

HOUSE BILL NO. HB0198

Wyoming bullion depository.

Sponsored by: Representative(s) Edwards, Jennings, Laursen,
Lindholm, Miller and Salazar and Senator(s)
Biteman, Bouchard and Steinmetz

A BILL

for

1 AN ACT relating to the administration of the government;
2 providing for the creation and administration of the
3 Wyoming bullion depository as specified; providing for
4 licensure of depository agents as specified; providing
5 definitions; providing for fees; providing rulemaking
6 authority; requiring annual reports; amending the duties of
7 the state auditor; conforming related provisions in the
8 Governmental Claims Act; and providing for effective dates.

9

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

11

12 **Section 1.** W.S. 9-23-101 through 9-23-127 and
13 9-23-201 through 9-23-210 are created to read:

14

15

CHAPTER 23

1 WYOMING BULLION DEPOSITORY

2

3 ARTICLE 1

4 WYOMING BULLION DEPOSITORY OPERATIONS

5

6 **9-23-101. Establishment.**

7

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

10

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

16

17 **9-23-102. Definitions.**

18

19 (a) As used in this chapter:

20

21 (i) "Administrator" means the bullion depository
22 administrator appointed under W.S. 9-23-103;

23

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

7

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

11

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

20

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

23

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

3

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

8

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

12

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

17

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

20

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

1

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

4

5 (B) Is customarily formed into bullion or
6 specie.

7

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

14

15 **9-23-103. Depository administration; administrator.**

16

17 (a) The depository shall be administered as a
18 division of the office of the state auditor, under the
19 direction and supervision of a bullion depository
20 administrator appointed by the state auditor with the
21 advice and consent of the governor. The appointment shall
22 be subject to senate confirmation in the manner provided in

1 W.S. 28-12-101 and 28-12-102 for gubernatorial
2 appointments.

3

4 (b) The administrator shall:

5

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

9

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

15

16 (iii) Promulgate rules and regulations necessary
17 to implement the provisions of this chapter.

18

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

23

1 **9-23-104. Deposits not subject to legislative**
2 **appropriation; allocation of revenues.**

3
4 (a) The following shall not be available for
5 legislative appropriation:

6
7 (i) A deposit to the depository;

8
9 (ii) Bullion or specie held by or on behalf of
10 the depository or a depository agent;

11
12 (iii) Bullion or specie in transit to or from
13 the depository or a depository agent;

14
15 (iv) A receivable or other amount owed to the
16 depository in settlement of a transaction in bullion or
17 specie.

18
19 (b) Bullion, specie and other assets described in
20 subsection (a) of this section are subject to redemption,
21 liquidation or transfer exclusively to discharge an
22 obligation of the depository to depository account holders,
23 depository agents, bullion banks, financial institutions or

1 other intermediaries in accordance with this chapter and
2 rules adopted under this chapter.

3

4 (c) Revenue the depository realizes from fees,
5 charges or other payments received in the course of
6 depository operations shall be deposited in the general
7 fund.

8

9 **9-23-105. Deposits and depository accounts.**

10

11 (a) The depository may receive a deposit of bullion
12 or specie from or on behalf of a person acting in the
13 person's own right, as trustee or in another fiduciary
14 capacity in accordance with rules adopted by the
15 administrator as appropriate to:

16

17 (i) Ensure compliance with law; and

18

19 (ii) Protect the interests of:

20

21 (A) The depository;

22

23 (B) Depository account holders;

1

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

4

5 (D) The public at large.

6

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

12

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

21

22 (d) Upon a determination that it is in the public
23 interest, the administrator may by rule and regulation

1 restrict the forms in which deposits of precious metals may
2 be made to the depository to only those forms of deposits
3 that conveniently lend themselves to measurement and
4 accounting in units of troy ounces and standardized
5 fractions of troy ounces.

6

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

10

11 **9-23-106. Demand, presentment, withdrawal, delivery**
12 **and settlement.**

13

14 (a) The depository shall deliver any precious metal
15 held by or on behalf of the depository in bullion, specie
16 or a combination of bullion and specie, on the order of a
17 depository account holder in a quantity of that precious
18 metal as is available in the depository account holder's
19 depository account.

20

21 (b) The depository shall make a delivery described by
22 subsection (a) of this section on demand by the presentment
23 of a suitable check, draft or electronic instruction to the

1 depository or a depository agent. The administrator by rule
2 shall adopt the forms, standards and processes through
3 which an order for delivery on demand may be made,
4 presented and honored.

5

6 (c) The depository shall make a delivery described in
7 subsection (a) of this section at the depository's
8 settlement facility designated by the administrator,
9 shipping to an address specified by the account holder or,
10 at the discretion of the depository, at a facility of a
11 depository agent at which presentment is made. A delivery
12 shall be made not later than five (5) business days after
13 the date of presentment.

14

15 **9-23-107. Transfer of depository account balance.**

16

17 (a) In accordance with rules adopted under this
18 chapter, a depository account holder may transfer any
19 portion of the balance of the holder's depository account
20 by check, draft or digital electronic instruction or
21 instrument to another depository account holder or to a
22 person who at the time the transfer is initiated is not a

1 depository account holder, as provided in subsection (c) of
2 this section.

3

4 (b) The depository shall adjust the depository
5 account balances of the depository accounts to reflect a
6 transfer transaction between depository account holders on
7 presentment of the check, draft or other transaction
8 instrument by reducing the transferor's depository account
9 balance and increasing the depository account balance of
10 the transferee accordingly.

11

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

21

22 **9-23-108. Depository account contracts.**

23

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

4

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

7

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

10

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

14

15 (c) The depository and the depository account holder
16 may amend a contract for a depository account by agreement,
17 or the depository may amend the deposit contract by mailing
18 a written notice of the amendment to the account holder,
19 separately or as an enclosure with the account holder's
20 statement of account or passbook. In the case of a contract
21 amendment by notice from the depository, the notice shall
22 include the text and effective date of the amendment. The
23 effective date of the amendment shall not be earlier than

1 thirty (30) days after the date the notice is mailed,
2 unless otherwise provided by rules adopted under this
3 chapter.

4

5 **9-23-109. Cause of action for denial of deposit**
6 **liability.**

7

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

14

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

19

20 (c) The depository's liability for a denial of
21 deposit liability is limited to the amount on deposit for
22 which liability was denied. A depositor may not recover
23 consequential damages, exemplary damages, pre-judgment or

1 post-judgment interest, costs or attorney's fees due to a
2 finding against the depository of denial of deposit.

3

4 (d) A suit authorized by this section shall be
5 brought in the first judicial district court in Laramie
6 county.

7

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

11

12 **9-23-110. Fees; service charges; penalties.**

13

14 The administrator by rule may establish fees, service
15 charges and penalties to be charged to a depository account
16 holder for a service or activity regarding a depository
17 account, including a fee for an overdraft, an insufficient
18 fund check or draft or a stop payment order.

19

20 **9-23-111. Depository account ownership.**

21

22 Unless the depository acknowledges in writing a pledge of a
23 depository account, the depository may treat the holder of

1 record of the account as the owner of the account for all
2 purposes and without regard to a notice to the contrary.

3

4 **9-23-112. Depository account transfer.**

5

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

9

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

12

13 (ii) An application for the transfer submitted
14 by the person to whom the depository account is to be
15 transferred.

16

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

21

22 **9-23-113. Depository accounts not interest-bearing.**

23

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

3

4 (i) Interest;

5

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

7

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

11

12 **9-23-114. Lien on depository account.**

13

14 (a) Without the need of any further agreement or
15 pledge, the depository has a lien on each depository
16 account owned by a depository account holder to secure any
17 fees, charges or other obligations owed or that may become
18 owed to the depository in connection with any of the
19 depository account holder's depository accounts.

20

21 (b) On default in the payment or in the satisfaction
22 of a depository account holder's obligation, the
23 depository, without notice to or consent of the depository

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

6

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

10

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

23

1 **9-23-115. Depository account as legal investment.**

2

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

7

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

10

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

13

14 (iii) A business or nonprofit corporation;

15

16 (iv) A charitable corporation or association; or

17

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

20

21 **9-23-116. Applicability of estate code.**

22

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

4

5 **9-23-117. Pledge of jointly held depository account.**

6

7 (a) Unless a term of the depository account provides
8 otherwise, a person on whose signature precious metals may
9 be withdrawn from a depository account that is jointly held
10 in the names of two (2) or more persons may, by a signed
11 pledge, pledge and transfer to the depository or to a third
12 party all or part of the account.

13

14 (b) A pledge made as described by subsection (a) of
15 this section does not sever or terminate the joint and
16 survivorship ownership of the account, to the extent
17 applicable to the account before the pledge.

18

19 **9-23-118. Depository account held by fiduciary.**

20

21 (a) The depository or a depository agent may accept a
22 depository account in the name of a fiduciary, including an

1 administrator, executor, custodian, guardian or trustee,
2 for a named beneficiary.

3

4 (b) A fiduciary may open, add to or withdraw precious
5 metals from an account described in subsection (a) of this
6 section.

7

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

12

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

20

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

23

1 (ii) Any other disposition of the beneficial
2 estate.

3

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

7

8 **9-23-119. Depository account held in trust;
9 undisclosed trust instrument.**

10

11 (a) If the depository opens a depository account for
12 a person claiming to be the trustee for another person and
13 the depository has no other notice of the existence or
14 terms of the trust other than a written claim against the
15 account:

16

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

20

21 (ii) If the person claiming to be the trustee
22 dies, the depository may pay or deliver the quantity of

1 precious metals represented by the balance in the account
2 to the person for whom the account was opened.

3

4 (b) The depository has no further liability for a
5 payment or delivery made as provided by subsection (a) of
6 this section.

7

8 **9-23-120. Power of attorney; revocation.**

9

10 (a) The depository shall recognize the authority of
11 an attorney-in-fact authorized in writing by a depository
12 account holder to manage or withdraw precious metals from
13 the depository account holder's account until the
14 depository receives written or actual notice of the
15 revocation of that authority.

16

17 (b) Unless otherwise specified in the authority
18 authorizing the attorney-in-fact, written notice of the
19 death or adjudication of incompetency of a depository
20 account holder is considered to be written notice of
21 revocation of the authority of the account holder's
22 attorney-in-fact. Nothing in this subsection shall be
23 deemed to affect the ability of an attorney-in-fact to

1 deposit precious metals to the depository account holder's
2 account.

3

4 **9-23-121. Transactions and relationships.**

5

6 The depository may enter into transactions and
7 relationships with bullion banks, depositories, dealers,
8 central banks, sovereign wealth funds, financial
9 institutions, international nongovernmental organizations
10 and other persons, located inside or outside of the state
11 or inside or outside of the United States, as the
12 administrator determines to be prudent and suitable to
13 facilitate the operations of the depository and to further
14 the purposes of this chapter.

15

16 **9-23-122. Prohibited actions.**

17

18 (a) The depository shall not take any of the
19 following actions, and any attempt by the depository to
20 take any of the following actions is void ab initio and of
21 no force or effect:

22

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

21

22 (ii) Crediting the depository account balances
23 of a depository account holder, or disposing of any

1 precious metals, if to do so would cause the aggregate
2 depository account balances with respect to any precious
3 metal represented by all depository accounts to exceed the
4 aggregate quantities of such precious metal held by or for
5 the benefit of the depository and the depository's
6 depository agents;

7

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

13

14 (A) The custody or intermediary
15 arrangements in question do not meet the administrator's
16 standards of safety, security and liquidity; or

17

18 (B) Except in those cases where such
19 relationship may be incidental to the performance of or
20 preparation for purchase and sale transactions with
21 counterparties located outside of the state, suitable
22 alternate arrangements for physical custody of the precious

1 metals inside this state have been established and are
2 available.

3

4 (iv) Extending credit to a person, including
5 credit secured by a depository account or other assets,
6 except an extension of credit incidental to the performance
7 of the functions and responsibilities otherwise provided by
8 this chapter;

9

10 (v) Engaging in a business or activity that, if
11 conducted by a private person, would be subject to
12 regulation in this state as a banking or savings and loan
13 function.

14

15 **9-23-123. Confiscations, requisitions, seizures and**
16 **other actions void.**

17

18 (a) Except by a valid court order pursuant to law, a
19 purported confiscation, requisition, seizure or other
20 attempt to control the ownership, disposition or proceeds
21 of a withdrawal, transfer, liquidation or settlement of a
22 depository account, including the precious metals
23 represented by the balance of a depository account, if

1 effected by a governmental or quasi-governmental authority
2 or by a financial institution or other person acting on
3 behalf of or pursuant to a directive or authorization
4 issued by a governmental or quasi-governmental authority,
5 in the course of a generalized declaration of illegality or
6 emergency relating to the ownership, possession or
7 disposition of one (1) or more precious metals, contracts
8 or other rights to the precious metals or contracts or
9 derivatives of the ownership, possession, disposition,
10 contracts or other rights, is void ab initio and of no
11 force or effect.

12

13 (b) The depository in the case of receiving notice of
14 a purported confiscation, requisition, seizure or other
15 attempt to control the ownership, disposition or proceeds
16 of a withdrawal, transfer, liquidation or settlement of a
17 depository account, including the precious metals
18 represented by the balance of a depository account,
19 effected by a governmental or quasi-governmental authority
20 or by a financial institution or other person acting on
21 behalf of or pursuant to a directive or authorization
22 issued by a governmental or quasi-governmental authority,
23 in the course of a generalized declaration of illegality or

1 emergency relating to the ownership, possession or
2 disposition of one (1) or more precious metals, contracts
3 or other rights to the precious metals or contracts or
4 derivatives of the ownership, possession, disposition,
5 contracts or other rights, shall not recognize the
6 governmental or quasi-governmental authority, financial
7 institution or other person acting as the lawful successor
8 of the registered holder of a depository account in
9 question.

10

11 (c) On receipt of notice of any transaction described
12 by subsection (a) of this section, with respect to all or
13 any portion of the balance of a depository account, the
14 depository shall suspend withdrawal privileges associated
15 with the balances of the depository account until suitable
16 substitute arrangements are effected in accordance with
17 rules of the administrator to enable the registered account
18 holder to take delivery of the precious metals represented
19 by the account balances in question. A voluntary transfer
20 of a depository account balance or of a depository account
21 among depository account holders may continue to take place
22 unaffected by the suspension, and the depository shall

1 recognize the transfer to the full extent authorized by
2 this chapter and rules adopted under this chapter.

3

4 **9-23-124. Official exchange rates.**

5

6 The administrator by rule shall establish the references by
7 which the official exchange rate for pricing precious
8 metals transactions in terms of United States dollars or
9 other currency is established at the time of a depository
10 transaction. The administrator shall establish procedures
11 and facilities through which the rates are made
12 discoverable at all reasonable times by system
13 participants, both on a real time basis and
14 retrospectively.

15

16 **9-23-125. Accounting for and reporting taxable gains.**

17

18 The administrator by rule shall establish procedures and
19 requirements for the depository and depository agents
20 designed to minimize the burden to system participants of
21 accounting for and reporting taxable gains and losses
22 arising out of depository transactions as denominated in
23 United States dollars or another currency.

1

2 **9-23-126. Annual report.**

3

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

8

9 **9-23-127. Use of depository agents.**

10

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

16

17 (b) The administrator by rule shall require a
18 depository agent to maintain suitable systems and processes
19 for electronic information sharing and communication with
20 the administrator and the depository to ensure that all
21 transactions effected on behalf of the depository are
22 reported to and integrated into the depository's records

1 not later than 11:59:59 p.m. on the date of each
2 transaction.

3

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

11

12

ARTICLE 2

13

DEPOSITORY AGENT LICENSE

14

9-23-201. Definitions.

15

16 (a) As used in this article:

17

18 (i) "Depository agent license" means a license
19 issued under this article;

20

21 (ii) "Depository agent services" means services
22 rendered to the general public for or on behalf of the
23

1 Wyoming bullion depository including purchasing, selling,
2 transferring, accepting, transporting, delivering or
3 otherwise dealing in precious metals bullion or specie in
4 relation to the creation, transfer, clearing, settlement or
5 liquidation of the rights and interests of a depository
6 account holder or a direct or indirect transferee of a
7 depository account holder. The term "depository agent
8 services" does not include:

9

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

21

22 (B) The opening, transfer, settlement or
23 liquidation of any derivative of a contract described by

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

11

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

22

23 **9-23-202. Applicability.**

1

2 (a) Notwithstanding any other provision of this
3 chapter, a service that constitutes both a depository agent
4 service under this article and a money transmission service
5 under W.S. 40-22-103 constitutes a depository agent service
6 only and shall not be deemed to be engaged in the business
7 of money transmission as provided in W.S. 40-22-103(a).

8

9 (b) A person who renders a depository agent service
10 and separately renders a service that constitutes money
11 transmission shall be subject to the requirements of this
12 article and to the requirements for money transmission
13 services as provided in title 40, chapter 22 of the Wyoming
14 statutes.

15

16 **9-23-203. License required.**

17

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

22

23 (i) Is licensed under this article; or

1

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

4

5 (A) The state or any political subdivision
6 thereof;

7

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

17

18 (b) For purposes of this article:

19

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

23

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

3

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

6

7 (ii) A person solicits, advertises or holds
8 themselves out as a person that engages in the business of
9 depository agent services if they represent that they will
10 conduct depository agent services.

11

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

18

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

23

1 **9-23-204. License application.**

2

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

6

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

11

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

15

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

18

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

21

1 (v) A list identifying the applicant's proposed
2 authorized delegates or subdelegates in the state, if any,
3 at the time of the filing of the license application; and
4

5 (vi) The location at which the applicant and its
6 authorized delegates and its subdelegates, if any, propose
7 to conduct the licensed activities in the state.
8

9 (b) The administrator may require a licensee under
10 this article or an applicant for a license issued under
11 this article to submit to a background investigation
12 including fingerprint checks for state, national and
13 international criminal history record checks as necessary.
14 While exercising his authority under this subsection, the
15 administrator may utilize background checks completed by
16 the division of criminal investigation, other government
17 agencies in this state or in other states, the federal
18 bureau of investigation or the registry or any other entity
19 designated by the registry.
20

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

1

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

6

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

10

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

14

15 **9-23-205. Application; fee; statements; security.**

16

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

20

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

1

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

7

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

15

16 **9-23-206. Issuance of license.**

17

18 (a) After the applicant files an application, the
19 administrator shall investigate the financial condition and
20 responsibility, financial and business experience,
21 character and general fitness of the applicant. The
22 administrator may conduct an on-site investigation of the
23 applicant, the reasonable cost of which shall be borne by

1 the applicant. If the administrator finds that the
2 applicant's business will be conducted honestly, fairly and
3 in a manner commanding the confidence and trust of the
4 community and that the applicant has fulfilled the
5 requirements imposed by this chapter and has paid the
6 required application fee, the administrator shall issue a
7 license to the applicant authorizing the applicant to
8 engage in depository agent services in this state for a
9 term of one (1) year. If these requirements have not been
10 met, the administrator shall deny the application in
11 writing setting forth the reasons for the denial.

12

13 (b) The administrator shall approve or deny every
14 application for an original license within one hundred
15 twenty (120) days from the date a complete application is
16 submitted, provided the time period may be extended with
17 written consent of the applicant. The administrator shall
18 notify the applicant of the date when the application is
19 deemed complete. In the absence of approval or denial of
20 the application within the time period allowed or consented
21 to, the application is deemed approved and the
22 administrator shall issue the license effective as of the

1 first day after the one hundred twenty (120) day or
2 extended period has elapsed.

3

4 (c) Any applicant aggrieved by a denial issued by the
5 administrator under this section may, not later than thirty
6 (30) days from the date of receipt of written notice of the
7 denial, request a hearing before the administrator.

8

9 **9-23-207. Temporary license.**

10

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

15

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

20

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

1

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

5

6 (iv) Agrees in writing that, until a permanent
7 license is issued, the person will engage only in
8 activities conducted at locations where an existing
9 depository agent license holder is engaged in depository
10 agent services business; and

11

12 (v) Pays the application fee and a nonrefundable
13 temporary license fee in the amount established by rule and
14 regulation of the administrator. The fee shall be
15 established in an amount to ensure that, to the extent
16 practicable, the total revenue generated from fees
17 collected approximates, but does not exceed, the direct and
18 indirect costs of administering temporary depository agent
19 licenses.

20

21 (b) The effective period for a temporary depository
22 agent license shall not exceed ninety (90) days after the
23 date the license is issued. The administrator may extend

1 the effective period for not more than thirty (30) days if
2 necessary to complete the processing of a timely filed
3 application for which approval is likely.

4

5 **9-23-208. Liability of license holder.**

6

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

13

14 **9-23-209. Trust imposed.**

15

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

23

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

8
9 (c) If the administrator revokes a depository agent
10 license, all money and other property held in trust by the
11 depository agent license holder shall be transferred to the
12 administrator for the benefit of the persons to whom the
13 related delivery obligations are owed.

14
15 (d) Property of a depository agent license holder
16 impressed with a trust under this section shall not be
17 considered an asset or property of the license holder in
18 the event of bankruptcy, receivership or a claim against
19 the license holder unrelated to the license holder's
20 obligations under this chapter.

21

22 **9-23-210. Disclosure requirements.**

23

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

6

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

10

11 **1-39-104. Granting immunity from tort liability;**
12 **liability on contracts; exceptions.**

13

14 (a) A governmental entity and its public employees
15 while acting within the scope of duties are granted
16 immunity from liability for any tort except as provided by
17 W.S. 1-39-105 through 1-39-112. Any immunity in actions
18 based on a contract entered into by a governmental entity
19 is waived except to the extent provided by the contract if
20 the contract was within the powers granted to the entity
21 and was properly executed and except as provided in W.S.
22 1-39-120(b). The claims procedures of W.S. 1-39-113 apply
23 to contractual claims against governmental entities.

1 Nothing in this section shall be deemed to provide immunity
2 from liability for a denial of deposit under W.S. 9-23-109
3 and the claims procedures of W.S. 1-39-113 shall not apply
4 to any claim for judicial relief under W.S. 9-23-109.

5

6 **1-39-116. Exclusiveness of remedy.**

7

8 (a) Except as otherwise provided in W.S. 9-23-109,
9 the remedy against a governmental entity as provided by
10 this act is exclusive, and no other claim, civil action or
11 proceeding for damages, by reason of the same transaction
12 or occurrence which was the subject matter of the original
13 claim, civil action or proceeding may be brought against
14 the governmental entity. No rights of a governmental entity
15 to contribution, indemnity or subrogation shall be impaired
16 by this section. Nothing in this section prohibits any
17 proceedings for mandamus, prohibition, habeas corpus,
18 injunction or quo warranto.

19

20 **9-1-403. State auditor; duties; prohibited acts;**
21 **powers; investigative subpoenas.**

22

1 (j) The state auditor shall administer the Wyoming
2 bullion depository division and appoint an administrator of
3 the depository as provided in W.S. 9-23-103.

4
5 **40-22-103. License required.**

6
7 (a) With the exception of those persons exempt
8 pursuant to W.S. 40-22-104, ~~on and after October 1, 2003~~
9 and except as otherwise provided in this section, no person
10 shall engage in the business of money transmission without
11 a license. The division shall regulate money transmitters
12 and carry out the provisions of this act. A person may
13 engage in the business of money transmission if the person
14 is licensed as a depository agent under W.S. 9-23-206 and
15 only engages in the business of money transmission in
16 connection with, and to the extent necessary for, the
17 performance of depository agent activities as provided in
18 W.S. 9-23-202(a).

19
20 **Section 3.** The state auditor shall determine the
21 costs necessary to implement the depository as provided in
22 this act and shall make a supplemental budget request for

1 that amount for consideration during the 2021 general
2 legislative session as provided in W.S. 9-2-1013.

3

4 **Section 4.**

5

6 (a) Except as otherwise provided in subsection (b) of
7 this section, this act is effective immediately upon
8 completion of all acts necessary for a bill to become law
9 as provided by Article 4, Section 8 of the Wyoming
10 Constitution.

11

12 (b) Sections 1 and 2 of this act are effective July
13 1, 2021.

14

15 (END)