.

80 (i) "Depository agent" means a person licensed in
81 accordance with this act to serve as an intermediary between the
82 depository and a retail customer in making a transaction in
83 precious metals bullion or specie.

84 (j) "Depository agent services" means services rendered
85 to the public for or on behalf of the Mississippi Bullion
86 Depository in the nature of purchasing, selling, transferring,
87 accepting, transporting, delivering or otherwise dealing in
88 precious metals bullion or specie in connection with the creation,
89 transfer, clearing, settlement or liquidation of the rights and
90 interests of a depository account holder and a direct or indirect



91 transferee of a depository account holder. The term "depository
92 agent services" does not include:

93 (i) Participation as a party or counterparty to a
94 transaction including an agreement with respect to a transaction,
95 in or in connection with a contract for the purchase or sale of a
96 person's rights and interests as a depository account holder, as a
97 cash contract for present delivery, a cash contract for deferred
98 shipment or delivery, or a contract for future delivery, where the
99 underlying deliverable consists of the depository account holder's
100 interest in the depository account, rather than the underlying
101 precious metal represented by the depository account balance;

102 (ii) The opening, transfer, settlement or
103 liquidation of any derivative of a contract described by
104 subparagraph (i) of this paragraph including a forward
105 transaction, swap transaction, currency transaction, future
106 transaction, index transaction, or option on or other derivatives
107 of a transaction of any of those types, in the nature of a cap
108 transaction, floor transaction, collar transaction, repurchase
109 transaction, reverse repurchase transaction, buy-and-sell-back
110 transaction, securities lending transaction or other financial
111 instrument or interest including an option with respect to a
112 transaction, or any combination of these transactions; or

113 (iii) The rendition of services exclusively in
114 support of the opening, transfer, settlement or liquidation of
115 transaction derivatives described by subparagraph (ii) of this



116 paragraph through a central counterparty, such as those
117 customarily rendered by a clearinghouse, clearing association or
118 clearing corporation, or through an interbank payment system,
119 physical or electronic trading facility, broker or brokerage firm
120 or similar entity, facility, system or organization.

121 (k) "Precious metal" means a metal including gold or
122 silver that bears a high value-to-weight ratio relative to common
123 industrial metals and customarily is formed into bullion or
124 specie.

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

130 (m) "Legal tender" means a specie legal tender, and
131 electronic currency whose entire and exclusive value is correlated
132 against the market value of gold or silver.

133 (i) Precious metal, bullion, or species may not be
134 characterized as personal property for taxation or regulatory
135 purposes, and the purchase or sale of any type or form of precious
136 metal, bullion or specie does not give rise to any tax liability.

137 (ii) The exchange of one (l) type or form of
138 precious metal, bullion or specie for another type or form of
139 legal tender does not give rise to any tax liability.



140 (iii) Unless specifically provided by the State
141 Constitution or general law or by contract, a person may not
142 compel another person to tender or accept precious metal, bullion,
143 or specie as legal tender.

144 (iv) Specie legal tender may be recognized to pay
145 private debts, taxes, and fees levied by the state or local
146 government or any subdivision thereof.

147 **SECTION 2.** (1) The Mississippi Bullion Depository shall be
148 established as a division in the Office of the State Treasurer.

149 (2) The depository shall be established to serve as the
150 custodian, guardian and administrator of certain bullion and
151 specie that may be transferred to or otherwise acquired by this
152 state or an agency, a political subdivision or another
153 instrumentality of this state.

154 (3) The depository shall be under the direction and
155 supervision of a bullion depository administrator jointly
156 appointed by the Governor and the State Treasurer with the advice
157 and consent of the Senate.

158 (4) The administrator shall:

159 (a) Administer, supervise and direct the operations and
160 affairs of the depository and depository agents; and

161 (b) Liaise with the State Treasurer and other divisions
162 of the Office of the State Treasurer to ensure that each
163 transaction with the depository that involves state money, an
164 agency, a political subdivision or another instrumentality of this



165 state, or a private person is planned, administered and executed
166 in a manner to achieve the purposes of this act.

167 (5) The administrator may appoint, subject to the approval
168 of the State Treasurer, a deputy administrator or other
169 subordinate officer as necessary and appropriate to execute the
170 efficient administration of the depository.

171 **SECTION 3.** No deposits made to the depository shall be
172 considered part of the State General Fund or shall be certified by
173 the State Board of Equalization as available for appropriation;
174 provided, revenue the depository realizes from fees, charges, or
175 other payments received in the course of depository operations
176 shall be deposited to the credit of the State General Fund.

177 **SECTION 4.** (1) The depository may receive a deposit of
178 bullion or specie from or on behalf of a person acting in the
179 person's own right, as trustee or in another fiduciary capacity,
180 in accordance with rules promulgated by the State Treasurer as
181 appropriate to:

- 182 (a) Ensure compliance with law; and
183 (b) Protect the interests of:
184 (i) The depository;
185 (ii) Depository account holders;
186 (iii) This state and its agencies, political
187 subdivisions and instrumentalities; and
188 (iv) The public at large.



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

193 (3) The State Treasurer shall promulgate rules to adopt
194 standards by which the quantities of precious metals deposited are
195 credited to a depositor's depository account by reference to the
196 particular form in which the metals were deposited, classified by
197 mint, denomination, weight, assay mark or other indicator as
198 applicable. The standards must conform to applicable national and
199 international standards of weights and measures.

200 (4) The State Treasurer may, if the State Treasurer
201 determines that to do so is in the public interest, promulgate
202 rules to restrict the forms in which deposits of precious metals
203 may be made to those forms that conveniently lend themselves to
204 measurement and accounting in units of troy ounces and
205 standardized fractions of troy ounces.

206 (5) The State Treasurer shall promulgate rules developing
207 standards and establishing fees for testing and authenticity of
208 deposits.

209 (6) The depository shall adjust each depository account
210 balance to reflect additions to or withdrawals or deliveries from
211 the account.

212 **SECTION 5.** (1) The depository shall deliver any precious
213 metal held by or on behalf of the depository in bullion, specie or



214 a combination of bullion and specie, on the order of a depository
215 account holder in a quantity of that precious metal as is
216 available in the depository account holder's depository account.

217 (2) The depository shall make a delivery as required by
218 subsection (1) of this section on demand by the presentment of a
219 suitable check, draft or digital electronic instruction to the
220 depository or a depository agent. The State Treasurer shall
221 promulgate rules to adopt the forms, standards and processes
222 through which an order for delivery on demand may be made,
223 presented, and honored.

224 (3) The depository shall make a delivery at the depository's
225 settlement facility designated by the State Treasurer, shipping to
226 an address specified by the account holder or, at the depository's
227 discretion, at a facility of a depository agent at which
228 presentment is made, not later than five (5) business days after
229 the date of presentment.

230 (4) The depository shall make available a debit card, issued
231 upon a request by the depository account holder, in which the
232 depository account holder may make transactions which are debited
233 from the balance of the holder's account. The balance available
234 to the depository account holder through the use of the debit card
235 shall be equal to eighty percent (80%) of the current spot price
236 of the deposits of the depository account holder. The State
237 Treasurer shall promulgate rules to implement the provisions of



238 this subsection, including the establishment of fees and
239 procedures for the issuance of the debit card.

240 (5) In accordance with rules promulgated pursuant to this
241 act, a depository account holder may transfer any portion of the
242 balance of the holder's depository account by check, draft or
243 digital electronic instruction to another depository account
244 holder or to a person who at the time the transfer is initiated is
245 not a depository account holder.

246 (6) The depository shall adjust the depository account
247 balances of the depository accounts to reflect a transfer
248 transaction between depository account holders on presentment of
249 the check, draft or other instruction by reducing the payor's
250 depository account balance and increasing the depository account
251 balance of the payee accordingly.

252 (7) If a depository account holder transfers to a payee who
253 is not a depository account holder any portion of the balance of
254 the holder's depository account, the depository shall allow the
255 payee to establish a depository account by presentment of the
256 payor's check, draft or instruction to the depository or to a
257 depository agent. The depository shall credit a newly established
258 account on behalf of the payee and shall debit the payor's account
259 accordingly.

260 **SECTION 6.** (1) To establish a depository account, a
261 depositor shall contract with the depository for a depository



262 account. The contract shall include, but not be limited to, with
263 specificity:

264 (a) The terms applicable to the account including any
265 special terms;

266 (b) The conditions in which amendments may be made to
267 the contract; and

268 (c) The conditions in which withdrawals or deliveries
269 with respect to the account may be made.

270 (2) The execution of a contract for a depository account
271 described by this section may be made, as prescribed by rules
272 promulgated pursuant to this act, by electronic or digital
273 transmission and signature.

274 (3) The depository or a depository agent shall hold the
275 contract for a depository account in the records pertaining to the
276 account.

277 (4) A contract for a depository account executed by a
278 depositor and the depository is considered a contract in writing
279 for all purposes and may be evidenced by one or more agreements,
280 deposit receipts, signature cards, amendment notices or other
281 executed documents as provided by law.

282 (5) The depository and the depository account holder may
283 amend a contract for a depository account by agreement, or the
284 depository may amend the deposit contract by mailing a written
285 notice of the amendment to the account holder, separately or as an
286 enclosure with or part of the account holder's statement of



287 account or passbook. In the case of amendment by notice from the
288 depository, the notice shall include the language of the amendment
289 and the date the amendment is in effect. The date the amendment
290 is in effect shall not be earlier than the thirtieth day after the
291 date the notice is postmarked, unless otherwise provided by rules
292 promulgated pursuant to this act.

293 **SECTION 7.** (1) A cause of action for denial of deposit
294 liability on a depository account contract without a maturity date
295 does not accrue until the depository has denied liability and
296 given notice of the denial to the depository account holder.

297 (2) The depository's act of furnishing an account statement
298 or passbook, whether in physical, digital or electronic form,
299 constitutes a denial of liability and the giving of such notice as
300 to any amount not shown on the statement or passbook.

301 **SECTION 8.** The State Treasurer may promulgate rules to
302 establish fees, service charges and penalties to be charged to a
303 depository account holder for a service or activity regarding a
304 depository account including a fee for an overdraft, an
305 insufficient fund check or draft or a stop payment order.

306 **SECTION 9.** (1) Unless the depository acknowledges in
307 writing a pledge of a depository account, the depository may treat
308 the holder of record of the account as the owner of the account
309 for all purposes and without regard to a notice to the contrary.

310 (2) A depository account may be transferred on the books of
311 the depository only on presentation to the depository of:



312 (a) Evidence of transfer satisfactory to the
313 depository; and

314 (b) An application for the transfer submitted by the
315 person to whom the depository account is to be transferred.

316 (3) A person to whom a depository account is to be
317 transferred shall accept the transferred account subject to the
318 terms of the deposit contract, this act and rules promulgated
319 pursuant to this act.

320 **SECTION 10.** (1) The depository shall not pay on a
321 depository account:

322 (a) Interest;

323 (b) An amount in the nature of interest; or

324 (c) A fee or other payment for the use or forbearance
325 of use of money, bullion, specie or precious metals deposited to a
326 depository account.

327 (2) Without the need for any further agreement or pledge,
328 the depository shall have a lien on each depository account owned
329 by a depository account holder to secure any fees, charges or
330 other obligations owed or that may become owed to the depository
331 in connection with any of the depository account holder's
332 depository accounts as provided by the terms of the depository
333 account holder's applicable depository account contract.

334 (3) On default in the payment or in the satisfaction of a
335 depository account holder's obligation, the depository, without
336 notice to or consent of the depository account holder, may



337 transfer on the depository's record all or part of the balance of
338 a depository account holder's depository account to the extent
339 necessary to pay or satisfy the obligation, as determined by
340 reference to the exchange rates applicable at the time of the
341 transfer.

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

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

355 **SECTION 11.** (1) The following persons may invest the
356 person's money in a depository account by purchasing precious
357 metals and depositing the precious metals with the depository or a
358 depository agent:

359 (a) A fiduciary including an administrator, executor,
360 custodian, guardian or trustee;



361 (b) A political subdivision of this state or an
362 instrumentality of this state;

363 (c) A business or nonprofit corporation;

364 (d) A charitable or educational corporation or
365 association; or

366 (e) A financial institution including a bank, savings
367 and loan association or credit union.

368 (2) An investment by an insurance company in a depository
369 account is eligible to be applied as a credit against taxes
370 payable, in accordance with rules that shall be promulgated by the
371 State Treasurer after consultation with the Insurance
372 Commissioner.

373 (3) An investment by a school district in a depository
374 account may be made instead of an investment, and the depository
375 may be used by a district instead of a depository bank.

376 (4) The applicable provisions of Title 27, Chapter 105,
377 Mississippi Code of 1972, governing a depository account shall
378 apply.

379 **SECTION 12.** (1) Unless a term of the depository account
380 provides otherwise, a person on whose signature precious metals
381 may be withdrawn from a depository account that is jointly held in
382 the names of two (2) or more persons may, by a signed pledge,
383 transfer to the depository or to a third party all or part of the
384 account.



385 (2) A pledge made as described by subsection (1) of this
386 section does not sever or terminate the joint tenants with rights
387 of survivorship of the account, to the extent applicable to the
388 account before the pledge.

389 (3) The depository or a depository agent may accept a
390 depository account in the name of a fiduciary including an
391 administrator, executor, custodian, guardian or trustee, for a
392 named beneficiary.

393 (4) A fiduciary may open, add to or withdraw precious metals
394 from an account described by subsection (3) of this section.

395 (5) Except as otherwise provided by law, a payment or
396 delivery to a fiduciary or an acquaintance signed by the fiduciary
397 to whom a payment or delivery is made is a discharge of the
398 depository for the payment or delivery.

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

406 (a) A revocation or termination of the fiduciary
407 relationship; or

408 (b) Any other disposition of the beneficial estate.



409 (7) The depository has no further liability for a payment
410 made or right delivered pursuant to subsection (6) of this
411 section.

412 (8) If the depository opens a depository account for a
413 person claiming to be the trustee for another person and the
414 depository has no other notice of the existence or terms of the
415 trust other than a written claim against the account:

416 (a) The person claiming to be the trustee, on the
417 person's signature, may withdraw precious metals from the account;
418 and

419 (b) If the person claiming to be the trustee dies, the
420 depository may pay or deliver the quantity of precious metals
421 represented by the balance in the account to the person for whom
422 the account was opened.

423 (9) The depository has no further liability for a payment or
424 delivery made as provided by subsection (8) of this section.

425 **SECTION 13.** (1) The depository shall recognize the
426 authority of an attorney-in-fact authorized in writing by a
427 depository account holder to manage or withdraw precious metals
428 from the holder's depository account until the depository receives
429 written or actual notice of the revocation of that authority.

430 (2) For purposes of this section, written notice of the
431 death or adjudication of incompetency of a depository account
432 holder shall be considered written notice of revocation of the
433 authority of the account holder's attorney-in-fact.



434 **SECTION 14.** (1) The depository shall enter into
435 transactions and relationships with bullion banks, depositories,
436 dealers, central banks, sovereign wealth funds, financial
437 institutions, international nongovernmental organizations or other
438 persons, located inside or outside of this state or inside or
439 outside of the United States, as the State Treasurer determines to
440 be prudent and suitable to facilitate the operations of the
441 depository and to further the purposes of this act.

442 (2) The depository shall not take any of the following
443 actions, and any attempt by the depository to take any of the
444 following actions is void ab initio and of no force or effect:

445 (a) Entering into a precious metals leasing,
446 sale-leaseback, forward transaction, swap transaction, future
447 transaction, index transaction or option on or other derivative of
448 any of those, whether in the nature of a cap transaction, floor
449 transaction, collar transaction, repurchase transaction, reverse
450 repurchase transaction, buy-and-sell-back transaction, securities
451 lending transaction or other financial instrument or interest
452 intended to or having the effect of hedging or leveraging the
453 depository's holdings of precious metals including any option with
454 respect to any of these transactions, or any combination of these
455 transactions, except that the limitation provided by this
456 paragraph does not apply to a transaction entered into to limit
457 the depository's exposure to post-signature price risks associated
458 with executory agreements to purchase or sell precious metals in



459 the ordinary course of depository operations and does not apply to
460 policies of insurance purchased to insure against ordinary
461 casualty risks such as theft, damage or destruction, loss during
462 shipment or similar risks;

463 (b) Accrediting the depository account balances of a
464 depository account holder, or disposing of any precious metals, if
465 to do so would cause the aggregate depository account balances
466 with respect to any precious metal represented by all depository
467 accounts to exceed the aggregate quantities of such precious metal
468 held by or for the benefit of the depository and the depository's
469 depository agents;

470 (c) Entering into or maintaining a deposit, trust or
471 similar relationship for the custody of precious metals by a third
472 party outside this state, directly or indirectly, for the account
473 or benefit of the depository if the State Treasurer by rule
474 establishes that:

475 (i) The custody or intermediary arrangements in
476 question do not meet the State Treasurer's standards of safety,
477 security and liquidity; or

478 (ii) Except in those cases where such relationship
479 may be incidental to the performance of or preparation for
480 purchase and sale transactions with counterparties located outside
481 of this state, suitable alternate arrangements for physical
482 custody of the precious metals inside this state have been
483 established and are available;



484 (d) Extending credit to a person including credit
485 secured by a depository account or other assets, except an
486 extension of credit incidental to the performance of the functions
487 and responsibilities otherwise provided by this act; or

488 (e) Engaging in a business or activity that, if
489 conducted by a private person, would be subject to regulation in
490 this state as a banking or savings and loan function.

491 **SECTION 15.** (1) A purported confiscation, requisition,
492 seizure or other attempt to control the ownership, disposition or
493 proceeds of a withdrawal, transfer, liquidation or settlement of a
494 depository account including the precious metals represented by
495 the balance of a depository account, if effected by a governmental
496 or quasi-governmental authority other than an authority of this
497 state or by a financial institution or other person acting on
498 behalf of or pursuant to a directive or authorization issued by a
499 governmental or quasi-governmental authority other than an
500 authority of this state, in the course of a generalized
501 declaration of illegality or emergency relating to the ownership,
502 possession or disposition of one or more precious metals,
503 contracts or other rights to the precious metals or contracts or
504 derivatives of the ownership, possession, disposition, contract or
505 other rights, is void ab initio and of no force or effect.

506 (2) The depository in the case of receiving notice of a
507 purported confiscation, requisition, seizure or other attempt to
508 control the ownership, disposition or proceeds of a withdrawal,



509 transfer, liquidation or settlement of a depository account
510 including the precious metals represented by the balance of a
511 depository account, effected by a governmental or
512 quasi-governmental authority other than an authority of this state
513 or by a financial institution or other person acting on behalf of
514 or pursuant to a directive or authorization issued by a
515 governmental or quasi-governmental authority other than an
516 authority of this state, in the course of a generalized
517 declaration of illegality or emergency relating to the ownership,
518 possession or disposition of one or more precious metals,
519 contracts or other rights to the precious metals or contracts or
520 derivatives of the ownership, possession, disposition, contracts
521 or other rights, may not recognize the governmental or
522 quasi-governmental authority, financial institution or other
523 person acting as the lawful successor of the registered holder of
524 a depository account in question.

525 (3) On receipt of notice of any transaction described by
526 subsection (1) of this section, with respect to all or any portion
527 of the balance of a depository account, the depository shall
528 suspend withdrawal privileges associated with the balances of the
529 depository account until suitable substitute arrangements may be
530 effected in accordance with rules of the State Treasurer to enable
531 the registered account holder to take delivery of the precious
532 metals represented by the account balances in question. A
533 voluntary transfer of a depository account balance or of a



534 depository account among depository account holders may continue
535 to take place unaffected by the suspension, and the depository
536 shall recognize to the full extent authorized by this act and
537 rules promulgated pursuant to this act.

538 **SECTION 16.** (1) The State Treasurer shall promulgate rules
539 to establish the references by which the official exchange rate
540 for pricing precious metals transactions in terms of United States
541 dollars or other currency must be established at the time of a
542 depository transaction. The State Treasurer shall establish
543 procedures and facilities through which the rates are made
544 discoverable at all reasonable times by system participants, both
545 on a real-time basis and retrospectively.

546 (2) The State Treasurer by rule shall establish procedures
547 and requirements for the depository and depository agents designed
548 to minimize the burden to system participants of accounting for
549 and reporting taxable gains and losses arising out of depository
550 transactions as denominated in United States dollars or another
551 currency.

552 (3) The State Treasurer shall promulgate rules to require a
553 depository agent to maintain suitable systems and processes for
554 electronic information sharing and communication with the State
555 Treasurer and the depository to ensure that all transactions
556 effected on behalf of the depository are reported to and
557 integrated into the depository's records not later than 11:59:59
558 p.m. Central Standard Time on the date of each transaction.



559 (4) The State Treasurer shall submit to the Governor, the
560 Lieutenant Governor and the Speaker of the House of
561 Representatives a report on the status, condition, operations and
562 prospects for the depository and depository participation not
563 later than September 30 of each year.

564 **SECTION 17.** The depository shall use private, independently
565 managed firms and institutions licensed as depository agents as
566 intermediaries to conduct retail transactions in bullion and
567 specie on behalf of the depository with current and prospective
568 depository account holders. A depository agent licensed by the
569 depository pursuant to this section must have a minimum of five
570 (5) years of depository operational experience or ownership
571 including three (3) years of direct retail transaction experience
572 with public and private entities or individuals. The State
573 Treasurer may promulgate rules to issue a depository agent license
574 and to impose additional requirements as to capitalization, net
575 worth, liquidity or other financial prerequisites to qualify as a
576 licensed depository agent to conduct transactions or take other
577 action on behalf of the depository.

578 **SECTION 18.** (1) A depository agent shall submit monthly,
579 quarterly and annual reports of all depository transactions not
580 later than the fifteenth day of the month following the expiration
581 of the period with respect to which such report is submitted. The
582 report must contain information and be in a form and format as
583 required by the State Treasurer.



584 (2) A depository agent license holder shall prepare written
585 reports and statements as follows:

586 (a) An audited unconsolidated financial statement that
587 is dated as of the last day of the license holder's fiscal year
588 that ended in the immediately preceding calendar year;

589 (b) A quarterly interim financial statement and report
590 regarding the permissible investments required to be maintained
591 pursuant to applicable rules that reflect the license holder's
592 financial condition and permissible investments as of the last day
593 of the calendar quarter to which the statement and report relate
594 and that are prepared not later than the forty-fifth day after the
595 last day of the calendar quarter; and

596 (c) Any other report required by the State Treasurer or
597 reasonably requested by the State Treasurer to determine
598 compliance with this act.

599 **SECTION 19.** (1) Notwithstanding any other provision of this
600 act, a money service that constitutes both a depository agent
601 service and a money transmission service or both a depository
602 agent service and a currency exchange service, for purposes of
603 this act constitute a depository agent service only.

604 (2) A depository agent service described by subsection (1)
605 of this section is not subject to a provision of this act
606 applicable uniquely to money transmission services or currency
607 exchange services.



608 (3) A person who renders a service that constitutes a
609 depository agent service including a depository agent service
610 described by subsection (1) of this section and renders another
611 service that constitutes money transmission or currency exchange
612 service only, is subject to the requirements of this act
613 applicable to each type of service rendered.

614 (4) A person may not engage in the business of rendering
615 depository agent services or advertise, solicit or hold the person
616 out as a person that engages in the business of depository agent
617 services unless the person:

618 (a) Is licensed pursuant to this act and has received
619 the requisite certifications from the State Treasurer of its
620 facilities, systems, processes and procedures as required by this
621 act or rules promulgated pursuant to this act; or

622 (b) Is exempted from licensing requirements as provided
623 by law.

624 (5) Notwithstanding any other provision of this act, the
625 following persons and entities shall not be eligible for a
626 depository agent license issued pursuant to this act:

627 (a) The United States or an instrumentality of the
628 United States including the United States Post Office or a
629 contractor acting on behalf of the United States Post Office;

630 (b) A person that, on behalf of the United States or a
631 department, agency or instrumentality of the United States, or a
632 state or county, city or any other governmental agency or



633 political subdivision of a state, provides electronic funds
634 transfer services of governmental benefits for a federal, state,
635 county or local governmental agency;

636 (c) A person that acts as an intermediary on behalf of
637 and at the direction of a license holder in the process by which
638 the license holder, after receiving money or monetary value from a
639 purchaser, either directly or through an authorized delegate,
640 transmits the money or monetary value to the purchaser's
641 designated recipient, provided that the license holder is liable
642 for satisfying the obligation owed to the purchaser;

643 (d) An attorney or title company that in connection
644 with a real property transaction receives and disburses domestic
645 currency or issues an escrow or trust fund check only on behalf of
646 a party to the transaction; or

647 (e) A person engaged in the business of currency
648 transportation who is both a registered motor carrier and a
649 licensed armored car company or courier company, provided that the
650 person does not engage in the money transmission or currency
651 exchange business without a license issued pursuant to this act.

652 (6) For purposes of this act:

653 (a) A person engages in the business of depository
654 agent services if the person renders a depository agent service,
655 regardless of whether:

656 (i) Compensation is sought or received for the
657 service, directly or indirectly; and



658 (ii) The service is incidental to any other
659 business in which the person is primarily engaged; and

660 (b) A person solicits, advertises or holds the person
661 out as a person who engages in the business of depository agent
662 services if the person represents that the person will conduct
663 depository agent services.

664 (7) Notwithstanding the provisions of subsection (6) of this
665 section, a person does not engage in the business of depository
666 agent services by engaging in a transaction for the person's own
667 depository account or for the account of another person acting as
668 a fiduciary that would constitute depository agent services if
669 conducted for another person.

670 (8) A depository agent license holder may engage in
671 depository agent services at one or more locations in this
672 state-owned directly or indirectly by the license holder under a
673 single license.

674 **SECTION 20.** (1) In addition to the general qualifications
675 for licensure set forth in Section 19 of this act, an applicant
676 for a depository agent license must demonstrate to the
677 satisfaction of the State Treasurer that:

678 (a) The applicant has and will maintain the
679 capitalization, minimum net worth and other applicable financial
680 requirements established by rules of the State Treasurer;



681 (b) The applicant's financial condition will enable the
682 applicant to engage in the business of depository agent services
683 safely and soundly; and

684 (c) The applicant does not engage in any activity or
685 practice that adversely affects the applicant's safety and
686 soundness.

687 (2) An applicant for a depository agent license shall submit
688 an application to the State Treasurer.

689 (3) At the time an application for a depository agent
690 license is submitted, an applicant must file with the State
691 Treasurer:

692 (a) An application fee established by the State
693 Treasurer;

694 (b) Audited financial statements that are satisfactory
695 to the State Treasurer for purposes of determining whether the
696 applicant has the minimum net worth required pursuant to rules and
697 is likely to maintain the required minimum net worth if a license
698 is issued; and

699 (c) Security in the amount of Five Hundred Thousand
700 Dollars (\$500,000.00) that meets the requirements of rules and an
701 undertaking or agreement that the applicant will increase or
702 supplement the security to equal the aggregate security required
703 by the State Treasurer before the issuance of the license and the
704 start of operations.



705 (4) The State Treasurer shall investigate the applicant,
706 which shall include conducting a background check with the
707 Mississippi Bureau of Investigation, and approve or deny the
708 application.

709 (5) The State Treasurer may issue a temporary depository
710 agent license to a person that is engaging in depository agent
711 services, but has not obtained a license pursuant to this act, if
712 the person:

713 (a) Certifies in writing that the person qualifies for
714 the license and will submit a completed license application not
715 later than the sixtieth day after the date the temporary license
716 is issued;

717 (b) Submits a recent financial statement acceptable to
718 the State Treasurer that reflects the minimum net worth required
719 pursuant to rules;

720 (c) Provides security that meets the requirements
721 specified by the State Treasurer, but not less than Five Hundred
722 Thousand Dollars (\$500,000.00);

723 (d) Agrees in writing that, until a permanent license
724 is issued, the person will engage only in activities being
725 conducted at existing locations; and

726 (e) Pays the application fee and a nonrefundable
727 temporary license fee in the amount established by rules
728 promulgated by the State Treasurer.



729 (6) The effective period for a temporary depository agent
730 license may not exceed ninety (90) days after the date the license
731 is issued. The State Treasurer may extend the effective period
732 for not more than thirty (30) days, if necessary, to complete the
733 processing of a timely filed application for which approval is
734 likely.

735 **SECTION 21.** (1) A depository agent license holder is liable
736 for the delivery to or for the account of the depository or each
737 depositor, as applicable, of all bullion, specie and money payable
738 or deliverable in connection with the transactions in which the
739 license holder engages on behalf of the depository.

740 (2) A depository agent license holder shall hold in trust
741 all cash, bullion, specie and other assets received in the
742 ordinary course of its business until the time the delivery
743 obligation is discharged. A trust resulting from the depository
744 agent license holder's actions is in favor of the persons to whom
745 such delivery obligations are owed.

746 (3) If a depository agent license holder commingles any
747 money or other property received for delivery with money or other
748 property owned or controlled by the depository agent license
749 holder, all commingled money and other property are impressed with
750 a trust as provided by this section in an amount equal to the
751 amount of money or property received for delivery, less the amount
752 of fees paid for the delivery.



753 (4) If the State Treasurer revokes a depository agent
754 license, all money and other property held in trust by the
755 depository agent license holder is assigned to the State Treasurer
756 for the benefit of the persons to whom the related delivery
757 obligations are owed.

758 (5) Money or other property of a depository agent license
759 holder impressed with a trust pursuant to this section may not be
760 considered an asset or property of the license holder in the event
761 of bankruptcy, receivership or a claim against the license holder
762 unrelated to the license holder's obligations pursuant to this
763 act.

764 **SECTION 22.** A depository agent license holder's name and
765 mailing address or telephone number must be provided to the
766 purchaser in connection with each depository agent services
767 transaction conducted by the depository agent license holder.

768 **SECTION 23.** If any one or more provisions, sections,
769 subsections, sentences, clauses, phrases or words of this act or
770 the application thereof to any person or circumstance is found to
771 be unconstitutional, the same is hereby declared to be severable,
772 and the balance of this act shall remain effective notwithstanding
773 such unconstitutionality. The Legislature hereby declares that it
774 would have passed this act, and each provision, section,
775 subsection, sentence, clause, phrase or word thereof, irrespective
776 of the fact that any one or more provisions, sections,



777 subsections, sentences, clauses, phrases or words be declared
778 unconstitutional.

779 **SECTION 24.** This act shall take effect and be in force from
780 and after July 1, 2024.

