HOUSE BILL NO. HB0124

Wyoming bullion depository.

Sponsored by: Representative(s) Miller, Blackburn, Clem, Halverson, Jaggi, Larsen, Laursen, Lindholm and Loucks

A BILL

for

AN ACT relating to the administration of the government; providing for the creation and administration of the Wyoming bullion depository as specified; providing for licensure of depository agents as specified; providing definitions; providing for fees; providing rulemaking authority; requiring a report; amending the duties of the state auditor; amending the Governmental Claims Act; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 9-21-101 through 9-21-127 and 9-21-201 through 9-21-210 are created to read:

CHAPTER 21

WYOMING BUILLION DEPOSITORY

ARTICLE 1

WYOMING BULLION DEPOSITORY OPERATIONS

9-21-101. Establishment.

(a) The Wyoming bullion depository is established as a division of the office of the state auditor.

(b) The depository is established to serve as the repository for and to safeguard and administer bullion and specie that may be transferred to or otherwise acquired by the state or an agency, political subdivision or another instrumentality of the state.

9-21-102. Definitions.

(a) As used in this chapter:

(i) "Administrator" means the bullion depository administrator appointed under W.S. 9-21-103;

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

(iii) "Business day" means a day other than a Saturday, Sunday or a legal holiday in this state as designated in W.S. 8-4-101;

(iv) "Deposit" means a quantity of a specified precious metal, in bullion, specie or a combination of bullion and specie, delivered by or on behalf of the depositor into the custody of the depository or a depository agent which creates an executory obligation of the depository to deliver to the order of the person establishing with the depository, on demand, an equal quantity of precious metal except as otherwise provided in this chapter;

(v) "Depositor" means a person who makes a deposit;

(vi) "Depository" means the Wyoming bullion depository created by this chapter;

(vii) "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;

(viii) "Depository account holder" means the original depositor or a successor or assignee of the depositor of a depository account;

(ix) "Depository agent" means a person licensed in accordance with this chapter to serve as an intermediary between the depository and a retail customer in making a transaction in precious metals, bullion or specie;

(x) "Division" means the Wyoming bullion depository division of the office of the state auditor;

(xi) "Precious metal" means a metal, including gold, silver, platinum, palladium and rhodium, that as determined by the administrator:

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

(B) Is customarily formed into bullion or specie.

(xii) "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.

9-21-103. Depository administration; administrator.

(a) The depository shall be administered as a division of the office of the state auditor, under the direction and supervision of a bullion depository administrator appointed by the state auditor with the advice and consent of the governor. The appointment shall be subject to senate confirmation in the manner provided in W.S. 28-12-101 and 28-12-102 for gubernatorial appointments.

(b) The administrator shall:

(i) Administer, supervise and direct the operations and affairs of the depository and depository agents; and

(ii) Coordinate with the state auditor and state agencies to ensure that each depository transaction that involves state property is planned, administered and executed in a manner to achieve the purposes of this chapter;

(iii) Adopt rules and regulations necessary to implement the provisions of this chapter.

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

9-21-104. Deposits not subject to legislative appropriation; allocation of revenues.

(a) The following shall not be available for legislative appropriation:

(i) A deposit to the depository;

(ii) Bullion or specie held by or on behalf of the depository or a depository agent;

(iii) Bullion or specie in transit to or from the depository or a depository agent;

(iv) 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 in subsection (a) of this section 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 in the general fund.

9-21-105. Deposits and depository accounts.

(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 administrator as appropriate to:

(i) Ensure compliance with law; and

(ii) Protect the interests of:

(A) The depository;

(B) Depository account holders;

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

(D) The public at large.

(b) The depository shall record the amount of precious metals a person deposits, regardless of form, in the appropriate units as determined by the administrator, and the records shall also specify the type and quantity of each precious metal deposited.

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

(d) Upon a determination that it is in the public interest, the administrator may by rule and regulation restrict the forms in which deposits of precious metals may be made to the depository to only those forms of deposits that conveniently lend themselves to measurement and accounting in units of troy ounces and standardized fractions of troy ounces.

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

9-21-106. 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) of this section on demand by the presentment of a suitable check, draft or electronic instruction to the depository or a depository agent. The administrator by rule shall adopt 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 described in subsection (a) of this section at the depository's settlement facility designated by the administrator, shipping to an address specified by the account holder or, at the discretion of the depository, at a facility of a depository agent at which presentment is made. A delivery shall be made not later than five (5) business days after the date of presentment.

9-21-107. 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 check, draft or digital electronic instruction to another depository account holder or to a person who at the time the transfer is initiated is not a depository account holder, as provided in subsection (c) of this section.

(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 check, draft or other transaction instrument by reducing the transferor's depository account balance and increasing the depository account balance of the transferee accordingly.

(c) If a depository account holder transfers to a person who is not a depository account holder any portion of the balance of the account holder's depository account, the depository shall allow the transferee to establish a depository account by presentment of the transferor's check, draft or instruction to the depository or to a depository agent. The depository shall credit a newly established account on behalf of the transferee and shall debit the transferor's account accordingly.

9-21-108. Depository account contracts.

(a) To establish a depository account, a depositor shall contract with the depository for a depository account. The contract shall specify:

(i) The terms applicable to the account, including any special terms; and

(ii) The conditions on which withdrawals or deliveries may be made to the account.

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

(c) 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 mailing a written notice of the amendment to the account holder, separately or as an enclosure with the account holder's statement of account or passbook. In the case of a contract amendment by notice from the depository, the notice shall include the text and effective date of the amendment. The effective date of the amendment shall not be earlier than thirty (30) days after the date the notice is mailed, unless otherwise provided by rules adopted under this chapter.

9-21-109. Cause of action for denial of deposit liability.

(a) If the depository has wrongly or erroneously denied liability for a deposit account and given notice of the denial to the depository account holder, the depository may be subject to a cause of action for denial of deposit liability as provided in this section.

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

(c) 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-judgment or post-judgment interest, costs or attorney's fees.

(d) A suit authorized by this section shall be brought in a district court of Laramie county.

(e) A suit authorized by this section shall be brought not later than one (1) year after the date the cause of action accrues.

9-21-110. Fees; service charges; penalties.

The administrator by rule may establish fees, service charges and penalties to be charged to 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.

9-21-111. Depository account ownership.

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.

9-21-112. Depository account transfer.

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

(i) Evidence of transfer satisfactory to the depository; and

(ii) 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 shall accept the transferred account subject to the terms of the deposit contract, this chapter and rules adopted under this chapter.

9-21-113. Depository accounts not interest-bearing.

(a) The depository shall not pay on a depository account:

(i) Interest;

(ii) An amount in the nature of interest; or

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

9-21-114. 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.

(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 enforceable pledge. 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 all or a portion of a depository account to the account of the secured party on the successful enforcement of the pledge.

9-21-115. Depository account as legal investment.

(a) The following persons and entities may invest money in a depository account by purchasing precious metals and depositing the precious metals with the depository or a depository agent:

(i) An individual or fiduciary, including an administrator, executor, custodian, guardian or trustee;

(ii) A political subdivision or instrumentality of the state;

(iii) A business or nonprofit corporation;

(iv) A charitable corporation or association; or

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

9-21-116. Applicability of estate code.

The applicable provisions of title 2 of the Wyoming statutes related to wills, decedent's estates and probate code shall govern a depository account.

9-21-117. 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 (2) 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) of this section does not sever or terminate the joint and survivorship ownership of the account, to the extent applicable to the account before the pledge.

9-21-118. 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 in subsection (a) of this section.

(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:

(i) A revocation or termination of the fiduciary relationship; or

(ii) Any other disposition of the beneficial estate.

(e) The depository has no further liability for a payment made or right delivered under subsection (d) of this section.

9-21-119. 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:

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

(ii) 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) of this section.

9-21-120. Power of attorney; revocation.

(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 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.

9-21-121. Transactions and relationships.

The depository shall 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 the state or inside or outside of the United States, as the administrator determines to be prudent and suitable to facilitate the operations of the depository and to further the purposes of this chapter.

9-21-122. Prohibited actions.

(a) The depository shall 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:

(i) 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 paragraph shall 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 shall 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;

(ii) 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;

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

(A) The custody or intermediary arrangements in question do not meet the administrator'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 the state, suitable alternate arrangements for physical custody of the precious metals inside this state have been established and are available.

(iv) 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;

(v) 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.

9-21-123. Confiscations, requisitions, seizures and other actions void.

(a) Except by a valid court order pursuant to law, 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 the 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 the state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession or disposition of one (1) 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 the 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 the state, in the course of a generalized declaration of illegality or emergency relating to the ownership, possession or disposition of one (1) 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, shall 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) of this section, 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 are effected in accordance with rules of the administrator 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 the transfer to the full extent authorized by this chapter and rules adopted under this chapter.

9-21-124. Official exchange rates.

The administrator by rule shall establish the references by which the official exchange rate for pricing precious metals transactions in terms of United States dollars or other currency is established at the time of a depository transaction. The administrator 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.

9-21-125. Accounting for and reporting taxable gains.

The administrator by rule 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.

9-21-126. Annual report.

The administrator shall submit to the governor and the legislature a report on the status, condition, operations and prospects for the depository and depository participation not later than September 30 of each year.

9-21-127. Use of depository agents.

(a) The depository shall use private, independently managed firms and institutions licensed as depository agents as intermediaries to conduct retail transactions in bullion and specie on behalf of the depository with current and prospective depository account holders.

(b) The administrator by rule shall require a depository agent to maintain suitable systems and processes for electronic information sharing and communication with the administrator 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.

(c) A depository agent shall submit monthly, quarterly and annual reports to the administrator of all depository transactions not later than the fifteenth day of the month following the expiration of the period of each report. The report shall contain information and be in a form and format as provided by rule and regulation of the administrator.

ARTICLE 2

DEPOSITORY AGENT LICENSE

9-21-201. Definitions.

(a) As used in this article:

(i) "Depository agent" means a person licensed in accordance with this chapter to serve as an intermediary between the Wyoming bullion depository and a retail customer in making a transaction in precious metals, bullion or specie;

(ii) "Depository agent license" means a license issued under this article;

(iii) "Depository agent services" means services rendered to the general public for or on behalf of the Wyoming bullion depository in the nature of purchasing, selling, transferring, accepting, transporting, delivering or otherwise dealing in precious metals bullion or specie in connection with the creation, transfer, clearing, settlement or liquidation of the rights and interests of a depository account holder and a direct or indirect transferee of a depository account holder. The term "depository agent services" does not include:

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

(B) The opening, transfer, settlement or liquidation of any derivative of a contract described by subparagraph (A) of this paragraph, including a forward transaction, swap transaction, currency transaction, future transaction, index transaction or option on or other derivative of a transaction of any of those types, 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, including an option with respect to a transaction, or any combination of these transactions; or

(C) The rendition of services exclusively in support of the opening, transfer, settlement or liquidation of transaction derivatives described by subparagraph (B) of this paragraph through a central counterparty, such as those customarily rendered by a clearinghouse, clearing association or clearing corporation, or through an interbank payment system, physical or electronic trading facility, broker or brokerage firm, or similar entity, facility, system or organization.

9-21-202. Applicability.

(a) Notwithstanding any other provision of this chapter, a service that constitutes both a depository agent service under this article and a money transmission service as provided in W.S. 40-22-103 constitutes a depository agent service only.

(b) A person who renders a depository agent service and also renders a service that constitutes money transmission only is subject to the requirements for money transmission services as provided in title 40, chapter 22 of the Wyoming statutes.

9-21-203. License required.

(a) No person shall engage in the business of rendering depository agent services or advertise, solicit or hold itself out as a person that engages in the business of depository agent services unless the person:

(i) Is licensed under this article; or

(ii) Is excluded from licensing requirements under this article because the person is:

(A) The state or any political subdivision thereof;

(B) A bank, bank holding company, credit union, building and loan association, savings and loan association, savings bank or mutual bank organized under the laws of any state or the United States provided that they do not issue or sell payment instruments through authorized delegates or subdelegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks.

(b) For purposes of this article:

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

(A) Compensation is sought or received for the service, directly or indirectly;

(B) The service is incidental to any other business in which the person is primarily engaged.

(ii) A person solicits, advertises or holds the person out as a person that engages in the business of depository agent services if the person represents that the person will conduct depository agent services.

(c) Notwithstanding subsection (b) of this section, a person does not engage in the business of depository agent services by engaging in a transaction for the person's own depository account or for the account of another person acting as a fiduciary that would constitute depository agent services if conducted for another person.

(d) A depository agent license holder may engage in depository agent services business at one (1) or more locations in the state owned directly or indirectly by the license holder under a single license.

9-21-204. License application.

(a) Each application for a license shall be made in writing and in a form prescribed by the administrator. Each application shall include the following:

(i) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records;

(ii) The applicant's history of material litigation and criminal convictions for the five (5) year period prior to the date of the application;

(iii) A description of the activities conducted by the applicant and a history of operations;

(iv) A description of the business activities in which the applicant seeks to be engaged in the state;

(v) A list identifying the applicant's proposed authorized delegates or subdelegates in the state, if any, at the time of the filing of the license application; and

(vi) The location at which the applicant and its authorized delegates and its subdelegates, if any, propose to conduct the licensed activities in the state.

(b) The administrator may require a licensee under this act or an applicant for a license issued under this act to submit to a background investigation including fingerprint checks for state, national and international criminal history record checks as necessary. While exercising his authority under this subsection, the administrator may utilize background checks completed by the division of criminal investigation, other government agencies in this state or in other states, the federal bureau of investigation or the registry or any other entity designated by the registry.

(c) The administrator may determine the content of application forms and the means by which an applicant applies for, renews or amends a license under this act.

(d) In addition to the general qualifications for licensure set forth in subsection (a) of this section, an applicant for a depository agent license shall demonstrate to the satisfaction of the administrator that:

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

(ii) The applicant does not engage in any activity or practice that adversely affects the applicant's safety and soundness as determined by the administrator.

9-21-205. Application; fee; statements; security.

(a) At the time an application for a depository agent license is submitted, an applicant shall file with the administrator:

(i) An application fee not to exceed three thousand dollars ($3,000.00) as established by rule and regulation of the administrator;

(ii) Audited financial statements that are satisfactory to the administrator for purposes of determining whether the applicant has the minimum net worth required under applicable rules and is likely to maintain the required minimum net worth if a license is issued; and

(iii) A bond or security in the amount of five hundred thousand dollars ($500,000.00) that meets the requirements of the administrator and an undertaking or agreement that the applicant will increase or supplement the security to equal the aggregate security required by the administrator before the issuance of the license and the start of operations.

9-21-206. Issuance of license.

(a) After the applicant files an application, the administrator shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The administrator may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the administrator finds that the applicant's business will be conducted honestly, fairly and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this chapter and has paid the required application fee, the administrator shall issue a license to the applicant authorizing the applicant to engage in depository agent services in this state for a term of one (1) year. If these requirements have not been met, the administrator shall deny the application in writing setting forth the reasons for the denial.

(b) The administrator shall approve or deny every application for an original license within one hundred twenty (120) days from the date a complete application is submitted, provided the time period may be extended with written consent of the applicant. The administrator shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application within the time period allowed or consented to, the application is deemed approved and the administrator shall issue the license effective as of the first day after the one hundred twenty (120) day or extended period has elapsed.

(c) Any applicant aggrieved by a denial issued by the administrator under this section may at any time within thirty (30) days from the date of receipt of written notice of the denial request a hearing before the administrator.

9-21-207. Temporary license.

(a) The administrator may issue a temporary depository agent license to a person that is engaging in depository agent services, but has not obtained a license under this article, if the person:

(i) Certifies in writing that the person qualifies for the license and will submit a completed license application not later than sixty (60) days after the date the temporary license is issued;

(ii) Submits a recent financial statement acceptable to the administrator that reflects the minimum net worth required under applicable regulations;

(iii) Provides a bond or security that meets the requirements specified by the administrator, but not less than five hundred thousand dollars ($500,000.00);

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

(v) Pays the application fee and a nonrefundable temporary license fee in the amount established by rule and regulation of the administrator.

(b) The effective period for a temporary depository agent license shall not exceed ninety (90) days after the date the license is issued. The administrator may extend the effective period for not more than thirty (30) days if necessary to complete the processing of a timely filed application for which approval is likely.

9-21-208. Liability of license holder.

A depository agent license holder is liable for the delivery to or for the account of the depository or each depositor, as applicable, of all bullion, specie and precious metal payable or deliverable in connection with the transactions in which the license holder engages on behalf of the depository.

9-21-209. Trust imposed.

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

(b) If a depository agent license holder commingles any property received for delivery with other property owned or controlled by the depository agent license holder, all commingled property is impressed with a trust as provided by this section in an amount equal to the amount property received for delivery, less the amount of fees paid for the delivery.

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

(d) Property of a depository agent license holder impressed with a trust under this section shall not be considered an asset or property of the license holder in the event of bankruptcy, receivership or a claim against the license holder unrelated to the license holder's obligations under this chapter.

9-21-210. Disclosure requirements.

A depository agent license holder's name and mailing address or telephone number shall be provided to the purchaser in connection with each depository agent services transaction conducted by the depository agent license holder.

Section 2. W.S. 1-39-104(a), 1-39-116(a), 9-1-403 by creating a new subsection (j) and 40-22-103(a) are amended to read:

1-39-104. Granting immunity from tort liability; liability on contracts; exceptions.

(a) A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. 1-39-105 through 1-39-112 and limited by W.S. 1-39-121. Any immunity in actions based on a contract entered into by a governmental entity is waived except to the extent provided by the contract if the contract was within the powers granted to the entity and was properly executed and except as provided in W.S. 1-39-121. The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities. Nothing in this section shall be deemed to provide immunity from liability for a denial of deposit liability under W.S. 9-21-109, and the claims procedures of W.S. 1-39-113 shall not apply to any claim for judicial relief under W.S. 9-21-109.

1-39-116. Exclusiveness of remedy.

(a) Except as otherwise provided in W.S. 9-21-109, the remedy against a governmental entity as provided by this act is exclusive, and no other claim, civil action or proceeding for damages, by reason of the same transaction or occurrence which was the subject matter of the original claim, civil action or proceeding may be brought against the governmental entity. No rights of a governmental entity to contribution, indemnity or subrogation shall be impaired by this section. Nothing in this section prohibits any proceedings for mandamus, prohibition, habeas corpus, injunction or quo warranto.

9-1-403. State auditor; duties; prohibited acts; powers; investigative subpoenas.

(j) The state auditor shall administer the Wyoming bullion depository division and appoint an administrator of the depository as provided in W.S. 9-21-103.

40-22-103. License required; scope.

(a) With the exception of those persons exempt pursuant to W.S. 40-22-104 and except as otherwise provided in this section, on and after October 1, 2003, no person shall engage in the business of money transmission without a license. The division shall regulate money transmitters and carry out the provisions of this act. A person may engage in the business of money transmission if the person is licensed as a depository agent under W.S. 9-21-206 and only engages in the business of money transmission in connection with, and to the extent necessary for, the performance of depository agent activities as provided in W.S. 9-21-202(a).

Section 3. Prior to any expenditure of funds required of the implementation of the provisions of W.S. 9-21-101 through 9-21-210 related to the Wyoming bullion depository, the state auditor shall determine the costs necessary to implement the depository and shall make a supplemental budget request for that amount for consideration during the 2017 general legislative session as provided in W.S. 9-2-1013.

Section 4. This act is effective July 1, 2016.

(END)